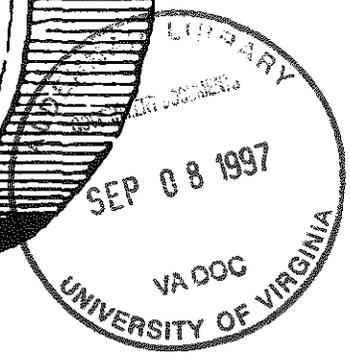
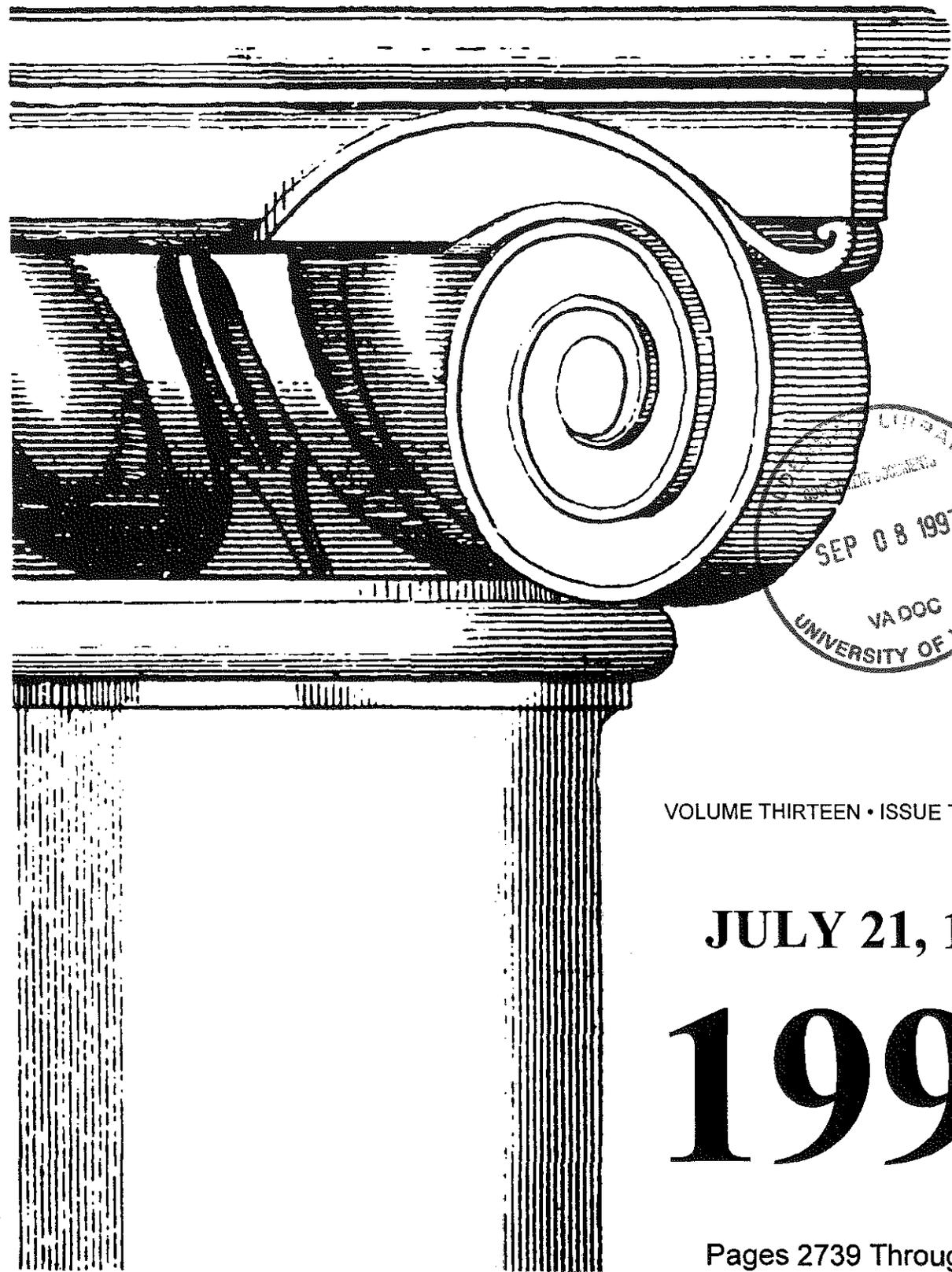


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THE VIRGINIA REGISTER

OF REGULATIONS



VOLUME THIRTEEN • ISSUE TWENTY-TWO

JULY 21, 1997

1997

Pages 2739 Through 2906

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) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation; and (ii) file the proposed regulation with the Registrar 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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August 4, 1997

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September 1, 1997

August 27, 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 amending regulations entitled: **9 VAC 5-80-10 et seq. Regulations for the Control and Abatement of Air Pollution (Rev. J97)**. The purpose of the proposed action is to develop a new source review permit program for sources of hazardous air pollutants as required by § 112(g) of the federal Clean Air Act.

Public Meeting: A public meeting will be held by the department in the Training Room, First Floor, Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, at 10:30 a.m. on July 23, 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.

Ad Hoc Advisory Group: The department is soliciting comments on the advisability of forming an ad hoc advisory group, utilizing a standing advisory committee or consulting with groups or individuals registering interest in working with the department to assist in the drafting and formation of any proposal. The primary function of any group, committee or individuals that may be utilized is to develop recommended regulation amendments for department consideration through the collaborative approach of regulatory negotiation and consensus. Any comments relative to this issue may be submitted until 4:30 p.m., July 24, 1997, to the Director, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

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

Need: The contemplated regulation is essential (i) to protect the health, safety or welfare of citizens and (ii) for the efficient and economical performance of an important governmental function. The reasoning for this conclusion is set forth below.

Hazardous air pollutants are known or suspected of causing cancer, nervous system damage, birth defects, and other serious health effects. Control of major sources of these pollutants will reduce and prevent such serious health effects.

Failure to develop an adequate regulation will also result in imposition of a federal program. Meeting the basic requirements of the law and its associated regulations will

ensure that Virginia retains its rights to govern Virginia sources.

Alternatives: Alternatives to the proposed regulatory action are being considered by the department. The department has tentatively determined that the first alternative is appropriate, as it is the least burdensome and least intrusive alternative that fully meets the purpose of the regulatory action. The alternatives being considered by the department are discussed below.

1. Amend the regulations to satisfy the provisions of the law and associated regulations and policies. This option is being selected because it meets the stated purpose of the regulatory action: to develop a new source review permit program for sources of hazardous air pollutants as required by § 112(g) of the federal Clean Air Act.
2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option is not being selected because it will not ensure consistency with federal requirements.
3. Take no action to amend the regulations. This option is not being selected because it will result in the imposition of a federal program.

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

Applicable Statutory Requirements: The contemplated regulation amendments are mandated by federal law or regulation. A succinct statement of the source (including legal citation) and scope of the mandate may be found below.

Under § 112 of the Clean Air Act, EPA is required to develop and maintain a list of hazardous air pollutants (HAPs), and to develop emission standards for these pollutants.

After the effective date of a Title V operating permit program, § 112(g) requires new and modified major sources to apply maximum achievable control technology (MACT). As described in §§ 112(g)(2)(A) and (B), modifying sources must meet the MACT for existing sources, and new sources must meet the MACT for new sources. If no applicable emissions limitations have been established, MACT must be determined on a case-by-case basis by states with approved Title V programs. Section 112(g)(1)(A) also allows sources to avoid requirements for modifications through the substitution of offsets; § 112(g)(1)(B) requires EPA to publish guidance that identifies the relative hazard to human health resulting from HAP emissions in order to facilitate any offset.

National Emission Standards for Hazardous Air Pollutants for Source Categories are found in 40 CFR Part 63. Thus far, final MACT standards have been issued for over 30 source types. The requirements of § 112 are also implemented in 40

Notices of Intended Regulatory Action

CFR 63.40 through 63.44, Requirements for control technology. This final rule was published in 61 FR 68384 (December 27, 1996). It establishes requirements and procedures for owners or operators to follow to comply with § 112(g), as well as guidance for permitting authorities in implementing § 112(g).

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

Public comments may be submitted until 4:30 p.m., July 24, 1997, to the Director, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Contact: Karen G. Sabasteanski, Policy Analyst, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426, FAX (804) 698-4510, toll-free 1-800-592-5482, or (804) 698-4021/TDD ☎

VA.R. Doc. No. R97-556; Filed June 4, 1997, 3:52 p.m.

ALCOHOLIC BEVERAGE 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 Alcoholic Beverage Control Board intends to consider **amending** regulations entitled: **3 VAC 5-10-10 et seq. Procedural Rules for the Conduct of Hearings Before the Board and its Hearing Officers and the Adoption or Amendment of Regulations.** The purpose of the proposed action is to simplify procedural rules in cases arising under the Wine and Beer Franchise Act and eliminate required annual rulemaking. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public comments may be submitted until August 22, 1997.

Contact: W. Curtis Coleburn, Secretary, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., Richmond, VA 23261-7491, telephone (804) 213-4409 or FAX (804) 213-4411.

VA.R. Doc. No. R97-608; Filed July 2, 1997, 10:42 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 Alcoholic Beverage Control Board intends to consider **amending** regulations entitled: **3 VAC 5-40-10 et seq. Requirements for Product Approval.** The purpose of the proposed action is to simplify the process for approving new alcoholic beverage products for sale in the Commonwealth. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public comments may be submitted until August 22, 1997.

Contact: W. Curtis Coleburn, Secretary, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., Richmond, VA 23261-7491, telephone (804) 213-4409 or FAX (804) 213-4411.

VA.R. Doc. No. R97-609; Filed July 2, 1997, 10:43 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 Alcoholic Beverage Control Board intends to consider **amending** regulations entitled: **3 VAC 5-50-10 et seq. Retail Operations.** The purpose of the proposed action is to (i) clarify storage requirements for alcoholic beverages used for culinary purposes; (ii) eliminate certain reporting requirements for industrial and hospital permittees; (iii) increase the record retention period for licensees from two to three years; (iv) permit the use of electronic data interchange programs; (v) allow wholesalers to offer different prices to on-premise and off-premise retailers; (vi) allow manufacturers to make gifts of alcoholic beverages for certain public events; and (vii) provide a schedule of penalties for first violations of certain statutes or regulations. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public comments may be submitted until August 22, 1997.

Contact: W. Curtis Coleburn, Secretary, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., Richmond, VA 23261-7491, telephone (804) 213-4409 or FAX (804) 213-4411.

VA.R. Doc. No. R97-610; Filed July 2, 1997, 10:43 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 Alcoholic Beverage Control Board intends to consider **amending** regulations entitled: **3 VAC 5-70-10 et seq. Other Provisions.** The purpose of the proposed action is to (i) simplify regulations on nonmember use of club facilities; (ii) simplify regulations establishing food inventory and sale qualifications for retail licensees; (iii) provide a process for the approval of employees with certain criminal convictions; (iv) clarify rules relating to lewd conduct; and (v) allow an exception to Happy Hour regulations for educational tastings. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public comments may be submitted until August 22, 1997.

Contact: W. Curtis Coleburn, Secretary, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., Richmond,

Notices of Intended Regulatory Action

VA 23261-7491, telephone (804) 213-4409 or FAX (804) 213-4411.

VA.R. Doc. No. R97-811; Filed July 2, 1997, 10:43 a.m.

BOARD FOR CONTRACTORS

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 Contractors intends to consider amending regulations entitled: **18 VAC 50-22-10 et seq. Board for Contractors Regulations**. The purpose of the proposed action is to comply with Executive Order 15(94) and conduct a regular reevaluation to determine if current regulations should be continued in existing form, amended, or terminated in order to regulate contractors in the least restrictive manner. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

Public comments may be submitted until July 23, 1997.

Contact: Eric L. Olson, Assistant Administrator, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-2785 or FAX (804) 367-2474.

VA.R. Doc. No. R97-539; Filed May 23, 1997, 12:10 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled: **12 VAC 30-50-10 et seq. Amount, Duration and Scope of Medical and Remedial Care Services; 12 VAC 30-60-10 et seq. Standards Established and Methods Used to Assure Quality of Care; 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 establish Medicaid coverage policies for licensed clinical nurse specialists, making them eligible for direct payment for the provision of services that they are licensed to provide. The agency does not intend to hold a public hearing on the proposed regulations after publication.

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

Public comments may be submitted until July 23, 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. R97-538; Filed May 21, 1997, 3:04 p.m.

DEPARTMENT OF MINES, MINERALS AND ENERGY

Board of Mineral Mining Examiners

† 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 Mineral Mining Examiners intends to consider amending regulations entitled: **4 VAC 25-35-10 et seq. Certification Requirements for Mineral Miners**. The purpose of the proposed action is to amend the section of the regulation on the general mineral miner certification to increase the time to submit training documents to the Department of Mines, Minerals and Energy (DMME). The time limit for DMME to return the general mineral miner certificate is also being considered for elimination. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 45.1-161.292:19 of the Code of Virginia.

Public comments may be submitted until August 20, 1997.

Contact: Conrad Spangler, Chairman, Board of Mineral Mining Examiners, Department of Mines, Minerals and Energy, 900 Natural Resources Dr., P.O. Box 3727, Charlottesville, VA 22903, telephone (804) 961-5000, FAX (804) 979-8544, or toll-free 1-800-828-1120 (VA Relay Center).

VA.R. Doc. No. R97-606; Filed July 2, 1997, 8:45 a.m.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS

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 Professional Soil Scientists intends to consider amending regulations entitled: **18 VAC 145-20-10 et seq. Board for Professional Soil Scientists Regulations**. The purpose of the proposed action is to comply with Executive Order 15(94) by conducting a regular reevaluation to determine if current regulations should be continued in existing form, amended or terminated in order to regulate professional soil scientists in the least restrictive manner. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 54.1-201 of the Code of Virginia.

Public comments may be submitted until August 11, 1997.

Contact: Gerald W. Morgan, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-2785, FAX (804) 367-2474, or (804) 367-9753/TDD ☎

VA.R. Doc. No. R97-580; Filed June 18, 1997, 11:54 a.m.

Notices of Intended Regulatory Action

SOIL AND WATER CONSERVATION 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 Soil and Water Conservation Board intends to consider promulgating regulations entitled: **4 VAC 50-60-10 et seq. Watershed Improvement District Referenda Regulations.** The purpose of the proposed action is to develop regulations which will specify arrangement for the conduct of referenda associated with the formation and operation of a watershed improvement district (WID).

Need: The proposed regulation is needed to make an electoral process efficient, complete, and consistent. Promulgation should make it possible to carry out existing law for the establishment of a watershed improvement district (WID). Unfortunately, the completion of the regulations may automatically make other required resources and expertise unavailable from the State Board of Elections, local boards of elections, and registrars. A WID is a means for local citizens to organize themselves into a self-governing unit capable of accepting moneys and financing needed environmental structures. This enables community determination of needs, which may serve to prevent state or federal imposition of natural resource requirements.

This is not a new intent of state law. The change merely designates different responsibility for setting referenda procedures. Formerly the responsible entity was the local Soil and Water Conservation District; now it is the Virginia Soil and Water Conservation Board, which already is accountable for land and water management and oversight of Virginia's 46 soil and water conservation districts.

Substance and Purpose: The referendum is the means by which landowners in a particularly defined area can vote to determine if a watershed improvement district should be created, and to determine if taxes and service charges should be levied to support the financial commitments of that WID to make improvements. Through these regulations, citizens will have an ability to address unique natural resource issues in conjunction with their locally elected soil and water conservation district (SWCD).

State law authorizes establishment of a WID within a soil and water conservation district or districts. A referendum that must pass both among the resident landowners and among all the qualified voters has been the mechanism for determining the WID's existence. The passage limit on the landowner portion of the referendum must be by two-thirds in favor who also must own two-thirds of the land. Passage of the referendum portion by all qualified voters is by simple majority.

Recodification of the election laws several years ago inadvertently affected the WID formation process by not addressing the WID references to the election laws. In response, the 1995 General Assembly mandated that the referenda authorized under the WID law be governed by

regulations developed by the Virginia Soil and Water Conservation Board. This will ensure that SWCD's across the state employ a consistent process, rather than each SWCD individually having to establish procedures for elections.

Estimated Impact: The regulations enable citizens to form a special assessment district, allowing the natural resource needs of a particular locale to be addressed and treated according to the wishes of the residents. Additional taxes and charges may be approved by referenda and collected to finance needed functions and structures within the district. A WID may incur indebtedness, borrow funds and issue bonds, subject to voter approval and landowner approval by referenda. The economic impact of this regulatory proposal will depend on the needs of each area, and only if the qualified voters and the landowners themselves wish for it to occur.

The regulations will name persons to conduct a referendum and describe associated administrative systems. The placement of perfunctory duties will be determined through expert advice and suggestions received during the public processes of the Administrative Process Act and the board's Regulatory Public Participation Procedures. While many details cannot be predicted at this preliminary stage, the least burdensome option will be selected so as to minimize the procedural steps associated with a referendum. The Department of Conservation and Recreation and the Virginia Soil and Water Conservation Board are very mindful of the limitation of resources and do not want to afflict themselves, soil and water conservation districts or citizens with minutia and technicalities that go beyond the minimum legal and effective requirements for a secure election.

Alternatives: The agency is not aware of any less burdensome or less intrusive alternatives for achieving the intent of the statute, aside from promulgating a set of uniform regulations for use throughout the Commonwealth. These regulations are not intended to be burdensome, nor intrusive, but, rather to promote essential American freedoms, including that of voting, expressing individual views, and helping to shape the character of one's local community. Electoral processes are a necessary function of government. Taxation is also an essential function of government. In this case, these functions are placed at the local level closest to the people. All alternatives considered are outside the scope of the regulatory process and would require legislative action.

Alternatives considered involve:

1. Rewrite of the Watershed Improvement District Act to require the joint responsibility of the State Board of Elections, local boards of elections, and local registrars; the Virginia Soil and Water Conservation Board, the Director of the Department of Conservation and Recreation, and the local soil and conservation districts. Current law fractures these resources and appears to make the actual functioning of referenda unworkable due to the absence of one or more of the above required parties to carry out the process. Currently either the

Notices of Intended Regulatory Action

expertise and support of the State Board of Elections is missing or the specific methodology required by §§ 10.1-617, 10.1-625, 10.1-628, and 10.1-634 of the Code of Virginia to hold referenda is missing. This alternative should be explored, but is beyond the current requirement to produce a set of regulations. Such an alternative would require major statutory changes and is outside of this regulatory process.

2. Amendments to the basic law to ensure the continued involvement of the State Board of Elections, local boards of elections, and local registrars. Under current law, the responsibilities of the State Board of Elections for such WID referenda will end with the effective date of the proposed regulations. The Department of Conservation and Recreation cannot understand how the referenda process would function without these resources. The Virginia Soil and Water Conservation Board and the department would have to duplicate the processes and resources of the state and local boards of elections and local registrars. Such an alternative would require major statutory and budget changes and is outside of this regulatory process.

3. Amendment of the existing law to require the 46 local soil and water conservation districts individually to promulgate regulations. First, they probably would be required to promulgate individual sets of public participation procedures. Second, they would be required to promulgate individual sets of Watershed Improvement District Referenda Regulations. Thus there would be an additional 92 sets of regulations in the Commonwealth, which would surely differ and cause confusion to the public, particularly when WID proposals overlap jurisdictional boundaries. Further, this scenario would require districts to duplicate, on an individual district basis, the processes and resources of the state and local boards of elections and local registrars. Such an alternative would require major statutory changes and is outside of this regulatory process.

4. Amendment of the existing law to centralize the local soil and water conservation districts' authority under § 10.1-617 of the Code of Virginia to develop individual and separate regulations to conduct a public hearing as permitted by § 10.1-616 of the Code of Virginia under the authority of the Virginia Soil and Water Conservation Board. Current wording is permissive, not mandatory, for the local soil and water conservation districts to develop such regulations. If centralized, the Virginia Soil and Water Conservation Board could be directed to incorporate such requirements into these Watershed Improvement District Referenda Regulations to provide one uniform set of requirements statewide to cover this entire process. Such an alternative would require major statutory changes and is outside of this regulatory process.

5. Amendment to simply repeal the local soil and water conservation districts' authority under § 10.1-617 of the Code of Virginia to develop individual and separate

regulations to conduct a public hearing as permitted by § 10.1-616 of the Code of Virginia. If repealed, the local soil and water conservation districts would rely upon the Virginia Freedom of Information Act and any other pertinent laws to conduct the public meeting. Such an alternative would require major statutory changes and is outside of this regulatory process.

Ad hoc Committee: The director intends to form an ad hoc committee to assist the board and department in gathering data and issues and in developing draft, proposed regulations. Meetings of the ad hoc committee will be public and published in The Virginia Register of Regulations.

The department requests comments on the costs and benefits of the stated alternatives or other alternatives.

The director intends to hold at least one public hearing on the proposed regulation after it is formally adopted by the board as a proposed regulation and it is published in The Virginia Register of Regulations.

To be considered, written comments should be directed to Mr. Leon E. App at the address below and must be received by 4 p.m. on Tuesday, July 29, 1997.

Applicable Laws and Regulations: Chapter 6 (§ 10.1-614 et seq.) of Title 10.1 of the Code of Virginia, especially §§ 10.1-634.1, 10.1-617, 10.1-624, 10.1-628 and 10.1-634.

Chapters 1.1:1 (§ 9-6.14:4.1 et seq.) and 1.2 (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia.

The Virginia Soil and Water Conservation Board's Regulatory Public Participation Procedures found at 4 VAC 50-10-10 et seq. and formerly VR 625-00-00:1 apply.

Governor Allen's Executive Order 13 (94), Review of Regulations Proposed by State Agencies.

Note: It must be assumed at this time that the federal voting rights laws apply to this action. Advice from the Attorney General's Office is to complete the Virginia regulatory actions and then submit the final regulation product to the Attorney General who will forward it to the U. S. Department of Justice for their review and determination of coverage.

Public Hearing Plans: On behalf of the board, the department seeks oral and written comments from interested persons on the intended regulatory action and on the costs and benefits of any alternative actions. In particular, the department requests comments on how the board may best develop these regulations to account for the total referenda process without assistance or resources from the State Board of Elections, local boards of elections and local registrars.

Additional Information: For additional information, review or copies of material or applicable laws and regulations, contact Mr. App at the address below.

Statutory Authority: § 10.1-634.1 of the Code of Virginia.

Public comments may be submitted until 4 p.m. on July 29, 1997.

Notices of Intended Regulatory Action

Contact: Leon E. App, Conservation and Development Programs Supervisor, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-4570, FAX (804) 786-6141, or (804) 786-2121/TDD 📞

VA.R. Doc. No. R97-396; Filed April 9, 1997, 11:32 a.m.

PROPOSED REGULATIONS

For information concerning Proposed Regulations, see Information Page.

Symbol Key

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

VIRGINIA MUSEUM OF FINE ARTS

REGISTRAR'S NOTICE: The Virginia Museum of Fine Arts 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 103-10-10 et seq. **Museum and Grounds Use and Access.**

Statutory Authority: § 23-253.4 of the Code of Virginia.

Summary:

This proposed regulation requires all parties or individuals not having contracted for use of the museum, museum grounds, or its other properties to obtain a permit for use from the museum. Such permit shall be requested 10 days prior to the desired use date. The regulation also requires compliance with Virginia law and sets forth bases for denial and revocation of the use permit.

CHAPTER 10.

MUSEUM AND GROUNDS USE AND ACCESS.

8 VAC 103-10-10. Definitions.

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

"Museum" means the Virginia Museum of Fine Arts.

"Museum building" means, but is not limited to, the primary building and any additions housing the Virginia Museum of Fine Arts, its collections, office spaces and assembly spaces.

"Museum grounds" means property including but not limited to streets, driveways, sidewalks, gardens, parking lots, and other open spaces deemed to be owned or otherwise controlled by the Virginia Museum of Fine Arts.

"Other properties" means, but is not limited to, any structures, storage facilities, garages, and classroom facilities not included in the "museum building" definition deemed to be owned or otherwise controlled by the Virginia Museum of Fine Arts.

8 VAC 103-10-20. Authority and application.

A. This regulation is established in accordance with § 23-253.4 of the Code of Virginia.

B. This regulation shall apply to the general public; to all public and private organizations, parties, or movements; and to all employees of the museum, the museum foundation, the council shop, and TheatreVirginia.

8 VAC 103-10-30. Procedures.

A. Public service hours.

1. *Museum building. Unless otherwise posted, the public exhibition areas of the museum building shall be open to the public from 11 a.m. each morning until 5 p.m. in the evening, Tuesday through Sunday, except for Thursday when closing will be at 8 p.m. These opening/closing times do not apply to members of the public attending functions or programs in the museum which are sponsored by the museum or are held at the museum pursuant to contract with the museum such as TheatreVirginia performances, "Fast Forward," and "Jumpin." Opening/closing times will be posted throughout the building. Unauthorized persons found on the premises after the posted closing times will be subject to arrest and prosecution.*

2. *Museum grounds. The grounds of the museum shall be open to the public from sunrise to sunset each day, except that the museum parking lots shall be open to members of the public attending approved functions or programs at the museum in the evening after sunset. Unauthorized persons found on the grounds during times other than the public service hours specified in this chapter will be subject to arrest and prosecution.*

3. *Other properties. The public service hours of other properties of the museum shall be posted on those properties. Unauthorized persons found on these other properties during times other than the posted public service hours will be subject to arrest and prosecution.*

B. *Prohibited activities. No soliciting, pamphleteering, assemblages or the displaying of flags, banners, or devices designed or adapted to bring into public notice any party, organization, or movement shall be permitted within the museum, its grounds or other properties except as provided herein.*

C. *Exceptions. With the approval of the director, the prohibitions set forth in subsection B of this section may be suspended by the Deputy Director for Administration to permit meetings, gatherings, or assemblages and the displaying of flags, banners, or devices if, in the deputy director's discretion, (i) the general enjoyment and use of the museum building, its grounds and other properties are not impaired, (ii) the public visiting the museum or attending an approved function is not disrupted, and (iii) the security or condition of the collection or the welfare, health, and safety of tourists, visitors and persons performing various duties on the premises are not endangered.*

D. *Permit required. Assemblages, meetings or functions which are not sponsored by the museum or which are not*

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held at the museum pursuant to a contract with the museum require a permit. Requests for permits for assemblages, meetings, or functions by any party, organization, movement or other private group must be in writing, must be submitted to the Deputy Director for Administration at least 10 working days prior to the requested date, and must contain the following information:

1. Name of organization, date of origin, status (corporation, unincorporated association, partnership, nonprofit corporation, etc.) and name and address of registered agent, if a corporation.
2. Name, title within the organization, permanent address, occupation and telephone number of the individual member who shall be responsible for the conduct of the meeting or function.
3. Statement as to the approximate number of members or other persons who will attend.
4. Date and specific period of time requested (from.....to.....).
5. Purpose of meeting or function, to include names and titles of speakers, if any.

E. Parking lots and walkways. Except for approved functions, the vehicular drives and parking lots within the museum grounds must remain open and the pedestrian walkways must afford reasonable movement of pedestrians at all times during public service hours.

F. Denial of permit. Requests for meetings or functions of organizations shall be denied if, after proper inquiry, the deputy director determines that the proposed event will constitute a clear and present danger to the orderly functioning of the museum and use of the museum building, its grounds or other properties by the public because of the advocacy of (i) the violent overthrow of the government of the United States, the Commonwealth of Virginia, or any political subdivision thereof; (ii) the willful damage or destruction, or seizure and subversion, of the museum building, its grounds or other property; (iii) the forcible disruption or impairment of or interference with the regularly scheduled functions of the museum; (iv) the physical harm, coercion, intimidation or other invasion of lawful rights of officials of the museum or members of the public; or (v) other disorders of a violent nature.

G. Violation of Virginia law. The deputy director may refuse authorization for the use of the museum building, its grounds or other property, if there is reason to believe that the organization requesting a permit is organized, functioning, or conducting business in violation of Virginia law.

H. Written approval. Authorization for the use of the museum building, its grounds or other property, will be set forth in a letter addressed to the individual named in subdivision D 2 of this section. Such authorization will automatically include all sections set forth above, together

with any other specific stipulations or procedures that may be necessary at the time.

I. Revocation of permit. Violations of this policy may result in immediate revocation of the permit by the deputy director or his duly appointed representative, and in the event such revocation occurs, all participants shall be required to leave the museum building, its grounds or other property forthwith.

VA.R. Doc. No. R97-586; Filed June 27, 1997, 2:49 p.m.

FINAL REGULATIONS

For information concerning Final Regulations, see Information Page.

Symbol Key

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

CHARITABLE GAMING COMMISSION

REGISTRAR'S NOTICE: Pursuant to § 18.2-340.38 of the Code of Virginia, the initial regulations adopted by the Charitable Gaming Commission are not subject to the Administrative Process Act (§ 9-6.14:1 et seq.) during the first 24-month period following the earliest effective date of any portion of Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2 of the Code of Virginia. Thereafter, all regulations shall fully comply with the provisions of the Administrative Process Act.

Title of Regulation: 11 VAC 15-11-10 et seq. Interim Public Participation Guidelines.

Statutory Authority: §§ 9-6.14:7.1, 18.2-340.18 and 18.2-340.38 of the Code of Virginia.

Effective Dates: July 1, 1997, through December 31, 1997.

Summary:

These regulations replace the current interim public participation guidelines (11 VAC 15-10-10 et seq.) which expired June 30, 1997. These regulations lay out the procedure to be used for soliciting public input in the formulation, amendment or repeal of regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) of the Code of Virginia.

Agency Contact: Copies of the regulation may be obtained from Donna Pruden, Charitable Gaming Commission, P.O. Box 756, 101 N. 14th Street, 17th Floor, Richmond, VA 23218, telephone (804) 786-0238. There is a charge of \$10 for all commission regulations.

CHAPTER 11.

INTERIM PUBLIC PARTICIPATION GUIDELINES.

11 VAC 15-11-10. Definitions.

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

"Administrative Process Act" means Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.

"Approving authority" means the collegial body of the Virginia Charitable Gaming Commission consisting of seven members each being duly appointed by the Governor of Virginia.

"Charitable Gaming Law" means the provisions found in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2 of the Code of Virginia.

"Executive Secretary" means the Executive Secretary of the Virginia Charitable Gaming Commission or his designee.

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

11 VAC 15-11-20. General.

A. The procedures in this chapter shall be used for soliciting input of interested persons in the formation and development, amendment or repeal of regulations in accordance with the Administrative Process Act (APA). This chapter does not apply to regulations exempted from the provisions of the Administrative Process Act (§ 9-6.14:4.1 B of the Code of Virginia) or excluded from the operation of Article 2 of the Administrative Process Act (§ 9-6.14:4.1 C of the Code of Virginia). The procedures shall expire when final regulations are promulgated or no later than December 31, 1997.

B. The failure of any person to receive any notice or copies of any documents provided under this chapter shall not affect the validity of any regulation.

C. In developing any regulation governing charitable gaming, the commission is committed to obtaining comments from interested persons. These comments may be forwarded to the executive secretary at the commission's main business office.

D. The public participation procedures shall apply to regulations administered by the commission that are subject to the Administrative Process Act. These procedures shall not apply to regulations adopted on an emergency basis.

E. Any person may petition the commission concerning the adoption or amendment of regulations. The petition, at a minimum, shall contain the following information:

- 1. Name of petitioner;*
- 2. Petitioner's mailing address and telephone number;*
- 3. Petitioner's interest in the proposed action;*
- 4. Recommended action with respect to regulations;*
- 5. Statement of need and justification for the proposed action;*
- 6. Statement of impact of the proposed action on the petitioner and other affected persons; and*
- 7. Supporting documents, if applicable.*

The commission shall provide a written response to such petition within 180 days from the date the petition was received. The commission's decision to initiate or not initiate rule making in response to petitions is not subject to judicial

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review. The commission, at its discretion, may consider any regulation request or change.

F. The commission shall maintain a list of persons who provide written comments or petitions to the commission and mail to everyone on the list a copy of the Notice of Intended Regulatory Action.

G. The commission shall place on its agenda, whenever appropriate, a period for public participation during its regular meetings.

H. The commission shall identify persons who either would be interested in or affected by proposed regulations. The methods for identifying interested parties shall include, but not be limited to, the following:

1. Using a list, compiled by the commission, of organizations which have been issued a permit or exempt authorization to conduct charitable gaming activities and of suppliers with a Certificate of Registration.
2. Using commission mailing lists to identify people who have raised questions or expressed an interest in the regulations.
3. Obtaining from the Secretary of the Commonwealth a list of persons who have registered as lobbyists for the most recent General Assembly session. The list shall be used to identify groups which may be interested in the subject matter of the proposed regulations.

I. The commission shall use, as necessary, advisory committees and interested individuals for developing proposed regulations. The commission shall use individuals with special expertise for professional input as required. Situations that may warrant the use of advisory committees may include, but are not limited to, analyzing electronic and mechanical gaming equipment, conducting special studies of charitable gaming as requested by the commission or the legislature and commenting on current or proposed statutes, regulations or operating rules and procedures.

J. Except for those regulations exempted by § 9-6.14:4.1 of the Code of Virginia, the commission shall provide the Registrar of Regulations with a Notice of Intended Regulatory Action (NOIRA) which describes the subject matter and intent of the planned regulation. At least 30 days shall be provided for public comment after publication of the NOIRA. The commission shall not file proposed regulations with the Registrar of Regulations until the public comment period on the NOIRA has closed.

K. The methods of notifying interested persons shall include publishing a notice in the Virginia Register of Regulations (Virginia Register) and may also include the following:

1. Sending the notice to all persons identified as interested parties through the methods described in subsection H of this section; and

2. Requesting that groups, associations and organizations to whom the notice is sent, publish the notice in newsletters or journals or use other means available to them to inform their members.

L. After interested parties have had reasonable opportunity to respond to the notice, the commission shall determine the level of interest in the proposed regulations.

1. If sufficient interest exists, the commission may schedule informal meetings before development of the proposed regulations. The purpose of the meetings shall be to determine specific areas of interest and concern and gather factual information on the subject of the proposed regulations.

2. Instead of or in addition to informal meetings, the commission may ask for additional written comments, concerns or suggestions on the development of regulations from those who respond to the notice.

3. The commission may forego an informal meeting, provided sufficient information to develop regulations was acquired as a result of the notice.

M. After initial public input on the intended regulatory action, the commission shall develop proposed regulations for review, revision and adoption.

N. After the drafting process, the commission-approved regulations shall be submitted to the Registrar of Regulations in accordance with the Administrative Process Act. Commission-approved regulations shall be published as proposed regulations in the Virginia Register.

O. The commission shall furnish a copy of the regulations published in the Virginia Register to persons who make such a request. A copy of the "Notice of Comment Period" form may be sent with the copy of the regulations.

P. The commission shall indicate in the NOIRA whether it intends to hold a public hearing on the proposed regulations after it is published. The commission shall hold such public hearings if required by law. If the commission states an intent to hold a public hearing on the proposed regulations in the NOIRA, then it shall hold the hearing.

Q. The commission shall adopt all final regulations. The final regulations shall be submitted for publication in the Virginia Register.

R. The commission shall order the printing of all adopted final regulations.

VA.R. Doc. No. R97-587; Filed June 27, 1997, 3:44 p.m.

Title of Regulation: 11 VAC 15-21-10 et seq. Interim Charitable Gaming Rules and Regulations.

Statutory Authority: §§ 18.2-340.18 and 18.2-340.38 of the Code of Virginia.

Effective Dates: July 1, 1997, through December 31, 1997, except 11 VAC 15-21-60 through 11 VAC 15-21-120 are effective September 1, 1997, through December 31, 1997.

Summary:

These regulations replace the current interim rules and regulations, 11 VAC 15-20-10 et seq., which expired June 30, 1997. These regulations prescribe the conditions under which charitable gaming shall be conducted in the Commonwealth to ensure that it is conducted in a manner consistent with the purpose for which it is permitted.

Agency Contact: Copies of the regulation may be obtained from Donna Pruden, Charitable Gaming Commission, P.O. Box 756, 101 N. 14th Street, 17th Floor, Richmond, VA 23218, telephone (804) 786-0238. There is a charge of \$10 for all commission regulations.

**CHAPTER 21.
INTERIM CHARITABLE GAMING RULES AND
REGULATIONS.**

**PART I.
DEFINITIONS.**

11 VAC 15-21-10. Definitions.

In addition to the definitions contained in § 18.2-340.16 of the Code of Virginia, the words and terms below, when used in this chapter, shall have the following meaning unless the context clearly indicates otherwise:

"Address of record" means an address provided to the commission on a permit application or exempt notification form or the most recent address on the commission's files.

"Bingo equipment and video systems" shall include equipment which facilitates the conduct of charitable gaming such as ball blowers, flashboards, TV monitors, cameras, smoke eaters, P.A. systems, tables and chairs, electronic verifiers and replacement parts for such equipment.

"Board of directors" means the board of directors, managing committee or other supervisory body of a qualified organization.

"Building" means a structure enclosed by continuous exterior walls regardless of the configuration of the interior walls.

"Bundled pull-tabs" means certain pull-tabs, commonly referred to as "jar tickets," "guppies," etc., which are taped or stapled together and sold as one unit.

"Calendar day" means the period of 24 consecutive hours commencing at 12:01 a.m. and concluding at midnight.

"Calendar week" means the period of seven consecutive calendar days commencing at 12:01 a.m. on Sunday and ending at midnight the following Saturday.

"Cash" means United States currency or coinage.

"CGC number" means a unique identification number issued by the commission.

"Commission" means the Virginia Charitable Gaming Commission.

"Concealed face bingo card" means a nonreusable bingo card constructed to conceal the card face. This type of card is commonly referred to under trade names such as "Tear-open," "Bonanza Bingo," "Bullseye" and "Fortune Card."

"Daubing" means covering a square containing a number called with indelible ink or otherwise concealing the number on a card or an electronic facsimile of a card.

"Deal" means each separate package or series of packages consisting of one game of instant bingo, pull-tab raffle or seal cards with the same serial number.

"Designator" means an object used in the number selection process, such as a ping pong ball, upon which bingo letters and numbers are imprinted.

"Discount" means any reduction in cost of admission or game packs via use of coupons, free packs or other similar methods.

"Disposable paper card" means a nonreusable, paper bingo card manufactured with preprinted numbers.

"Door prize" means any prize awarded by the random drawing or random selection of a name or number taken from any entry or admission ticket.

"Electronic bingo device" means an electronic device which displays facsimiles of bingo cards and allows a player to daub such cards.

"Electronic verification" means the verification of bingo by entering the free space number of the winning bingo card into computer equipment which contains preprogrammed software for this purpose.

"Fiscal year" or "annual reporting period" means the 12-month period beginning October 1 of any given year and ending September 30 of the following year.

"501(c) organization" means any organization that is tax exempt under 26 USC § 501(c) (3), (4), (8), (10) or (19).

"Flare" means a piece of paper, cardboard or similar material which bears printed information relating to name of manufacturer or logo, name of the game, card count, cost per play, the number of prizes to be awarded and the specific prize amounts in a deal of instant bingo, pull-tab or seal cards.

"Free space number," "perm number," "center number" or "card or face number" means the number generally printed in the center space of a bingo card that identifies the unique pattern of numbers printed on that card.

"Game program" means a written list of all games to be played and prize amounts to be paid during a session for each game, where prize amounts are fixed or are based on attendance.

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"Immediate family" means one's spouse, mother, father, son, daughter, brother, sister, grandchild, grandparent, mother-in-law, father-in-law and step-child.

"Interested parties" means the president, an officer or bingo manager of any qualified organization which is exempt or is a permit applicant or holds a permit or exempt authorization to conduct charitable gaming or the owner, director, officer or partner of an entity engaged in supplying charitable gaming supplies to organizations.

"Management, operation or conduct" means the provision of oversight and supervision, check writing or approval authority for charitable gaming funds, purchase authority for charitable gaming supplies, service as a volunteer worker or assistant or negotiation of contracts or leases.

"Manufacturer" means a person who assembles from raw materials or subparts a completed piece of bingo or other charitable gaming equipment or supplies. "Manufacturer" also means a person who modifies, converts, adds to or removes parts from bingo or other charitable gaming equipment or supplies to further its promotion or sale for the conduct of charitable gaming.

"Operating costs" means charitable gaming fund disbursements for reasonable and proper expenses incurred in the conduct of charitable gaming including, but not limited to, costs of publicizing the time, date and location of charitable gaming, utilities, rent, prizes, professional fees, audit and administration or permit fees and gaming supplies.

"Owner" means any individual with financial interest of 10% or more in a supplier.

"Packet" means sheets of bingo paper assembled in the order of games to be played. This may or may not include specials, winner-take-alls and jackpots.

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

"Prize" means cash, merchandise, certificate or other item of value awarded to a winning player.

"Progressive seal card game" means a seal card game in which a prize is carried forward to the next deal if not won when a deal is completed.

"Pull-tabs" means individually prepackaged cards made completely of paper or paper products with winners being determined by the appearance of preprinted concealed letters, numbers or symbols that must be exposed by the player to determine wins and losses.

"Random selection" or "randomly selected" means a process of selecting number designators to produce random numbers during a bingo game in which each designator or number in the remaining population has an equal chance or probability of being selected.

"Remuneration" means payment in cash or the provision of anything of value for goods provided or services rendered.

"Seal card" means a board or placard used in conjunction with a deal of the same serial number which contains one or more concealed areas that, when removed or opened, reveal a predesignated winning number, letter or symbol located on that board or placard.

"Selection device" means a device that is operated manually or mechanically to randomly select bingo numbers.

"Serial number" means a unique number printed by the manufacturer on each bingo card in a set or each instant bingo or pull-tab card in a deal.

"Series number" means the number of unique card faces contained in a set of disposable bingo paper or bingo hard cards. A 9000 series, for example, has 9000 unique faces.

"Session" means a period of time during which one or more bingo games are conducted by a single qualified organization, or when approval for joint operation is obtained, by two or more qualified organizations that begins with the selection of the first ball for the first game and ends with the selection of the last ball for the last game.

"Set" means the bingo cards contained within each series number.

"Special permit" means a permit granted to a qualified organization to allow the organization to conduct more frequent operation of bingo games during carnivals, fairs or other similar public amusement events of limited duration.

"Use of proceeds" means the use of funds derived by an organization from its charitable gaming activities which are disbursed for those lawful religious, charitable, community or educational purposes. This includes expenses relating to the acquisition, construction, maintenance or repair of any interest in the real property involved in the operation of the organization and used for lawful religious, charitable, community or educational purposes.

PART II.

PERMITS, EXEMPT NOTIFICATIONS, REGISTRATION CERTIFICATES.

11 VAC 15-21-20. Eligibility for permit; when valid; permit requirements.

A. The conduct of charitable gaming is a privilege which may be granted or denied by the commission. Except as provided in § 18.2-340.23 of the Code of Virginia, every organization and volunteer fire department and rescue squad with anticipated gross receipts of \$25,000 or more annually shall obtain a permit or exempt authorization number from the commission prior to the commencement of authorized charitable gaming activities.

B. Upon the organization's request and pursuant to § 18.2-340.24 B of the Code of Virginia, the commission shall review a tax exempt request submitted to the IRS for a tax exempt status determination. A nonrefundable fee of \$250 shall be charged for this review.

C. A permit or exempt authorization shall be valid only for locations, days, dates and times as listed on the permit or exempt authorization.

D. In accordance with subdivision 1 of § 18.2-340.19 of the Code of Virginia, as a condition of receiving a permit or exempt authorization, the following minimum percentage of charitable gaming gross receipts shall be used for (i) those lawful religious, charitable, community or educational purposes for which the organization is specifically chartered or organized or (ii) those expenses relating to the acquisition, construction, maintenance or repair of any interest in real property involved in the operation of the organization and used for lawful religious, charitable, community or educational purposes:

For the fiscal year beginning October 1, 1996:

For organizations with annual gross receipts less than \$150,000 3%

For organizations with annual gross receipts between \$150,000 and \$500,000 4%

For organizations with annual gross receipts over \$500,000 6%

For the fiscal year beginning October 1, 1997:

For organizations with annual gross receipts less than \$150,000 4%

For organizations with annual gross receipts between \$150,000 and \$500,000 6%

For organizations with annual gross receipts over \$500,000 9%

For the fiscal year beginning October 1, 1998, and later fiscal years:

For organizations with annual gross receipts less than \$150,000 5%

For organizations with annual gross receipts between \$150,000 and \$500,000 10%

For organizations with annual gross receipts over \$500,000 12%

11 VAC 15-21-30. Permit application and exempt notification process.

A. Organizations anticipating gross receipts of \$25,000 or more (except volunteer fire departments and rescue squads) shall complete a commission-prescribed application to request issuance or renewal of an annual permit to conduct charitable gaming. The application shall be accompanied by a nonrefundable fee payable to the Treasurer of Virginia in the amount of \$200. The commission may issue permits for periods of less than one year. Fees for such permits shall be prorated and rounded off to the nearest \$50 per quarter.

B. Volunteer fire departments and rescue squads anticipating gross receipts of \$25,000 or more shall file a commission-prescribed exempt notification form to request an authorization to conduct charitable gaming.

C. The commission may initiate action against any organization exempt from permit requirements when it reasonably believes the organization is not in compliance with the provisions of charitable gaming laws or applicable regulations, or both, of the commission. The commission may decline to issue an exempt notification number to volunteer fire departments and rescue squads failing to meet the requirements of § 18.2-340.23 of the Code of Virginia.

D. Permit holders requiring a special permit shall convey their request in the form of a letter to the commission. There shall be a \$50 fee for special permits.

E. Permits and exempt authorizations shall be valid for a period of one year from the date of issuance or for a period specified on the permit or authorization.

F. Permits shall be granted only after a background investigation to ensure public safety and welfare as required by § 18.2-340.25 of the Code of Virginia. Investigations shall consider the nature, the age and severity and the potential harm to public safety and welfare of any criminal offenses. The investigation may include, but shall not be limited to, the following:

1. A search of Virginia criminal history records for all officers of the organization and members who serve as game managers. Information and authorization to conduct these records checks shall be provided in the permit application. Applications may be denied if any game manager or officer has been convicted within 10 years preceding the date of application for any of the following:

- a. Any felony involving fraud, theft or financial crimes; or
- b. Any misdemeanor crimes involving moral turpitude.

In addition, any felony conviction involving fraud, theft or financial crimes, regardless of age, may result in denial of application.

2. An inquiry as to whether the organization has been investigated or examined by the Internal Revenue Service in connection with charitable gaming activities during the previous three years.

3. An inquiry as to whether the organization has entered into any contract with, or has otherwise employed for compensation, any persons for the purpose of organizing or managing, operating or conducting any charitable gaming activity.

4. Inquiries into the finances and activities of an organization and the sources and uses of funds.

5. Inquiries into the level of community or financial support to the organization and the level of community involvement in the membership and management of the organization.

G. The initial permit application shall include:

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1. A list of members participating in the conduct of charitable gaming;
 2. A copy of the articles of incorporation, bylaws, charter, constitution or other similar organizing document. Religious organizations with churches or other houses of worship may submit other appropriate organizing documents;
 3. A copy of the determination letter issued by the IRS under § 501(c) of the Internal Revenue Code, if appropriate, or a letter from the national office of an organization indicating the applicant organization is in good standing and is currently covered by a group exemption ruling;
 4. A copy of the organization's most recent annual financial statement and balance sheet;
 5. A copy of the written lease or proposed written lease agreement and all other agreements if the organization rents or intends to rent the facility where bingo is or will be conducted. Information on the lease shall include name, address, phone number of the landlord, square footage and maximum occupancy of the building and the rental amount by each category of equipment or property rented; and
 6. An authorization by an officer or other appropriate official of an organization to permit the commission to determine whether the organization has been investigated or examined by the Internal Revenue Service in connection with charitable gaming activities during the previous three years. This authorization will allow appropriate tax authorities to provide information relating to open or closed criminal investigations, civil examinations or other enforcement activity regarding the organization's involvement in charitable gaming, revocation of tax exempt status or other matters that may impact the issuance of a charitable gaming permit.
- H. Copies of minutes of meetings of an organization and any contracts with landlords or suppliers to which the organization is, or may be a party, may be requested by the commission prior to rendering a permitting decision.
- I. Copies of amendments to an organization's articles of incorporation, bylaws, charter, constitution or other organizing document, as they occur, shall be submitted to the commission.
- J. Organizations applying to renew a permit previously issued by the commission shall submit articles of incorporation, bylaws, charter, constitution or other organizing document and IRS determination letter if there are any amendments or changes to these documents. The most recent financial statements, information on officers and an IRS tax waiver form shall also be filed with a renewal application.
- K. Organizations may request permits to conduct joint bingo games as provided in § 18.2-340.29 of the Code of

Virginia and special permits as provided in § 18.2-340.27 of the Code of Virginia:

1. In the case of a joint game between a volunteer fire department or rescue squad and an organization not exempt from permit requirements, both shall file the exempt notification form and permit application respectively. Benefits extended by regulation or the Code of Virginia to a volunteer fire department or rescue squad shall not extend to a nonexempt organization solely due to operation of a joint game.
 2. The nonrefundable permit fee for joint games shall be a total of \$200.
 3. A single permit shall be issued in the names of both organizations conducting a joint game. All restrictions and prohibitions applying to single organizations shall apply to qualified organizations jointly conducting bingo games pursuant to § 18.2-340.29 of the Code of Virginia.
 4. No charitable gaming shall be conducted prior to the issuance of a joint permit or joint exemption number.
 5. Applications for joint games shall include an explanation of the division of manpower, costs and proceeds for the joint game.
- L. An organization wishing to permanently change dates, times or locations of its charitable gaming shall request a change in the permit.
- M. No more than six temporary changes in dates or times due to inclement weather, special events or holidays may be made in a permit year without a permanent change in the permit.
- N. Change requests shall be made in writing at least 30 days in advance of the proposed effective date.
- O. A nonrefundable fee of \$50, payable to the Treasurer of Virginia, shall be submitted with a request for a permanent permit change. The fee shall not be charged for temporary changes as described in subsection M of this section or to changes in permits due to an addition or removal of a charitable gaming activity.
- P. An organization located in the Northern Virginia Planning District may sell raffle tickets for a drawing to be held in another state in the United States provided:
1. The raffle is conducted by the organization in conjunction with a meeting outside the Commonwealth of Virginia or with another organization which is licensed to conduct raffles outside the Commonwealth of Virginia.
 2. The raffle is conducted in accordance with the laws of the state where the drawing is to be held.
 3. The portion of the proceeds derived from the sale of raffle tickets in the Commonwealth is reported to the commission.

PART III.

CONDUCT OF GAMES, RULES OF PLAY, ELECTRONIC BINGO.

11 VAC 15-21-40. Conduct of bingo, instant bingo and raffles.

A. Organizations subject to these regulations shall post their permit or exempt authorization at all times on the premises where charitable gaming is conducted.

B. No individual shall provide any information or engage in any conduct that alters or is intended to alter the outcome of any charitable game.

C. Individuals under 18 years of age may play bingo provided such persons are accompanied by a parent or legal guardian. It shall be the responsibility of the organization to ensure that such individuals are eligible to play. At its option, an organization may adopt a house rule to limit the play of bingo to individuals age 18 or older.

D. Individuals under the age of 18 may sell raffle tickets for a qualified organization raising funds for activities in which they are active participants.

E. No individual under the age of 11 may participate in the management, operation or conduct of bingo games.

F. Individuals between the ages of 11 and 18 may participate in the conduct or operation of a bingo game provided the organization conducting such bingo games obtains and keeps on file written parental consent from the parent or legal guardian and verifies the date of birth of such youth.

G. Family members and surviving spouses of deceased bona fide members may participate as volunteer game workers.

H. All volunteer workers, including nonmember spouses, shall have in their possession a picture identification, such as a driver's license, while participating in the management, operation or conduct of a bingo game.

I. There shall be a game manager or person in charge present any time a bingo game is conducted.

J. Any organization selling instant bingo, pull-tab raffles or seal cards shall:

1. Maintain a supplier's invoice or a legible copy thereof on premises where gaming is conducted which reflects all deals in play, in storage or used at the location where instant bingo cards, pull-tab or seal card raffles are sold; and

2. Pay for instant bingo, pull-tab or seal card supplies only by a check drawn on the charitable gaming account of the organization.

K. A volunteer working a bingo session may receive complimentary food and nonalcoholic beverages for consumption on premises, provided the retail value of such food and beverages does not exceed \$5.00 for each session.

L. Individuals who are not members of an organization or are members who do not participate in any charitable gaming activities may be paid reasonable fees for preparation of financial reports.

M. Except for individuals identified in subsections K and L of this section and individuals allowed by law to be compensated for providing assistance to organizations for the deaf and blind, no free packs, discounts or remuneration in any other form shall be provided directly or indirectly to volunteers, members of their family or individuals residing in their household.

N. Individuals providing security for an organization's charitable gaming activity shall not participate in the charitable gaming activity as a player and shall not be compensated with charitable gaming supplies or with rentals of electronic bingo devices.

O. No organization shall award any prize money or any merchandise valued in excess of the following amounts:

1. No bingo door prize shall exceed \$25;

2. No regular bingo or special bingo game prize shall exceed \$100;

3. No instant bingo prize for a single card shall exceed \$500;

4. No bingo jackpot of any nature whatsoever shall exceed \$1,000 nor shall the total amount of bingo jackpot prizes awarded in any one calendar day exceed \$1,000; and

5. No pull-tab card, when played as permitted in § 18.2-340.26 of the Code of Virginia, shall have a prize exceeding \$500.

The provisions of this subsection shall not apply to any bingo game in which all the gross receipts from players for that game up to \$1,000 are paid as prize money back to the players, provided there is no more than one such game per calendar day of play and the prize money from any such game does not exceed \$1,000, such games being commonly referred to as "winner-take-all" games.

P. Multiple bingo sessions shall be permitted in a single premises as long as the sessions are distinct from one another and are not used to advertise or do not result in the awarding of more in prizes than is permitted for a single qualified organization. All leases for organizations to conduct charitable gaming in a single premises shall be for sessions separated by an interval of at least one hour during which no instant bingo sales shall take place.

Q. Separate sessions at the same location shall require separate admission fees.

R. All bingo and instant bingo sales must occur within the time specified on the charitable gaming permit. In addition, instant bingo sales may occur as provided in subsection S of this section provided no such sales take place in the required one hour break between sessions.

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S. Instant bingo cards shall only be sold in conjunction with a regular bingo session. No instant bingo sales shall take place for more than two hours before or after a session. If multiple sessions are held at the same location, no instant bingo sales shall be conducted during the required one hour break between sessions. The commission may take action if it believes that a regular bingo session is not legitimate or is being conducted in a manner such that instant bingo cards are not being sold in conjunction with a normal, regular bingo session.

T. No charitable gaming shall be conducted by any organization on days, premises or at times other than those which are specified on the organization's permit or exempt authorization approved by the commission.

U. Only bona fide volunteers of qualified organizations may rent, exchange or otherwise provide electronic bingo devices to players.

V. A qualified organization shall conduct only bingo games listed on a game program for that session. The program shall list all games and prize amounts. If the prize amounts are determined by attendance or at the end of a game, the game program shall list the attendance required for the prize amount or the fact that prizes shall be determined at the end of a game.

W. A qualified organization selling instant bingo or pull-tab cards shall post a flare provided by the manufacturer at the location where such cards are sold.

X. Only qualified organizations shall advertise a bingo game. Providing players with information about bingo games through printed advertising is permitted, provided the name of the qualified organization shall be in a type size equal to or larger than the name of the premises, hall or the word "bingo." Printed advertisements shall identify the use of proceeds percentage reported in the past quarter or fiscal year.

Y. Raffles which award prizes based on a percentage of gross receipts shall use prenumbered tickets.

Z. The following rules shall apply to pull-tab dispensing devices:

1. A dispenser shall only be used at a location owned or leased by a qualified organization which holds a permit to conduct charitable gaming at that location. Only cards purchased by an organization to be used during the organization's charitable gaming activity shall be in the dispenser.
2. Keys to the dispensing area and coin/cash box shall be in the possession and control of the game manager or designee of the organization's board of directors at all times. Keys shall at all times be available at the location where the dispensing device is being used.
3. The game manager or designee shall provide keys to a commission representative for inspection upon request.

4. Only a volunteer game worker of an organization may stock the device, remove cash or pay winner's prizes.

11 VAC 15-21-50. Rules of play.

A. An organization may adopt "house rules" regarding conduct of the game, provided such rules are consistent with the provisions of the law and this chapter. "House rules" shall be conspicuously posted or at an organization's option, printed on the game program.

B. The following rules of play govern the conduct of bingo games:

1. All players shall be physically present at the location where the balls for a bingo game are drawn to play the game or to claim a prize. Seal card prizes that can only be determined after a seal is removed or opened must be claimed within 30 days of the close of a deal. All other prizes must be claimed on the game date.
2. No random number generators shall be used in the conduct of bingo games.

C. The following rules of play shall govern the sale of instant bingo and pull-tab cards:

1. Cards shall not be sold to the public from the original packing box or container. Cards from the original packing box or container shall be mixed thoroughly before being sold by volunteers, dispensing machines or from other containers.
2. No cards which have been marked, defaced, altered, tampered with or otherwise constructed in a manner which tends to deceive the public or affect the chances of winning or losing shall be placed into play.
3. Winning cards shall have the winning symbol or number defaced or punched immediately after redemption by the organization's authorized representative.
4. An organization may commingle unsold cards with no more than one additional deal. The practice of commingling deals shall be disclosed to the public via house rules or in a similar manner.
5. If a deal is not played to completion and unsold cards remain, the remaining cards shall be sold on the next date the same type of ticket is scheduled to be sold. If no future date is anticipated, the organization shall, after making diligent efforts to sell the entire deal, consider the deal closed or completed. The unsold cards shall be retained in accordance with 11 VAC 15-21-70.

D. Individuals involved in the management, operation or conduct of charitable gaming may play bingo or purchase instant bingo or pull-tab cards for any session they are working or have worked provided they are identified by the caller as game workers who are going to play.

E. Electronic bingo.

1. Electronic bingo devices may be used by bingo players in the following manner:

- a. Players must input into the device each number called;
- b. Players must notify the game operator or caller of a winning pattern of bingo by a means other than use of the electronic device;
- c. Players are limited to playing a maximum of 72 cardfaces per game on each device;
- d. Electronic bingo devices shall not be reserved for players. Each player shall have an equal opportunity to use the available devices on a first come, first served basis;
- e. Each player using an electronic bingo device shall possess a printed representation of all faces played or to be played by the device or a receipt with the organization name, date, time, number of cards played and device identification number. Images of cards or faces stored in an electronic device must be exact duplicates of the printed faces if faces are printed;
- f. Commission representatives may examine and inspect any electronic bingo device and related system. Such examination and inspection shall include immediate access to the device and unlimited inspection of all parts and associated systems and may involve the removal of equipment from the game premises for further testing;
- g. All electronic bingo devices must be programmed or enabled for play on the premises where the game will be played;
- h. All electronic bingo devices shall be rented or otherwise provided to a player only by an organization and no part of the proceeds of the rental of such devices shall be paid to a landlord, his employee, agent or member of his immediate family; and
- i. If a player's call of a bingo is disputed by another player or if a commission representative makes a request, one or more cards stored on an electronic bingo device shall be printed by an organization.

2. Players may exchange a defective electronic bingo device for another device provided the exchange does not take place while a game is in progress.

F. The following rules of play shall govern the conduct of raffles:

1. Before a prize drawing, each stub or other detachable section of each ticket sold shall be placed into a receptacle from which the winning tickets shall be drawn. The receptacle shall be designed so that each ticket placed in it has an equal chance to be drawn.
2. All prizes shall be valued at fair market value.

PART IV.

BANK ACCOUNTS, RECORDKEEPING, FINANCIAL REPORTING, AUDITS, FEES.

(Effective dates for Part IV: September 1, 1997, through December 31, 1997.)

11 VAC 15-21-60. Bank accounts.

A. Qualified organizations shall maintain a separate bank account for charitable gaming receipts.

B. All disbursements shall be made by check directly from a charitable gaming account or from a general fund account of the organization if charitable gaming funds are transferred to such an account.

C. Monthly bank statements and reconciliations shall be maintained for three years following the close of a fiscal year (September 30).

D. All receipts from each session of bingo games and instant bingo shall be deposited by the second business day following the session at which they were received.

E. Pull-tab and raffle proceeds shall be deposited at least once every calendar week.

11 VAC 15-21-70. Recordkeeping.

A. In addition to the records required by § 18.2-340.30 D of the Code of Virginia, qualified organizations conducting bingo shall maintain a system of records that documents and identifies:

1. Charitable gaming supplies purchased;
2. Charitable gaming supplies used;
3. Discounts provided;
4. Daily bingo reconciliation and instant bingo reconciliation;
5. Number of electronic bingo devices rented, unique serial numbers of such devices, number of faces sold by each unit and a summary report for each session to include date, time, location and detailed information on income and expenses;
6. Unused charitable gaming supplies that were destroyed. Destruction must be witnessed by two officers of the organization who shall sign and date the itemized list if the retail face value of supplies destroyed exceeds \$1,000 in a fiscal year; and
7. All operating expenses including rent, advertising and security. Copies of invoices for all such expenses shall be maintained.

B. Qualified organizations conducting raffles shall have a recordkeeping system to account for cash receipts, cash disbursements and raffle tickets purchased or sold and prizes awarded. All records shall be maintained for three years from the close of the fiscal year. The recordkeeping system shall include:

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1. Invoices for the purchase of pull-tab raffle cards which shall reflect the following information:

- a. Name and address of supplier;
- b. Name of purchaser;
- c. Date of purchase;
- d. Invoice price for each deal;
- e. Form number and name of card;
- f. Serial numbers;
- g. Quantity purchased; and
- h. Sales price of cards.

2. A record of cash receipts from raffle ticket sales (other than pull-tabs) by tracking the total number of tickets available for sale, the number issued to sellers, the number returned, the number sold and reconciliation of all raffle sales to receipts;

3. Sequentially numbered tickets which shall state the name, address and telephone number of the organization, the prize or prizes to be awarded, the date of the prize drawing or selection, the selling price of the raffle ticket and the charitable gaming permit or exempt authorization number;

4. Receipts for all raffle prizes valued at \$500 or more on which prize winners must provide printed name, residence address and the amount and description of the prize received; and

5. Deposit records of the required weekly deposits of pull-tab raffle receipts.

C. All raffle tickets (except for pull-tab raffles) shall state the name and address of the organization, the prize or prizes to be awarded, the date of the prize drawing, the selling price of the ticket and the charitable gaming permit or exemption number. All such tickets shall be sequentially numbered. Winning tickets for prizes of \$500 and over and unsold tickets shall be maintained for three years from the close of the fiscal year.

D. Organizations shall maintain a complete set of records for each deal of pull-tab cards sold and a reconciliation of cash to determine gross receipts and prizes paid. The reconciliation must be performed at the close of each deal unless all pull-tabs are sold for the same price. In this event, a reconciliation shall be performed at least once every week.

E. Each organization shall prepare and maintain the following records for each session:

1. A Session Reconciliation Form and an instant bingo reconciliation completed and signed within 48 hours of the end of the session by the bingo manager;
2. An admissions control system that provides a cross-check on the number of players in attendance and admission sales. This may include a ticket control system, cash register or any similar system;

3. A reconciliation to account for cash received from floor workers for the sale of extra bingo sheets for any game; and

4. A record of all discounts exceeding \$2.00 per person given to customers may be required from organizations whose discounts for the previous fiscal year exceeded 1.0% of that fiscal year's gross receipts.

11 VAC 15-21-80. Financial reporting, penalties, inspections and audits.

A. Each charitable gaming permit holder shall file an annual report of receipts and disbursements by December 15 of each year on a form prescribed by the commission. The annual report shall cover the activity for the fiscal year. Volunteer fire departments and rescue squads shall file a commission-prescribed resolution of their board of directors by December 15 each year in lieu of the financial report.

B. The annual report shall be accompanied by the audit and administration fee as established by the commission for the fiscal year unless the fee has been remitted with quarterly reports.

C. An organization requesting an extension to file annual reports for good cause shall pay the audit and administration fee by December 15.

D. Qualified organizations realizing gross receipts in excess of \$50,000 in any calendar quarter shall file, in addition to its annual report, a quarterly report of receipts and disbursements on a form prescribed by the commission as follows:

Quarter Ending	Date Due
December 31	March 1
March 31	June 1
June 30	September 1
September 30	December 1

Quarterly reports shall be accompanied by the appropriate audit and administration fee. An annual financial report may not substitute for a quarterly report.

E. Organizations failing to file required reports, request an extension or make fee payments when due shall be charged a penalty of \$25 per day from the due date up to a maximum of \$750.

F. Any other qualified organization in possession of funds derived from charitable gaming (including those who have ceased operations) as of September 30 of any year, regardless of when such funds may have been received or whether it has a valid permit from the commission shall file an annual financial report on or before December 15 of each year until such funds are depleted. If an organization ceases the conduct of charitable gaming, it shall provide the commission with the name of an individual who shall be responsible for filing financial reports. If no such information is provided, the president of an organization shall be responsible for filing reports until all charitable gaming proceeds are depleted.

G. If an organization has been identified through inspection, audit or other means as having deficiencies in complying with statutory or regulatory requirements or having ineffective internal controls, the commission may impose restrictions or additional recordkeeping and financial reporting requirements.

H. The commission, at its option, may impose a penalty on any organization which fails to comply with provisions of the law or this chapter.

I. Any records deemed necessary to complete an inspection, audit or investigation may be removed by the commission, its employees or agents from the premises of an organization or any location where charitable gaming is conducted. The commission shall provide a written receipt of such records at the time of removal.

11 VAC 15-21-90. Use of proceeds.

A. All payments by an organization intended as use of proceeds:

1. Must be made by check written from the organization's charitable gaming account or the organization's general fund account; and
2. Must be for the future acquisition, construction, remodeling or improvement of real property or the acquisition of other equipment or vehicles to be used for religious, charitable, educational or community purposes.

Transfers to a special fund account may be included as a use of proceeds if the payment is made into a special fund account authorized by the board of directors or an irrevocable trust fund.

No payments made to the special fund account shall be withdrawn for other than the specified purpose unless prior notification is made to the commission.

B. Use of proceeds payments by an organization:

1. Shall not be made directly for the benefit of any individual member or shareholder of an organization or a person residing in the member's or shareholder's household. If any benefit derived by any officer, director, game manager or other member engaged in the management, operation or conduct of charitable gaming is greater than benefit available to any other individual, regardless of whether they are involved in the management, operation or conduct of charitable gaming, such benefit shall not qualify as a use of proceeds. The reduction of tuition, dues or any fees or payments as a result of a member or shareholder, or anyone in their household, working bingo games or raffles is prohibited.
2. Shall not be made for any activity which is not permitted by federal, state or local laws or for any activity which attempts to influence or finance directly or indirectly political parties or committees or the election or reelection of any person who is or has been a candidate for public office.

C. Organizations shall provide details of use of proceeds with the annual financial report.

D. Expenditures of charitable gaming funds for events, activities or programs which are open primarily to an organization's members and their families shall not qualify as use of proceeds unless substantial benefit to the community is demonstrated by an organization.

E. The commission or its employees may disallow a use of proceeds payment to be counted against the minimum percentage referred to in 11 VAC 15-21-20 D.

If any payment claimed as use of proceeds is subsequently disallowed, an organization may be allowed additional time as specified by the commission to meet minimum use of proceeds requirements.

**PART V.
RENT.**

11 VAC 15-21-100. Requirements regarding renting premises, agreements and landlord participation.

A. No organization shall rent or use any leased premises to conduct charitable gaming unless all terms for rental or use are set forth in a written agreement and signed by the parties thereto prior to the issuance of a permit to conduct charitable gaming.

B. Organizations shall not make payments to a landlord except by check drawn on the organization's general fund or charitable gaming account.

C. No landlord, his agent or employee, member of his immediate family or person residing in his household shall make directly or indirectly a loan to any officer, director, game manager or entity involved in the management, operation or conduct of charitable gaming of an organization in Virginia which leases its charitable gaming facility from the landlord.

D. No landlord, his agent or employee, a member of his immediate family or person residing in his household shall make any direct or indirect payment to any officer, director, game manager or entity involved in the management, operation or conduct of charitable gaming conducted at a facility rented from the landlord in Virginia unless the payment is authorized by the lease agreement and is in accordance with the law.

E. No landlord, his agent or employee, person residing in the same household or member of his immediate family shall, at charitable games conducted on the landlord's premises:

1. Participate in the management, operation or conduct of any charitable games;
2. Sell, lease or otherwise provide any bingo supplies including, but not limited to, bingo cards, pull-tab cards, markers or other game pieces; or
3. Require as a condition of the lease or contract that a particular manufacturer, distributor or supplier of bingo supplies be used by the organization.

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"Bingo supplies" as used in this chapter shall not include glue and tape sold from concession stands or from a location physically separated from the location where bingo supplies are normally sold.

F. If equipment or services are included by a landlord in any lease or contract, the lease or contract shall itemize the amount attributable to the rent of the premises, equipment and each service to be provided by the landlord.

G. No member of an organization involved in the management, operation or conduct of charitable gaming shall provide any services to a landlord or be remunerated in any manner by the landlord of the facility where an organization is conducting its charitable gaming.

PART VI.

FACT-FINDING CONFERENCES, HEARINGS, APPEALS.

11 VAC 15-21-110. Procedural rules for the conduct of fact-finding conferences, hearings, appeals.

A. Fact-finding conference; notification, appearance, conduct.

1. Unless automatic revocation or immediate suspension is required by law, no authorization or permit to conduct charitable gaming shall be denied, suspended or revoked except upon notice stating the proposed basis for such action and the time and place for a fact-finding conference, as set forth in the Administrative Process Act (§ 9-6.14.11 et seq.) Chapter 1.1:1 of Title 9 of the Code of Virginia.

2. If a basis exists for a refusal to renew, suspend or revoke a permit or authorization, the commission shall notify, by certified mail or by hand delivery, the interested parties at the address of record maintained by the commission.

3. Notification shall include the basis for the proposed action and afford interested parties the opportunity to present written and oral information to the commission which may have a bearing on the proposed action at a fact-finding conference. If there is no withdrawal, a fact-finding conference shall be scheduled at the earliest mutually agreeable date, but no later than 60 days from the date of the notification. Organizations or suppliers who wish to waive their right to a conference shall notify the commission at least 14 days before the scheduled conference.

4. After consideration of evidence presented during an informal fact-finding conference, if a basis for action still exists, the interested parties shall be notified in writing within 60 days of the fact-finding conference, via certified or hand delivered mail, of the decision and the right to a formal hearing. Parties to the conference may agree to extend the report deadline if more time is needed to consider relevant evidence.

B. Hearing; notification, appearance, conduct.

1. If, after a fact-finding conference, a sufficient basis still exists to deny, suspend or revoke a permit or authorization, interested parties shall be notified by certified mail or hand delivery of the proposed action and of the opportunity for a hearing on the proposed action. If an organization desires to request a hearing, it shall notify the commission within 14 days of receipt of a report on the conference. Parties may enter into a consent agreement to settle the issues at any time prior to, or subsequent to, an informal fact-finding conference.

2. If an interested party or representative fails to appear at a hearing, the hearing officer may proceed in his absence and make a recommendation.

3. Oral and written arguments may be submitted to and limited by the hearing officer. Oral arguments shall be recorded in an appropriate manner.

C. Hearing location. Hearings before a hearing officer shall be held, insofar as practicable, in the county or city in which the organization is located. Hearing officers may conduct hearings at locations convenient to the greatest number of persons or by telephone conference, video conference or similar technology, in order to expedite the hearing process.

D. Administrative Process Act. The provisions of the Virginia Administrative Process Act shall apply.

E. Hearing decisions.

1. Recommendations of the hearing officer shall be a part of the record and shall include a written statement of the hearing officer's findings of fact and recommendations as well as the reasons or basis for the recommendations. Recommendations shall be based upon all the material issues of fact, law or discretion presented on the record.

2. The commission's executive secretary or his designee shall review the recommendation of the hearing officer and render a decision on the recommendation within 30 days of receipt. The decision shall cite the appropriate rule, relief or denial thereof as to each issue.

F. Agency representation. The executive secretary's designee may represent the commission in an informal conference or at a hearing.

PART VII.

REPORTING VIOLATIONS.

11 VAC 15-21-120. Reporting violations.

A. Unless otherwise required by law, the identity of any individual who provides information to the commission or its employees regarding alleged violations shall be held in strict confidence.

B. Any officer, director or game manager of a qualified organization shall immediately report to the commission any

information pertaining to the suspected misappropriation or theft of funds or any other violations of the law.

C. Failure to report the information required by subsection B of this section may result in the denial, suspension or revocation of a charitable gaming permit or authorization.

D. Any officer, director or game manager of a qualified organization involved in the management, operation or conduct of charitable gaming shall immediately notify the commission upon conviction of a felony or a crime of moral turpitude.

E. Failure to report information required by subsection D of this section by any officer, director or game manager of a qualified organization or supplier may result in the denial, suspension or revocation of a permit or authorization.

F. Any officer, director or game manager of a qualified organization involved in charitable gaming shall immediately report to the commission any change the Internal Revenue Service makes in the tax status of the organization, or if it is a chapter of a national organization covered by a group tax exempt determination, the tax status of the national organization.



BINGO/RAFFLE APPLICATION

CGC FORM#201(EFF 6/97)

GENERAL INSTRUCTIONS

1. USE THIS APPLICATION WHEN APPLYING FOR EITHER A NEW OR RENEWAL PERMIT
2. COMPLETE THE ENTIRE APPLICATION AND ALL ATTACHMENTS. ALLOW 45 DAYS FOR PROCESSING.
3. PLACE N/A IF ITEM IS NOT APPLICABLE. PLEASE TYPE OR PRINT ALL ANSWERS. DO NOT USE PENCIL.
4. IF NEEDED, ATTACH ADDITIONAL DOCUMENTS OR EXPLANATION SHEETS.
5. ENCLOSE A NON-REFUNDABLE \$200 APPLICATION FEE PAYABLE TO: TREASURER OF VIRGINIA
6. ENSURE APPLICATION IS SIGNED/DATED AND NOTARIZED BY THE APPROPRIATE INDIVIDUAL(S)

ORGANIZATION INFORMATION

1. TYPE OF PERMIT APPLIED FOR: BINGO RAFFLE BINGO & RAFFLE

2. APPLICATION TYPE: NEW RENEWAL PREVIOUSLY LICENSED BY: ()

3. ORGANIZATION NAME: _____

4. MAILING ADDRESS: _____
CITY _____ STATE _____ ZIP _____ PHONE # () _____

5. JURISDICTION WHERE THE ORGANIZATION REGULARLY MEETS? CITY _____ COUNTY _____

6. HAS THE ORGANIZATION BEEN IN EXISTENCE AND MET ON A REGULAR BASIS IN THIS JURISDICTION OR OTHER ADJACENT JURISDICTION ON A CONTINUING BASIS FOR AT LEAST THREE (3) YEARS? YES NO

7. PROVIDE A COMPLETE LIST OF VOLUNTEER MEMBERS PARTICIPATING IN THE MANAGEMENT, OPERATION OR CONDUCT OF CHARITABLE GAMING (INCLUDE NAME, ADDRESS AND DATE JOINED FOR EACH MEMBER).....(list attached?)..... YES NO

7a. RENEWAL APPLICANTS ONLY: HAVE THERE BEEN CHANGES TO THE MEMBERSHIP LIST PREVIOUSLY FILED WITH THE COMMISSION?..... (IF YES, SUBMIT UPDATES ONLY)..... YES NO

8. TYPE OF ORGANIZATION (CHECK ONE): RELIGIOUS EDUCATIONAL CHARITABLE COMMUNITY
 FRATERNAL VETERANS OTHER _____ MONTH/YEAR FORMED: _____

9. TOTAL NUMBER OF MEMBERS: _____ TOTAL VIRGINIA RESIDENTS AS MEMBERS: _____

BINGO GAME/RAFFLE INFORMATION

10. PHYSICAL ADDRESS WHERE THE BINGO/RAFFLE WILL BE HELD:
CITY _____ COUNTY _____ STATE _____ ZIP _____

11. IS THIS LOCATION IN OR ADJACENT TO THE JURISDICTION IN QUESTION #5 ABOVE?..... YES NO

12. FOR BINGO GAMES ONLY, IS THIS A LEASED BUILDING YES NO
(IF YES, ATTACH COPY OF THE LEASE)

12a. DOES THE ORGANIZATION OR LANDLORD HAVE A CERTIFICATE OF OCCUPANCY FROM THE LOCAL BUILDING/ZONING DEPARTMENT?..... YES NO

Organization Name: _____ Page 2

BINGO GAME/RAFFLE INFORMATION (CONTINUED)

12b. NAME OF LANDLORD: _____ FACILITY NAME _____
 LANDLORD ADDRESS _____
 CITY _____ STATE _____ ZIP _____ PHONE () _____
 FACILITY SQUARE FOOTAGE? _____ SEATING CAPACITY? _____

13. PERSON RESPONSIBLE FOR FILING FINANCIAL REPORTS: _____
 ADDRESS _____
 CITY _____ STATE _____ ZIP _____ E-MAIL _____
 PHONE () _____ WORK () _____ FAX# () _____

14. DAY(S), DATE(S) AND TIME(S) THE BINGO/RAFFLE WILL BE HELD:
 DAY(S)/DATE(S) _____ TIME: FROM: _____ am/pm TO: _____ am/pm
 DAY(S)/DATE(S) _____ TIME: FROM: _____ am/pm TO: _____ am/pm

15. HOW WILL THE PROCEEDS FROM THE BINGO GAME/RAFFLE BE USED? (BE SPECIFIC)

16. ESTIMATED ANNUAL GROSS RECEIPTS FROM BINGO/RAFFLE: _____

17. FOR RAFFLE APPLICANTS ONLY, WILL THE RAFFLE EVENT BE HELD IN CONJUNCTION WITH A CASINO OR LAS VEGAS NIGHT? _____ YES NO
 (IF YES, PROVIDE DETAILS ABOUT THE EVENT ON A SEPARATE PAGE)

18. NEW APPLICANTS MUST PROVIDE A COPY OF THE ORGANIZATION'S ARTICLES OF INCORPORATION, BY-LAWS, CONSTITUTION OR SIMILAR ORGANIZING DOCUMENT. (copy attached?) _____ YES NO

19. RENEWAL APPLICANTS ONLY: HAVE CHANGES BEEN MADE TO THE ARTICLES OF INCORPORATION, BY-LAWS, CHARTER OR IRS DETERMINATION LETTER PREVIOUSLY FILED WITH THE COMMISSION? (IF YES, PROVIDE COPY OF CHANGES) _____ YES NO

20. HAS THE ORGANIZATION BEEN DESIGNATED AS A 501 (C) ORGANIZATION BY THE INTERNAL REVENUE SERVICE? _____ YES NO
 (IF YES, PROVIDE A COPY OF THE DETERMINATION LETTER)

20a. IF THE ORGANIZATION DOES NOT HAVE A 501 (C) DESIGNATION BY THE INTERNAL REVENUE SERVICE, HAS ONE BEEN APPLIED FOR? _____ (copy attached?) _____ YES NO
 (IF YES, FURNISH A COPY OF THE APPLICATION FOR 501 (C) DESIGNATION)

20b. IN THE LAST THREE (3) YEARS, HAS THE ORGANIZATION HAD A 501(C) STATUS WITH THE INTERNAL REVENUE SERVICE REVOKED OR SUSPENDED? _____ YES NO

21. ATTACH A COPY OF THE ORGANIZATION'S MOST RECENT INCOME STATEMENT, AND IF AVAILABLE, A BALANCE SHEET. (copy attached?) _____ YES NO

Organization Name: _____ Page 3

22. IN THE LAST FIVE (5) YEARS, HAS:
 A) ANY OFFICER OR GAME MANAGER OF THE ORGANIZATION BEEN CONVICTED OF A FELONY OR A CRIME OF MORAL TURPITUDE? _____ YES NO
 B) THE ORGANIZATION BEEN DENIED A BINGO OR RAFFLE PERMIT? _____ YES NO
 C) THE ORGANIZATION HAD A BINGO OR RAFFLE PERMIT REVOKED? _____ YES NO

23. HAS ANY OFFICER OR GAME MANAGER, AT ANY TIME, BEEN CONVICTED OF TWO OR MORE FELONIES INVOLVING FRAUD, THEFT OR FINANCIAL CRIMES? _____ YES NO

(IF YES TO ANY ITEM IN 22A-C OR 23, PROVIDE DETAILS ON A SEPARATE PAGE)

PERSONNEL INFORMATION

Code of Virginia § 18.2-340.25 requires the Charitable Gaming Commission to issue a permit only after a reasonable investigation has been conducted. The following information is required to conduct a criminal history check. Individuals providing information below hereby authorize the Charitable Gaming Commission and/or the Department of State Police to investigate all matters relating to this application, and waive any rights or causes of action they may have based on the disclosure of otherwise confidential information.

POSITION CODES: (P) PRESIDENT (VP) VICE-PRESIDENT (S) SECRETARY (T) TREASURER (M) BINGO/RAFFLE MANAGER

Last Name, First Name, Middle	Race/Sex	Date of Birth	Social Security #	Address & Phone #	Position

SEND THE COMPLETED APPLICATION FORM ALONG WITH A CHECK FOR THE \$200 APPLICATION FEE TO: VIRGINIA CHARITABLE GAMING COMMISSION, P.O. BOX 756, RICHMOND, VA 23218. PLEASE ALLOW FORTY FIVE (45) DAYS FOR PROCESSING. INCOMPLETE INFORMATION WILL DELAY PROCESSING.

SIGNATURES/NOTARY

This application must be signed by the president of the organization as well as the bingo manager listed on the application. Signatures must be notarized.
 I/we hereby affirm that all information provided in this application and attachments are true and factual to the best of my/our knowledge and belief. No false or misleading statements have willfully been made. I/we also agree that the organization listed on this application and its officers, members and employees will abide by the law and all the rules and regulations of the Virginia Charitable Gaming Commission in the operation of bingo game(s) and/or raffle(s).

(NAME - PRINT) PRESIDENT _____ (SIGNATURE) _____ (DATE) _____

(NAME - PRINT) BINGO/RAFFLE MANAGER _____ (SIGNATURE) _____ (DATE) _____

NOTARY PUBLIC

Sworn to and subscribed before me this _____ day of _____ 19 _____.

My commission expires _____ By: _____
 Notary Public

CHARITABLE GAMING COMMISSION USE ONLY

Organization Name: _____

Received: _____ Approved Denied Withdrawn Hearing

FIPS # _____ Region: _____

Permit # _____ Expiration: _____ Licensing Official _____

TEMPORARY CHANGES	AMENDMENT DATES
APPROVAL DATES	
1. _____	1. _____
2. _____	2. _____
3. _____	3. _____
4. _____	
5. _____	
6. _____	

NOTES _____

COMMONWEALTH OF VIRGINIA
Charitable Gaming Commission
 P.O. Box 756 Richmond, VA 23218
 (804) 786-1681

EXEMPT ORGANIZATION - NOTIFICATION CGC FORM 202 (EFF 8/96)

GENERAL INSTRUCTIONS

1. COMPLETE ALL OF PAGES ONE AND TWO.
2. RETURN THE ENTIRE FORM TO THE CHARITABLE GAMING COMMISSION. KEEP A COPY FOR YOUR RECORDS.
3. PLEASE TYPE OR PRINT ALL ANSWERS. DO NOT USE PENCIL.
4. ENSURE FORM IS SIGNED/DATED AND NOTARIZED BY THE APPROPRIATE INDIVIDUAL(S).
5. AFTER REVIEW BY THE COMMISSION, AN ACKNOWLEDGMENT AND RESOLUTION FORM WILL BE RETURNED TO YOUR ORGANIZATION.
6. UPON THE COMPLETION OF THE BINGO/RAFFLE EVENT, FILE THE REQUIRED RESOLUTION WITH THE COMMISSION.

ORGANIZATION INFORMATION

1. ORGANIZATION NAME: _____
2. MAILING ADDRESS: _____
 CITY _____ STATE _____ ZIP _____ PHONE # () _____
3. CONTACT PERSON: _____ TITLE/POSITION: _____
4. JURISDICTION WHERE THE ORGANIZATION REGULARLY MEETS? CITY _____ COUNTY _____
5. HAS THE ORGANIZATION MET ON A REGULAR BASIS IN THIS JURISDICTION OR AN ADJACENT JURISDICTION ON A CONTINUING BASIS FOR AT LEAST THREE (3) YEARS? YES NO
6. IS THE ORGANIZATION COMPRISED OF AT LEAST 50% VIRGINIA RESIDENTS? YES NO
7. HAS THE ORGANIZATION ALWAYS OPERATED AS NON-PROFIT? YES NO
8. TYPE OF ORGANIZATION (CHECK ONE): EDUCATIONAL RELIGIOUS VETERANS
 COMMUNITY FRATERNAL CHARITABLE OTHER (EXPLAIN) _____
9. DATE THE ORGANIZATION WAS FORMED: MONTH _____ YEAR _____

BINGO GAME/RAFFLE INFORMATION

10. ADDRESS WHERE THE BINGO GAME/RAFFLE WILL BE HELD:
 CITY/COUNTY _____ STATE _____ ZIP _____ (_____)
JURISDICTION
11. DAY(S), DATE(S) AND TIME(S) THE BINGO/RAFFLE WILL BE HELD:
 DAY(S)/DATE(S) _____ TIME: FROM: _____ am/pm TO: _____ am/pm
12. ESTIMATED ANNUAL GROSS RECEIPTS FROM BINGO OR RAFFLE: _____
 TYPE OF ACTIVITY: BINGO RAFFLE BINGO & RAFFLE
13. HOW WILL THE PROCEEDS FROM THE BINGO GAME/RAFFLE BE USED? (BE SPECIFIC) _____

Page 2

Organization Name: _____

14. FOR RAFFLE APPLICANTS ONLY, WILL THE RAFFLE EVENT BE HELD IN CONJUNCTION WITH A CASINO OR LAS VEGAS NIGHT? YES NO

15. PERSON RESPONSIBLE FOR BINGO/RAFFLE EVENT: _____
 PHONE () - _____ WORK () - _____ FAX# () - _____

16. IN THE LAST FIVE (5) YEARS, HAS ANY OFFICER OR GAME MANAGER OF THE ORGANIZATION BEEN CONVICTED OF A FELONY OR A CRIME OF MORAL TURPITUDE? YES NO

17. ORGANIZATIONS REQUESTING TO USE VOLUNTEER WORKERS BETWEEN THE AGES OF 16-18 MUST SUBMIT A WRITTEN EXEMPTION REQUEST, IDENTIFYING SUCH WORKERS ON AN ATTACHMENT AND PROVIDE THEIR DATES OF BIRTH YES NO
(attachment included ?)

PERSONNEL INFORMATION

POSITION CODES: (P) PRESIDENT (VP) VICE-PRESIDENT (S) SECRETARY (T) TREASURER (M) BINGO/RAFFLE MANAGER

Last Name, First Name, Middle Initial	Address & Phone #	Position

Prior to issuance of an exemption number, the Commission may require additional information from those named above.

SIGNATURES/NOTARY

This notification must be signed by the president of the organization as well as the bingo/raffle manager listed on the application. Signatures must be notarized.
 I/we hereby affirm that all information provided in this application and attachments are true and factual to the best of my/our knowledge and belief. No false or misleading statements have willfully been made. I/we also agree that the organization listed on this application and its officers, members and employees will abide by all of the rules and regulations of the Virginia Charitable Gaming Commission in the operation of bingo game(s) and/or raffle(s) pursuant to Code of Virginia Chapter 8 § 18.2-340.13 et seq.

(NAME - PRINT) PRESIDENT (SIGNATURE) (DATE)

(NAME - PRINT) BINGO/RAFFLE MANAGER (SIGNATURE) (DATE)

NOTARY PUBLIC

Sworn to and subscribed before me this _____ day of _____ 19____
 My commission expires _____ By: _____
 NOTARY PUBLIC

Page 3

CHARITABLE GAMING COMMISSION - ACKNOWLEDGMENT

Organization Name: _____

15. ORGANIZATION NAME: _____

16. GAME/DRAWING ADDRESS: _____

17. CITY/COUNTY _____ STATE _____ ZIP _____

18. DAY(S), DATE(S) AND TIME(S) THE BINGO/RAFFLE WILL BE HELD:
 DAY(S)/DATE(S) _____ TIME: FROM: _____ am/pm TO: _____ am/pm

The above named organization has notified the Virginia Charitable Gaming Commission of its intent to conduct charitable gaming in the Commonwealth of Virginia. The Commission acknowledges receipt of this notification.

Received: _____ Reviewed: _____ Exemption #: _____

Expiration Date: _____

Licensing Official

Note: A new notification form must be filed with the Commission 60 days before the above expiration date.

EXEMPT ORGANIZATION RESOLUTION

This resolution must be submitted to the Virginia Charitable Gaming Commission either within 60 days from the event date stated on the notification form for a one-time bingo or raffle event; or, by December 1st in the case of all other bingo/raffle event(s).

On the _____ day of _____, 19____, the Board of Directors of _____
 formally met. By vote of the said Board, be it resolved that for the bingo/raffle notification currently filed with the Virginia Charitable Gaming Commission on _____, 19____, the organization generated \$ _____ in gross receipts from the said bingo/raffle event(s). These gross receipts were generated between _____, 19____ and _____, 19____.

The organization also affirms that its officers, members, employees have abided by all of the rules and regulations of the Virginia Charitable Gaming Commission in the operation of bingo game(s) and/or raffle(s) pursuant to the Code of Virginia Chapter 8 § 18.2-340.15 et seq. Note: An exempt organization (other than a volunteer fire department or rescue squad) that exceeds \$25,000 in annual gross receipts must submit financial reports to the Commission pursuant to § 18.2-340.30.

(NAME - PRINT) PRESIDENT (SIGNATURE) (DATE)

(NAME - PRINT) BINGO/RAFFLE MANAGER (SIGNATURE) (DATE)

NOTARY PUBLIC

Sworn to and subscribed before me this _____ day of _____ 19____
 My commission expires _____ By: _____
 NOTARY PUBLIC



CHARITABLE GAMING COMMISSION
FINANCIAL REPORT FOR YEAR ENDING 9/30/
FORM 101

ORGANIZATION NAME:		CGC #:
FINANCIAL SUMMARY		
FUNDS AVAILABLE DURING REPORTING PERIOD		
BEGINNING BALANCES (DO NOT INCLUDE INTEREST INCOME)		
1. Beginning Bank Balances from Bingo/Raffle (As of / /)	\$	
2. Beginning Cash on Hand (As of / /)	\$	
3. TOTAL BEGINNING BALANCES (Lines 1 + 2)	\$	
RECEIPTS		
4. a. Paper Sales (Include Hardcards if Used)	\$	
b. Electronic Bingo Device Sales	\$	
c. Total Regular Bingo Sales (Line 4a + Line 4b)	\$	
5. Instant & Seal Card Sales at Bingo Games	\$	
6. Pull-Tab & Seal Card Sales in Social Quarters	\$	
7. Raffles	\$	
8. Miscellaneous Sales (Daubers, Wands, Tape, etc.)	\$	
9. Overages	\$	
10. Returned Checks Collected	\$	
11. TOTAL RECEIPTS (Line 4c thru Line 10)	\$	
ADJUSTMENTS TO RECEIPTS		
12. Returned Checks	\$	
13. Admissions Tax Paid to: (Locality) (Hampton Roads Planning District Only)	\$	
14. Discounts	\$	
15. TOTAL ADJUSTMENTS (Lines 12 + 13 + 14)	\$	
16. ADJUSTED CASH RECEIVED FOR PERIOD (Line 11 Minus Line 15) (Receipts subject to Audit and Administration Fee)	\$	
17. TOTAL FUNDS AVAILABLE (Lines 3 + 16)	\$	

FUNDS DISBURSED DURING REPORTING PERIOD		
OPERATING COSTS		
18. PRIZES AWARDED:		
a. Regular, Special & WTA Bingo Games	\$	
b. Jackpot Games	\$	
c. Instant & Seal Cards (Bingo)	\$	
d. Pull-Tab & Seal Cards (Social Quarters)	\$	
e. Raffles (Donated Prizes are NOT included)	\$	
f. Door Prizes	\$	
g. TOTAL PRIZES AWARDED (Lines 18a thru 18f)	\$	
19. SUPPLIES PURCHASED		
a. Bingo Supplies	\$	
b. Instant Bingo/Seal Card Supplies (Bingo)	\$	
c. Pull-Tab/Seal Card Supplies (Social Quarters)	\$	
d. Raffle Supplies (Other than Pull-Tabs)	\$	
e. Miscellaneous Supplies	\$	
f. TOTAL SUPPLIES (Lines 19a thru 19e)	\$	
20. Rent	\$	
21. Audit & Administration Fee Paid Prior Period (Not Current Fee Due)	\$	
22. Shortages	\$	
23. Other Operating Costs	\$	
24. TOTAL OPERATING COSTS (Lines 18g thru 23)	\$	
25. USE OF PROCEEDS		
26. TOTAL DISBURSEMENTS (Lines 24 + 25)	\$	
ENDING BALANCES (DO NOT INCLUDE INTEREST EARNED)		
27. Ending Bank Balance from Bingo/Raffle (As of / /) (Attach a copy of the Reconciled Bank Statement to this report)	\$	
28. Ending Cash on Hand (As of / /)	\$	
29. TOTAL FUNDS ACCOUNTED FOR (Equals Line 17) (Lines 26 + 27 + 28)	\$	
AUDIT & ADMINISTRATION FEE CALCULATION		
A. LINE 16 TIMES THE FEE PERCENTAGE	\$	
B. QUARTERLY FEE PAID THIS YEAR	\$	
C. FEE DUE WITH THIS REPORT (Line A Minus Line B)	\$	
D. Check Number	CGC No.	



CHARITABLE GAMING COMMISSION
FINANCIAL REPORT FOR QUARTER ENDING _____
FORM 102

FAILURE TO FILE FINANCIAL REPORTS WHEN DUE SHALL CAUSE AUTOMATIC REVOCATION OF THE CHARITABLE GAMING PERMIT. THIS REPORT, WITH THE APPROPRIATE FEE IS DUE WITHIN 60 DAYS OF THE END OF ANY QUARTER DURING WHICH THE ORGANIZATION GROSSED \$50,000 OR MORE FROM CHARITABLE GAMING.

ORGANIZATION	BINGO ATTENDANCE	CGC #
	BINGO ATTENDANCE	
1.	TOTAL NUMBER OF PAYING CUSTOMERS DURING THE QUARTER: _____	
2.	NUMBER OF GAMING SESSIONS DURING THE QUARTER: _____	
	RECEIPTS	
3.	a. BINGO PAPER SALES \$ _____	
	b. ELECTRONIC BINGO DEVICE SALES _____	
	c. TOTAL GAME SALES (LINE 3a PLUS LINE 3b) \$ _____	
4.	INSTANT BINGO/SEAL CARD BINGO SALES _____	
5.	SOCIAL QUARTERS PULL-TAB RAFFLE SALES _____	
6.	RAFFLE SALES _____	
7.	MISCELLANEOUS SALES _____	
8.	RETURNED CHECKS COLLECTED _____	
9.	TOTAL RECEIPTS BEFORE DEDUCTIONS (LINES 3c THRU 8) \$ _____	
10.	DEDUCTIONS:	
	a. LOCAL ADMISSIONS TAXES PAID	
	(LOCALITY: _____) \$ _____	
	b. DISCOUNTS _____	
	c. RETURNED CHECKS COLLECTED _____	
	d. TOTAL DEDUCTIONS (LINE 10a + b + c) \$ _____	
11.	NET RECEIPTS FOR THE QUARTER (LINE 9 MINUS LINE 10d) \$ _____	
12.	AUDIT & ADMINISTRATION FEE DUE WITH THIS REPORT (LINE 11 x 1.5%) \$ _____	

OATH: I, the undersigned, do hereby swear or affirm under the penalties of perjury as set forth in Section 18.2-434 of the Code of Virginia, that the foregoing figures and statements are true, full, and correct to the best of my knowledge and belief.

President or Chief Exec. Officer _____ Title _____ Date _____
 Bingo/Raffle Manager _____ Title _____ Date _____
 SUBSCRIBED AND SWORN BEFORE ME, THIS _____ DAY OF _____
 My commission expires _____ Notary Public _____

CGC FORM #103 (REV 4/97)

CHARITABLE GAMING COMMISSION	
REPORT OF SALES TO CHARITABLE GAMING ORGANIZATIONS	
FORM 103	
(INFORMATION SUPPLIED IS EXEMPT FROM THE FREEDOM OF INFORMATION ACT)	
EACH SUPPLIER PROVIDING SUPPLIES AND EQUIPMENT TO ORGANIZATIONS LICENSED TO OPERATE CHARITABLE GAMING IS REQUIRED TO FURNISH THE FOLLOWING INFORMATION. THIS INFORMATION MUST BE FURNISHED ANNUALLY BY JANUARY 1 AND REPORT ON SALES TO EACH ORGANIZATION FOR THE PERIOD OCTOBER 1 THRU SEPTEMBER 30 OF THE PREVIOUS YEAR.	
SUPPLIER INFORMATION	
COMPANY NAME:	_____
D/B/A:	_____
HEADQUARTERS ADDRESS:	_____
CGC NUMBER:	_____
CHARITABLE ORGANIZATION INFORMATION	
FOR EACH ORGANIZATION PURCHASING CHARITABLE GAMING SUPPLIES FROM YOUR COMPANY THE FOLLOWING INFORMATION MUST BE SUPPLIED:	
1)	NAME OF THE ORGANIZATION
2)	PAPER SUPPLIES AND DOLLAR AMOUNT
3)	MISCELLANEOUS SUPPLIES (DAUBERS, TAPE, WANDS, ETC.) AND THE DOLLAR AMOUNT
4)	PULL-TAB, INSTANT BINGO AND SEAL CARD SUPPLIES TO INCLUDE:
	a. THE NAME OF EACH GAME
	b. THE FORM NUMBER
	c. THE SERIAL NUMBER OF EACH DEAL
	d. THE NUMBER OF TICKETS PER DEAL
	e. SELLING PRICE PER TICKET
	f. THE NET TO THE ORGANIZATION FROM EACH DEAL
	g. ORGANIZATION'S COST
THIS INFORMATION SHOULD BE ON A MASTER LISTING ENCLOSED WITH THIS FORM. DO NOT SEND COPIES OF INVOICES.	
ATTEST STATEMENT	
(COMPLETE, SIGN AND HAVE NOTARIZED THE FOLLOWING)	
OATH: I, _____, Representing _____, do hereby swear or affirm under the penalties of perjury as set forth in Section 18.2-434 of the Code of Virginia, that the figures and statements shown on the enclosed report(s) are true, full and correct to the best of my knowledge and belief.	
Signature _____	Title _____ Date _____
Subscribed and sworn before me, this _____ day of _____	
My commission expires _____ Notary Public _____	
Note: Notary shall cause person/affiant to raise his/her hand and take the OATH by reading it to the person signing. By notary making attestation, he/she indicates that they have complied with this requirement.	

CHARITABLE GAMING COMMISSION
SUGGESTED BINGO DAILY RECONCILIATION FORM
 FORM 104

NOTE: If you have a form in place (manual or computerized) that will provide a reconciliation with at least all of the information listed below, you may use your form.

NAME OF ORGANIZATION: _____

SESSION DATE: _____

1.	TOTAL ATTENDANCE THIS SESSION	_____
2.	ENDING CASH ON HAND (INCLUDING THE CHANGE FUND)	\$ _____
3.	BEGINNING CASH ON HAND (INCLUDING THE CHANGE FUND)	\$ _____
RECEIPTS:		
4.	Admissions	
a.	Regular & Special Bingo and Additional Hard Cards	\$ _____
b.	Electronic Bingo Devices	\$ _____
c.	Discounts	\$ _____
d.	NET Admissions (a + b)	(4a + 4b - 4c) \$ _____
5.	Extra Regular and Special Paper Games	\$ _____
6.	Extra Jackpot Sales	\$ _____
7.	Winner-Take-All Sales	\$ _____
8.	Miscellaneous Sales	\$ _____
9.	Receipts from Instants and Seal Cards	\$ _____ (A)
10.	TOTAL Receipts from Bingo Operations (Lines 4d+5+6+7+8+9)	\$ _____
CONTINUED ON BACK		

DISBURSEMENTS:

11.	Regular & Special Bingo Prizes	\$ _____
12.	Jackpot Game Prizes	\$ _____
13.	Winner-Take-All Prize	\$ _____
14.	Instant and Seal Card Prizes	\$ _____ (B)
15.	Other Disbursements	\$ _____
16.	TOTAL DISBURSEMENTS (LINES 11 + 12 + 13 + 14 + 15)	\$ _____
17.	NET PROCEEDS FROM SESSION (Line 10 - Line 16)	\$ _____
18.	PRIZES PAID BY CHECK	\$ _____
19.	TOTAL TO BE ACCOUNTED FOR (Line 3 + Line 17 + Line 18)	\$ _____
20.	OVER/(SHORT) (Line 2 - Line 19)	\$ _____ (C)
21.	AMOUNT WITHHELD FOR CHANGE FUND	\$ _____
22.	TOTAL AMOUNT TO BE DEPOSITED (Line 2 - Line 21)	\$ _____
DATE DEPOSITED _____ (D)		

The foregoing figures and statements are true, full and correct to the best of my knowledge and belief.

NAME: _____ TITLE: _____ DATE: _____
 (Name and Title of Person Preparing the Reconciliation)

- (A) Total of Line 10 on all Instant Bingo/Seal Card Devices reports.
- (B) Total of Line 11 on all Instant Bingo/Seal Card Devices reports.
- (C) CASH OVER/(SHORT) amounts of \$50 or more must have a written explanation attached to this form within a reasonable period (no more than 72 hours) after the end of the session.
- (D) The bank validated deposit slip **must be attached** to this form.

CGCFORM#105 (REV 7/96)

CHARITABLE GAMING COMMISSION
SAMPLE INSTANT BINGO/SEAL TICKET SALES LOG CARD FOR BINGO
 (Use a separate sheet for each price class of Instant Bingo/Seal Cards)

NAME OF ORGANIZATION: _____

DATE OF SESSION: _____

1.	Amount of Cash On Hand From Sale Of Instant/Seal Card Tickets at end of Session (DO NOT INCLUDE THE CHANGE FUND)	\$ _____
2.	Beginning Count of Instant/Seal Card Tickets	_____
3.	Number of Tickets Added	_____ (A)
4.	Subtotal (Lines 2 + 3)	_____
5.	Total Free Plays Redeemed	_____
6.	TOTAL TICKETS AVAILABLE FOR SALE (Line 4 minus Line 5)	_____
7.	Ending Count of Instant/Seal Card Tickets	_____ (B)
8.	NUMBER OF INSTANTS/SEAL CARD TICKETS SOLD (Lines 6 - 7)	_____
9.	Sale Price Of Each TICKET	_____
10.	GROSS SALES (Lines 8 X 9)	_____ (C)
11.	TOTAL PRIZES PAID	_____ (D)
12.	TOTAL CASH TO ACCOUNT FOR (Lines 10 - 11)	\$ _____
13.	CASH OVER/(SHORT) (Lines 1 - 12)	\$ _____

LIST EACH DEAL OPENED BY SERIAL NUMBER, EXPECTED NET FROM THE DEAL AND FORM NUMBER

_____	FORM # _____						
_____	FORM # _____						
_____	FORM # _____						
_____	FORM # _____						

The foregoing figures and statements are true, full and correct to the best of my knowledge and belief

NAME: _____ TITLE: _____

DATE: _____

- (A) You may add one row/sleeve at a time
- (B) You only have to count unsold tickets that have been removed from the deal. You may estimate the number of tickets in the box.
- (C) Total All Sheets and Report Combined Total on Line 9 of the Bingo Daily Reconciliation Form
- (D) Total All Sheets and Report Combined Total on Line 14 of the Bingo Daily Reconciliation Form
- (E) If you do not sell the complete deal at a session you will be over or short one week and the reverse the next week.

CGC FORM #117 (EFF 10/97)



CHARITABLE GAMING COMMISSION
REQUEST FOR EXTENSION FOR FILING THE ANNUAL FINANCIAL REPORT
 ORGANIZATION: _____ CGC #: _____

This is a request that an extension of 45 days be granted for the filing of the Annual Financial Report which is due on December 15 of this year. If the extension is granted the report will be due at the Commission's offices by mail at P. O. Box 756, Richmond, VA 23218 or via hand delivery to the Monroe Building, 17th Floor, 101 N. 14th Street, Richmond, VA, no later than 5 p.m., January 29 of next year.

Enclosed is a check, made out to the Treasurer of Virginia, in the amount of \$ _____ for the estimated Audit and Administration Fee due which is calculated as follows:

- 1. Estimated Gross Receipts for October 1, _____ thru September 30, _____ \$ _____
- 2. Fee Percentage _____
- 3. Gross Total Due \$ _____
- 4. Less: Fees paid with Quarterly Reports _____
- 5. Net Due with this Request \$ _____

It is understood that if the report is not filed by January 29, _____ the organization's permit to conduct charitable gaming is automatically revoked and may not be reinstated until the financial report is correctly filed and a new application has been submitted and approved. Further, it is also understood that this extension, if approved, is null and void if the report is not delivered to the Commission by January 29. In addition, the organization may be liable for a fine of \$25 for each day the report is late after December 15 of this year with the total fine not exceeding \$750.

President of Chief Exec. Officer _____ Title _____ Date _____

Bingo/Raffle Manager _____ Title _____ Date _____

The request for an extension for filing the financial report for the fiscal year is granted _____ / is not granted _____

For the Commission: _____ Title _____ Date _____

VA R. Doc. No. R97-588; Filed June 27, 1997, 2:39 p.m.

Final Regulations

Title of Regulation: 11 VAC 15-30-10 et seq. Interim Supplier Rules and Regulations.

Statutory Authority: §§ 18.2-340.18 and 18.2-340.38 of the Code of Virginia.

Effective Date: July 1, 1997, through December 31, 1997, except 11 VAC 15-30-30 D is effective October 1, 1997, through December 31, 1997.

Summary:

These interim regulations replace regulations prescribing construction and other standards for charitable gaming supplies and products and the rules relating to the conduct of business by suppliers in the Commonwealth of Virginia contained in the Interim Rules and Regulations of the Charitable Gaming Commission.

The interim rules, which expired June 30, 1997, are found at 11 VAC 15-20-10 et seq. The commission voted to separate out the provisions applicable to suppliers from the previous interim rules and regulations.

Agency Contact: Copies of the regulation may be obtained from Donna Pruden, Charitable Gaming Commission, P.O. Box 756, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23218, telephone (804) 786-0238.

CHAPTER 30.

INTERIM SUPPLIER RULES AND REGULATIONS.

11 VAC 15-30-10. Definitions.

In addition to the definitions contained in § 18.2-340.16 of the Code of Virginia, the words and terms below, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Address of record" means an address provided to the commission on a registration certificate application or the most recent address on the commission files.

"Bingo equipment and video systems" includes equipment which facilitates the conduct of charitable gaming such as ball blowers, flashboards, TV monitors, cameras, smoke eaters, P.A. systems, tables and chairs, electronic verifiers and replacement parts for such equipment.

"Board of directors" means the board of directors, managing committee or other supervisory body of a qualified organization.

"Bundled pull-tabs" means certain pull-tabs, commonly referred to as "jar tickets," "guppies," etc., which are taped or stapled together and sold as one unit.

"Calendar day" means the period of 24 consecutive hours commencing at 12:01 a.m. and concluding at midnight.

"Calendar week" means the period of seven consecutive calendar days commencing at 12:01 a.m. on Sunday and ending at midnight the following Saturday.

"Cash" means United States currency or coinage.

"CGC number" means a unique identification number issued by the commission.

"Commission" means the Virginia Charitable Gaming Commission.

"Concealed face bingo card" means a nonreusable bingo card constructed to conceal the card face. This type of card is commonly referred to under trade names such as "Tear-open," "Bonanza Bingo," "Bullseye" and "Fortune Card."

"Daubing" means covering a square containing a number called with indelible ink or otherwise concealing the number on a card or an electronic facsimile of a card.

"Deal" means each separate package or series of packages consisting of one game of instant bingo, pull-tab raffle or seal cards with the same serial number.

"Designator" means an object used in the number selection process, such as a ping-pong ball, upon which bingo letters and numbers are imprinted.

"Disposable paper card" means a nonreusable paper bingo card manufactured with preprinted numbers.

"Electronic bingo device" means an electronic device which displays facsimiles of bingo cards and allows a player to daub such cards.

"Electronic verification" means the verification of bingo by entering the free space number of the winning bingo card into computer equipment which contains preprogrammed software for this purpose.

"Fiscal year" or "annual reporting period" means the 12-month period beginning October 1 of any given year and ending September 30 of the following year.

"Flare" means a piece of paper, cardboard or similar material which bears printed information relating to the name of the manufacturer or logo, name of the game, card count, cost per play, the number of prizes to be awarded and the specific prize amounts in a deal of instant bingo, pull-tab or seal cards.

"Free space number," "perm number," "center number," "card number" or "face number" means the number generally printed in the center space of a bingo card that identifies the unique pattern of numbers printed on that card.

"Game program" means a written list of all games to be played and prize amounts to be paid during a session for each game, where prize amounts are fixed or are based on attendance.

"Immediate family" means one's spouse, mother, father, son, daughter, brother, sister, grandchild, grandparent, mother-in-law, father-in-law or stepchild.

"Interested parties" means the owner, director, officer or partner of an entity engaged in supplying charitable gaming supplies to organizations.

"Management," "operation" or "conduct" means the provision of oversight and supervision, check writing or approval authority for charitable gaming funds, purchase authority for charitable gaming supplies, service as a volunteer worker or assistant or negotiation of contracts or leases.

"Manufacturer" means a person who assembles from raw materials or subparts a completed piece of bingo or other charitable gaming equipment or supplies. "Manufacturer" also means a person who modifies, converts, adds or removes parts to or from bingo or other charitable gaming equipment or supplies to further their promotion or sale for the conduct of charitable gaming.

"Owner" means any individual with financial interest of 10% or more in a supplier.

"Packet" means sheets of bingo paper assembled in the order of games to be played. This may or may not include specials, winner-take-all and jackpots.

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

"Prize" means cash, merchandise, certificate or other item of value awarded to a winning player.

"Progressive seal card game" means a seal card game in which a prize is carried forward to the next deal if not won when a deal is completed.

"Pull-tabs" means individually prepackaged cards made completely of paper or paper products with winners being determined by the appearance of preprinted concealed letters, numbers or symbols that must be exposed by the player to determine wins and losses.

"Random selection" or "randomly selected" means a process of selecting number designators to produce random numbers during a bingo game in which each designator or number in the remaining population has an equal chance or probability of being selected.

"Remuneration" means payment in cash or the provision of anything of value for goods provided or services rendered.

"Seal card" means a board or placard used in conjunction with a deal of the same serial number which contains one or more concealed areas that, when removed or opened, reveal a predesignated winning number, letter or symbol located on that board or placard.

"Selection device" means a manually or mechanically operated device to randomly select bingo numbers.

"Serial number" means a unique number printed by the manufacturer on each bingo card in a set or each instant bingo or pull-tab card in a deal.

"Series number" means the number of unique card faces contained in a set of disposable bingo paper cards or bingo hard cards. A 9000 series, for example, has 9000 unique faces.

"Session" means a period of time during which one or more bingo games are conducted by a single qualified organization, or when approval for joint operation is obtained, by two or more qualified organizations, that begins with the selection of the first ball for the first game and ends with the selection of the last ball for the last game.

"Set" means the bingo cards contained within each series number.

11 VAC 15-30-20. Suppliers of charitable gaming supplies: application, qualifications, suspension, revocation or refusal to renew certificate; maintenance and production of records.

A. Prior to providing any charitable gaming supplies, a supplier shall submit an application on a form prescribed by the commission and receive a registration certificate. A \$500 application fee payable to Treasurer of Virginia is required. Provisional registration certificates valid for no more than 180 days may be issued by the commission if the background investigation is not completed. The actual cost of background investigations for a registration certificate may be billed by the commission to an applicant. The commission shall act on an application within 90 days of the date of the application.

B. The commission may refuse to register a supplier or may suspend or revoke a registration certificate if an officer, director, employee, agent or owner:

1. Is operating without a valid license, permit or certificate as a supplier or manufacturer in any state in the United States;
2. Fails or refuses to recall a product as directed by the commission; or
3. Conducts business with unauthorized entities in the Commonwealth of Virginia.

C. A supplier shall not sell, offer to sell or otherwise provide charitable gaming supplies for use by anyone in the Commonwealth other than to an organization with a permit or exemption number from the commission or another registered supplier. However, a supplier may:

1. Sell charitable gaming supplies to an organization which expects to gross less than \$25,000 in a fiscal year.

For each such organization, the supplier shall maintain the name, address and telephone number. The supplier shall also obtain a written statement from an officer or game manager of such organization confirming that gross receipts are expected to be less than \$25,000. Such statement shall be dated and kept on file for three years from the end of a fiscal year.

2. Sell bingo cards, paper and related supplies such as daubers to persons or entities other than qualified organizations provided such supplies shall not be sold or otherwise provided for use in charitable gaming activities regulated by the commission or in unlawful gambling activities. Payment for such sales in excess of \$50 shall

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be accepted in the form of a check. Suppliers shall maintain records of these sales and provide them to the commission upon request.

This provision shall not apply to the sale to landlords of bingo equipment and video systems as defined in this chapter. Bingo equipment shall not include dispensing devices and electronic bingo devices.

D. A supplier shall not sell, offer to sell or otherwise provide charitable gaming supplies to any individual or organization in the Commonwealth unless the charitable gaming supplies are purchased or obtained from a manufacturer or another registered supplier. No supplier shall accept payment for the sale of charitable gaming supplies in the Commonwealth except by a check drawn on the charitable gaming account. This requirement shall not apply to sales of \$50 or less made under subsection C 2 of this section and to sales by one registered supplier to another. Suppliers may take back for credit and resell supplies received from an organization with a permit or exempt authorization which has ceased charitable gaming or is returning supplies not needed.

E. No supplier, supplier's agent, employee, member of the supplier's immediate family or person residing in the same household as a supplier may be involved in the management, operation or conduct of charitable gaming of any customer of the supplier in the Commonwealth.

F. The commission shall conduct a background investigation prior to the issuance of a certificate to any supplier. The investigation may include, but shall not be limited to, the following:

1. A search of the Virginia Central Criminal Records Exchange (CCRE) on all officers, directors and owners; and
2. Verification of current compliance with Commonwealth of Virginia state tax laws.

G. Appropriate information and authorizations shall be provided to the commission to verify information cited in subsection F of this section.

H. Suppliers shall document each sale of charitable gaming supplies to an organization in the Commonwealth on an invoice which reflects the following:

1. Name and address of the organization;
2. Date of sale and location where bingo supplies are shipped if different from the billing address;
3. Name, form number and serial number of each deal of instant bingo or pull-tab raffle cards or bundles and the number of cards in each deal;
4. Quantity of deals sold, the organization's cost per deal and selling price per card;
5. Serial number of the top sheet in each packet of disposable bingo paper, the number of sheets in each

packet or pad, the cut and color and the number of pads sold;

6. Serial number for each series of uncollated bingo paper and the number of sheets sold;

7. Detailed information concerning the type, quantity and individual price of any other charitable gaming supplies or related items including, but not limited to, concealed face bingo cards, hard cards, markers or daubers and refills. For concealed face bingo cards, the number of sets, price per set and the serial number of each set shall be included; and

8. Any type of equipment, device or product manufactured for or intended to be used in the conduct of charitable games including, but not limited to, designators, designator receptacles, number display boards, selection devices, dispensing machines and verification devices.

I. Suppliers shall ensure that two copies of the detailed invoice are provided to the customer for each sale of charitable gaming supplies.

J. Each supplier shall provide a report to the commission by January 1 of each year on sales of charitable gaming supplies for the fiscal year ending September 30 of the previous year to each organization in the Commonwealth. Reports shall include the name and address of each organization; its CGC number; the sales (in dollars) of bingo paper, instant bingo cards, pull-tabs, seal cards, daubers, tape and other supplies; and rental fees and sales of electronic bingo devices. For sales of instant bingo cards, pull-tabs and seal cards, the records shall also indicate the name, form number, selling price per ticket and serial number of each deal or box of instant bingo or pull-tab raffle cards and the number of tickets in each deal. This report may be provided to the commission on paper, computer disk or other commission-approved media.

K. The commission shall have the right to set manufacturing and testing criteria for all electronic and mechanical equipment used in the conduct of charitable gaming. If any such equipment does not meet the criteria, it shall be recalled. The cost of testing shall be borne by the manufacturer of such equipment.

L. Commission employees or agents shall have the right to inspect all electronic and mechanical equipment used in the conduct of charitable gaming.

M. Suppliers, their agents and employees, members of the supplier's immediate family or persons residing in their household shall not make any loan directly or indirectly to any organization or officer, director, game manager or entity involved in the management, operation or conduct of charitable gaming of a supplier's customer located in the Commonwealth.

N. No supplier or supplier's agent or employee shall directly or indirectly provide a rebate, discount or refund to any person other than an organization which purchases

supplies or leases or purchases equipment from the supplier. All such transactions shall be recorded on the supplier's account books.

O. A supplier shall not rent, sell or otherwise provide electronic bingo devices unless he possesses a valid registration certificate in the Commonwealth.

P. A written agreement specifying the terms of lease or rental shall be required for any electronic bingo devices provided an organization.

11 VAC 15-30-30. Construction and other standards for bingo, instant bingo, pull-tabs, raffles; electronic bingo devices and pull-tab dispensers.

A. No supplier shall knowingly sell or otherwise provide to an organization and no organization shall knowingly use bingo supplies unless they conform to the following construction standards:

1. Disposable paper sold shall be of sufficient weight and quality to allow for clearly readable numbers and to prevent ink from spreading, bleeding or otherwise obscuring other numbers or cards.

2. Each sheet of disposable bingo paper shall be comprised of cards bearing a serial number. No serial number shall be repeated on or in the same style, series and color of cards within a one-year period.

3. Disposable bingo paper assembled in books or packets shall not be separated except for single-sheet specials. This provision does not apply to two-part cards on which numbers are filled by players and one part is separated and provided to an organization for verification purposes.

4. Each carton of disposable bingo paper shall have an exterior label listing the following information:

- a. Type of product;
- b. Number of booklets or loose sheets;
- c. Series numbers;
- d. Serial number of the top sheet;
- e. Number of cases;
- f. Cut of paper; and
- g. Color of paper.

B. No supplier shall knowingly sell or otherwise provide to an organization and no organization shall knowingly use instant bingo, pull-tab or seal cards unless they conform to the following construction standards:

1. Cards shall be constructed so that concealed numbers, symbols or winner protection features cannot be viewed or determined from the outside of the card by using a high intensity lamp of 500 watts, with or without utilizing a focusing lens.

2. Deals shall be designed, constructed, glued and assembled in a manner to prevent determination of a winning or losing ticket without removing the tabs or otherwise uncovering the symbols or numbers as intended.

3. Each card in a deal shall bear the same serial number. Only one serial number shall be used in a deal. No serial number used in a deal shall be repeated by the same manufacturer on that same manufacturer's form within a three-year period. The flare of each deal shall accompany the deal and shall have affixed to it the same serial number as the tickets in such deal.

4. Numbers or symbols on cards shall be fully visible in the window and shall be placed so that no part of a number or symbol remains covered when the tab is removed.

5. Window slits on each card shall be perforated on the three cut sides. Cards shall be glued on all four edges and between each window. Glue shall be of sufficient strength and type to prevent the undetectable separation or delamination of the card.

6. The following minimum information shall be printed on a card:

a. Break open pull-tab, instant bingo cards:

- (1) Name of the manufacturer or its distinctive logo;
- (2) Name of the game;
- (3) Manufacturer's form number;
- (4) Price per individual card or bundle, unless accompanied by a flare with that information;
- (5) Unique minimum five-digit game serial number printed on the game information side of the card; and
- (6) Number of winners and respective winning number or symbols and specific prize amounts, unless accompanied by a publicly posted flare with that information.

b. Banded pull-tabs:

- (1) Manufacturer;
- (2) Serial number; and
- (3) Number of winners and respective winning numbers or symbols and prize amounts, or a publicly posted flare giving that information.

C. No organization shall use raffle tickets (other than pull-tab cards) independent of a bingo game unless they conform to the following construction standards:

1. Each ticket shall have a detachable section and shall be consecutively numbered.
2. Each section of a ticket shall bear the same number. The section retained by the organization shall provide

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space for the purchaser's name, complete address and telephone number.

3. The following information shall be printed on the purchaser's section of each ticket:

- a. Dates and times of drawings;
- b. Locations of the drawings;
- c. Name of the charitable organization conducting the raffle;
- d. Price of the ticket;
- e. Charitable Gaming Commission permit or exemption number; and
- f. Prizes.

D. (Effective October 1, 1997, through December 31, 1997)
Electronic bingo.

1. At any time, the commission, at its discretion, may require testing at the manufacturer's expense of electronic bingo devices as a condition of use.

2. All electronic bingo devices shall be programmed or enabled for play on the premises where the game is to be played.

3. Each electronic bingo device shall have a unique identification number permanently coded into the software of such device.

4. Electronic bingo devices shall not allow a player to create a card by the input of specific numbers on each card.

5. Electronic bingo devices shall not accept cash, currency or tokens for play.

6. Electronic bingo devices shall require the manual entry of numbers as they are called.

7. A device shall not allow the play of more than 72 cards per game.

8. The electronic bingo device system shall record a sequential transaction number or audit tracking number for each transaction. The system shall not allow the manual resetting or changing of this number.

9. The system shall produce a receipt and a transaction log containing the following:

- a. Organization name;
- b. Location of bingo game;
- c. Sequential transaction or receipt number;
- d. Number of electronic bingo cards loaded;
- e. Cost of electronic bingo cards loaded;
- f. Electronic device number issued to a player; and
- g. Date and time of the transaction.

In addition, the system shall produce a summary report identifying the date and time of the report, voided transactions and total gross receipts for each session.

10. Each device shall be programmed to automatically erase all stored electronic cards at the end of the last game of a session or within a set time from their rental to a player.

11. All devices shall be reloaded with another set of cards at the beginning of each session if the devices are to be reused at the same location.

E. In instances where a defect in packaging or in the construction of deals or electronic devices is discovered by or reported to the commission, the commission shall notify the manufacturer of the deals or devices containing the alleged defect. Should the commission, in consultation with the manufacturer, determine that a defect exists, and should the commission determine the defect affects game security or otherwise threatens public confidence in the game, the commission may, with respect to deals or electronic devices for use still located within the Commonwealth, require the supplier to:

1. Recall the deals or electronic devices affected that have not been sold or otherwise provided; or
2. Issue a total recall of all affected deals or electronic devices.

F. No pull-tab dispenser may be sold, leased or otherwise furnished to any person or organization in the Commonwealth or used in the conduct of charitable gaming unless the device meets standards approved by the commission. In addition, suppliers and manufacturers of such dispensers shall comply with the requirements of 15 USC §§ 1171-1178 (The Gambling Devices Act of 1962).

G. All pull-tab dispensing devices must meet the following standards:

1. Each dispenser shall be manufactured in a manner that ensures a pull-tab ticket is dispensed only after insertion of United States currency or coinage into the dispenser. Such ticket and any change due shall be the only items dispensed from the machine.
2. Each dispenser shall be manufactured in a manner that ensures the device neither displays nor has the capability of displaying or otherwise identifying a pull-tab as a winning or nonwinning ticket.
3. Each dispenser shall be manufactured in such a manner that any visual animation does not simulate or display rolling or spinning reels or produce audible music or enhanced sound effects.
4. Each dispenser shall be equipped with separate locks for the pull-tab supply modules and money boxes. Locks shall be configured so that no one key will operate both the supply modules and money boxes.

H. No dispensing devices shall be linked to other such devices so as to permit the play of progressive games.

I. The commission may test a dispensing device at any time to ensure that it meets construction standards and allows for fair play. Such tests shall be conducted at the cost of the manufacturer of such devices.

J. The face value of cards being dispensed shall match the amount deposited in the currency/coin acceptor less change provided.

11 VAC 15-30-40. Instant bingo and pull-tab randomization standards.

All instant bingo and pull-tab cards shall meet the following randomization standards:

1. Deals shall be assembled so that winning tickets are placed throughout each deal.
2. Deals shall be assembled and packaged in a manner that prevents isolation of winning cards due to variations in printing, graphics, colors, sizes, appearances of cut edges or other markings of cards.
3. Winning cards shall be distributed and mixed among all other cards in a deal so as to eliminate any pattern between deals or portions of deals from which the location or approximate location of any winning card may be determined.

11 VAC 15-30-50. Procedural rules for the conduct of fact-finding conferences, hearings, appeals.

A. Fact-finding conference; notification, appearance, conduct.

1. Unless automatic revocation or immediate suspension is required by law, no certificate to sell charitable gaming supplies shall be denied, suspended or revoked except upon notice stating the basis for such proposed action and the time and place for a fact-finding conference, as set forth in the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).
2. If a basis exists for a refusal to renew, suspend or revoke a certificate, the commission shall notify, by certified mail or by hand delivery, the interested parties at the address of record maintained by the commission.
3. Notification shall include the basis for the proposed action and afford interested parties the opportunity to present written and oral information to the commission which may have a bearing on the proposed action at a fact-finding conference. If there is no withdrawal, a fact-finding conference shall be scheduled at the earliest mutually agreeable date, but no later than 60 days from the date of the notification. Organizations or suppliers who wish to waive their right to a conference shall notify the commission at least 14 days before the scheduled conference.
4. After consideration of evidence presented during an informal fact-finding conference, and if a basis for action

still exists, the interested parties shall be notified in writing within 60 days of the fact-finding conference, via certified or hand-delivered mail, of the decision and the right to a formal hearing. Parties to the conference may agree to extend the report deadline if more time is needed to consider relevant evidence.

B. Hearing; notification, appearance, conduct.

1. If, after a fact-finding conference, a sufficient basis still exists to deny, suspend or revoke a certificate, interested parties shall be notified by certified or hand-delivered mail of the proposed action and of the opportunity for a hearing on the proposed action. If a supplier desires to request a hearing, it shall notify the commission within 14 days of receipt of a report on the conference. Parties may enter into a consent agreement to settle the issues at any time prior to or subsequent to an informal fact-finding conference.
2. If an interested party or representative fails to appear at a hearing, the hearing officer may proceed in his absence and make a recommendation.
3. Oral and written arguments may be submitted to and limited by the hearing officer. Oral arguments shall be recorded in an appropriate manner.

C. Hearing location. Hearings before a hearing officer shall be held, insofar as practicable, in the county or city in which the supplier is located. Hearing officers may conduct hearings at locations convenient to the greatest number of persons or by telephone conference, video conference or similar technology, in order to expedite the hearing process.

D. Administrative Process Act. The provisions of the Virginia Administrative Process Act shall apply.

E. Hearing decisions.

1. Recommendations of the hearing officer shall be a part of the record and shall include a written statement of the hearing officer's findings of fact and recommendations as well as the reasons or bases for the recommendations. Recommendations shall be based upon all the material issues of fact, law or discretion presented on the record.
2. The commission's executive secretary or his designee shall review the recommendation of the hearing officer and render a decision on the recommendation within 30 days of receipt. The decision shall cite the appropriate rule, relief or denial thereof as to each issue.

F. Agency representation. The executive secretary's designee may represent the commission in an informal conference or at a hearing.

11 VAC 15-30-60. Reporting violations.

A. Unless otherwise required by law, the identity of any individual who provides information to the commission or its

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employees regarding alleged violations shall be held in strict confidence.

B. Any officer or director of a supplier, or his agent or employee, shall immediately report to the commission any information pertaining to the suspected misappropriation or theft of funds or any other violations of the law.

C. Failure to report the information required by subsection B of this section may result in the denial, suspension or revocation of a certificate of registration.

D. Any officer, director, partner or owner of a supplier shall immediately notify the commission upon conviction or plea of *nolo contendere* to a felony or a crime involving gambling or an action against any license or certificate held by the supplier in any state in the United States.

E. Failure to report information required by subsection D of this section by any supplier may result in the denial, suspension or revocation of a registration certificate.

VA.R. Doc. No. R97-589; Filed June 27, 1997, 3:44 p.m.

DEPARTMENT OF HEALTH (STATE BOARD OF)

REGISTRAR'S NOTICE: Chapter 902 of the 1996 Acts of Assembly abolished the Virginia Health Services Cost Review Council and specified that the regulations of the council would remain in effect until superseded by regulations adopted by the Board of Health. 12 VAC 25-30-10 et seq., Methodology to Measure Efficiency and Productivity of Health Care Institutions, has been amended and adopted by the Board of Health as 12 VAC 5-216-10 et seq., Methodology to Measure Efficiency and Productivity of Health Care Institutions, and Virginia Health Services Cost Review Council Patient Level Data System, 12 VAC 25-40-10 et seq., has been amended and adopted by the Board of Health as 12 VAC 5-217-10 et seq., Regulations of the Patient Level Data System.

The State Board of Health 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, and in accordance with § 9-6.14:4.1 C 1, which excludes agency orders or regulations fixing rates or prices. The State Board of Health will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 12 VAC 5-216-10 et seq. Methodology to Measure Efficiency and Productivity of Health Care Institutions (formerly 12 VAC 25-30-10 et seq.).

Statutory Authority: §§ 32.1-12 and 32.1-276.2 of the Code of Virginia.

Effective Date: August 20, 1997.

Summary:

This regulation defines the methodology used in identifying efficient and productive hospitals and nursing homes in Virginia. The methodology uses facility data collected from the Annual Historical Performance Filing through an electronic software package supplied by the State Board of Health through its nonprofit contractor. The resulting ranking is normally printed in the publication "Buyer's Guide to Efficient and Productive Hospitals and Nursing Homes." No substantive changes were made to the regulations. Technical changes are being made to reflect the abolition of the Virginia Health Services Cost Review Council.

Agency Contact: Copies of the regulation may be obtained from Tim Catherman, Department of Health, P.O. Box 2448, Richmond, VA 23218, telephone (804) 371-4134.

CHAPTER 30 216.

METHODOLOGY TO MEASURE EFFICIENCY AND PRODUCTIVITY OF HEALTH CARE INSTITUTIONS.

~~12 VAC 25-30-10.~~ 12 VAC 5-216-10. Purpose; limitations; activities.

A. The methodology set forth in this chapter is market oriented. Consumers and buyers of health care will receive information from the council board that will allow them to make prudent health care decisions.

~~12 VAC 25-30-20.~~ Limitations.

B. Nothing in this chapter or the actions taken by the council board pursuant to any of its provisions shall be construed as constituting approval by the Commonwealth or any of its agencies or officers of the reasonableness of any charges made or costs incurred by any health care institution.

~~12 VAC 25-30-30.~~ Activities.

C. The council board will collect, analyze, and publish information on health care institutional provider practices relating to efficiency and productivity.

~~12 VAC 25-30-40.~~ 12 VAC 5-216-20. Filing.

Each health care institution, except where otherwise indicated, will submit the following filings: an annual historical performance filing.

1. Annual Budget Summary Filing. Each health care institution will submit an Annual Budget Summary Filing as prescribed in § 9-160 B of the Code of Virginia. This filing will provide financial and statistical information to assist purchasers, state policy makers, and other consumers develop projections of future charges and costs. The budget filing shall be received by the council at least 30 days prior to the beginning of the health care institution's fiscal year.

2. Annual Historical Performance Filing. Each health care institution will submit an annual historical performance filing as prescribed in § 9-158 § 32.1-276.7 of the Code of Virginia. This filing will be used to collect audited financial information and other information for all of the categories listed in 12 VAC

~~25-30-50 12 VAC 5-216-40.~~ It will provide the basis for the evaluation by the ~~council board~~. The annual historical performance filing shall be received by the ~~council board~~ within 120 days after the close of the health care institution's fiscal year.

~~3. Quarterly Historical Performance Filings. Only hospitals, including acute care hospitals, ambulatory surgical hospitals, psychiatric hospitals, and rehabilitation hospitals, will submit Quarterly Historical Performance Filings. All other health care institutions are provisionally exempt from this requirement. Quarterly information will be incorporated into a council data bank so that purchasers may seek current information. The Quarterly Historical Performance Filing shall be received by the council within 45 days after the end of each hospital's fiscal year quarter.~~

12 VAC 5-216-30. Eliminating duplication in reporting.

In compliance with § 32.1-276.4 B of the Code of Virginia, information that is collected by other public and private entities that is used by the board in its evaluation of efficiency and productivity shall be received by the board directly from the appropriate agency or entity. Data will also be drawn from the Virginia Patient Level Data System and from other available data bases.

~~42 VAC 25-30-50. 12 VAC 5-216-40. Categories of information.~~

Information concerning charges, costs, elements of costs, productivity, resource utilization, financial viability, and community support services will be assembled from the filings made pursuant to this chapter.

~~42 VAC 25-30-60. 12 VAC 5-216-50. Efficiency and productivity indicators.~~

Individual data elements from the general categories identified in ~~42 VAC 25-30-50 12 VAC 5-216-40~~ will be used to form ratio indicators. These indicators will be used to evaluate health care institutions and rank health care institutions in relation to their peers.

1. Case mix index. ~~Each acute care hospitals hospital shall provide the council board with a case mix index for all inpatients and designated categories of inpatients when it submits its annual historical performance filing. The Medicare DRG grouper process shall be utilized by the council board.~~

~~2. Freestanding (i.e., nonsystem) hospitals with fewer than 100 licensed hospital beds may apply to the council for an exemption to subdivision 1 of this section for calendar year 1993. All hospitals must comply with subdivision 1 of this section in calendar year 1994.~~

~~3. 2. Each nursing facility that has received a Patient Intensity Rating System (PIRS) Service Intensity Index (SII) number from the Virginia Department of Medical Assistance Services shall report the four quarterly final PIRS SII scores associated with its fiscal year. These~~

scores are to be reported on the institution's annual historical performance filing.

~~42 VAC 25-30-70. Mortality indicator.~~

~~Each hospital will indicate in its Annual Historical Performance Filing whether or not its Health Care Financing Administration (HCFA) mortality rates, overall and for all subcategories, are within HCFA's expected mortality ranges. This information will not be used to measure the relative efficiency and productivity of a hospital in 1993.~~

~~12 VAC 25-30-80. 12 VAC 5-216-60. Electronic submission of data.~~

A. Information shall be submitted electronically.

~~4. B. Information shall be submitted using software developed by the council board for the use of health institutions in submitting filings.~~

2. C. Any health care institution that does not have the computer equipment to submit electronically may apply to the ~~council board~~ for an exemption to ~~subdivision 4 subsection B~~ of this section. ~~Beginning January 1994, A fee commensurate with the cost of data entry will be assessed by the council board.~~

~~42 VAC 25-30-90. 12 VAC 5-216-70. Public access to data.~~

The ~~council board~~ will publish an annual report which will incorporate the data collected and analysis of the data including, but not limited to, an evaluation of the relative efficiency and productivity of health care institutions. An electronic data base ~~will be available is open~~ to the public in 1994.

~~42 VAC 25-30-100. 12 VAC 5-216-80. Initial measurement.~~

The performance of each health care institution will be measured using the indicators referenced in ~~42 VAC 25-30-60 12 VAC 5-216-50.~~

~~42 VAC 25-30-110. 12 VAC 5-216-90. Ranking; other peer groupings.~~

A. Unless exempted as provided for in ~~42 VAC 25-30-130 12 VAC 5-216-110~~, each health care institution will be subject to a ranking procedure.

1. ~~Regional Geographical~~ peer grouping. Similar types of health care institutions (e.g., all hospitals or all nursing homes) will be grouped into geographical peer groups and ranked in relation to other institutions within their peer group.

2. Ranking procedure. Each health care institution will be ranked on each indicator and given a quartile score on each indicator. Each quartile represents 25% of institutions within the peer group. Each institution will be given a score of 1, 2, 3, or 4 on each indicator depending upon the quartile in which ~~they fall it falls~~. A quartile score of 1 on an indicator means that an institution ranked in the top quartile (top 25%) on that indicator.

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Quartile scores are summed over all indicators. The total is divided by the number of indicators to get an average quartile score. The top performers will be selected by using the average quartile score and identifying, *to the extent possible*, the top 25% of the institutions within each peer group.

~~12 VAC 25-30-120. Other peer groupings.~~

~~B. Health care institutions may be sorted into other peer groupings (e.g., bed size, urban/rural, system/nonsystem) for purposes of analysis.~~

~~12 VAC 25-30-130. 12 VAC 5-216-100. Exemptions from the ranking procedure.~~

~~During calendar year 1993, Until such time as a resource utilization adjustor, similar to the case mix index for acute care hospitals referenced in subdivision 1 of 12 VAC 5-216-50 is developed and adopted by the board, some institutions will be exempt from the ranking procedure as described below:~~

- ~~1. Small hospitals. Freestanding (i.e., nonsystem) hospitals with fewer than 100 licensed beds that are exempt pursuant to subdivision 2 of 12 VAC 25-30-60.~~
- ~~2. 1. Psychiatric hospitals.~~
- ~~3. 2. Rehabilitation hospitals.~~
- ~~4. 3. Ambulatory surgery hospitals.~~
- ~~5. 4. Continuing care retirement communities.~~
- ~~6. 5. Children's specialty hospitals.~~
- ~~7. 6. Subacute care hospitals.~~

NOTICE: The forms used in administering 12 VAC 5-216-10 et seq., Methodology to Insure Efficiency and Productivity of Health Care Institutions, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Department of Health, 1500 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

~~Psychiatric Hospital Annual Budget Filing Form (eff. 3/22/94).~~

~~Psychiatric Hospital Quarterly Filing Form (eff. 3/22/94).~~

~~Psychiatric Hospital Annual Historical Filing Form (eff. 3/22/94).~~

~~Indicator Definitions - Psychiatric Hospitals Form (eff. 8/12/94).~~

~~Ambulatory Surgical Hospital Annual Budget Filing Form (eff. 3/22/94).~~

~~Ambulatory Surgical Hospital Quarterly Filing Form (eff. 3/22/94).~~

~~Ambulatory Surgery Hospital Annual Historical Filing Form (eff. 3/22/94).~~

~~Indicator Definitions - Ambulatory Surgery Hospitals Form (eff. 8/11/94).~~

~~Nursing Home Annual Budget Filing Form (eff. 3/22/94).~~

~~Nursing Home Annual Historical Filing Form (eff. 3/22/94).~~

~~Indicator Definitions - Nursing Homes (eff. 8/11/94).~~

~~Appendix I, Calculation and an Example of Case Mix and Ancillary and Outpatient Adjusted Patient Days (eff. 3/11/94).~~

~~Hospital and Nursing Home Reconciliation Worksheet (eff. 3/22/94).~~

~~Hospital Annual Historical Filing Form (eff. 3/22/94).~~

~~Hospital Annual Budget Filing Form (eff. 3/22/94).~~

~~Hospital Quarterly Filing Form (eff. 3/22/94).~~

~~Indicator Definitions - Hospitals (eff. 8/11/94).~~

~~Rehabilitation Hospital Annual Budget Filing Form (eff. 3/22/94).~~

~~Rehabilitation Hospital Quarterly Filing Form (eff. 3/22/94).~~

~~Rehabilitation Hospital Annual Historical Filing Form (eff. 3/22/94).~~

~~Indicator Definitions - Rehabilitation Hospitals Form (eff. 3/22/94).~~

~~Hospital Historical Filing, 03-01 (rev. 4/30/96).~~

~~Indicator Definitions - Acute Care Hospitals (rev. 10/15/96).~~

~~Special Services Utilization Calculations~~

~~Ambulatory Surgical Hospital Historical Filing, 03-02 (rev. 4/30/96).~~

~~Indicator Definitions - Ambulatory Surgical Hospitals (rev. 10/15/96).~~

~~Nursing Home Historical Filing, 03-03 (rev. 4/30/96).~~

~~Indicator Definitions - Nursing Homes (rev. 10/15/96).~~

~~Psychiatric Hospital Historical Filing, 03-05 (rev. 4/30/96).~~

~~Indicator Definitions - Psychiatric Hospitals (rev. 10/15/96).~~

~~Rehabilitation Hospital Historical Filing, 03-06 (rev. 4/30/96).~~

~~Indicator Definitions - Rehabilitation Hospitals (rev. 10/15/96).~~

~~Income Statement Reconciliation Worksheet, 04-04 (rev. 4/30/96).~~

VA.R. Doc. No. R97-584; Filed June 27, 1997, 12:33 p.m.

Title of Regulation: 12 VAC 5-217-10 et seq. Regulations of the Patient Level Data System (formerly 12 VAC 25-40-10 et seq., Virginia Health Services Cost Review Council Patient Level Data System).

Statutory Authority: §§ 32.1-12 and 32.1-276.2 of the Code of Virginia.

Effective Date: August 20, 1997.

Summary:

This regulation requires hospitals to submit patient level data for every discharged inpatient. Most of the data elements are currently collected from the UB-92 billing form. The regulation defines the timing of submission, associated fees for the patient level database, and elements subject to be processed and verified. The regulation further identifies duties of the State Board of Health and any nonprofit organization involved. No substantive changes were made to the regulation. Technical changes are being made to reflect the abolition of the Health Services Cost Review Council, along with revisions of the billing form. A rate change was made to adjust the accuracy level from 98% to 95%.

Agency Contact: Copies of the regulation may be obtained from Tim Catherman, Department of Health, P.O. Box 2448, Richmond, VA 23218, telephone (804) 371-4134.

CHAPTER 40.

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL
PATIENT LEVEL DATA SYSTEM

CHAPTER 217.

REGULATIONS OF THE PATIENT LEVEL DATA SYSTEM.

~~12 VAC 25-40-10.~~ 12 VAC 5-217-10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings:

"Board" means the Virginia Board of Health.

"Council" means the Virginia Health Services Cost Review Council.

"Complete filing" means that patient level data of at least 99% of a hospital's inpatient discharges for a calendar year quarter are submitted.

"Inpatient hospital" means a hospital providing inpatient care and licensed pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 of Title 32.1 of the Code of Virginia, a hospital licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of Title 37.1 of the Code of Virginia, or a hospital operated by the University of Virginia or Virginia Commonwealth University.

"Nonprofit organization" means a nonprofit, tax-exempt health data organization with expertise and capacity to execute the powers and duties set forth for such entity in Chapter 26 (§ 9-156 et seq.) Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 9 32.1 of the Code of Virginia and with which the

Commissioner of Health has entered into a contract as required by the Code of Virginia.

"Processed, verified data" means data on inpatient records which have been subjected to edits. These edits shall be applied to data elements which are on the ~~UB-82 UB-92~~ Billing Form (or a successor Billing Form adopted by the Virginia Uniform Billing Committee for use by inpatient hospitals in Virginia). The edits shall have been agreed to by the ~~executive director of the council board and VHI~~ the nonprofit organization. Inpatient records containing invalid ~~UB- UB-92~~ codes or all blank fields for any of the data elements subjected to edits shall be designated as error erroneous records. ~~At least 98% of a complete filing of all records which are submitted by an inpatient hospitals in aggregate per calendar year quarter and which are subjected to these edits must be free of error for data to be considered processed and verified. To be considered processed and verified, a complete filing of all records which are submitted by an inpatient hospital in aggregate per calendar year quarter and which are subjected to these edits must be free of error at a prescribed minimum rate. The prescribed minimum error rate shall be 95% overall, with patient identifier separately calculated at 95% or a minimum rate recommended by the board of directors of the nonprofit organization and approved by the Virginia Board of Health. The error rate shall be calculated on only those fields designated in 12 VAC 5-217-20 or as subsequently approved by the board through the process specified in 12 VAC 5-217-20.~~

"System" means the Virginia Patient Level Data System.

~~"Virginia Health Information" or "VHI" means the Virginia nonstock corporation organized for the purpose of operating as a nonprofit, tax exempt health data organization, with which the executive director has entered into a contract as required by § 9-166.4 of the Code of Virginia.~~

~~12 VAC 25-40-20.~~ 12 VAC 5-217-20. Reporting requirements for patient level data elements.

Every inpatient hospital shall submit each patient level data element listed below for each hospital inpatient, including a separate record for each infant, if applicable. Most of these data elements are currently collected from a ~~UB-82 UB-92~~ Billing Form. The column for a "Form Locator" indicates where the data element is located on the ~~UB-82 UB-92~~. For ~~these elements collected on the UB-92, a the~~ column for the "Page Number" ~~from refers to the Uniform Billing Manual (UB-82) (UB-92), revised on July, 1989 which has been May, 1993. The Uniform Billing Manual UB-92, prepared for Virginia hospitals by the Virginia Uniform Billing Committee, is also provided which details a provides a detailed field description and any special instructions pertaining to that element. An asterisk (*) indicates when the required data element is either not on the UB-82 UB-92 or in the Uniform Billing Manual. The instructions provided under that particular data element should then be followed. If a successor billing form to the UB-82 UB-92 form is adopted by the Virginia Uniform Billing Committee for use by inpatient~~

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hospitals in Virginia, information pertaining to the data elements listed below should be derived from that successor billing form.

Data element	Form Locator	Page Number
1. Hospital identifier <i>Enter the six-digit Medicare provider number or a number assigned by the board or its designee.</i>	4 *	49 *
2. Attending physician identifier <i>Enter the six-digit nationally assigned Uniform Physician Identification Number (UPIN) physician identification number, either the Uniform Physician Identification Number (UPIN) or National Provider Identifier (NPI) as approved by the board for the physician assigned as the attending physician for an inpatient.</i>	92 82	± 82-1 and 82-2
3. Operating Other physician identifier <i>Enter the six-digit nationally assigned UPIN physician identification number, either the Uniform Physician Identification Number (UPIN) or National Provider Identifier (NPI) as approved by the board for the physician identified as the operation operating physician for each inpatient the principal procedure reported for up to six procedures.</i>	93 83 A & B	± 83-1 and 83-2
4. Payor identifier	57 50 A, B, C	419-424 50-1 through 50-11
5. Employer identifier name	73 65 A	448 65-1
6. Patient identifier <i>Enter the nine-digit social security number of the patient. If a social security number has not been assigned, (i.e., for an infant) leave blank. The nine-digit social security number is not required for patients under four years of age.</i>	*	*
7a. Patient sex	43 15	29 15-1
7b. Race code	*	*

If an inpatient hospital collects information regarding the choices listed below, the appropriate one-digit code reflecting the race of the patient should be entered. If a hospital only collects information for categories 0, 1, or 2, then the appropriate code should be entered from those three selections.

0 = White		
1 = Black		
2 = Other		
3 = Asian		
4 = American Indian		
5 = White Hispanic		
6 = Black Hispanic		
7c. Date of birth	42 14	28 14-1
7d. Century indicator	35, 36, 37, 38, 39 = 17	28
7 e. d. Zip code	44 13	27 13-1
7 f. e. Patient relationship to insured	67 A, B, C 59 A, B, C	135-137 59-1 through 59-2
7 g. f. Employment status code	72 64 A, B, C	146-147 64-1 and 64-2
7 h. g. Discharge (i.e., Patient) Status Patient status (i.e., discharge) Inpatient codes only.	24 22	38 22-1 and 22-2
7 i. h. Birth weight (for infants) Enter the birth weight in grams of newborns.	*	*
8a. Admission type	47 19	33 19-1 and 19-2
8b. Admission source	46 20	35 20-1 through 20-3
8c. Admission date	45 17	34 17-1
8d. Admission hour	46 18	32 18-1
8e. Admission diagnosis code	27 76	44 76-1
9. Discharge date Only enter date of discharge.	22 *	39 *
10. Principal diagnosis code	77 67	152 67-1 and 67-2

Enter secondary diagnoses (up to eight). In addition, include diagnoses recorded in the comments section for DX6-DX9.	78,79,80, 84 68-75	453 68-1
11. External cause of injury code (E-code)	± 77	± 77-1
Record all external cause of injury codes in secondary diagnoses position after recording all treated secondary diagnoses.		
12. Principal procedure code and date	84 80	456-457 80-1
Enter other procedures and dates (up to five). In addition, include procedures recorded in the comments section for PX4-PX6.	83 81 A-E	455 81-1
13. Revenue Center code (up to 23)	54 42	80-144 42-1 through 42-56
Revenue Center Units (up to 23)	52 46	445 46-1
Revenue Center Charges (up to 23)	53 47	446 47-1
14. Total charges (by revenue code category or by HCPCS code)	53 47	446 47-1

(R.C. Code 001 is for total charges. See page 84 47-1.)

~~12 VAC 25-40-30.~~ **12 VAC 5-217-30. Options for filing format.**

Inpatient hospitals of 100 beds or larger ~~more~~ that submit patient level data directly to the ~~council board~~ or ~~VHI the nonprofit organization~~ shall submit it in an electronic data format. Hospitals of less than 100 beds that submit patient level data directly to the ~~council board~~ or ~~VHI the nonprofit organization~~ may directly submit it in electronic data format or in hard copy. If hard copy is utilized the hospital shall submit, for each inpatient discharged, a copy of the ~~UB-82 UB-92~~ and an addendum sheet for those data elements not collected on the ~~UB-82 UB-92~~ or defined in the Uniform Billing Manual. These hospitals must submit all patient level data in electronic data format by January 1, 1995.

If a hospital submits processed, verified data directly to ~~VHI the nonprofit organization~~, it shall be in electronic format.

~~12 VAC 25-40-40.~~ **12 VAC 5-217-40. Options for submission.**

Each inpatient hospital shall submit the patient level data to the ~~council board~~ for processing and verification. If data

are submitted in this fashion, the ~~council board~~ will transmit it to ~~VHI the nonprofit organization~~ along with any fees submitted by the hospital to the ~~council board~~ for the processing and verification of such data.

As an alternative to submitting the patient level data to the ~~council board~~, an inpatient hospital may submit the patient level data to the office of ~~VHI the nonprofit organization~~ for processing and verification. ~~If this alternative is chosen data shall be submitted to the following address:~~

~~Virginia Health Information Corporation~~
~~Post Office Box 8727~~
~~Richmond, Virginia 23226~~

If a hospital chooses this alternative it shall notify the ~~council board~~ and the ~~VHI nonprofit organization~~ of its intent to follow this procedure.

In lieu of submitting the patient level data to the ~~council board~~ or to ~~VHI the nonprofit organization~~, an inpatient hospital may submit already processed, verified data to ~~VHI the nonprofit organization~~. If an inpatient hospital chooses this alternative for submission of patient level data, it shall notify the ~~council board~~ and the ~~VHI nonprofit organization~~ of its intent to utilize this procedure.

If an inpatient hospital decides to change the option it has chosen, it shall notify the ~~council board~~ of its decision 30 days prior to the due date for the next submission of patient level data.

~~12 VAC 25-40-50.~~ **12 VAC 5-217-50. Contact person.**

Each hospital shall notify in writing the ~~council board~~ and ~~VHI the nonprofit organization~~ of the name, address, telephone number and fax number of a contact person. If a hospital's contact person changes, the ~~council board~~ and ~~VHI the nonprofit organization~~ shall be notified in writing as soon as possible of the name of the new person who shall be the contact person for that hospital.

~~12 VAC 25-40-60.~~ **12 VAC 5-217-60. Frequency of submission.**

A. Inpatient hospitals shall submit patient level data for inpatients at least on a calendar year quarterly basis.

B. If the data is submitted to the ~~council board~~ or to ~~VHI the nonprofit organization~~ for processing and verification, it shall be received at the office of the ~~council board~~ or the office of ~~VHI the nonprofit organization~~ within 45 days after the end of each calendar year quarter.

B. C. If inpatient hospitals choose to submit processed, verified data directly to ~~VHI the nonprofit organization~~, it shall be received at the office of ~~VHI the nonprofit organization~~ within 120 days after the end of each calendar year quarter.

~~12 VAC 25-40-70.~~ **12 VAC 5-217-70. Establishment of annual fee.**

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The ~~council board~~ shall prescribe a reasonable fee not to exceed one dollar per discharge for each inpatient hospital submitting patient level data pursuant to this chapter to cover the cost of the reasonable expenses in processing and verifying such data. The fee shall be established and reviewed annually by the ~~council board~~. Payment of the fee by a hospital shall be at the time quarterly inpatient data ~~are~~ is submitted.

~~42 VAC 25-40-80.~~ **12 VAC 5-217-80. Payment of fee to nonprofit organization.**

If an inpatient hospital chooses to submit its patient level data directly to ~~VH~~ the nonprofit organization, that hospital may pay the fee described in ~~42 VAC 25-40-70~~ 12 VAC 5-217-70 to ~~VH~~ the nonprofit organization at the time it submits its quarterly data. If a hospital pays its fee directly to ~~VH~~ the nonprofit organization, the requirements of a fee to be paid to the ~~council board~~, as described in ~~42 VAC 25-40-70~~ 12 VAC 5-217-70, shall be waived by the ~~council board~~.

~~42 VAC 25-40-90.~~ **12 VAC 5-217-90. Waiver or reduction of fee.**

If a hospital submits processed, verified patient level data to ~~VH~~ the nonprofit organization, ~~VH~~ the nonprofit organization may, in its discretion, grant a waiver or reduction of the fee if it determines that the hospital has submitted properly processed, verified data.

~~42 VAC 25-40-100.~~ **12 VAC 5-217-100. Late charge.**

A late charge of \$25 per working day shall be paid to the ~~council board~~ by an inpatient hospital that does not submit, in aggregate, a complete filing of the patient level data required by ~~Part II (12 VAC 25-40-20 et seq.)~~ 12 VAC 5-217-20 for all inpatients discharged in a calendar year quarter pursuant to the times established in ~~42 VAC 25-40-60~~ 12 VAC 5-217-60. This requirement may be waived by the ~~council board~~ if an inpatient hospital can show that an extenuating circumstance exists. Examples of an extenuating circumstance include, but are not limited to, the installation of a new computerized billing system, a bankruptcy proceeding, closure of the institution, change of ownership in the institution, or the institution is a new facility that has recently opened.

VA.R. Doc. No. R97-585; Filed June 27, 1997, 12:35 p.m.

Title of Regulation: 12 VAC 25-10-10 et seq. Public Participation Guidelines (REPEALED).

Statutory Authority: §§ 32.1-12 and 32.1-276.2 of the Code of Virginia.

Effective Date: August 20, 1997.

Summary:

These regulations are being repealed because they are duplicative of existing State Board of Health regulations and their existence is therefore unnecessary.

Agency Contact: Tim Catherman, Department of Health, P.O. Box 2448, Richmond, VA 23218, telephone (804) 371-4134.

VA.R. Doc. No. R97-583; Filed June 27, 1997, 12:36 p.m.

DEPARTMENT OF HEALTH PROFESSIONS

REGISTRAR'S NOTICE: The following regulation filed by the Department of Health Professions is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 B 18 of the Code of Virginia, which exempts regulations promulgated to implement the Health Practitioners' Intervention Program, Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1 of the Code of Virginia.

Title of Regulation: 18 VAC 76-10-10 et seq. Regulations Governing the Health Practitioners' Intervention Program for the Department of Health Professions.

Statutory Authority: § 54.1-2516 of the Code of Virginia.

Effective Date: July 1, 1997.

Summary:

The Department of Health Professions is promulgating regulations for the implementation of a Health Practitioners' Intervention Program in accordance with Chapter 439 of the 1997 Acts of the Assembly.

Regulations clarify terminology through the establishment of definitions, establish the composition and organization of the Intervention Program Committee, set forth criteria for eligibility for participation and for stayed disciplinary action for impaired practitioners, specify terms of the participation and recovery contracts, set forth procedures for consultation and exchange of information, and establish conflicts of interests.

Agency Contact: Copies of the regulation may be obtained from Elaine J. Yeatts, Department of Health Professions, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9918.

CHAPTER 10.

REGULATIONS GOVERNING THE HEALTH PRACTITIONERS' INTERVENTION PROGRAM FOR THE DEPARTMENT OF HEALTH PROFESSIONS.

18 VAC 76-10-10. Definitions.

The words and terms used in this chapter shall have the definitions ascribed to them in § 54.1-2515 or shall have the following meanings, unless the context clearly indicates otherwise:

"Committee" means the Intervention Program Committee as defined in § 54.1-2515 of the Code of Virginia.

"Contractor" means an entity with whom the director has contracted for implementation and operation of intervention services.

"Director" means the Director of the Department of Health Professions.

"Regulated" means a person who is licensed, certified, or registered or an applicant who is otherwise fully eligible for licensure, certification, or registration by a health regulatory board within the Virginia Department of Health Professions.

"Program" means the Health Practitioners' Intervention Program for the Virginia Department of Health Professions.

18 VAC 76-10-20. Organization of committee.

A. Except for the initial appointments, members shall be appointed for a term of four years and shall be eligible for reappointment for one additional four-year term. A member who is appointed to fill a vacancy for the remainder of an unexpired term shall be eligible for two full four-year terms. Terms of appointment shall begin on July 1 of each calendar year.

B. The initial appointees to the committee shall begin their terms on July 1, 1997, and shall be appointed as follows:

1. Two members shall serve for a term of one year, two members shall serve for a term of two years, and two members shall serve for a term of three years. All of the above shall be eligible for reappointment to two four-year terms.

2. One member shall serve for a term of four years and shall be eligible for reappointment to one four-year term.

C. Members of the committee shall not be current members of a health regulatory board within the department.

D. The committee shall elect a chairman and vice chairman for a one-year term ending June 30 of each calendar year.

E. The committee shall meet not less than once every two months and shall conduct all business according to Robert's Rules of Order. Four members shall constitute a quorum. The committee may adopt bylaws to govern its operations as it deems necessary to conduct its business and as consistent with law and regulations.

F. The director shall have the authority to remove a member and shall report such removal to the Board of Health Professions at its next scheduled meeting.

G. By December 31 of each calendar year, each health regulatory board within the department shall designate, in accordance with § 54.1-2400 (8) of the Code of Virginia, a liaison to the committee for a term of one year. Likewise, each board shall select an alternate to serve in the absence of the liaison.

18 VAC 76-10-30. Eligibility.

A. Any impaired practitioner regulated by the department, who has not been previously terminated for noncompliance from this or any other state-sponsored intervention program, shall be eligible for the program.

B. For the purposes of eligibility for the program, impairment shall not include kleptomania, pyromania, transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, sexual behavioral disorders, homosexuality and bisexuality.

C. In order to become eligible for participation in the program, the practitioner shall sign a participation contract with the committee. Failure to adhere to the terms of the contract may subject the practitioner to termination from the program.

D. Unless otherwise ordered by a regulatory board, a practitioner shall maintain a current license, certificate, or registration to remain eligible for participation in the program.

18 VAC 76-10-40. Eligibility for stayed disciplinary action.

A. The committee shall consult with the board liaison for the purpose of determining whether disciplinary action should be stayed. If it is determined that an applicant for the program is not eligible for a stay and evidence of a violation has been reported to the committee, the committee shall make a report of the violation to the Enforcement Division of the department. If found ineligible for stayed disciplinary action, the practitioner may remain eligible for the program.

B. Prior to making a decision on stayed disciplinary action, the committee shall review any applicable notices or orders and shall consult with the Enforcement Division of the department on any pending investigations.

C. Disciplinary action may be initiated by the appropriate health regulatory board upon receipt of investigative information leading to a determination of probable cause that impairment constitutes a danger to patients or clients or upon a determination that the committee decision for stayed disciplinary action is not consistent with provisions for a stay pursuant to § 54.1-2516 C of the Code of Virginia.

18 VAC 76-10-50. Participation contract.

A. The participation contract between the committee and the practitioner shall include at least the following elements:

1. The treatment plan to be followed by the practitioner;
2. Any provisions for withdrawal from practice or limitations on the scope of practice;
3. Consequences of failure to comply with the treatment plan;
4. Any releases for seeking information or records related to the impairment from family, peers, medical personnel or employers;
5. A brief written history of the nature of the impairment; and
6. Any other terms or requirements as may be deemed necessary by the committee.

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B. The participation contract shall specify that costs accruing to the individual practitioner, including but not limited to treatment and body fluid screens, shall not be the responsibility of the program.

18 VAC 76-10-60. Recovery contract.

The recovery contract between the committee and the practitioner may include but not be limited to the following:

1. Length of contract;
2. Type, frequency, and conditions of drug screens;
3. Type and frequency of self-help meetings;
4. Stipulations for self-reporting;
5. Quarterly reports from employers, peers, or peer assistance programs;
6. Conditions and terms for completion and release from the program; and
7. Any other terms or requirements as may be deemed necessary by the committee.

18 VAC 76-10-70. Procedures for consultation with liaisons of health regulatory boards.

A. The committee shall consult with the liaison of the relevant health regulatory board prior to making a determination on stayed disciplinary action; such consultation may include the following:

1. Eligibility of a practitioner for stayed disciplinary action;
2. The implications of the impairment on practice in the profession;
3. The circumstances of the impairment related to a possible violation of laws or regulation; or
4. Any other issues related to disciplinary action or the eligibility, treatment and recovery of a practitioner.

B. In its consultation with the board liaison, the committee shall not disclose the name of the practitioner.

18 VAC 76-10-80. Procedures for exchange of information.

A. All disclosure of information shall be consistent with subsections B and C of § 54.1-2517 of the Code of Virginia.

B. Reporting requirement to health regulatory boards.

1. Upon receipt of an investigative report which alleges impairment, a health regulatory board shall request and the committee shall report if the practitioner has been found eligible for stayed disciplinary action.
2. Upon a determination by the committee that a practitioner has successfully completed the program, the committee shall report such completion to the respective health regulatory board if the committee has previously

received an inquiry from that board regarding the practitioner's participation.

C. Reporting requirements to the director.

1. The contractor or contractors shall report at least annually to the director and the committee on statistics which indicate the general performance of the program to include information and format stipulated in the contract.
2. At no time shall the report disclose the names of practitioners enrolled in the program.

D. Records for the program shall be retained by the contractor or contractors pursuant to terms of the contract.

18 VAC 76-10-90. Procedures for communication.

Except as provided for in § 54.1-2518 of the Code of Virginia, no communication with an applicant or a participant in the program shall be initiated except through the contractor or through the committee.

18 VAC 76-10-100. Conflicts of interests.

A. The committee, contractor, or employees and agents of the contractor who refer practitioners for treatment, shall not refer a practitioner to a treatment facility where the contractor, employees or agents possess an investment interest, as defined in Chapter 24.1 (§ 54.1-2410 et seq.) of Title 54.1 of the Code of Virginia, unless it is an investment interest defined in § 54.1-2411 D of the Code of Virginia.

B. Likewise, the committee, the contractor, or its employees and agents as noted in subsection A of this section shall not have an investment interest in any laboratory which practitioners will be mandated to use for testing during the period of their contract.

C. The contractor shall offer multiple treatment options to any practitioner accepted into the program if treatment is a condition of participation unless the committee authorizes an exception.

D. A committee member who is providing treatment to a practitioner in the program shall disqualify himself from any decision related to such practitioner.

VA.R. Doc. No. R97-602; Filed July 1, 1997, 12:34 p.m.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

REGISTRAR'S NOTICE: The following regulation filed by the State Council of Higher Education for Virginia is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 B 4 of the Code of Virginia, which exempts regulations relating to grants of state or federal funds or property.

Title of Regulation: 8 VAC 40-70-10 et seq. Tuition Assistance Grant Program Regulations.

Statutory Authority: § 23-38.13 of the Code of Virginia.

Effective Date: July 1, 1997.

Summary:

The regulations set forth the general policies and procedures that participating institutions of higher education should use when determining who is eligible for an award under the program and when administering the program. The key provisions of the regulations include institutional participation, disbursement of funds, student eligibility criteria, award amount, and administrative responsibilities.

Agency Contact: Copies of the regulation may be obtained from Stephen R. Merritt, State Council of Higher Education for Virginia, James Monroe Building, 101 N. 14th Street, Richmond, VA 23219, telephone (804) 225-2623.

CHAPTER 70.
TUITION ASSISTANCE GRANT PROGRAM
REGULATIONS.

8 VAC 40-70-10. Definitions.

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

"Academic year" means the enrollment period which normally extends from late August to May or early June and which is normally comprised of two semesters 15 to 16 weeks in length or three quarters 10 to 11 weeks in length. The semesters and quarters do not include intersessions or short terms that precede or follow the regular semesters or quarters.

"Accredited" means an institution approved to confer degrees pursuant to the provisions of §§ 23-265 through 23-276 et seq. of the Code of Virginia and requirements of the Appropriation Act, as the same are now constituted or hereafter amended.

"Award" means a grant of Tuition Assistance Grant Program funds given during fall and spring terms at semester institutions and fall, winter, and spring terms at quarter institutions.

"Census date" means the time during an academic year when a count of enrolled students is made for reporting purposes. For semester terms, the census date shall be no sooner than the end of the fourteenth calendar day from the beginning of the term and no later than the established reporting date end of the add/drop period. For quarter terms, the census date shall be no sooner than the end of the tenth calendar day from the beginning of the term and no later than the established reporting date end of the add/drop period. For nonstandard terms, the census date shall be no sooner than the end of the class session that represents the completion of 15% of the class days and no later than the established reporting date.

"Cost of attendance" means the sum of tuition, fees, room, board, books, supplies, and other education-related expenses, as determined by an eligible institution for

purposes of calculating a student's financial need and awarding federal campus-based student aid funds.

"Council" means the State Council of Higher Education for Virginia.

"Domiciliary resident" means a student who is determined by the council to meet the definition of enrolling institution to be a domiciliary resident of Virginia, as specified under by § 23-7.4 of the Code of Virginia and the council's guidelines for domiciliary status determinations. In cases where there are disputes between students and the enrolling institutions, council staff shall make the final determinations (see 8 VAC 40-70-40 C).

"Eligible institution" means a private, accredited, nonprofit, degree-granting institution of higher education that is formed, chartered, or established within Virginia whose primary purpose is to provide collegiate, graduate, or professional education and not to provide religious training or theological education.

"Eligible program" means a curriculum of courses at the undergraduate, graduate, or first professional level. Undergraduate programs are those programs that lead to an associate's or bachelor's degree and which require at least two academic years (60 semester hours or its equivalent in quarter hours) to complete. Graduate programs are those programs leading to a degree higher in level than the baccalaureate degree and which require at least one academic year (30 semester hours or its equivalent in quarter hours) to complete. First-professional programs are those programs leading to a degree in dentistry, medicine, veterinary medicine, law, or pharmacy. Programs that provide religious training or theological education are not eligible courses of study under the Tuition Assistance Grant Program. Programs in the 39.xxxx series, as classified in the National Education Center for Educational Statistics' Classification of Instructional Programs (CIP), are not eligible programs.

~~*"Eligible institution" means a private, accredited, nonprofit, degree-granting institution of higher education in Virginia whose primary purpose is to provide collegiate or graduate education and not to provide religious training or theological education.*~~

"First-professional student" means a student enrolled and program placed in any of the following programs: dentistry, medicine, veterinary medicine, law, or pharmacy.

"Fiscal year" means the period extending from July 1 to June 30.

"Full-time student" means a student who is enrolled for at least 12 credit hours per semester or its equivalent in quarter hours at the undergraduate level or nine credit hours per semester or its equivalent in quarter hours at the graduate or first professional level. For students enrolled in nontraditional or nonstandard terms, the full-time enrollment requirement will vary based on the length of the terms, the number of contact hours, and other measures of comparability with the institution's normal academic year. The total hours counted

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will not include courses taken for audit, but may include required developmental or remedial courses and other elective courses which normally are not counted toward a degree at the institution. ~~A graduating student may be certified full-time and eligible to receive an award if: (i) the student was enrolled full-time in the immediately preceding term, (ii) the course credits needed to complete degree requirements total less than a full-time course load, and (iii) the maximum number of years of eligibility has not been exceeded.~~

"Graduate student" means a student enrolled and program-placed in a master's or doctoral program.

"Nonprofit institution" means an educational institution operated by one or more nonprofit corporations or associations no part of the net earnings of which may inure to the benefit of any individual, and said institution's earnings are applied solely to the support of said institution and its educational programs and activities.

"Nontraditional or nonstandard program" means a degree program where the terms of the program do not conform to the standard terms of the institution's academic year. Nontraditional or nonstandard programs must be approved by council before students enrolled in the programs can receive awards.

~~*"Post baccalaureate student" means a matriculated student who is in a program leading to a degree higher in level than the baccalaureate degree and is classified by the institution as a "professional" or "graduate" student.*~~

"Program" means the Tuition Assistance Grant Program (TAGP).

~~*"Undergraduate student" means a student in a program leading to an associate's or bachelor's degree or an undergraduate teaching certificate who has not earned a bachelor's or higher degree, and who is not classified by the institution as a "professional" or "graduate" student.*~~

8 VAC 40-70-20. Institutional participation in the program: application procedures.

In order to participate in the program, eligible institutions not previously approved by the council to participate must file formal application with the council no later than January 31 of the calendar year preceding the calendar year in which fall term grants would first be available to students.

Applications shall be addressed to the council and shall include:

1. Estimates of the number of students who would be eligible to receive grants under the program in the first and second years of participation;
2. A copy of the Fiscal Operations Report and Application to Participate in Federal Student Financial Aid Programs (FISAP); and
3. Certifications from the institution's chief executive officer that the institution:

a. Meets eligibility requirements for participation, namely, that it is an accredited, nonprofit, Virginia degree-granting institution of higher education whose primary purpose is to provide collegiate, graduate, or professional education and not to provide religious training or theological education;

b. Will furnish whatever data the council may request in order to verify its institutional eligibility claims to the satisfaction of the council;

c. Will promptly notify the council within 30 days following any change in governance or mission that may affect the institution's status as an eligible institution; and

d. By its governing body, has authorized its adherence to the requirements of this chapter, as the same are now constituted or hereafter amended, until such time as the institution may withdraw from participation in the program.

Applications must be approved and all documents must be on file before any funds are disbursed.

8 VAC 40-70-30. Disbursement of funds.

A. Advancement of funds. A percentage of an institution's estimated allocation of funds for a term will be forwarded to the institution at the beginning of the term. The percentage will be based on each institution's prior year's performance and will be established by the council no later than August September 1. After the census date for each term, the institution will certify that recipients are enrolled as full-time students and are meeting other eligibility requirements established for the program. After enrollment is verified, ~~remaining funds, if any, will~~ *additional funds, if needed, may* be disbursed to the institution. Funds for recipients reported as not enrolled full-time or not meeting other eligibility requirements shall not be disbursed to students, and funds for these students, if already received by the institution in its capacity as the student's fiscal agent, shall be ~~reported to the council as unused funds returned to the council upon request.~~

~~B. Fund usage. Awards may be used only for payment of tuition at the institution in the academic year for which the award has been made. A student who has received a full tuition waiver cannot receive an award under the program. A student who has received a partial tuition waiver may receive an award so long as the sum of the waiver and the award does not exceed tuition charges.~~

~~The institution shall complete and return to the council, as requested, a report of funds not used. An institution shall not declare as unused funds the funds it has previously credited to a student's account without first notifying the student of its intention to do so, in writing, at least 20 working days prior to taking such action.~~

~~For a student who receives an award and withdraws from an institution during a term and is entitled to a refund from that institution, the institution shall report to the council as~~

~~unused funds a prorated portion of the student's award on the basis of the tuition refund policy in effect at the institution.~~

~~All unused funds shall be returned to the council within 20 working days after receiving written request from the council.~~

B. Fund usage. Awards shall be used only for payment of tuition at the institution in the academic year for which the award has been made. A student who has received a full tuition waiver shall not receive an award under the program. An institution shall not declare as unused funds the funds it has previously credited to a student's account without first notifying the student of its intention to do so, in writing, at least 20 working days prior to taking such action. All unused funds shall be returned to the council no later than the end of the fiscal year or 20 working days after receiving written request from the council, whichever is sooner.

C. Notification to students. Institutions shall make students aware that the award is state-funded. ~~The institutions shall also direct specific notice to estimates of awards which appear as credits on statements of student tuition charges. Institutions, in addition, shall ensure that each award recipient is notified of the disposition of award funds subsequent to the date that such funds are received by the institution.~~ Evidence of such notification may include, ~~but shall not be limited to,~~ (i) the dates on receipts signed by award recipients, (ii) formal procedures for providing to recipients written notification of the crediting of student accounts or the availability of checks after such funds are received by the institution, or (iii) institutional records which verify the dates that checks were disbursed to students.

D. Restriction on use of funds. An institution shall establish and maintain financial records that accurately reflect all program transactions as they occur. The institution shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity. Program funds shall be deposited in a noninterest-bearing account established and maintained exclusively for that purpose. Funds ~~may only~~ shall be disbursed *only* to student accounts receivable or to the council. The institution shall *not* hold program funds in the account for a ~~maximum of more than~~ 20 working days before transferring funds to student accounts. ~~All unused funds must be returned to the council no later than the end of the fiscal year or 20 working days after receiving a written request from the council, whichever is sooner.~~

Funds received by the institutions under the program ~~may~~ shall be used only to pay awards to students. The funds are held in trust on behalf of the Commonwealth of Virginia by the institutions for the intended student beneficiaries and ~~may~~ shall not be used for any other purpose.

8 VAC 40-70-40. Student eligibility.

A. Eligibility criteria. In order to be eligible to receive an award, the student must:

1. Be a domiciliary resident of Virginia;

2. Enroll in the academic year for which the award is to be received as a full-time student in an eligible program at an eligible institution;

- a. A student's enrollment status shall be determined at the census date. If a student withdraws after the census date, he shall receive a prorated award based on the tuition refund policy in effect at the institution.

- b. A graduating student in his final term may be certified full-time and eligible to receive a prorated award if (i) the student was enrolled full-time and accepted for or received an award, or both, in the immediately preceding term, (ii) the course credits needed to complete degree requirements total less than a full-time course load, and (iii) the maximum number of years of eligibility has not been exceeded.

3. Not have been convicted for failure to comply with federal selective service registration requirements; ~~and.~~

4. Complete and submit by the published deadline an application for an award.

B. Limitations on awards.

1. If a student receives a partial payment for a semester or quarter, the student's total term of eligibility ~~is~~ shall be reduced by one semester or quarter.

2. Preference for awards ~~will~~ shall be given to eligible students who will enroll for the fall semester or quarter of any given academic year. Awards to students enrolling subsequent to the fall semester or quarter will be limited to funds available through attrition and other nonuse of authorized funds.

3. Awards for students pursuing associate's degrees shall initially be made for one academic year but may be renewed for no more than one additional academic year; ~~subject always to the availability of funds.~~ Students pursuing associate's degrees shall be limited to a cumulative total of two academic years of eligibility for tuition assistance for each associate degree, and a cumulative total of four years of undergraduate assistance.

4. Awards for baccalaureate students shall initially be made for one academic year, but may be renewed for no more than three additional academic years of undergraduate study; ~~subject always to the availability of funds.~~

5. ~~Students pursuing degrees beyond the baccalaureate level shall be limited to a cumulative total of four academic years of eligibility for tuition assistance. Students enrolled in master's programs may receive assistance for two academic years; doctoral programs, two academic years; law programs, three academic years; and medical programs, four academic years.~~

6. *5. Baccalaureate* degree-holders enrolled in teacher certification programs may receive awards if the student has not exceeded undergraduate eligibility and if the

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student was enrolled full time *and accepted for or received an award, or both*, in the immediately preceding term.

~~7. Students receiving awards must maintain eligibility throughout the period for which the award is made.~~

6. Students pursuing degrees at the graduate level shall be limited to three years of support or the number of years of degree program, whichever is shorter.

7. Students pursuing degrees at the first-professional level shall be limited to:

- a. Four years of support for medical school;
- b. Three years of support for law school;
- c. Three years of support for dental school;
- d. Three years of support for veterinary medical school; and
- e. Three years of support for pharmacy school.

8. Students enrolled in a program programs leading to a second bachelor's, master's, or professional degree are ~~not baccalaureate or graduate degree shall not be eligible to receive an award awards.~~

C. Appeals process. ~~Students may appeal institutions' eligibility decisions by filing a written statement with the council by an annually established deadline. Council staff shall make final decisions on eligibility disputes between students and the enrolling institutions. A student whose eligibility for an award has been denied may appeal the institution's initial determination by filing a written statement with the council by an annually established deadline.~~

The appeal process for resolving eligibility disputes shall consist of a review of the institution's initial determination by a council staff member and a final administrative review by a committee comprised of three council staff members. No person who serves at one level of the appeals process shall be eligible to serve at any other level of review.

In order to provide for the orderly and timely resolution of all disputes, the appeals process shall be in writing and state time limitations for the reviews. The council shall distribute the written appeals procedure to participating institutions, and students may request a copy of the written appeals procedure from the enrolling institution or the council.

8 VAC 40-70-50. Award amount.

Section 23-38.14 of the Code of Virginia specifies that no award shall exceed the annual average appropriation per full-time equivalent student for the previous year from the general fund for operating costs at two-year and four-year public institutions of collegiate education in Virginia. The amount of the award ~~will shall~~ be determined by the number of eligible ~~applicants students~~ and funds available. In no event shall ~~any the award amount exceed any award the~~ limit set forth in the Appropriation Act.

An award received by a student under the program shall not be reduced by the student's receipt of other financial aid from any source unless the award, when added to other financial aid, would enable the student to receive total assistance in excess of the estimated cost of attendance at the institution the student attends.

A student who receives a tuition waiver ~~may, scholarship or grant restricted to payment of tuition~~, shall not receive a full award if the sum of the tuition waiver and the award exceeds total tuition charges. However, the student may receive an award in the amount of the difference between tuition charges and the tuition waiver.

A student who falls under the full-time requirement exception shall receive a partial award that is prorated based on the student's actual tuition charges and tuition charged a full-time student. (See 8 VAC 40-70-40 A 2.)

8 VAC 40-70-60. Administration.

A. The council. The council ~~will shall~~ periodically review institutional administrative practices to determine compliance with this chapter. If the council determines that an institution has failed to rectify substantial compliance errors after an opportunity to do so is provided by the council, the council may, after a 20-day written notice of pending action to the institution, suspend or terminate its future participation in the program. In all instances, the council will require the institution to recover and refund to the council any state funds that were expended improperly. *An institution that is suspended or terminated from the program may ask for reconsideration by submitting a written appeal within 30 days of the council's decision.*

~~The council will periodically send confirmation letters to award recipients. The letters shall include, but not be limited to, requests for information about status, permanent address, domicile, and funds received to date.~~

The council ~~will shall~~ provide assistance, interpretation of policy and regulations, and guidance to the institutions in their handling of administrative matters. The assistance ~~will may~~ be in the form of, ~~but not limited to,~~ information about the program and preparation of the student application. If an institution wishes to do so, it may prepare its own application, so long as it is approved by the council.

B. Participating institutions. Institutions shall:

1. Certify student eligibility in all respects;
- ~~2. Provide the council with information pertinent to determining domicile and key application data onto a domiciliary diskette provided by the council or process information in a format approved by the council;~~
- ~~3.~~ 2. Notify, in writing, students whose applications are rejected that they are not eligible for awards, the reason they are not eligible, and the deadline date for submitting appeals to the council;
4. 3. Secure and provide to the council such information regarding student applicants and award recipients as the

council deems necessary for the proper administration of the program;

4. Act, with the student's authorization, as the student's agent to receive and hold program funds for the student's use as tuition assistance;

5. Furnish periodic reports and other pertinent information as may be required by the council. The reports shall include, but not be limited to, copies of institutional financial aid audit reports and audited financial statements;

6. Ensure that each application bears a stamp indicating the date the application was received by the institution. Applications received ~~in the mail~~ after the annually established closing dates for on-time or late applications may be treated as on-time or late applications, respectively, if proof of ~~mailing submission~~ on or before the closing date accompanies the application. ~~The only proof of mailing accepted shall be either Acceptable proof of submission on or before the closing date may be a completed Certificate of Mailing obtained from the U.S. Post Office by the applicant or, the postmarked envelope showing that the application was mailed on or before the closing date at the institution, or similar documentation from another service.~~ An application bearing a stamped date of receipt later than the closing date for late applications shall normally not be considered; and

7. Withdraw from the program only upon a 60-day written notice to both its student body and the council. Withdrawal shall be effective at the conclusion of the academic year designated by the withdrawing participant.

The institution's chief executive officer shall designate one individual at the institution to act as the primary representative of the institution in all matters pertaining to the administration of the program. The chief executive officer shall, in addition, indicate whether the primary institutional representative may designate a single subordinate who may act as an alternate representative for routine administrative operational matters at the campus. At multi-campus institutions, an alternate representative may be designated for each branch campus if the chief executive officer authorizes the appointment of alternate representatives. If there is a change in the primary representative, the chief executive officer shall designate another individual and notify the council within 30 days, in writing, of the change. It is the responsibility of the primary representative to advise the council in a similar fashion of changes in alternate representatives, if any.

C. Responsibility of recipients. A recipient of an award under the program shall notify the institution, in writing, of any name or permanent address changes.

VA.R. Doc. No. R97-601; Filed July 1, 1997, 3:15 p.m.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

REGISTRAR'S NOTICE: On April 14, 1997, final action on the following provisions of the Virginia Statewide Building Code as published in 13:12 VA.R. 1344-1363 March 3, 1997, was suspended: (i) the repeal of paragraph 2 of Section R-214.1 of CABO One and Two Family Dwelling Code/1992 Edition of 13 VAC 5-60-20, (ii) the repeal of 105.1 and 105.1.1 of 13 VAC 5-60-60, (iii) the repeal of 116.5 and 116.9 of 13 VAC 5-60-170, (iv) the adoption of 13 VAC 5-61-80 A, (v) the adoption of 13 VAC 5-61-140 B, (vi) the adoption of 13 VAC 5-61-190 A, and (vii) the adoption of 13 VAC 5-61-220 C 12. (See 13:15 VA.R. 1737-1741 April 14, 1997.) The regulatory process was suspended pursuant to § 9-6.14:7.1 K of the Code of Virginia. Section 9-6.14:7.1 K provides that if any changes with substantial impact are made to a proposed regulation from the time it is published as a proposed regulation to the time it is published as a final regulation, any person may petition the agency to request an opportunity for oral and written submittals on the changes. An additional comment period was held from April 14, 1997, to May 28, 1997, and a public hearing was held on April 28, 1997, to solicit additional comments on these provisions.

After reviewing the comments received during the additional comment period, on June 23, 1997, the Board of Housing and Community Development adopted changes to the final regulation as published in 13:12 VA.R. 1344-1363 March 3, 1997. These changes are set out below and will take effect on August 20, 1997.

Title of Regulations: 13 VAC 5-60-10 et seq. Virginia Uniform Statewide Building Code, Volume I - New Construction Code/1993 (repealing paragraph 2 of Section R-214.1 of CABO One and Two Family Dwelling Code/1992 Edition of 13 VAC 5-60-20, 105.1 and 105.1.1 of 13 VAC 5-60-60, and 116.5 and 116.9 of 13 VAC 5-60-170).

13 VAC 5-61-10 et seq., Virginia Uniform Statewide Building Code (amending 13 VAC 5-61-80 A, 13 VAC 5-61-140 B, 13 VAC 5-61-190 A and 13 VAC 5-61-220 C 12).

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

Effective Date: August 20, 1997.

Summary:

The final amendments (i) limit the exception to the permit requirements for replacement materials and equipment; (ii) decrease time following initial occupancy requiring the code official to issue a notice of violation; (iii) shorten the time allowed for filing an appeal under the building code; and (iv) retain the current standard regarding handrails in one and two family dwellings. The repealed provisions have been replaced by the newly adopted provisions.

Summary of Public Comment and Agency Response: A summary of comments made by the public and the agency's

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response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from the Department of Housing and Community Development Training and Certification Office, The Jackson Center, 501 North 2nd Street, Richmond, VA 23219, telephone (804) 371-7180.

13 VAC 5-60-20. [~~Reference standards and amendments. (Repealed.)~~]

~~The permit applicant shall have the option to select as an acceptable alternative for detached one and two family dwellings and one family townhouses not more than three stories in height and their accessory structures the following standard:~~

~~CABO ONE AND TWO FAMILY DWELLING CODE/1992 EDITION and 1993 Amendments (also referred to herein as One and Two Family Dwelling Code)~~

~~Jointly published by:~~

~~Building Officials and Code Administrators International, Inc.
Southern Building Code Congress International, Inc. and
International Conference of Building Officials.~~

13 VAC 5-60-60. [~~Application for construction permit. (Repealed.)~~]

~~105.1. When permit is required. Written application shall be made to the building official when a construction permit is required. A permit shall be issued by the building official before any of the following actions subject to the USBC may be commenced:~~

- ~~1. Constructing, enlarging, altering, repairing, or demolishing a building or structure.~~
- ~~2. Changing the use of a building either within the same use group or to a different use group when the new use requires greater degrees of structural strength, fire protection, exit facilities, ventilation or sanitary provisions.~~
- ~~3. Installing or altering any equipment which is regulated by this code.~~
- ~~4. Removing or disturbing any asbestos containing materials during demolition, alteration, renovation or additions to buildings or structures.~~

~~Exceptions:~~

- ~~1. Ordinary repairs which do not involve any violation of the USBC shall be exempt from this provision. Ordinary repairs shall not include the removal, addition or relocation of any wall or partition, or the removal or cutting of any structural beam or bearing support, or the removal, addition or relocation of any parts of a building affecting the means of egress or exit requirements. Ordinary repairs shall not include the removal, disturbance, encapsulation, or enclosure of any asbestos~~

~~containing material. Ordinary repairs shall not include additions, alterations, replacement or relocation of the plumbing, mechanical, or electrical systems, or other work affecting public health or general safety. The term "ordinary repairs" shall mean the replacement of the following materials with like materials:~~

- ~~a. Painting.~~
- ~~b. Roofing when not exceeding 100 square feet of roof area.~~
- ~~c. Glass when not located within specific hazardous locations as defined in Section 2405.2 of the BOCA Code and all glass repairs in Use Group R-3 and R-4 buildings.~~
- ~~d. Doors, except those in fire-rated wall assemblies or exitways.~~
- ~~e. Floor coverings and porch flooring.~~
- ~~f. Repairs to plaster, interior tile work, and other wall coverings.~~
- ~~g. Cabinets installed in residential occupancies.~~
- ~~h. Wiring and equipment operating at less than 50 volts.~~

~~2. A permit is not required to install wiring and equipment which operates at less than 50 volts provided the installation is not located in a noncombustible plenum, or is not penetrating a fire resistance rated assembly.~~

~~3. Detached utility sheds 150 square feet or less in area and eight feet six inches or less in wall height when accessory to any Use Group building except Use Groups H and F.~~

~~4. Tents and air support structures covering an area 900 square feet (84 m²), or less, including all connecting areas and spaces with a common means of egress, or entrance, and having an occupant load of 50 or less.~~

~~105.1.1. Authorization of work. The building official may authorize work to commence pending receipt of written application.~~

13 VAC 5-60-170. [~~Appeals. (Repealed.)~~]

~~116.5. Application for appeal. The owner of a building or structure, the owner's agent or any other person involved in the design or construction of the building or structure may appeal a decision of the building official concerning the application of the USBC or his refusal to grant a modification to the provisions of the USBC covering the manner of construction or materials to be used in the erection, alteration or repair of that building or structure. The applicant shall submit a written request for appeal to the BBCA within 90 calendar days from the receipt of the decision to be appealed. The application shall contain the name and address of the owner of the building or structure and the person appealing if not the owner. A copy of the written~~

decision of the building official shall be submitted along with the application for appeal and maintained as part of the record. The application shall be stamped or otherwise marked by the BBCA to indicate the date received. Failure to submit an application for appeal within the time limit established by this section shall constitute acceptance of the building official's decision.

~~116.9. Appeal to the TRB. After final determination by the BBCA, any person who was a party to the local appeal may appeal to the TRB. Appeals by an involved state agency from the decision of the building official for state owned buildings shall be made directly to the TRB. Application shall be made to the TRB within 21 calendar days of receipt of the decision to be appealed. Failure to submit an application for appeal within the time limit established by this section shall constitute an acceptance of the BBCA's resolution or building official's decision.~~

13 VAC 5-61-80. BNBC Section 107.0 Application for Permit.

A. Add exceptions to subsection 107.1 to read:

Exceptions:

1. Installation of wiring and equipment which operates at less than 50 volts provided the installation is not located in a noncombustible plenum or penetrating an assembly required to have a fire-resistance rating.
2. Construction of detached utility sheds not exceeding 150 square feet (14 m²) of building area and 102 inches (2591 mm) in wall height and when accessory to any use group building except Use Group F or H.
3. Tents and air-supported structures that cover an area of 900 square feet (84 m²) or less, including all connecting areas or spaces with a common means of egress or entrance and with an occupant load of 50 or less persons.
4. ~~[Maintenance and repair of structures involving repair or replacement of existing materials or equipment with equivalent materials or equipment, not to include the equipment's service systems. Replacement of mechanical and plumbing equipment, appliances and fixtures, electrical fixtures, reroofing, residing, windows and doors with that of similar or greater capacity in the same location in Use Group R-3 or R-4 buildings.~~

~~Note: The intent of subdivision 4 of this subsection is to require permits when changes to the duct systems, plumbing DWV or water piping, electrical circuits, appliance vent systems, or gas piping are made except for reconnection to replacement equipment, appliances or fixtures. Replacement of plumbing and electrical fixtures, fixture fittings, appurtenances, plumbing and electrical appliances including electric water heaters, fans, humidifiers, dehumidifiers, air cleaners and similar mechanical equipment, windows and doors with that of similar capacity in the same location in Use Groups R-2 (four stories or less), R-3 and R-4. Changes to duct~~

systems, plumbing supply, drain, waste and vent piping, electrical circuits, appliance vent systems and gas piping, other than reconnection to replacement equipment, appliances and fixtures require a permit.

5. Application or notice to the code official is not required for ordinary repairs to structures. Such repairs shall not include the cutting away of any wall, partition or portion thereof, the removal or cutting of any structural beam or loadbearing support, or the removal or change of any required means of egress, or rearrangement of parts of a structure affecting the egress requirements; nor shall ordinary repair include addition to, alteration of, replacement or relocation of any standpipe, water supply, sewer, drainage, drain leader, gas, soil, waste, vent or similar piping, electric wiring or mechanical or other work affecting public health or general safety.

~~5. 6.] Work which the code official has authorized pending receipts of an application.~~

B. Delete subsection 107.1.1.

C. Change subsection 107.3 to read:

107.3. By whom application is made: Application for a permit shall be made by the owner or lessee of the building or structure, or agent of either, or by the registered design professional employed in connection with the proposed work. The full names and addresses of the owner, lessee, applicant, and the responsible officers, if the owner or lessee is a corporate body, shall be stated in the application. The code official shall accept and process permit applications through the mail.

D. Add subsection 107.3.1 to read:

107.3.1. Application by contractors: The code official shall require the applicant for a permit to furnish, prior to the issuance of the permit, that person's license or certification number issued pursuant to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia or evidence of being exempt from the provisions of that chapter.

E. Add exception to subsection 107.6 to read:

Exception: The code official is permitted to waive or modify the requirement for a site plan when the application for permit is for alteration or repair or when otherwise warranted.

F. Delete subsection 107.6.1.

G. Change subsection 107.7 to read:

107.7. Engineering details: The code official shall require to be filed adequate details of structural, mechanical, plumbing, and electrical work, which may include computations, stress diagrams and other essential technical data. All engineering plans and computations shall bear the signature and seal of the engineer or architect responsible for the design as required by Section 114.1.

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13 VAC 5-61-140. BNBC Section 116.0 Violations.

A. Change subsection 116.2 to read:

116.2. Notice of violation: The code official shall serve a notice of violation to the responsible party as determined by Section 116.1 if the violation has not been remedied within a reasonable time. The notice shall reference the code section that serves as the basis for the violation and direct the discontinuance and abatement of the violation. The notice shall be in writing and be served by either delivering a copy to the responsible party by mail to the last known address or delivering the notice in person or by leaving it in the possession of any person in charge of the premises, or by posting the notice in a conspicuous place at the entrance door or access way if the person in charge of the premises cannot be found. The notice of violation shall indicate the right of appeal by reference to Section 121.1.

B. Add subsection 116.2.1 to read:

~~[116.2.1 Violations discovered after occupancy: A notice of violation shall be issued for a violation discovered after initial occupancy of a building or structure when the violation has not been remedied within a reasonable time.~~

~~Exception: A notice of violation shall not be issued for a violation discovered after two years beyond the statute of limitation provided by § 19.2-8 of the Code of Virginia for prosecuting a building code violation. Nothing in this exception shall extend the time limit established by § 19.2-8 of the Code of Virginia for prosecuting a building code violation.~~

116.2.1. Limitation of notice: When a violation relating to construction is discovered more than two years after either (i) the certificate of occupancy is issued, or the date of initial occupancy, whichever is later, or (ii) the final inspection for an alteration or renovation, a notice of violation shall only be issued upon advice from legal counsel to the jurisdiction that action may be taken to compel correction of the violation. The code official shall document violations of the applicable edition of the USBC once compliance can no longer be compelled by prosecution under § 36-106 of the Code of Virginia.]

C. Change subsection 116.4 to read:

116.4. Violation penalties: Penalties for violations of this code shall be as set out in § 36-106 of the Code of Virginia.

13 VAC 5-61-190. BNBC Section 121.0 Means of Appeal.

A. Change subsection 121.1 to read:

121.1. Application for appeal: Appeals from the [code official local building department] concerning application of this code or refusal to grant a modification to the provisions of this code covering the manner of construction or materials to be used in the erection, alteration or repair of a structure shall first lie to the [local] board of [building code] appeals established in this section. [~~The appeal Appeals relating to construction~~] shall be submitted within [~~30 45 30~~] days [~~of the application of this code or the refusal to grant a~~

~~modification to the provisions of this code and appeals relating to maintenance shall be submitted within 21 days] .~~

[~~Exception 121.1.1. State-owned buildings~~]: Appeals by the involved state agency from the decision of the code official for state-owned buildings shall be made directly to the TRB within 21 days of the application of this code or the refusal to grant a modification to the provisions of this code.

B. Change subsection 121.2 to read:

121.2. Board of appeals: There shall be established within each department of building inspection a board of appeals. A separate board of appeals may be established for different areas of enforcement of this code provided each board of appeals complies with this section. The board of appeals shall consist of at least five members appointed by the chief appointing authority. Whenever a county or a municipality does not have a board of building code appeals, the local governing body shall enter into an agreement with the local governing body of another county or municipality or with some other agency, or a state agency approved by the DHCD for such appeals.

C. Change subsection 121.2.1 to read:

121.2.1. Qualifications: To the extent such persons may be available, the board of appeals shall consist of individuals from each of the following professions or disciplines.

1. Registered design professional who is a registered architect, or a builder or superintendent of building construction with at least 10 years experience, five of which shall have been in responsible charge of work.
2. Registered design professional with structural engineering or architectural experience.
3. Registered design professional with mechanical or plumbing engineering experience, or a mechanical or plumbing contractor with at least 10 years experience, five of which shall have been in responsible charge of work.
4. Registered design professional with electrical engineering experience, or an electrical contractor with at least 10 years experience, five of which shall have been in responsible charge of work.
5. Registered design professional with fire protection engineering experience, or a fire protection contractor with at least 10 years experience, five of which shall have been in responsible charge of work.

The code official, technical assistants, inspectors or other employees of the department of building inspection shall not serve as members of the board of appeals.

D. Change subsection 121.2.2 to read:

121.2.2. Alternate members: The chief appointing authority shall be permitted to appoint two alternate members who shall be called by the board chairman to hear appeals during the absence or disqualification of a member. Alternate

members shall possess the qualifications required for board membership.

E. Delete subsection 121.2.6.

F. Change subsection 121.3 to read:

121.3. Notice of meeting: The board shall meet upon notice from the chairman, within 30 days of the filing of an appeal, or at stated periodic meetings.

G. Change subsection 121.5 to read:

121.5. Postponed hearing: When a quorum of the board is not present to hear an appeal, either the appellant or the appellant's representative shall have the right to request a postponement of the hearing.

H. Change subsection 121.6 to read:

121.6. Board decision: The board shall rule by a concurring vote of a majority of members present.

I. Change subsection 121.6.1 to read:

121.6.1. Resolution: The decision of the board shall be by resolution. Certified copies shall be furnished to the appellant and to the code official. The resolution shall contain a statement indicating that if further appeal is sought, application shall be made to the TRB within 21 days of receipt of the resolution.

J. Change subsection 121.7 to read:

121.7. Appeal to the TRB: No appeal to the TRB shall lie prior to a final determination by the board of appeals. Application shall be made to the TRB within 21 days of receipt of the resolution of the board of appeals.

Exception: Appeals by the involved state agency from the decision of the code official for state-owned buildings shall be made directly to the TRB within 21 days of the application of this code or the refusal to grant a modification to the provisions of this code.

13 VAC 5-61-220. BNBC Section 310.0 Residential Use Groups.

A. Change subsection 310.1 to read:

310.1. General: All structures in which sleeping accommodations are provided, excluding those that are classified as institutional occupancies, shall be classified as Use Group R-1, R-2, R-3 or R-4. The term "Use Group R" shall include Use Groups R-1, R-2, and R-3. Family day homes licensed or certified by the Virginia Department of Social Services shall be permitted to accommodate the numbers of children permitted under the licensing restrictions and shall be classified as a residential use group.

B. Change subsection 310.6 to read:

310.6. Use Group R-4 structures: This use group shall include all detached one- or two-family dwellings and one-family townhouses not more than three stories in height, and the accessory structures as indicated in the CABO One- and Two-Family Dwelling Code listed in Chapter 35 of this code.

All such structures shall be designed in accordance with the CABO One- and Two-Family Dwelling Code listed in Chapter 35 of this code or in accordance with the requirements of this code applicable to Use Group R-3.

Exceptions:

1. Structures classified as Use Group R-4 shall comply with applicable requirements of Section 3107.0 of this code.

2. Structures classified as Use Group R-4 shall comply with the requirements of Section 1214.4 of this code, when applicable.

C. Add subsection 310.6.1 to read:

310.6.1. Amendments to the CABO Code: The following changes shall be made to the CABO One- and Two-Family Dwelling Code listed in Chapter 35 of this code:

1. Delete the note in CABO subsection 114.1.

2. Change CABO subsection 115.1 to read:

115.1. General. Swimming pools, spas and hot tubs shall comply with the provisions in Appendix D.

3. Change CABO subsection 119.1 to read:

119.1. General. The provisions for energy conservation contained in Appendix E shall be part of this code.

4. Add exception to CABO subsection 301.2 to read:

Exception: Heating facilities shall be required in accordance with Section 303.6. The winter design temperature for heating facilities required or provided shall be established by the jurisdiction in accordance with this section.

5. Change CABO subsection 303.6 to read:

303.6. Required heating. Every dwelling unit or portion thereof which is to be rented, leased or let on terms either expressed or implied to furnish heat to the occupants thereof shall be provided with heating facilities capable of maintaining the room temperatures at 65°F (18°C) during the period from October 1 to May 15 during the hours between 6:30 a.m. and 10:30 p.m. of each day and not less than 60°F (16°C) during other hours when measured at a point three feet (914 mm) above the floor and three feet (914 mm) from the exterior walls. The capability of the heating system shall be based on the winter design temperature for heating facilities established by the jurisdiction.

6. Add CABO subsection 303.7 to read:

303.7. Insect screens. Every door, window and other outside opening required for ventilation purposes shall be supplied with approved tightly fitted screens of not less than 16 mesh per inch and every swinging door shall have a self-closing device.

7. Add CABO subsection 306.5 to read:

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306.5. Approval. Water supply sources and sewage disposal systems are regulated and approved by the Virginia Department of Health.

8. Change CABO subsection 310.4 to read:

310.4. Type of lock or latch. All egress doors shall be readily openable from the inside without the use of a key unless the key cannot be removed from the lock when the door is locked from the inside.

9. Change CABO subsection 314.2 to read:

314.2. Treads and risers. The maximum riser height shall be 8¼ inches (210 mm) and the minimum tread depth shall be nine inches (229 mm). The riser height shall be measured vertically between leading edges of the adjacent treads. The tread depth shall be measured horizontally between the vertical planes of the foremost projection of adjacent treads and at a right angle to the tread's leading edge. The walking surface of treads and landings of a stairway shall be sloped no steeper than one unit vertical in 48 units horizontal (2.0% slope). The greatest riser height within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm). The greatest tread depth within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm).

10. Change CABO subsection 314.4 to read:

314.4. Winders. Winders are permitted, provided that the width of the tread at a point not more than 12 inches (305 mm) from the side where the treads are narrower is not less than nine inches (229 mm) and the minimum width of any tread is not less than six inches (153 mm). The continuous handrail required by Section 314.1 shall be located on the side where the tread is narrower.

11. Change CABO subsection 314.6 to read:

314.6. Circular stairways. Circular stairways shall have a minimum tread depth and a maximum riser height in accordance with Section 314.2 and the smaller radius shall not be less than twice the width of the stairway. The minimum tread depth of nine inches (229 mm) shall be measured from the narrower end.

[12. Change subsection 315.2 to read:

315.2. Handrail grip size. *The handgrip portion of the handrails shall not be more than 2-5/8 inches (66.7mm) in cross-sectional dimension, or the shape shall provide an equivalent gripping surface. The handgrip portion of handrails shall have a smooth surface with no sharp corners.*

]

13. Delete CABO subsection 316.1.1.

14. Delete CABO Section 324 Protection Against Radon.

15. Change subsection 401.4 to read:

401.4. Soil tests: Localities having 20% and greater moderate and high shrink/swell potential of the jurisdictional land area shall implement an expansive soil test policy.

Localities having less than 20% moderate and high shrink/swell potential of the jurisdictional land area may adopt a soil test policy. The policy shall establish minimum criteria to determine the circumstances which require testing for expansive soils and the minimum testing requirements. The policy shall be established in a manner selected by the local government having jurisdiction. All localities shall obtain and retain as a reference guide a copy of the applicable National Cooperative Soil Survey produced cooperatively by the Natural Resources Conservation Service and the Virginia Polytechnic Institute and State University, where this survey is available. Figures 401.4a and 401.4b shall be used to determine the percentage of jurisdictional land area which has moderate or high shrink/swell potential.

VA.R. Doc. Nos. R97-596 and R97-598; Filed June 30, 1997, 4:29 p.m.

Title of Regulation: 13 VAC 5-61-10 et seq. Virginia Uniform Statewide Building Code (amending 13 VAC 5-61-440; adding 13 VAC 5-61-445).

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

Effective Date: August 20, 1997.

Summary:

The regulations have been amended pursuant to Chapter 332 of the 1997 Virginia Acts of Assembly to extend a certain deadline for compliance to install an automatic sprinkler system in existing hotels and motels. Also, an amendment has been made to reflect changes in Virginia statutory law relating to smoke detectors in colleges and universities.

Agency Contact: Copies of the regulation may be obtained from the Training and Certification Office, Department of Housing and Community Development, 501 North 2nd Street, Richmond, VA 23219-1321, telephone (804) 371-7180.

13 VAC 5-61-440. BNBC Section 3402.0 General requirements.

A. Change subsection 3402.2 to read:

3402.2. Replacement glass: Any replacement glass installed in buildings constructed prior to the initial effective date of this code shall meet the quality and installation standards for glass installed in new buildings as are in effect at the time of installation.

B. Change subsection 3402.3 to read:

3402.3. Smoke detectors in colleges and universities: College and university buildings containing dormitories for sleeping purposes shall be provided with battery-powered or AC-powered smoke detector devices installed therein in accordance with this code in effect on July 1, 1982. ~~After January 1, 1984, all~~ All public and private college and university dormitories shall have installed and use due diligence in maintaining in good working order such detectors regardless of when the building was constructed.

The chief administrative officer of the college or university shall obtain a certificate of compliance *with the provisions of this subsection* from the building official of the locality in which the college or university is located or in the case of state-owned buildings, from the Director of the Virginia Department of General Services.

The provisions of this section shall not apply to any dormitory at a state-supported military college or university which is patrolled 24 hours a day by military guards.

C. Change subsection 3402.4 to read:

3402.4. Smoke detectors in certain juvenile care facilities: Battery-powered or AC-powered smoke detectors shall be installed and maintained in all local and regional detention homes, group homes, and other residential care facilities for children and juveniles which are operated by or under the auspices of the Virginia Department of Juvenile Justice, regardless of when the building was constructed, by July 1, 1986, in accordance with the provisions of this code that were in effect on July 1, 1984. Administrators of such homes and facilities shall be responsible for the installation and maintenance of the smoke detector devices.

D. Change subsection 3402.5 to read:

3402.5. Smoke detectors for the deaf and hearing impaired: Smoke detectors providing an effective intensity of not less than 100 candela to warn a deaf or hearing-impaired individual shall be provided, upon request by the occupant to the landlord or proprietor, to any deaf or hearing-impaired occupant of any of the following occupancies, regardless of when constructed:

1. All dormitory buildings arranged for the shelter and sleeping accommodations of more than 20 individuals;
2. All multiple-family dwellings having more than two dwelling units, including all dormitories, boarding and lodging houses arranged for shelter and sleeping accommodations of more than five individuals; or
3. All buildings arranged for use of one-family or two-family dwelling units.

A tenant shall be responsible for the maintenance and operation of the smoke detector in the tenant's unit.

A hotel or motel shall have available no fewer than one such smoke detector for each 70 units or portion thereof, except that this requirement shall not apply to any hotel or motel with fewer than 35 units. The proprietor of the hotel or motel shall post in a conspicuous place at the registration desk or counter a permanent sign stating the availability of smoke detectors for the hearing-impaired. Visual detectors shall be provided for all meeting rooms for which an advance request has been made.

E. Change subsection 3402.6 to read:

3402.6. Smoke detectors in adult care residences, adult day care centers and nursing homes and facilities: Battery-powered or AC-powered smoke detector devices shall be

installed in all adult care residences and adult day care centers licensed by the Virginia Department of Social Services, regardless of when the building was constructed. The location and installation of the smoke detectors shall be determined by the provisions of this code in effect on October 1, 1990.

The licensee shall obtain a certificate of compliance from the building official of the locality in which the residence or center is located, or in the case of state-owned buildings, from the Director of the Virginia Department of General Services.

The licensee shall maintain the smoke detector devices in good working order.

Fire alarm or fire detector systems, or both, as required by the edition of this code in effect on October 1, 1990, shall be installed in all nursing homes and nursing facilities licensed by the Virginia Department of Health by August 1, 1994, and shall be maintained in good working order.

F. Change subsection 3402.7 to read:

3402.7. Fire suppression systems in nursing homes and facilities: Fire suppression systems as required by the edition of this code in effect on October 1, 1990, shall be installed in all nursing facilities licensed by the Virginia Department of Health by January 1, 1993, regardless of when such facilities or institutions were constructed, and shall be maintained in good working order. Units consisting of certified long-term care beds located on the ground floor of general hospitals shall be exempt from the requirements of this section.

G. Delete subsection 3402.9.

H. Add subsection 3402.10 to read:

3402.10. Fire suppression systems in hospitals: Fire suppression systems shall be installed in all hospitals licensed by the Virginia Department of Health as required by the edition of this code in effect on October 1, 1995, regardless of when such facilities were constructed, and shall be maintained in good working order.

I. Add subsection 3402.11 to read:

3402.11. Identification of handicapped parking spaces by above grade signs: All parking spaces reserved for the use of handicapped persons shall be identified by above grade signs, regardless of whether identification of such spaces by above grade signs was required when any particular space was reserved for the use of handicapped persons. A sign or symbol painted or otherwise displayed on the pavement of a parking space shall not constitute an above grade sign. Any parking space not identified by an above grade sign shall not be a parking space reserved for the handicapped within the meaning of this section.

All above grade handicapped parking space signs shall have the bottom edge of the sign no lower than four feet (1219 mm) nor higher than seven feet (2133 mm) above the parking surface. Such signs shall be designed and

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constructed in accordance with the provisions of Chapter 11 of this code.

J. Add subsection 3402.12 to read:

3402.12. ~~Sprinkler systems and smoke~~ Smoke detectors in hotels and motels: ~~An automatic sprinkler system and smoke~~ Smoke detectors shall be installed in hotels and motels as required by the edition of this code VR 394-01-22, USBC, Volume II, in effect on March 1, 1990, by the dates indicated, regardless of when constructed, and shall be maintained in good working order.

K. Add subsection 3402.13 to read:

3402.13. *Sprinkler systems in hotels and motels:* By September 1, 1997, an automatic sprinkler system shall be installed in hotels and motels as required by the edition of VR 394-01-22, USBC, Volume II, in effect on March 1, 1990, regardless of when constructed, and shall be maintained in good working order.

13 VAC 5-61-445. BNBC Section 3404.0 General Requirements.

Change subsection 3404.2 to read:

3404.2. Requirements: An alteration to any structure shall conform to the code requirements for a new structure and shall not result in an increase in hazard to the occupants. Portions of the structure not altered and not affected by the alteration are not required to comply with the code requirements for a new structure. The installation of material and equipment that is neither required nor prohibited need only comply with the USBC requirements that regulate a safe installation. Material and equipment may be replaced with material and equipment of a similar kind or with greater capacity in the same location.

VA.R. Doc. No. R97-597; Filed June 30, 1997, 4:29 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: 12 VAC 30-120-70 et seq. Part II: Home and Community Based Services for Technology Assisted Individuals (amending 12 VAC 30-120-70 through 12 VAC 30-120-120; adding 12 VAC 30-120-115; repealing 12 VAC 30-120-130).

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

Effective Date: August 20, 1997.

Summary:

The purpose of this action is to amend the Technology Assisted Individuals Program regulations to update the definition of those eligible to receive services and to conform the financial eligibility criteria to correspond to the current HCFA interpretation. This action also responds to Chapter 359 of the 1997 Acts of Assembly and addresses comments made to the first proposed regulation, the revised proposed regulation, as well as

problems identified since the initial comment period. Definitions are being added or changed. The coverage statement has been expanded to show coverage of adults and exclusion of coverage for individuals in certain board and care facilities. A statement of qualifications has been added for patients younger and older than 21 in order to be approved to receive this service. Specific statements have been added of the application of cost effectiveness standards to persons younger and older than 21 years of age. Care giving requirements for primary caregivers have been added. A statement has been added of the exclusion of services' availability to persons in various institutions. Covered services and provider requirements have been clarified and the application of the cost-effectiveness standard to them has been indicated. Patient assessments and plans of care requirements have been clarified. Patients' appeal rights of denied coverage have been clarified.

Summary of Public Comment and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Register of Regulations.

Agency Contact: Copies of the regulation may be obtained from Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

12 VAC 30-120-70. Definitions.

The following words and terms, when used in ~~these regulations~~ *this part*, shall have the following meanings unless the context clearly indicates otherwise:

"Activities of daily living (ADL)" means personal care tasks, i.e., bathing, dressing, toileting, transferring, bowel/bladder control, and eating/feeding. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Adult" means an individual who either is 21 years of age or is past 21 years of age.

"Child" means an individual who has not yet reached his 21st birthday.

"Congregate living arrangement" means one in which two or more recipients live in the same household and may share receipt of health care services from the same provider or providers.

"Congregate private duty nursing" means nursing provided to two or more recipients in a group setting.

"DMAS" means the Department of Medical Assistance Services.

"Environmental modifications" means physical adaptations to a house, [or] place of residence [~~or work site, when the modification exceeds reasonable accommodation requirements of the Americans with Disabilities Act (42 USC § 1201 et seq.)~~], [which shall be] necessary to ensure the

individual's health or safety, or enable functioning with greater independence when the adaptation is not being used to bring a substandard dwelling up to minimum habitation standards and is of direct medical or remedial benefit to the individual. [Such modifications must exceed reasonable accommodation requirements of the Americans with Disabilities Act (42 USC § 1201 et seq.)]

"Health care coordinator" means the ~~health care professional designated by the provider contracted with DMAS to perform health care coordination as registered nurse~~ who is responsible for ensuring that the assessment, care planning, monitoring, and review activities as required by DMAS are accomplished. This individual may be either an employee of DMAS or a DMAS contractor.

"Health care coordination" means a comprehensive needs assessment, determination of cost effectiveness, and the coordination of the service efforts of multiple providers in order to avoid duplication of services and to ensure the individual's access to and receipt of needed services.

"Instrumental activities of daily living (IADL)" means social tasks, i.e., meal preparation, shopping, housekeeping, laundry, money management. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services. Meal preparation is planning, preparing, cooking and serving food. Shopping is getting to and from the store, obtaining/paying for groceries and carrying them home. Housekeeping is dusting, washing dishes, making beds, vacuuming, cleaning floors, and cleaning kitchen/bathroom. Laundry is washing/drying clothes. Money management is paying bills, writing checks, handling cash transactions, and making change.

"Medical equipment and supplies" means those articles prescribed by the attending physician, generally recognized by the medical community as serving a diagnostic or therapeutic purpose and as being a medically necessary element of the home care plan. Items covered are medically necessary equipment and supplies needed to assist the individual in the home environment, without regard to whether those ~~not already available under other services~~ items are covered by the Plan.

"Objective Scoring Criteria" means the evaluative tool to be used to determine the appropriateness for an individual's admission to these services.

"Personal assistance" means care provided by an aide or respiratory therapist trained in the provision of assistance with ADLs or IADLs.

"Plan of care" means the written plan of services and supplies certified by the attending physician needed by the individual to ensure optimal health and safety for an extended period of time.

"Primary caregiver" means either a family member or other person who takes primary responsibility for providing personal care, assistance with ADLs or IADLs or both, and ~~other care needs the recipient is unable to provide for himself~~

assistance to the recipient or recipients for care they are unable to provide for himself or themselves.

"Private duty nursing" means individual and continuous nursing care provided by a registered nurse or a licensed practical nurse under the supervision of a registered nurse.

"Providers" means those individuals or facilities registered, licensed, or certified, or both, as appropriate, and enrolled by DMAS to render services to Medicaid recipients eligible for services.

"Respite care services" means temporary skilled nursing services designed to relieve the family of the care of the technology assisted individual (~~up to age 24~~) for a short period or periods of time (a maximum of 15 days per year or 360 hours per 12-month period). In a congregate living arrangement, this same limit shall apply per household. Respite care shall be provided in the home of the individual's family or caretaker.

"Routine respiratory therapy" means services that can be provided on a regularly scheduled basis. Therapy interventions may include: (i) monitoring of oxygen in blood; (ii) evaluation of pulmonary functioning; and (iii) maintenance of respiratory equipment.

"State Plan for Medical Assistance" or "the Plan" means the document containing the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"Technology assisted" means any ~~child, younger than 24 years individual;~~ defined as chronically ill or severely impaired whose illness or disability would, in the absence of home care services, precipitate admission to or prolong that child's stay in a hospital, nursing facility, or other long-term care facility. This individual must need who needs both a medical device to compensate for the loss of a vital body function and substantial and ongoing skilled nursing care to avert death or further disability. ~~The technology assisted child shall include one or more of the following categories: and whose illness or disability would, in the absence of services approved under this waiver [,] require admission to or prolonged stay in a hospital, nursing facility, or other medical long-term care facility.~~

- ~~1. Children dependent at least part of each day on mechanical ventilators.~~
- ~~2. Children requiring prolonged intravenous administration of nutritional substances or drugs.~~
- ~~3. Children having daily dependence on other device-based respiratory or nutritional support, including tracheostomy tube care, suctioning, oxygen support, or tube feeding.~~

12 VAC 30-120-80. Coverage statement. General coverage and requirements for technology assisted waiver services.

- A. Coverage statement.

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1. Coverage shall be provided under the administration of DMAS for certain technology assisted individuals ~~up to the age of 21~~ who would otherwise remain in hospitals (for individuals under 21) or specialized care nursing facilities (for those over 21) for which Medicaid reimbursement would be made.

~~B.~~ 2. The objective of this waiver is to provide for medically appropriate and cost-effective coverage of services necessary to maintain these individuals in the community.

~~C.~~ 3. Coverage shall not be provided for these services for individuals who reside in board and care facilities or adult care residences nor who are inpatients in general acute care hospitals, skilled or intermediate nursing facilities, or intermediate care facilities for the mentally retarded.

~~D.~~ Coverage shall be provided for private duty nursing, respite care, nutritional supplements (nonlegend drugs) and medical supplies and equipment not otherwise available under the State Plan. All such services shall be covered only in the individual's home.

B. Patient qualifications. A Medicaid eligible technology assisted individual shall be eligible for services if he meets the following requirements:

1. The technology assisted individual who is younger than 21 years of age shall be determined to need a medical device when the individual meets one or more of the following categories:

- a. Individuals depending at least part of each day on mechanical ventilators.
- b. Individuals requiring prolonged intravenous administration of nutritional substances or drugs or ongoing peritoneal dialysis.
- c. Individuals having daily dependence on other device-based respiratory or nutritional support, including tracheostomy tube care, oxygen support, or tube feeding.

2. The technology assisted individual who is 21 years of age or older shall be determined to need a medical device when the individual meets one or more of the following categories:

- a. Individuals depending at least part of each day on mechanical ventilators.
- b. Individuals requiring prolonged intravenous administration of nutritional substances or drugs or ongoing peritoneal dialysis.

~~2.~~ 3. The individual's attending physician must certify the individual's need for this level of care which must include the need for private duty nursing.

~~3.~~ 4. In addition to the medical needs identified in subdivision 1 or 2 of this subsection, the technology assisted individual shall be determined to need

substantial and ongoing skilled nursing care. This determination shall be made using an objective tool approved by DMAS. The recipient shall be required to meet a minimum standard on the Objective Scoring Criteria to be eligible to be admitted to technology assisted waiver services.

~~4.~~ 5. In addition to the medical needs identified in subdivision 1 or 2 of this subsection, Medicaid eligible individuals younger than 21 shall be admitted to this service only if the anticipated cost to Medicaid of home care will be less than or equal to the cost to Medicaid of the individual in a hospital or nursing facility.

~~5.~~ 6. In addition to the medical needs identified in subdivision 1 or 2 of this subsection, Medicaid eligible individuals older than 21 must enter this service from a specialized nursing facility or other comparable or higher level of care Medicaid reimbursed institution when it is determined that the individual will require care from that institution for an extended period of time or would be transferred to a specialized nursing facility for that level of care, or both. Such other comparable Medicaid reimbursed institution could be a general acute care hospital, an inpatient rehabilitation hospital, or other subacute setting. Before this individual can be approved for this community-based Medicaid reimbursed service, the individual must have been residing at the facility for a minimum of 90 days. At least a portion of the cost for each of the 90 days must have been reimbursed by Medicaid. If the recipient has been in the facility for more than 90 days at the time of the request for waiver services, at least a portion of the cost for each of these days in the most recent 90 day period must have been paid by Medicaid. An individual older than 21 shall be admitted to this waiver service only if the anticipated cost to Medicaid of his home care will be less than or equal to the current average cost of care in a specialized nursing facility.

7. Adult Medicaid eligible individuals who [~~enter~~ entered] this waiver service prior to their 21st birthday shall be required to conform to the same medical needs and individual cost-effectiveness standards as specified for all other adults.

~~6.~~ 8. If a person is over age 21 and already a waiver recipient and requires admission to a nursing facility or rehabilitation hospital for more than 30 days [~~but less than 90 days~~], the recipient will be discharged from the waiver. To be readmitted to the waiver services, the recipient must be assessed to determine that the recipient currently meets the specialized nursing facility and waiver criteria. If these criteria are met, the recipient shall be readmitted to waiver services ~~without having to first be admitted to a specialized care bed for 90 days.~~

~~7.~~ If a recipient over age 21 is discharged from the waiver for any reason other than admission to a specialized nursing facility or other comparable or higher level of care for more than 90 days, the recipient must be

~~admitted to a specialized care facility level of care for at least 90 days before the recipient can be readmitted to the waiver in order to ensure that community care being provided by other sources is not supplanted by Medicaid reimbursed care.~~

~~9. 9. The individual shall have a live-in primary caregiver who accepts responsibility for the individual's health and welfare or the individual shall be over the age of 21 and share a home with one or more other waiver recipients. The primary caregiver shall be responsible for a minimum of eight hours of the individual's care in a 24-hour period.~~

10. Individuals over the age of 21 years may live in congregate living arrangements and shall have primary caregivers. Two such individuals may share the time and services of one caregiver who shall provide a minimum of eight hours of care in a 24-hour time period.

~~9. 11. These services shall not be available to individuals while an inpatient in general acute care hospitals, skilled nursing facilities, intermediate care facilities, or intermediate care facilities for the mentally retarded, board and care facilities, or adult care residences.~~

~~40. 12. Any individual, regardless of age, who requires admission to any type of medical care facility for fewer than 30 days shall again be eligible for waiver services upon discharge from the facility so long as all other requirements continue to be met.~~

C. Patient eligibility requirements.

1. Individuals receiving services under this waiver must be eligible under one of the following eligibility groups: ADC and AFDC-related recipients, SSI and SSI-related recipients, aged, blind or disabled recipients eligible under 42 CFR 435.121, and the special home and community-based waiver group at 42 CFR 435.217 which includes individuals who are eligible under the State Plan if they were institutionalized. The income level used for the special home and community-based waiver group at 42 CFR 435.217 is 300% of the current Supplemental Security Income payment standard for one person. Medically needy individuals are eligible if they meet the medically needy financial requirements for income and resources.

2. Under this waived service, the coverage groups authorized under § 1902(a)(10)(C)(i)(III) of the Social Security Act (42 USC § 1396a(a)(10)) will be considered as if they were institutionalized for the purpose of applying institutional deeming rules. All recipients under the waiver must meet the financial and nonfinancial Medicaid eligibility criteria and be Medicaid eligible in an institution. The deeming rules are applied to waiver eligible individuals as if the individuals were residing in an institution or would require that level of care.

3. Virginia shall reduce its payment for home and community-based services provided for an individual by

that amount of the individual's total income (including amounts disregarded in determining eligibility) that remains after allowable deductions for personal maintenance needs, deductions for other dependents and medical needs have been made according to the requirements in 42 CFR 435.726. ~~[DMAS will reduce its payment for home and community-based waiver services by the amount that remains after deducting the amounts~~ Such specified reductions shall be made] as specified in 42 CFR 435.726 in the specified order from the individual's income.

4. Individuals who are eligible for third-party payment for the alternative institutional services shall not be eligible for these waived services. If an individual or ~~their~~ an individual's legally responsible party voluntarily cancels ~~[enrollment in]~~ any insurance plan which would have provided coverage for institutional services in order to become eligible for waiver services ~~[within one year prior to the date waiver services are requested]~~, eligibility for the waiver shall be denied.

12 VAC 30-120-90. Covered services and provider requirements.

A. Private duty nursing service shall be covered for individuals ~~up to the age of 21~~ qualified for enrolled in the technology assisted waiver services. This service shall be provided ~~only~~ through either a home health agency licensed or certified by the Virginia Department of Health for Medicaid participation, and with which DMAS has a contract for private duty nursing or a day care center licensed by the Virginia Department of Social Services which employs registered nurses and is enrolled by DMAS to provide congregate private duty nursing. At a minimum, the private duty nurse shall either be a licensed practical nurse or a registered nurse with a current and valid license issued by the Virginia State Board of Nursing.

1. For individuals under 21 whether living separately or congregately, during the first 30 days after the individual's admission to the waiver service, private duty nursing is covered for 24 hours per day if needed and appropriate to assist the family in adjustment to the care associated with technology assistance. After 30 days, private duty nursing shall be reimbursed for a maximum of 16 hours per 24-hour period per household. The department may grant individual exceptions, not to exceed 30 total days per annum, to these maximum limits based on documented emergency needs of the individual and ~~continued aggregate the case, [without inclusion of additional emergency costs]~~, which continue to meet requirements for cost effectiveness of community services. ~~[Such consideration of documented emergency needs shall not include applicable additional emergency costs.]~~

2. For individuals over the age of 21 years whether living separately or congregately, private duty nursing shall be reimbursed for a maximum of 16 hours within a 24-hour period per household provided that the cost-

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effectiveness standard is not exceeded for the individual's care.

3. In no instance, shall DMAS approve [~~a~~ an ongoing] plan of care or [ongoing] multiple plans of care per household which result in approval of more than 16 hours of private duty nursing in a 24-hour period per household.

2. 4. If the individual is ~~Individuals weaned from no longer dependent upon the technology, reimbursement who no longer meet the patient qualifications for either children or adults cited in 12 VAC 30-120-80~~ may be available eligible for private duty nursing for a maximum of ~~16 hours~~ the number of hours [per 24-hour period] previously approved in the plan of care ~~per 24-hour period~~ not to exceed two weeks [~~per 24-hour period~~] from the date the attending physician certifies the cessation of daily technology assistance.

3. 5. The hours of private duty nursing approved for coverage shall be limited by either medical necessity and or cost effectiveness or both.

4. 6. Congregate private duty nursing shall be limited to a maximum ratio of one private duty nurse to two adult waiver recipients [~~except~~ .] When ~~two~~ three or more waiver recipients share a home [~~where~~ ,] ratios will be determined by the combined needs of the residents.

B. Provided that the cost-effectiveness standard shall not be exceeded, respite care service shall be covered for a maximum of 360 hours within a 12-month period per household for individuals ~~up to the age of 21~~ who are qualified for technology assisted waiver services and who have a primary caregiver, other than the provider, who requires relief from the burden of caregiving. This service shall be provided by skilled nursing staff (registered nurse or licensed practical nurse licensed to practice in the Commonwealth) under the direct supervision of a home health agency licensed or certified by the Virginia Department of Health for Medicaid participation and with which DMAS has a contract to provide private duty nursing.

C. Provided that the cost-effectiveness standard shall not be exceeded, durable medical equipment and supplies not otherwise covered in the State Plan shall be provided for individuals qualified for technology services. All durable medical equipment and supplies, including nutritional supplements, which are covered under the State Plan and those medical equipment and supplies, including such items which may be defined as assistive technology and environmental modifications which are not covered under the State Plan but are medically necessary and cost effective for the individual's maintenance in the community, shall be covered. This service shall be provided by persons qualified to render it.

4. Durable medical equipment and supplies shall be necessary to maintain the individual in the home environment.

a. 1. Medical equipment and supplies shall be prescribed by the attending physician and included in the plan of care, and shall ~~must~~ be generally recognized as serving a diagnostic or therapeutic purpose and being medically necessary for the home care of the individual.

b. 2. Vendors of durable medical equipment and supplies related to the technology upon which the individual is dependent shall have a contract with DMAS to provide services.

e. 3. In addition to providing the ventilator or other respiratory-devised support and associated equipment and supplies, the vendor providing the ventilator shall ensure the following:

(1) a. 24 hour on-call for emergency services;

(2) b. Technicians to make regularly scheduled maintenance visits at least every ~~15~~ 30 days and more often if called;

(3) c. Replacement or repair of equipment and supplies as required; and

(4) d. Respiratory therapist registered or certified with the National Board for Respiratory Care (NBRC) on call 24 hours per day and stationed within two hours of the individual's home to facilitate immediate response. The respiratory therapist shall be available for routine respiratory therapy as well as emergency care. In the event that the Department of Health Professions implements through state law a regulation requiring registration, certification or licensure for respiratory therapists to practice in the Commonwealth, DMAS shall require all respiratory therapists providing services to this technology assisted population to be duly registered, licensed or certified.

2. ~~Medical equipment and supplies include:~~

a. ~~All durable medical equipment and supplies which are covered under the State Plan. See the attachment listing for specific items which are covered. and those medical equipment and supplies, including such items which may be defined as assistive technology and environmental modifications which are not covered under the State Plan but are medically necessary and cost effective for the individual's maintenance in the community; and~~

b. Apnea monitor ~~Nutritional supplements.~~

D. ~~Nutritional supplements (nonlegend drugs) shall be covered for those individuals for whom the physician has determined that these are medically necessary and who are receiving other waiver services. Provided that the cost-effectiveness standard shall not be exceeded, personal assistance services shall be covered for individuals over the age of 21 who require some assistance with activities of daily living and instrumental activities of daily living but do not require and are able to do without skilled interventions during portions of their day or are able to self perform a portion of~~

their ADLs or IADLs or direct their skilled care needs during the period when personal assistance would be provided. ~~This service shall be provided by durable medical equipment agencies contracted with DMAS. Personal assistance services shall be rendered by a provider who has a DMAS provider agreement to provide personal care, home health care, and private duty nursing. At a minimum, the staff providing personal assistance must have been certified through coursework as either personal care aides, home health aides, homemakers, personal care attendants, or registered or certified respiratory therapists.~~

12 VAC 30-120-100. Provider reimbursement.

A. All private duty nursing services shall be reimbursed at an hourly negotiated fee.

B. Respite care shall be reimbursed at an hourly negotiated fee.

C. ~~Prior approval for durable medical equipment and supplies shall be requested from DMAS by the durable medical equipment provider. [The request must be submitted to the health care coordinator.]~~ Prior approval by DMAS shall be required for all durable medical equipment and other medically related supplies furnished under this program before the individual's admission to waiver services and before reimbursement. If additional equipment and supplies are needed following the individual's admission to waiver services, the Health Care Coordinator shall ~~durable medical equipment provider must obtain DMAS' prior approval.~~ This prior authorization requirement shall apply to all durable medical equipment and supplies that are covered under the State Plan or the waiver.

D. ~~Prior approval by DMAS shall be required for nutritional supplements furnished under this program before the individual's admission to waiver services and before reimbursement. If nutritional supplements are needed following the individual's admission to waiver services, the health care coordinator must obtain DMAS' approval. Personal assistance shall be reimbursed at an hourly negotiated fee.~~

12 VAC 30-120-110. Patient qualification and eligibility requirements. Assessment and plan of care requirements.

A. ~~Medicaid eligible individuals, younger than 21, shall be entitled to this service based on the anticipated cost to Medicaid of home care being less than the anticipated cost to Medicaid of the individual remaining in the hospital and based on continued aggregate cost effectiveness of community services.~~

B. ~~The individual shall have a live-in primary care giver who accepts responsibility for the individual's health and welfare.~~

C. ~~These services shall not be available to individuals receiving care in general acute care hospitals, skilled nursing facilities, intermediate care facilities, or intermediate care facilities for the mentally retarded.~~

~~D. Virginia will apply the financial eligibility criteria contained in the State Plan for the categorically needy and the medically needy. Virginia has elected to cover the optional categorically needy group under 42 CFR 435.211, 435.231 and 435.217. The income level used for 435.211, 435.231 and 435.217 is 300% of the current Supplemental Security Income payment standard for one person.~~

~~1. Under this waiver, the coverage groups authorized under § 1902(a)(10)(A)(ii)(VI) of the Social Security Act will be considered as if they were institutionalized for the purpose of applying institutional deeming rules. All recipients under the waiver must meet the financial and nonfinancial Medicaid eligibility criteria and be Medicaid eligible in an institution. The deeming rules are applied to waiver eligible individuals as if the individuals were residing in an institution or would require that level of care.~~

~~2. Virginia shall reduce its payment for home and community based services provided to an individual who is eligible for Medicaid services under 42 CFR 435.217 by that amount of the individual's total income (including amounts disregarded in determining eligibility) that remains after allowable deductions for personal maintenance needs, deductions for other dependents, and medical needs have been made, according to the guidelines in 42 CFR 435.735 and § 1915(e)(3) of the Social Security Act as amended by the Consolidated Omnibus Budget Reconciliation Act of 1986. DMAS will reduce its payment for home and community based waiver services by the amount that remains after deducting the following amounts in the following order from the individual's income:~~

~~a. For individuals to whom § 1924(d) applies, Virginia intends to waive the requirement for comparability pursuant to § 1920(a)(10)(B), to allow for the following:~~

~~(1) An amount for the maintenance needs of the individual which is equal to the categorically needy income standard for a noninstitutionalized individual.~~

~~(2) For an individual with only a spouse at home, the community spousal income allowance determined in accordance with § 1924(d) of the Social Security Act.~~

~~(3) For an individual with a family at home, an additional amount for the maintenance needs of the family determined in accordance with § 1924(d) of the Social Security Act.~~

~~(4) Amount for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but covered under the Plan.~~

~~b. For all other individuals:~~

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~~(1) An amount for the maintenance needs of the individual which is equal to the categorically needy income standard for a noninstitutionalized individual.~~

~~(2) For an individual with a family at home, an additional amount for the maintenance needs of the family which shall be equal to the medically needy income standard for a family of the same size.~~

~~(3) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but covered under the state Medical Assistance Plan.~~

E. Assessment and Plan of Care requirements.

~~1. A. [The initial assessment and development of the plan of care shall be conducted by] a multidisciplinary team. The team shall include [an The] attending physician, a nurse, and a social worker and a health care coordinator [must participate in the approval of the initial assessment and the number of hours of nursing service required].~~

~~a. 1. The physician shall be currently certified by the Board of Medicine and have a currently valid license to practice medicine in the Commonwealth. The physician shall have experience in the needs and care of technology assisted persons and the needs of children if the individual being admitted to waiver services is a child.~~

~~b. 2. The nurse shall health care coordinator must be a registered nurse currently and validly licensed to practice nursing in the Commonwealth. The nurse shall have experience in the needs and care of technology assisted persons and the needs of children if the individual being admitted to waiver services is a child.~~

~~e. The social worker shall have a master's degree in social work. The social worker shall have experience in the needs and care of technology assisted persons and the needs of children.~~

~~d. 3. Other specialists who are currently and validly licensed, registered or certified to practice their specialties within the Commonwealth may participate in the assessment and care planning process. These other specialists shall have experience in the needs and care of technology assisted persons and the needs of children if the person being admitted to waiver services is a child.~~

~~e. 4. The health care coordinator is shall be responsible for ensuring that the assessment, care planning, monitoring, and review activities required by DMAS are accomplished and documented consistent with DMAS' requirements. The Health Care Coordinator shall be either a nurse or a social worker meeting the requirements of subdivision b or c above. [For individuals over the age of 21, the health care~~

~~coordinator must determine that the minimum established nursing facility criteria are met.]~~

2. B. Referral for waiver services and assessment.

~~a. 1. For individuals under age 21, a service referral may originate from either the clinical staff in the hospital where the individual is located or from the clinical staff a health care professional in the community where the individual is receiving non-Medicaid funded home and community-based services. For individuals over age 21, the referral may originate from the discharge planning staff in the nursing facility where the individual resides or from persons in the community who are aware of the needs of the individual.~~

~~b. 2. The health care coordinator shall meet with the family and representatives of the clinical patient care team to preliminarily assess the individual's needs. first determine that Medicaid would be the source of payment for the individual's institutional care if waiver services are not available. An individual for whom third-party payment is available for the alternative institutional care is not eligible for the waiver service nor is an individual whose insurance has been voluntarily dropped in anticipation of waiver application and an assessment for waiver services is not to be completed.~~

~~e. 3. Upon receiving parental or guardian consent from the [adult individual (or a parent or guardian in the case of a child) legally competent recipient or the recipient's legal guardian or the parent of a minor child] to explore the possibility of home care, the health care coordinator shall arrange for the assessment process for waiver services. [The initial assessment and development of the plan of care for a potential waiver participant will shall be conducted by the health care coordination multidisciplinary team coordinator. The attending physician and a health care coordinator must participate in the approval of the initial assessment and the number of hours of nursing service required.]~~

~~d. 4. At the time of assessment, certification from the attending physician that the individual would otherwise require continued acute care or skilled specialized nursing facility care will shall be necessary to continue the assessment process.~~

~~e. If the physician certifies the need for care and if the family desires community based care, the Health Care Coordinator shall continue the assessment process. The Health Care Coordinator shall perform a home visit to ensure suitability of the home environment for the individual's placement. Concurrently, the Health Care Coordinator or social worker of the multidisciplinary team shall conduct a family assessment to ensure the family's willingness and ability to participate in home care. Consideration shall also be given to the extent of family and community support available to meet the care needs of the technology-assisted individual.~~

5. Upon the completion of the assessment process the health care coordinator shall make a determination of the need for substantial and ongoing skilled nursing care. This determination will be made using an objective tool approved by DMAS. For admission to or continuation in the technology assisted waiver program, the recipient will be required to meet a score of 50 or more on the Objective Scoring Criteria form.

3. C. Development of the plan of care.

a. 1. Upon completion of the ~~medical/nursing/functional assessment and the family and home assessment, required assessments and a determination that the individual needs substantial and ongoing skilled nursing care,~~ the [~~plan of care hours of nursing service required~~] is developed [~~and approved~~] by the health care coordinator.

b. 2. At minimum, the plan of care shall include:

(1) a. A statement of the appropriateness of the home in which the individual is to be placed.

(2) b. Identification of the type, frequency, and amount of nursing care *and personal assistance* needed. This shall include the name of the provider agency, whether the nurse is an RN or an LPN, and verification that the nurse is licensed to practice in the Commonwealth *and the professional qualifications of the personnel required to provide personal assistance.* This shall also contain documentation that the health care coordinator has verified that the provider agency is an enrolled provider with DMAS to provide ~~skilled nursing the appropriate waiver services for this population the individual.~~

(3) c. Identification of all other services that are needed for the individual to be maintained in the home. The statement shall include, as appropriate, speech therapy, occupational therapy, physical therapy, transportation, physician services, the frequency and amount of service needed, the provider of the service, and the payment source.

(4) d. A complete list of equipment and supply needs, and identification of the provider and source of payment.

(5) e. Identification of the type, frequency, and amount of care that the family or other informal care givers shall provide.

~~(6) Identification of the anticipated utilization of respite care during the 12 month period after admission to the waiver services.~~

(7) f. Other referrals for assessment for services (as needed and appropriate) to include but not be limited to the school system; *Special Supplemental Nutrition Program for Women, Infants, and Children Program (WIC)*; child development clinic services; and Early

and Periodic Screening, Diagnosis and Treatment Program (EPSDT) services.

~~(8) g.~~ Identification of the primary care physician in the community who has agreed to ~~follow manage the medical care of the individual in the community.~~

~~(9) h.~~ The appropriateness of the medical care, including a statement from the ~~multidisciplinary team as well as the individual's primary care physician,~~ to be signed by the legally responsible adult, attesting that the medical care the individual is to receive in the home is agreed to by the legally responsible adult ~~and is appropriate in the opinion of all involved parties and all others involved in the assessment process referred to in this section.~~

4. D. Cost effectiveness computations.

a. ~~These~~ 1. Cost effectiveness computations shall be completed by the health care coordinator upon completion of the plan of care *for any individual entering the waiver.*

b. 2. *For individuals over 21,* the health care coordinator shall be required to document the anticipated cost to DMAS for the individual's waiver services for a 12 ~~one~~ - month period. The health care coordinator shall then compare ~~DMAS~~ DMAS' costs for the waiver to ~~anticipated the average costs to DMAS for continued hospitalization of specialized nursing facility care for the individual.~~

3. *For individuals under 21,* the health care coordinator shall be required to document the anticipated cost to DMAS for the individual's waiver services for a ~~one~~ ~~month~~ 12-month period. The health care coordinator shall then compare DMAS' costs for the waiver to the average costs to DMAS for continued hospitalization of the individual.

5. E. Patient selection of waiver services.

a. 1. ~~[When the determination that the individual's needs can appropriately and cost effectively be met in the community with these waiver services, the health care coordinator shall give the legally responsible party and the primary care giver, if separate persons, adult individual or the parent or guardian of a child the choice of waiver services or hospitalization institutionalization. The health care coordinator shall give the legally competent recipient or the recipient's legal guardian or the parent of a minor child the choice of waiver services or institutionalization.]~~

b. 2. If waiver services are chosen, the ~~applicant or his legally responsible party and the primary care giver, if separate persons, adult~~ will also be given the opportunity to choose the providers of service, if more than one provider is available to render the services. *If more than one waiver recipient will reside in the home, one waiver provider shall be chosen to provide all private duty nursing services for all waiver recipients in the home.*

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~~Only one nurse will be authorized to care for each two waiver recipients in a home [, except .] In the instance when adult waiver participants share a home more than two waiver participants share a home, [where] nursing ratios will be determined by the health care coordinator based on the needs of all the recipients living together.~~

~~6. F. DMAS shall review and approve the assessment, plan of care, cost effectiveness, and choice of providers prior to the individual's admission to community waiver services, and prior to Medicaid payment for any services related to the waiver services plan of care.~~

~~7. 12 VAC 30-120-115. Reevaluation requirements and utilization review.~~

~~a. A. The need for reevaluations shall be determined by the health care coordinator. Reevaluations shall be conducted by the health care coordinator at least every 30 days during the first three months after admission to waiver services as required by the individual's needs and situation and at any time when a change in the individual's condition indicates the need for reevaluation. After the first three months, the health care coordinator shall conduct a home visit once every three months and more often if necessary.~~

~~b. B. DMAS is responsible for performing utilization review at least semi-annually every six months and for the maintenance of supporting documentation. DMAS shall also maintain a copy of the plan of care, the initial evaluation, and each reevaluation for a the minimum period of five years required by federal and state law.~~

~~c. C. The health care coordinator shall review the plan of care for appropriateness of the level, amount, type, and quality of services provided as well as for monitoring the cost effectiveness of the individual's care in the community.~~

~~d. D. Medical necessity of waiver services shall be reviewed by the health care coordinator and DMAS.~~

~~E. If the health care coordinator or DMAS determines, during utilization review or at any other time, that the waiver individual no longer meets cost-effectiveness standards or medical needs criteria, then the health care coordinator or DMAS, as appropriate, shall deny [further] payment for such waiver individual with the exception of a child or adult who no longer meets the patient qualifications of 12 VAC 30-120-80 who may be eligible for private duty nursing for the number of hours previously approved in the plan of care per 24-hour period not to exceed two weeks from the date the attending physician certifies the cessation of daily technology assistance.~~

~~e. The Health Care Coordinator shall submit this information to DMAS.~~

~~f. During the semi-annual review period, a DMAS utilization review analyst shall review the record and conduct a home visit. The purposes of this record review and home visit are to determine the correctness of the level of care; to ensure that the amount, duration, and scope of the services are~~

~~appropriate; to ensure that the individual's health and welfare are protected; and to ensure that cost effectiveness is maintained.~~

12 VAC 30-120-120. Appeal of denied coverage.

A. DMAS shall provide the opportunity for a fair hearing under 42 CFR Part 431, Subpart E, to individuals who are not given the choice of home and community-based services as an alternative to ~~remaining in the receiving hospital or entering nursing facility services or who are denied the amount or type of service of their choice or the provider of their choice. Persons who are discharged from waiver services shall also have the right to file an appeal.~~

B. The individual shall be advised *in writing* of the denial and of his right to appeal consistent with DMAS client appeals (12 VAC 30-110-10 through 12 VAC 30-110-600).

12 VAC 30-120-130. Documentation requirements. (Repealed.)

~~The Health Care Coordinator shall submit the following documentation to DMAS before the individual's admission to waiver services:~~

- ~~1. All of the required assessment and documentation.~~
- ~~2. Certification of level of care.~~
- ~~3. Plan of care.~~
- ~~4. Cost effectiveness computation.~~
- ~~5. Agreement of legally responsible party and the primary care give, if separate persons, with the plan of care.~~
- ~~6. Choice of home and community based care or hospital care.~~
- ~~7. Choice of waiver service providers, if waiver services are chosen.~~

LIST OF COVERED DURABLE MEDICAL EQUIPMENT

~~Medical Equipment and Supplies Covered Under State Plan:~~

- ~~1. Ventilator and necessary attachment.~~
- ~~2. Back up portable ventilator and attachments.~~
- ~~3. Suction machine, stationary.~~
- ~~4. Suction machine, portable.~~
- ~~5. Ambu bag.~~
- ~~6. Patient lift.~~
- ~~7. Overbed table.~~
- ~~8. Commode, shower chair, or stretcher.~~
- ~~9. Environmental control unit.~~
- ~~10. Alternative communication devices.~~
- ~~11. Tracheostomy tubes.~~

- ~~12. Tracheostomy care kits or individual supplies normally found in the kit.~~
- ~~13. Gastrostomy, or other feeding, tubes.~~
- ~~14. Feeding pumps.~~
- ~~15. Suction catheters.~~
- ~~16. Sterile water.~~
- ~~17. Sterile saline.~~
- ~~18. Special medical mattresses.~~
- ~~19. Oxygen and oxygen equipment.~~
- ~~20. Foley catheters.~~
- ~~21. Bed pans.~~
- ~~22. Antiseptic solution for cleaning of ventilator and respiratory supplies.~~
- ~~23. Wheelchair, manual or power, including adaptive seating devices to prevent contractures and skin breakdown.~~
- ~~24. Hospital bed.~~
- ~~25. Adaptive mobility transportation device (Mulholland chair).~~
- ~~26. Phrenic pacer (implant, transmitter box, antenna and battery).~~
- ~~27. Pharmacological preparation necessary for life sustaining nutritional management (legend drug only).~~
- ~~28. Pulse oximeter.~~

~~Medical Equipment and Supplies Not Covered Under State Plan.~~

- ~~1. Apnea monitor.~~

FORMS

~~Medical Status Continued DMAS 130, WPPSHBC #560.~~

~~Functional Status DMAS 130, WPPSHBC #560.~~

~~Nursing/Professional Services DMAS 130, WPPSHBC #560.~~

~~Pre Discharge Family Assessment DMAS 131, WPPSHBC #578.~~

~~Pre Discharge Home Evaluation DMAS 132, WPPSHBC #578.~~

~~Technology Dependent Services Plan of Care DMAS 133, WPPSHBC #573.~~

~~Health Care Coordination Reassessment DMAS 136, WPPSHBC #581.~~

~~Objective Scoring Criteria, 1996~~

OBJECTIVE SCORING CRITERIA

Individual's Name _____ Principal Diagnosis _____

HCC _____ Admit Date _____ DATE _____

TECHNOLOGY	POINTS																			
Vent Dependent total	50																			
intermittent	45																			
Trach	43																			
C-PAP, BIPAP	25																			
Oxygen, continuous	15																			
O2, continuous, unstable	35																			
G-tube continuous	15																			
G-tube, cont. with reflux	35																			
NG tube continuous	40																			
bolus	25																			
IV therapy continuous	40																			
SUBTOTAL TECHNOLOGY																				
NURSING NEEDS																				
Suctioning > q1hr.	5																			
q1-4hrs	3																			
q4hrs+	2																			
NG/GT Feeds continuous	5																			
q 2hrs	4																			
q3hrs	3																			
q4hrs	2																			
Medication simple	2																			
moderate	4																			
complex	8																			
Intermittent cath. q4hrs	8																			
q8hrs	6																			
q12hrs	4																			
qd or PRN	2																			
Dressings q 8hrs or less	3																			
> q8hrs	2																			
Trach change and care	5																			
IV/Hyperal continuous	8																			
8-16hrs	6																			
4-7 hrs	4																			
< 4hrs	2																			
Special TX QID	8																			
TID	6																			
BID	4																			
QD	2																			
Specialized monitor I/O	5																			
> 3 hrs. in last yr or 3 mo. cont	5																			
Other																				
SUBTOTAL NURSING																				
TOTAL POINTS																				
DAILY NURSING HOURS.																				

VA.R. Doc. No. R97-591; Filed June 30, 1997; 3:21 p.m.

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Signature of person completing form _____ Date _____

DEFINITIONS

- Oxygen, continuous- Individual must require oxygen a minimum of 12 hours out of 24.
- Oxygen, unstable, - Dependent on oxygen 24 hours per day plus any 2 of the following:
 - Diuretics
 - Albuterol treatments at least q4hrs around the clock
 - Weight is below 15th percentile for age and gain does not follow normal curve for height
 - >3 hospitalizations in last 6 months for respiratory problems
 - Daily desaturation below doctor ordered parameters and desaturation requires nursing intervention
 - Physician ordered restricted fluid intake
- G-tube with reflux - Individual has continuous G-tube feeds plus one of the following
 - swallow study within the last 6 months that demonstrated reflux
 - aspiration pneumonia within the last 12 months
 - need for suctioning due to reflux (not oral secretions) on a daily basis
- Simple medication - One or two medications not requiring dosage adjustment
- Moderate medication - More than two meds that required close monitoring of dosage, side effects etc.
- Complex medication - Six or more meds on different frequency schedules OR
 - Four or more meds requiring close monitoring of dosage and side effects
- Dressings - Sterile dressings only. Trach dressings are not included in this category
- Special Treatments - Other treatments that are considered skilled e.g. nebulizer. ROM is not a special treatment.
- Specialized I/O monitoring - Monitoring that includes judgment of fluid replacement needs

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DEPARTMENT OF MINES, MINERALS AND ENERGY

Board of Coal Mining Examiners

Title of Regulation: 4 VAC 25-20-10 et seq. Board of Coal Mining Examiners Certification Requirements (amending 4 VAC 25-20-20 through 4 VAC 25-20-250; repealing 4 VAC 25-20-10, 4 VAC 25-20-260 through 4 VAC 25-20-330; adding 4 VAC 25-20-15, 4 VAC 25-20-45, 4 VAC 25-20-125, 4 VAC 25-20-129, 4 VAC 25-20-255, 4 VAC 25-20-259, and 4 VAC 25-20-340 through 4 VAC 25-20-430).

Statutory Authority: §§ 45.1-161.28, 45.1-161.29, 45.1-161.34 and 45.1-161.35 of the Code of Virginia.

Effective Date: August 20, 1997.

Summary:

The Board of Coal Mining Examiners has amended its certification requirements to ensure that miners are certified to perform specialized tasks required to mine coal.

The amendments include new requirements under the Virginia Mine Safety Act, revise and clarify requirements for individual certifications, and add several certifications needed by industry. The amendments include new requirements relating to continuing education programs and sponsors, continuing education for each certification, on-site examination of mine foremen, hearing procedures, and the general coal miner certification.

Agency Contact: Copies of the regulation may be obtained from Marilyn Gates, Division of Mines, Department of Mines, Minerals and Energy, U. S. Route 23 South, P. O. Drawer 900, Big Stone Gap, VA 24219, telephone (540) 523-8226.

CHAPTER 20.

BOARD OF COAL MINING EXAMINERS CERTIFICATION REGULATIONS REQUIREMENTS.

PART I.

GENERAL AND SPECIFIC REQUIREMENTS FOR CERTIFICATION.

~~4 VAC 25-20-10. [Administration of certification and continuing education programs. (Repealed.)]~~

~~[The Board of] Mineral [Coal Mining Examiners] and Board of Coal Mining Examiners have [(BCME) has established standards for] miners [applicants seeking certification. The certification programs are administered by the Division of Mines] and the Division of Mineral Mining [in the Department of Mines, Minerals and Energy.] Requirements for coal and mineral miners are set forth in 4 VAC 25-20-20 through 4 VAC 25-20-40.~~

~~[4 VAC 25-20-15. Definitions.~~

~~A. This chapter works with the Virginia Mine Safety Act, Title 45.1 of the Code of Virginia. Refer to § 45.1-161.8 for other definitions related to this chapter.~~

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

"Appropriately related work experience" means work experience which demonstrates the applicant's skill and level of responsibility in performing tasks, and prepares and equips him to perform in the capacity of a certified person.

"BCME" means Board of Coal Mining Examiners.

"Chief" means the Chief of the Division of Mines.

"DMME" means the Department of Mines, Minerals and Energy.

"Division" means the Division of Mines.

"DMLR" means Division of Mined Land Reclamation.

"EMT" means emergency medical technician.

"GCM" means general coal miner.

"MSHA" means the Mine Safety and Health Administration.

"Virginia coal mine safety regulations" mean regulations 4 VAC 25-50-10 through 4 VAC 25-120-10.

"Virginia Mine Safety Act" means Chapters 14.2 (§ 45.1-161.7 et seq.) through 14.6 (§ 45.1-161.304 et seq.) and Chapter 18 (§ 45.1-221 et seq.) of Title 45.1 of the Code of Virginia.]

4 VAC 25-20-20. General requirements for applicants.

A. Applicants shall complete and submit the Application for Certification Examination, Form ~~BOE-1-A or BOE-1-B~~ DM-BCME-1.

B. Applicants shall complete and submit the Certification Verification of Work Experience Form ~~BOE-2-A or BOE-2-B~~ DM-BCME-2 and documentation of appropriately related work experience for approval by the ~~Division of Mines or the Division of Mineral Mining~~ chief if required for the certification. This information shall be signed by a company official knowledgeable of the experience of the applicant and shall be notarized.

C. Applicants shall submit a valid standard or advanced first aid certificate or card, first responder card, [~~Mine Safety and Health Administration~~ () MSHA ()] Form 5000-23 [with the new miner training or annual refresher portion completed], or Emergency Medical Technician Certification except where noted. [First aid shall be a component of training and examination for all certifications issued by the BCME.]

D. Applicants shall submit a copy documentation of all degrees required or evidence of successfully having completed the, continuing education, and other training if required training for certification.

E. Applicants shall submit a \$10 fee for to take each examination in the form of a cashier's check, certified check or money order. Cash will be accepted if paying in person or to retake all or part of an examination. Refer to § 45.1-

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161.31 of the Code of Virginia for acceptable forms of payment.

F. The Application for Certification Examination and the fee *applicable fees* shall be submitted at least five working days prior to the examination.

G. Applicants shall fulfill the requirements of this section and accumulate the required years of experience ~~within no later than five years of taking after passing the examination.~~

H. Those applicants not meeting the requirements of subsection G of this section shall begin the application process again, submitting a new application ~~and work experience forms~~, taking the examination again, and paying the fee. *A work experience form shall only be submitted if the applicant needs to update information.*

I. *Certificate holders shall notify the division [of Mines] office within 90 days of a change in their name, their mailing address, or the status of any certification required by this chapter. Failure to do so may prevent the division from notifying the certificate holder of the certification requirements. The last known address reported to the division will be used to mail notices and information.*

J. *The division [of Mines] shall mail notices to certificate holders which [states state] the deadline for completion of requirements and the conditions under which the certificate may be suspended or revoked.*

[*K. For the purposes of this chapter, "appropriately related work experience" means work experience which demonstrates the applicant's skill and level of responsibility in performing tasks, and prepares and equips him to perform in the capacity of a certified person.]*

4 VAC 25-20-30. Examination requirements for applicants.

A. Applicants for first class mine foreman (coal), surface foreman (coal or minerals), surface foreman, open pit (minerals), underground foreman (minerals), surface blaster (coal or minerals), and underground shot firer (coal), and underground blaster (minerals) certifications shall score at least 85% on each section of the written examination ~~to pass~~. Applicants for all other certifications shall score at least 80% on each section of the written examination.

B. If all or part of an examination is failed ~~and the applicant wishes to retake the test~~, then the applicant shall wait at least 10 working days after the ~~initial examination~~ notification letter has been sent before retaking the failed section or sections.

C. If a section of the examination is failed a second time, then the applicant shall ~~retake the entire examination, and shall wait at least 10 working days after the second examination notification letter has been sent before retaking the entire examination.~~

D. If the examination is failed on the third try, then the applicant shall wait the greater of one year from the date of the first examination or 10 working days ~~from the last~~

~~examination to after the notification letter has been sent before he may begin the examination cycle again.~~

E. If one year passes prior to the third take of the examination, the certification cycle shall start over with a new application, ~~work experience forms~~, fee, and examination. *A work experience form shall only be submitted if the applicant needs to update information.*

F. An examination may not be taken more than three times in one year.

G. Applicants for ~~coal~~ certifications shall also pass the gas detection examination unless already certified in ~~the area of otherwise~~ gas detection except as noted in the ~~position~~ qualifications certification requirements in Part II (4 VAC 25-20-50 et seq.) of this chapter.

4 VAC 25-20-40. Requirements for reciprocity.

A. Reciprocity shall be available for persons certified by states which accept the corresponding Virginia certifications and whose certification requirements are substantially equivalent to Virginia's.

B. If reciprocity is requested by a person certified in another state which accepts the corresponding Virginia certification, a current copy of the pocket card or certificate, [~~grades,~~] and documentation from the other state shall be submitted in addition to fulfilling the requirements in 4 VAC 25-20-20.

~~C. Applicants shall pass the examination on Virginia mining laws and regulations with a score of at least 85%.~~

~~D. C. Applicants for a surface blaster certification shall pass any other examinations required by the Division of Mines, the Division of Mineral Mining and the [Division of Mined Land Reclamation DMLR] with a score of at least 85% and meet any corresponding [Division of Mined Land Reclamation DMLR] requirements.~~

4 VAC 25-20-45. Approval of continuing education programs and sponsors.

A. *Colleges, universities, training companies, manufacturers, operators, other organizations and persons who wish to sponsor a continuing education program shall submit information to the chief which explains how their program will meet the requirements outlined in this chapter. The request shall include a description of the proposed training, the instructor's name and certification numbers, and the tentative schedule and location. [Persons Applicants] approved to provide training shall notify the division of the final schedule as soon as is practical.*

B. *[Persons Applicants] who wish to have continuing education approved for credit shall submit information to the chief which explains how the training they attended meets the requirements outlined in this chapter. The request shall include a description of the training, the instructors name and certification numbers, and the date, time and location of the training.*

C. The chief shall notify the applicant in writing of his decision to approve or disapprove the training.

PART II.

CERTIFICATION REQUIREMENTS FOR COAL MINING.

4 VAC 25-20-50. First class mine foreman.

A. Applicants shall possess five years mining experience, three of which shall be underground, ~~or appropriately related work experience approved by the Division of Mines and shall pass the first class mine foreman, map, and gas detection examinations.~~

B. Applicants ~~may~~ shall be given three years credit for a degree in mining engineering from an approved four-year college [or two years credit for a degree in mining technology].

C. Applicants shall be at least 23 years of age.

D. ~~Beginning [January 1, 1997 August 20, 1997], certified mine foremen shall complete the continuing education requirements in this section within two years from the date of their certification and every two years thereafter. [Foremen certified prior to January 1, 1997, shall complete the continuing education requirements in this section within two years of this date and every two years thereafter.]~~ The holder of the certificate shall submit documentation to the division [~~of Mines~~] indicating the required continuing education has been completed prior to these deadlines.

E. The holder of the certificate, in order to receive continuing education credit, shall satisfactorily complete a first class mine foreman continuing education course approved by the chief and taught by a certified instructor or other instructor approved by the chief.

F. The first class mine foreman shall complete at least four hours of continuing education every two years.

G. The content of the continuing education course shall include, but is not limited to, the:

1. [~~Virginia Coal~~] Mine Safety Act, Chapter 14.2 (§ 45.1-161.7 et seq.) of Title 45.1 of the Code of Virginia;
2. Virginia coal mine safety regulations;
3. Responsibilities of first class mine foreman;
4. Virginia coal mine safety policies and division [~~of Mines~~] operators' memos; and
5. Review of fatalities and accident trends in Virginia underground coal mines.

H. A maximum of four hours in excess of the required hours may be carried over to the next continuing education period.

I. Failure to complete continuing education requirements shall result in suspension of a person's certification pending completion of continuing education. If the continuing education requirement is not met within two years from the

suspension date, the certification shall be revoked by the [~~Board of Coal Mining Examiners BCME~~].

J. The division [~~of Mines~~] shall send notice of any suspension to the last address the certified person reported to the division in accordance with 4 VAC 25-20-20 I and to the last employer address reported to the division.

4 VAC 25-20-60. First class shaft or slope foreman.

A. Applicants shall possess five years mining work experience at a shaft or slope or appropriately related work experience approved by the ~~Division of Mines chief~~.

B. Applicants shall pass the first class shaft or slope foreman and gas detection examinations.

~~B.~~ C. Applicants may be given three years credit for a degree in mining engineering or two years credit for a degree in mining technology.

4 VAC 25-20-70. Surface foreman.

A. Applicants shall possess five years of surface coal mining experience ~~or appropriately related work experience approved by the Division of Mines.~~

B. Applicants ~~may be given three years credit for a degree in mining engineering or two years credit for a degree in mining technology.~~ Applicants shall pass the surface foreman, first aid, and gas detection examinations.

C. ~~Beginning [January 1, 1997 August 20, 1997], certified persons shall complete the continuing education requirements in this section within two years from the date of their certification and every two years thereafter. [Foremen certified prior to January 1, 1997, shall complete the continuing education requirements in this section within two years of this date and every two years thereafter.]~~ The holder of the certificate shall submit documentation to the division [~~of Mines~~] indicating the required continuing education has been completed prior to these deadlines.

D. The holder of the certificate, in order to receive continuing education credit, shall satisfactorily complete a surface foreman continuing education course approved by the chief and taught by a certified instructor or other instructor approved by the chief.

E. The surface foreman shall complete at least four hours of continuing education every two years.

F. The content of the continuing education course shall include, but is not limited to, the:

1. [~~Virginia Coal~~] Mine Safety Act, Chapter 14.2 (§ 45.1-161.7 et seq.) of Title 45.1 of the Code of Virginia;
2. Virginia coal mine safety regulations;
3. Responsibilities of surface foreman;
4. Virginia coal mine safety policies and division [~~of Mines~~] operators' memos; and
5. Review of fatalities and accident trends in Virginia surface coal mines.

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G. A maximum of four hours in excess of the required hours may be carried over to the next continuing education period.

H. Failure to complete continuing education requirements shall result in suspension of a person's certification pending completion of continuing education. If the continuing education requirement is not met within two years from the suspension date, the certification shall be revoked by the [~~Board of Coal Mining Examiners BCME~~].

I. The division [~~of Mines~~] shall send notice of any suspension to the last known address of the certified person reported to the division in accordance with 4 VAC 25-20-20 I and to the last employer address reported to the division.

4 VAC 25-20-80. Surface blaster.

A. Applicants shall possess one year blasting experience on a surface coal mine under the direction of a certified surface blaster or appropriately related work experience approved by the ~~Division of Mines~~ chief.

B. Applicants shall ~~also~~ pass the surface blaster examination and the endorsement section of the examination required by the [~~Division of Mined Land Reclamation (~~] DMLR [~~)~~] and meet any corresponding ~~Division of Mined Land Reclamation DMLR~~ requirements in 4 VAC 25-130-850.14. The gas detection examination is not required.

C. ~~Gas examination not required.~~ Certified surface blasters must be recertified in accordance with the DMLR requirements in 4 VAC 25-130-850.15. To remain certified, a blaster shall be recertified every five years by:

1. Presenting written proof that he has demonstrated blasting competency in his work during two of the last three years immediately preceding the expiration date; or
2. Retaking and passing the mined land reclamation portion of the blaster exam.

D. An applicant who fails the exam shall complete the training required by DMLR regulations in 4 VAC 25-130-850.13 and pass the coal surface blaster's exam prior to recertification.

4 VAC 25-20-90. Underground shot firer.

A. Applicants shall possess two years coal mining experience underground, one year of the two years shall have included handling and using explosives underground under the direction of a certified underground shot firer, or appropriately related work experience approved by the ~~Division of Mines~~ chief.

B. Applicants shall pass the underground shot firer and gas detection examinations.

4 VAC 25-20-100. Underground electrical repairman.

A. Applicants shall possess one year of electrical experience in underground coal mining under the direction of a certified underground electrical repairman or appropriately

related work experience approved by the ~~Division of Mines~~ chief.

B. Applicants shall pass the underground electrical repairman and gas detection examinations.

~~B.~~ C. Applicants may be given six months credit for electrical educational training from a college, technical school, or vocational school.

D. Applicants who are certified may perform electrical work at underground and surface locations.

E. Continuing education requirements.

1. An underground electrical repairman certification shall remain valid if the certified person meets the [~~Mine Safety and Health Administration (~~] MSHA [~~)~~] annual retraining requirements (30 CFR [~~48-8~~ 75.153(g)]).

2. Submission of a copy of documentation sent to MSHA shall be acceptable to meet this requirement.

3. If a certificate expires because the certificate holder fails to complete the [electrical] retraining requirements, then the holder of the expired certificate shall meet requirements of Part I (4 VAC 25-20-10 et seq.) of this chapter and pass the electrical repairman examination prior to reinstatement of certification by the board.

4 VAC 25-20-110. Surface electrical repairman.

A. Applicants shall possess one year of electrical experience in surface coal mining under the direction of a certified surface electrical repairman or appropriately related work experience approved by the ~~Division of Mines~~ chief.

B. Applicants shall pass the surface electrical repairman and gas detection examinations.

~~B.~~ C. Applicants may be given six months credit for electrical educational training from a college, technical school, or vocational school.

D. Applicants who are certified may perform electrical work at surface locations only.

E. Continuing education requirements.

1. A surface electrical repairman certification shall remain valid if the certified person meets the MSHA annual [electrical] retraining requirements (30 CFR [~~48-8~~ 75.153(g)]).

2. Submission of a copy of documentation sent to MSHA shall be acceptable to meet this requirement.

3. If a certificate expires because the certificate holder fails to complete the retraining requirements, then the holder of the expired certificate shall meet requirements of Part I (4 VAC 25-20-10 et seq.) of this chapter and pass the surface electrical repairman examination prior to reinstatement of certification by the board.

4 VAC 25-20-120. Electrical maintenance foreman (surface and underground).

A. Applicants shall hold a valid electrical repairman certification prior to being eligible to take the appropriate electrical maintenance foreman examination and shall pass the [appropriate] electrical maintenance foreman examination.

B. Applicants shall possess three years electrical experience as applied to underground mining or appropriately related work experience approved by the ~~Division of Mines~~ chief.

C. Applicants may be given one year credit for an electrical engineering degree, or six months credit for electrical education training from a technical or vocational school.

~~D. Gas examination not required. Applicants who become certified may perform electrical work at surface and underground locations.~~

E. Applicants must meet continuing education requirements in subsection E of 4 VAC 25-20-100 for an electrical repairman.

4 VAC 25-20-125. Electrical maintenance foreman (surface).

A. Applicants shall hold a valid electrical repairman certification prior to being eligible to take the appropriate electrical maintenance foreman examination and shall pass the electrical maintenance foreman examination.

B. Applicants shall possess three years electrical experience as applied to surface mining or appropriately related work experience approved by the chief.

C. Applicants may be given one year credit for an electrical engineering degree, or six months credit for electrical education training from a technical or vocational school.

D. Applicants who become certified may perform electrical work at surface locations only.

E. Applicants must meet continuing education requirements in subsection E of 4 VAC 25-20-100 for an electrical repairman.

4 VAC 25-20-129. Chief electrician (surface and underground).

A. Applicants shall hold a valid electrical repairman and electrical maintenance foreman certification prior to being eligible to take the chief electrician examination and shall pass the appropriate chief electrician examination.

B. Applicants shall possess five years electrical experience or appropriately related work experience approved by the chief and shall meet continuing education requirements in subsection E of 4 VAC 25-20-100 for an electrical repairman.

C. Applicants who become certified may perform electrical work at surface and underground locations.

4 VAC 25-20-130. Chief electrician (surface).

A. Applicants shall hold a valid *electrical repairman and electrical maintenance foreman* certification prior to being eligible to take the chief electrician examination and shall pass the appropriate chief electrician examination.

B. Applicants shall possess five years electrical experience ~~as applied to underground mining~~ or appropriately related work experience approved by the ~~Division of Mines~~ chief and shall meet continuing education requirements in subsection E of 4 VAC 25-20-100 for an electrical repairman.

~~C. Applicants may be given two years credit for an electrical engineering degree, or six months credit for electrical educational training from a technical or vocational school. Applicants who become certified may perform electrical work at surface locations only.~~

~~D. Gas examination not required.~~

4 VAC 25-20-140. Hoisting engineer.

A. Applicants shall possess two years of practical mining experience and one year of hoisting experience *under the direction of a certified hoisting engineer* or appropriately related work experience approved by the ~~Division of Mines~~ chief. A certified hoisting engineer shall verify the hoisting experience.

B. *The applicant shall pass the hoisting engineer and gas detection examinations.*

~~B. C.~~ After the examination has been successfully completed, the applicant shall obtain written permission from a mine official to have a representative from the division [~~of Mines~~] observe the applicant's operation of hoisting equipment at the mine. Permission shall be on company stationery, signed by the company official, and submitted to the division [~~of Mines~~].

D. *A certified hoisting engineer may act as an automatic elevator operator after completing the on-site demonstration required by 4 VAC 25-20-240 C.*

4 VAC 25-20-150. Top person.

A. Applicants shall possess one year of practical mining experience with at least 30 days under the direction of a certified top person or appropriately related work experience approved by the ~~Division of Mines~~ chief.

B. *Applicants shall pass the top person, first aid, and gas detection examinations.*

C. *This certification shall not be used in lieu of any other certification.*

4 VAC 25-20-160. Preparation plant foreman.

A. Applicants shall possess five years coal mining experience. at least one year shall be at a preparation plant,

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or appropriately related work experience approved by the ~~Division of Mines chief.~~

B. Applicants shall pass the preparation plant foreman and gas detection examinations.

~~B.~~ C. Applicants may be given three years credit for a degree in mining engineering or two years credit for a degree in mining technology.

4 VAC 25-20-170. Dock foreman.

A. Applicants shall possess ~~two years~~ *one year* experience at a dock or appropriately related work experience approved by the ~~Division of Mines chief.~~

B. Applicants shall pass the dock foreman and gas detection examinations.

C. This certification shall not be used in lieu of any other certification.

4 VAC 25-20-180. Mine inspector.

A. Applicants shall possess ~~seven years~~ *underground* mining experience as described in § 45.1-161.20 of the Code of Virginia.

B. Applicants ~~may~~ *shall* be given three years credit for a degree in mining engineering *from an approved four-year college.*

C. Applicants shall hold a valid First Class Mine Foreman ~~Certification Certificate.~~

~~D. Gas examination not required.~~ *Applicants shall meet the continuing education requirements of 4 VAC 25-20-50 for first class mine foreman.*

[E. Applicants shall pass the mine inspector examination.]

~~[E. F.]~~ A certificate will not be issued until an applicant is employed by the ~~[Department of Mines, Minerals and Energy DMME]~~ and shall only remain valid while the person is employed by the department.

4 VAC 25-20-190. Underground diesel engine mechanic.

A. All maintenance work performed on diesel engines used to power equipment in underground coal mines ~~must~~ *shall* be performed by, or under the direct supervision of, a person possessing a Diesel Engine Mechanic Certificate issued by the ~~[Board of Coal Mining Examiners BCME]~~. In addition, no operator of an underground coal mine in the Commonwealth of Virginia may use diesel-powered equipment in the mine without first employing a diesel engine mechanic who is certified by the ~~[Board of Coal Mining Examiners BCME]~~.

B. "Maintenance" ~~means~~ *shall include* all of the tasks required to be performed routinely to ensure that the engine exhaust emissions conform with the requirements of the laws and regulations of Virginia ~~[and MSHA,]~~, and with the maintenance recommendations of the manufacturer of the engine.

C. Applicants shall possess six months experience as a diesel engine mechanic, complete a diesel engine mechanic course approved by the division ~~[of Mines],~~ or possess appropriately related work experience approved by the ~~Division of Mines chief.~~ A one-year diesel engine mechanic program approved by the division ~~of Mines~~ may be substituted for the diesel engine mechanic experience.

D. Applicants shall pass the underground diesel engine mechanic [, first aid,] and gas detection examinations.

~~D.~~ E. The initial training course for diesel engine mechanics shall include at least 32 hours of classroom instruction and be taught by ~~instructors certified by the Division of Mines~~ a certified instructor.

~~E.~~ F. To qualify for ~~consideration and~~ approval by the chief, the content of the initial training course for diesel engine mechanics shall include, but ~~is not~~ *is not* limited to:

1. Diesel engine principles;
2. Diesel fuel and fuel systems;
3. Engine exhaust systems;
4. ~~[State and federal]~~ diesel laws and regulations;
5. Safe use of equipment;
6. Emission controls and, testing *procedures and recordkeeping;* and
7. Protection of health of workers exposed to diesel equipment.

~~F.~~ G. The annual ~~retraining~~ *continuing education* course for diesel engine mechanics shall include at least four hours of classroom instruction and be taught by ~~instructors certified by the Division of Mines~~ a certified instructor.

~~G.~~ H. The content of the ~~retraining~~ *continuing education* course shall include, but not be limited to:

1. Diesel technology;
2. ~~[State and federal]~~ diesel laws and regulations;
3. Safe use of equipment; and
4. Protection of *the* health of workers exposed to diesel equipment; and
5. *Required emission test procedures and recordkeeping.*

~~H.~~ *Gas examination not required.*

I. A Diesel Engine Mechanic Certificate shall remain valid until December 31 following the anniversary date of the *initial* training, providing the certification requirements are met, unless the certificate is revoked by the ~~[Board of Coal Mining Examiners BCME]~~.

J. The holder of the certificate shall renew the certificate by satisfactorily completing a diesel engine mechanic ~~retraining~~ *continuing education* course approved by the

~~Division of Mines chief and taught by an a certified instructor approved by the Division of Mines.~~

K. The holder of the certificate shall submit documentation to the division [~~of Mines~~] indicating the required ~~retraining continuing education~~ has been completed before the expiration of the card.

~~L. If a certificate expires because the certificate holder fails to complete the retraining requirements, then the holder of the expired certificate shall complete the retraining requirements and pass the Diesel Engine Mechanic Examination prior to the reinstatement of certification, unless otherwise approved by the Chairman of the Board of Coal Mining Examiners. Failure to complete the required education shall result in suspension of certification pending completion of continuing education. If the continuing education requirement is not met within two years from the suspension date, then the certification shall be revoked by the [Board of Coal Mining Examiners BCME].~~

M. The division [~~of Mines~~] shall send notice of any suspension to the last known address that the certified person reported to the division in accordance with 4 VAC 25-20-20 I and to the last known employer address.

4 VAC 25-20-200. Diesel engine mechanic instructor.

A. Applicants shall have teaching experience and be a certified diesel engine mechanic or possess appropriately related work experience approved by the ~~Division of Mines chief~~.

~~B. Gas examination not required.~~

~~C. B.~~ Applicants shall maintain the certificate by teaching at least one approved diesel engine mechanic course every two years or at least one approved diesel engine mechanic ~~retraining continuing education~~ course every year.

~~D. The holder of the certificate shall submit documentation~~
C. Documentation shall be submitted to the division [~~of Mines~~] indicating the required teaching has been completed before the expiration of the card.

~~E. The Board of Coal Mining Examiners may revoke the certification, in accordance with § 45.1-161.35 of the Code of Virginia, when the certificate holder fails to meet these validation requirements.~~

~~F. If a certificate expires because the certificate holder fails to complete the teaching requirements, then the holder of the expired certificate shall pass the Diesel Engine Mechanic Instructor Examination prior to the reinstatement of certification.~~

D. Failure to complete the required teaching shall result in suspension of the certification. Applicants may meet the teaching requirement by teaching under the supervision of a certified diesel mechanic engine instructor. If the teaching requirement is not met one year from suspension, then the certification shall be revoked by the [~~Board of Coal Mining Examiners BCME~~].

E. The division [~~of Mines~~] shall send notice of any suspension to the last known address that the certified person reported to the division in accordance with 4 VAC 25-20-20 I and to the last known employer address.

4 VAC 25-20-210. Advanced first aid.

A. Applicants shall complete a ~~40-hour~~ 24-hour advanced first aid class [, at minimum,] taught by an ~~approved a certified~~ advanced first aid instructor or possess appropriately related work experience approved by the ~~Division of Mines chief~~ and pass the advanced first aid examination.

B. Approved advanced first aid classes shall cover the following subjects:

1. Introduction to first aid;
2. Respiratory emergencies and ~~artificial respiration cardiopulmonary resuscitation; i.e., heart saver or other four-hour equivalent~~;
3. Removal of foreign bodies from the throat (the Heimlich Maneuver) and ~~cardiopulmonary resuscitation (CPR)~~;
4. Wounds;
5. Shock;
6. Specific injuries including head and chest;
7. Contamination, infection, and prevention;
8. Burns;
9. Cold exposure and frost bite;
10. Bone and joint injuries;
11. Dressings and bandages;
12. Sudden illness;
13. Emergency *underground* rescue and transfer;
14. Unusual rescue situations *related to mining*;
15. Poisoning, *toxic and hazardous materials*;
16. Transportation of victims; and
17. Heat exposure.

C. Certified persons shall complete [~~eight four~~] hours ~~training continuing education [biannually annually], which is taught by an a certified~~ advanced first aid instructor ~~approved by the Division of Mines~~, to maintain their advanced first aid card. [*This continuing education requirement shall include recertification in CPR.*]

D. The holder of the certificate shall submit documentation to the division [~~of Mines~~] indicating the required ~~training continuing education~~ has been completed ~~before the expiration of the card~~.

E. Applicants holding a valid [~~Emergency Medical Technician (-) EMT (+) card~~] or [*EMT*] first responder card, shall be deemed eligible to receive advanced first aid

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certification without having to complete the initial advanced first aid class or without passing the advanced first aid examination. All applicants shall complete eight hours of continuing education. The advanced first aid certification shall start on the day the applicant's EMT [certification] or [EMT] first responder certification expires.

F. Failure to complete required continuing education shall result in suspension of the certification pending completion of the continuing education. Applicants may meet the teaching requirement by teaching under the supervision of an advanced first aid instructor. If the continuing education requirement is not met within one year from the suspension date, then the certification shall be revoked by the [~~Board of Coal Mining Examiners~~ BCME].

G. The division [~~of Mines~~] shall send notice of any suspension to the last known address of the certified person reported to the division in accordance with 4 VAC 25-20-20 I and to the last known employer address.

4 VAC 25-20-220. [~~Advanced~~] first aid instructor.

A. Applicants shall be certified as [~~a an advanced~~] first aid instructor by the American Red Cross, National Safety Council, Virginia Emergency Medical Services, or ~~other certified instructor~~ as otherwise approved by the Division of Mines chief. [Applicants shall also be certified in cardiopulmonary resuscitation by the American Heart Association or the American Red Cross.]

B. ~~The first aid instructor card shall be good for two years.~~

G. B. The holder of the certificate shall submit documentation to the division [~~of Mines~~] indicating that they have continued their certification as required by subsection A of this section ~~before the expiration of the card~~ or by teaching one initial or refresher first aid training course for DMME within a two-year period.

C. Failure to maintain a certified [~~advanced~~] first aid instructor's certification will result in suspension of [~~their Board of Coal Mining Examiners~~ the applicant's BCME] certification. Applicants may meet the teaching requirement by teaching under the supervision of [~~a an advanced~~] first aid instructor. If the certification is not renewed within one year from the suspension date, then the certification shall be revoked by the [~~Board of Coal Mining Examiners~~ BCME].

D. The division [~~of Mines~~] shall send notice of any suspension to the last known address of the certified person reported to the division in accordance with 4 VAC 25-20-20 I and the last known address of the employer.

4 VAC 25-20-230. Surface facilities foreman for shops, labs and warehouses.

A. Applicants shall possess one year work experience at a shop, lab or warehouse or appropriately related work experience approved by the Division of Mines chief.

B. This certification shall not be used in lieu of the surface foreman, prep plant foreman or dock foreman certifications.

B. Applicants shall pass the surface facilities foreman and gas detection examinations.

C. This certification shall not be used in lieu of any other certification.

4 VAC 25-20-240. Automatic elevator operator.

A. Applicants shall possess one year ~~actual~~ mining experience ~~working in and around a mine~~ or appropriately related work experience approved by the ~~Division of Mines~~ chief.

B. Applicants shall pass the automatic elevator operator and gas detection examinations.

B. C. The applicant shall obtain written permission from a mine official to have a representative from the division [~~of Mines~~] observe the applicant's operation of an automatic elevator at the mine. Permission shall be ~~presented~~ on company stationery, signed by the company official, and submitted to the division [~~of Mines~~] prior to the ~~visit~~ scheduled observation. The applicant shall demonstrate proper use of the equipment.

4 VAC 25-20-250. Gas detection qualification ~~for coal mining~~.

A. The applicant shall demonstrate the proper use of gas detection equipment ~~at the time of the examination or at the mine~~ and shall pass the gas detection examination.

B. ~~No~~ The general requirements of 4 VAC 25-20-20 shall not apply except the applicants shall complete Form DM-BCME-1.

4 VAC 25-20-255. General coal miner [(GCM) surface and underground].

A. Applicants employed in Virginia coal mines prior to January 1, 1996, who wish to become certified shall:

1. Meet the requirements of Part I (4 VAC 25-20-10 et seq.) of this chapter;
2. Submit a notarized work experience form verifying mining experience prior to January 1, 1996; and
3. Pass the gas detection examination if they are not already gas detection qualified [unless working only on the surface of a mine].

B. Applicants seeking certification after January 1, 1996, shall:

1. Meet the requirements of Part I (4 VAC 25-20-10 et seq.) of this chapter.
2. [~~Submit documentation to the Division of Mines verifying completion of new miner training, newly employed experienced miner training, or annual refresher training. The training shall include highlights of the coal mine safety laws of Virginia and the coal mine safety and health regulations of the Division of Mines and the Board of Coal Mining Examiners. The training shall include a demonstration of knowledge or passing of~~

~~a written examination on Virginia's coal mine safety laws and regulations. Complete training which shall include highlights of the coal mine safety laws of Virginia and the underground coal mine safety and health regulations of the division and the BCME. The training shall address surface mining requirements for the GCM Surface Certification or underground coal mining requirements for the GCM Underground Certification. The training shall include a demonstration of knowledge or passing of a written examination on Virginia's coal mine safety laws and regulations covering either surface or underground mining. First aid shall be included in the general coal miner training unless applicants submit new miner training or annual refresher training to meet first aid requirements.]~~

3. Submit Form DM-BCME-3, Verification of Training Completed for General Coal Miner Certification, prior to commencing work in a coal mine. The form shall be signed by the employee and the instructor and the date they sign will be the effective date of the General Coal Miner certification.

4. Pass the gas detection examination [unless working only on the surface of a mine].

4 VAC 25-20-259. BCME instructor.

A. Instructors conducting training used to meet requirements of the [~~Board of Coal Mining Examiners BCME~~] shall be certified unless otherwise approved in this chapter.

B. To become a certified instructor, the person shall:

1. Submit an application showing applicable mining or instructor experience.
2. Agree to monitoring and evaluation by division instructors and demonstrate the knowledge, skill and ability to conduct training.

C. Final approval for certification shall be based on an evaluation of performance.

D. Applicants shall maintain the certificate by teaching at least one approved certification course every two years.

E. The holder of the certificate shall submit documentation to the division [~~of Mines~~] indicating the required teaching has been completed.

F. Failure to recertify shall result in suspension of the certification pending completion of the required teaching. Applicants may meet the teaching requirement by teaching under the supervision of a certified instructor. If the teaching requirement is not met within one year from the suspension date, then the certification shall be revoked by the [~~Board of Coal Mining Examiners BCME~~].

G. The division [~~of Mines~~] shall send notice of any suspension to the last known address of the certified person reported to the division in accordance with 4 VAC 25-20-20 I and to the last known employer address.

PART III.

CERTIFICATION REQUIREMENTS FOR MINERAL MINING. (Repealed.)

4 VAC 25-20-260. Underground foreman. (Repealed.)

~~A. Applicants shall possess five years mining experience at an underground mineral mine or appropriately related work experience approved by the Division of Mineral Mining.~~

~~B. Applicants may be given three years credit for a degree in mining engineering or civil engineering or two years credit for a degree in mining technology or civil technology.~~

~~C. Applicants shall possess a valid first aid certificate which represents completion of a first aid course with a minimum of eight hours training.~~

4 VAC 25-20-270. Surface foreman. (Repealed.)

~~A. Applicants shall possess five years mining experience, at least one year at a surface mineral mine, or appropriately related work experience approved by the Division of Mineral Mining.~~

~~B. Applicants may be given three years credit for a degree in mining engineering or civil engineering or two years credit for a degree in mining technology or civil technology.~~

~~C. Applicants shall possess a valid first aid certificate which represents completion of a first aid course with a minimum of eight hours training.~~

4 VAC 25-20-280. Surface foreman, open pit (not applicable to mines with on-site blasting). (Repealed.)

~~A. Applicants shall possess five years mining experience, with at least one year at a surface mineral mine or appropriately related work experience approved by the Division of Mineral Mining.~~

~~B. Applicants may be given three years credit for a degree in mining engineering or civil engineering or two years credit for a degree in mining technology or civil technology.~~

~~C. Applicants shall possess a valid first aid certificate which represents completion of a first aid course with a minimum of eight hours training.~~

4 VAC 25-20-290. Surface blaster. (Repealed.)

~~Applicants shall possess one year blasting experience on a surface mineral mine under the supervision of a certified blaster or possess appropriately related work experience approved by the Division of Mineral Mining.~~

4 VAC 25-20-300. Underground blaster. (Repealed.)

~~Applicants shall possess two years of work experience in an underground mine with at least one year handling and using explosives underground or possess appropriately related work experience approved by the Division of Mineral Mining.~~

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4 VAC 25-20-310. Mineral mining electrician. (Repealed.)

A. ~~Applicants shall hold a valid journeyman electrical certification issued under Department of Housing and Community Development criteria or possess appropriately related work experience approved by the Division of Mineral Mining.~~

B. ~~Applicants shall complete training as required by 30 CFR 48 and submit documentation of such training to the Division of Mineral Mining.~~

C. ~~Employees of licensed electrical contractors having completed hazard training under 30 CFR 48 shall be allowed to complete electrical work at the mine.~~

4 VAC 25-20-320. Advanced first aid. (Repealed.)

A. ~~Applicants shall complete a 40-hour advanced first aid class taught by an approved advanced first aid instructor or possess appropriately related work experience approved by the Division of Mineral Mining.~~

B. ~~Subjects which shall be covered in the advanced first aid class are listed in 4 VAC 25-20-210.~~

4 VAC 25-20-330. First aid instructor. (Repealed.)

~~Applicants shall be certified as a first aid instructor by the American Red Cross or other certified instructor as approved by the Division of Mineral Mining.~~

PART IV.

ON-SITE EXAMINATION OF MINE FOREMAN.

4 VAC 25-20-340. Examinations.

A. ~~When a mine is issued a closure order or violation related to a hazardous roof or ventilation condition, the mine foreman may be examined to determine his knowledge of the roof control plan and ventilation requirements in the area of his responsibility at the mine. The examination shall be conducted [on-site with consideration given to the duties and responsibilities of the foreman on the surface at the mine site on the day the violation or closure order is issued].~~

B. ~~The chief shall develop a pool of no more than 50 questions addressing the areas listed in subsection D of this section, which shall be approved by the [Board of Coal Mining Examiners BCME. These questions shall be available on request and should be incorporated as part of continuing education and other training for mine foremen.]~~

C. ~~A division [of Mines] inspector shall administer a written examination using 10 questions from the approved pool. The foreman shall answer eight out of 10 questions correctly to demonstrate thorough understanding of the mine's roof or ventilation plans. [The inspector shall select questions from the pool which are most relevant to the conditions or practices resulting in the order of closure or violation.]~~

D. ~~The mine foreman may refer to roof control, ventilation, bleeder, or other plans available to him when examined at the surface of an underground mine. [He may refer to plans or~~

~~other information available to him underground when he is examined underground.] Any mine foreman performing tasks requiring certification or otherwise directing work in ventilation or roof support shall be able to provide the following information:~~

1. ~~Describe the roof control requirements set out in the mine's roof control plan in the area of the foreman's responsibility.~~

2. ~~Describe the frequency and methods of any required testing of roof, face and ribs in the area of the foreman's responsibility.~~

3. ~~Show how the roof control practices in the area of the foreman's responsibility comply with the requirements of the roof control plan.~~

4. ~~Describe the frequency and contents of any pre-shift, on-shift, and when applicable, weekly examinations of mine ventilation required in the area of the foreman's responsibility.~~

5. ~~Describe the requirements for action under the mine's fan stoppage plan in the area of the foreman's responsibility.~~

6. ~~Describe any requirements for face ventilation controls used in the area of the foreman's responsibility.~~

7. ~~Describe any requirements under the mine bleeder plan in the area of the foreman's responsibility.~~

8. ~~Describe the requirements for mine ventilation controls such as regulators, ventilation doors, and other similar controls in the area of the foreman's responsibility.~~

9. ~~Describe the minimum volume of air required in the area of the foreman's responsibility.~~

10. ~~Describe the minimum requirements for quality of air (oxygen, carbon dioxide, and methane) in the area of the foreman's responsibility.~~

11. ~~Describe the procedure to follow in the area of the foreman's responsibility upon an accumulation of methane at:~~

a. ~~1.0% or greater not less than 12 inches from the roof, face, ribs, or floor;~~

b. ~~Greater than 1.0% in a split that ventilates any group of active areas;~~

c. ~~1.5% (or 2.0% as applicable) in a split of air returning from areas where coal is being extracted or is capable of being extracted; or~~

d. ~~5.0% or greater in any area of the mine.~~

E. ~~The division [of Mines] inspector completing an examination of a foreman under this part shall discuss the results of the exam with the foreman before leaving the mine.~~

4 VAC 25-20-350. Actions brought before the [Board of Coal Mining Examiners BCME].

A. The examination shall be the basis of any enforcement action brought before the board for failure to display a thorough understanding of the roof control plan and ventilation for the area of the mine for which he is responsible.

B. Refusal of the foreman to submit to examination will constitute just cause to be brought before the board and may result in suspension of certification and revocation of certification by the board.

PART V.

GUIDELINES FOR ON-SITE EXAMINATION OF A MINE FOREMAN.

4 VAC 25-20-360. Purpose and scope.

A. Section 45.1-161.35 A of the Code of Virginia provides for on-site examination of a mine foreman by a mine inspector to determine that the foreman has a thorough understanding of the roof control plan and ventilation for the area of the mine for which he is responsible. The procedures followed by the inspector in conducting an on-site examination of a mine foreman must be consistent with requirements in Part IV (4 VAC 25-20-340 et seq.) of this chapter. This includes the use of questions approved by the board which are administered in accordance with this chapter.

B. The purpose of examining a mine foreman is to measure and evaluate his knowledge and understanding of mine roof control and ventilation for the areas of his responsibility. Mine foremen are required to demonstrate this and other elements of mine safety when they become certified to act as mine foremen in the Commonwealth of Virginia.

C. An on-site examination by the mine inspector will only be initiated when there is just cause that the foreman has failed to maintain safe roof control and ventilation for his area of responsibility at the mine. Just cause for an on-site examination of a mine foreman by a mine inspector must be based on issuance of an order of closure or violation related to a hazardous condition pertaining to roof control or ventilation.

4 VAC 25-20-370. Determination by the inspector to conduct an on-site examination.

A. An order of closure issued in accordance with § 45.1-161.91 of the Code of Virginia, or notice of violation issued in accordance with § 45.1-161.90 of the Code of Virginia that relate to roof control or ventilation hazards, shall be reviewed at the time it is issued for evidence of mine foreman negligence, which could require on-site examination of the mine foreman by the mine inspector. In making the determination whether or not to conduct an on-site examination, the mine inspector must establish the following:

1. The roof or ventilation hazards cited resulted from performing his duties with less than ordinary care. Ordinary care means the use of such care as a reasonably prudent and careful mine foreman could use under similar circumstances.

2. The mine foreman knew or should have known of the existence of the hazardous condition.

B. When these criteria have been established, the mine inspector will undertake an on-site examination of the mine foreman.

4 VAC 25-20-380. Notification of intent to conduct an on-site examination.

A. The mine inspector will notify the mine foreman of an order of closure or notice of violation for a hazardous condition related to roof control or ventilation in the area of the foreman's responsibility. The inspector will let him know that he intends to invoke the provision of the law for an on-site examination of the foreman.

B. The following approach will be taken by the mine inspector in giving notice to the mine foreman:

1. The notification will be given by the inspector in private.

2. The inspector will be courteous and professional in explaining the reason for the on-site examination.

3. The inspector will explain the procedures he will follow in conducting the on-site examination.

4 VAC 25-20-390. Procedures for conducting on-site examination.

A. The on-site examination of the mine foreman will be handled in such a way as to not prevent the foreman from performing his duties. The on-site examination must be conducted, to the extent possible, [~~by the end of the shift or~~] immediately on arrival outside on the surface on the day the order of closure or notice of violation is issued.

B. These procedures will be followed in conducting the on-site examination:

1. The examination will be administered in a written format.

2. Ten questions selected by the mine inspector will be written out by the mine inspector on paper for use in the on-site examination.

3. The mine inspector will choose the 10 questions from the approved pool.

4. The mine inspector will choose the 10 questions related to the condition or practice being cited by the order of closure or notice of violation.

5. The mine foreman will be provided sufficient time to write out his answers to the questions. He may refer to plans or other information available to him. However, no other person may assist him in answering the questions.

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The mine inspector will remain with the mine foreman during the written examination.

[~~6. The examination may be administered underground at the dinner hole or other suitable location. If necessary, it can be conducted on the surface promptly upon the mine foreman's arrival outside.~~]

[~~7. 6.~~]. The mine inspector will read the questions being asked to the mine foreman if requested and should answer any questions from the mine foreman which could help to clarify his understanding of the questions.

[~~8. 7.~~] The mine foreman may respond to the questions orally. In this case, the mine inspector will record the response of the mine foreman to each question on the examination form, have the foreman sign the form as accurately representing the response, and provide the mine foreman a copy promptly upon completion.

4 VAC 25-20-400. Results of the on-site examination.

A. The mine inspector will promptly check the responses given by the mine foreman for each of the 10 questions asked. At least eight of the 10 questions must be answered correctly to successfully complete the on-site examination. The results of the on-site examination will be reviewed promptly with the mine foreman. A copy of the written on-site examination completed by the mine foreman will be provided to him promptly by the mine inspector.

B. The circumstances related to the on-site examination of the mine foreman, including pass or fail results, will be described in the inspector's report, and will be reviewed as part of the closeout of the scheduled inspection activity for the mine.

C. The chief will notify the mine foreman and mine operator in writing of the petition to the BCME for a formal hearing. Should a petition for a hearing be requested, the hearing would be conducted in accordance with Part VI (4 VAC 25-20-410 et seq.) of this chapter.

[D. If a foreman successfully appeals a violation which resulted in an on-site evaluation and further establishes to the BCME that he had a thorough knowledge of such plans, then the failure of the on-site examination shall not be used in any other revocation against the foreman.]

PART VI. HEARING PROCEDURES.

4 VAC 25-20-410. Prehearing procedures.

A. Any person wishing to bring any matter before the board shall use these procedures except for good cause shown before the board.

B. Petitions for action by the board shall be in writing, shall state the grounds for the petition before the board, shall state the relief sought, and shall include any applicable supporting material, as set out below:

1. For certification to be revoked in accordance with § 45.1-161.35 B of the Code of Virginia, the petitioner or

petitioners shall submit specific charges which set forth the reasons why the certification should be revoked.

2. To request a reexamination for a certificate revoked pursuant to § 45.1-161.35 of the Code of Virginia, the holder of the revoked certificate shall submit a request for reexamination with evidence that the cause for revocation of his certificate has ceased to exist.

3. For other petitions before the board, the petitioner shall submit a written petition explaining the request being made and the relief being sought.

C. The division [~~of Mines~~] shall assign a docket number to all petitions before the board. The division shall provide written notice to all parties to any proceeding in accordance with § 45.1-161.35 D of the Code of Virginia and the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

D. Persons wishing to address the board, except those making a petition for board action, will be provided an opportunity at the conclusion of the board meeting.

E. Persons shall make any request for change to the board's regulations in accordance with the [~~Department of Mines, Minerals and Energy DMME~~] and the board's Public Participation Guidelines, 4 VAC 25-10-10 et seq.

4 VAC 25-20-420. Conduct of formal hearings.

A. All hearings shall be heard during scheduled meetings of the board, on a case-by-case basis, in the order the petitions appear on the docket.

B. Hearings shall be held in the [~~Department of Mines, Minerals and Energy DMME~~], Big Stone Gap office, unless a different location is agreed to by mutual consent of the parties to the hearing and the Chairman of the [~~Board of Coal Mining Examiners BCME~~].

C. Hearings requiring case decisions shall be recorded.

D. Each party may be represented by an individual of choice or legal counsel.

E. The chairman, with the concurrence of the majority of the board present at a hearing, shall have the authority to limit evidence to that relevant to the issues. Any proofs, rebuttal, and cross examination which are immaterial, insubstantial, privileged, or repetitive may be excluded.

F. The chairman may continue, adjourn and reconvene the hearing as necessary.

G. Decisions of the board shall be made based on a preponderance of the evidence placed before it.

4 VAC 25-20-430. Post-hearing procedures.

A. The board may require submittal of briefs from the parties to a hearing concerning the issues of record before the board. The board shall schedule submittal of briefs at the time of the hearing.

B. *Transcripts of the proceeding shall be provided on request to any party to the hearing at cost. Motions to correct any transcript shall be filed within 10 working days after delivery of the transcript, and shall be ruled on by the chief within 10 working days after his receipt of the motion. Any corrections shall be sent to all parties to the hearing who have received a copy of the transcript.*

C. *Decisions shall be rendered in writing and communicated to parties to the proceeding in accordance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).*

VA.R. Doc. No. R97-607; Filed July 2, 1997, 8:40 a.m.

Virginia Gas and Oil Board

Title of Regulation: 4 VAC 25-160-10 et seq. Virginia Gas and Oil Board Regulations (amending 4 VAC 25-160-10 through 4 VAC 25-160-70, 4 VAC 25-160-100 through 4 VAC 25-160-150, and 4 VAC 25-160-200; repealing 4 VAC 25-160-160, 4 VAC 25-160-170, 4 VAC 25-160-180, and 4 VAC 25-160-210 through 4 VAC 25-160-230).

Statutory Authority: § 45.1-361.15 of the Code of Virginia.

Effective Date: August 20, 1997.

Summary:

The amendments incorporate recommendations resulting from the Executive Order 15 (94) review and reflect legislative changes to the Virginia Gas and Oil Act.

The amendments include:

- Specifying information to be included with notices of hearings before the board instead of requiring the full application be included with the notices;
- Changing the notification for amendments to pooling orders to require only affected persons be notified;
- Clarifying the requirement for use of the State Plane Coordinate System in descriptions of pool and unit boundaries instead of using a metes and bounds description;
- Adding the requirement to account for pending permit applications as well as existing permits in requests for exceptions to statewide spacing;
- Extending the deadline for operators to file the results of people's elections under forced pooling orders from 20 to 45 days after the close of the election period;
- Removing the requirement for operators to file drilling and operating costs reports if no one elects to share in the operation of a well under a forced pooling order;
- Adding information on payments to escrow agents to recordkeeping requirements;

- Simplifying the requirements to transfer operation of a unit under a forced pooling order to a new company; and
- Extending the sunset date for board orders from one to two years if there is no commencement of activity in the unit.
- Requiring cost data provided to participating and nonparticipating operators be itemized.

Summary of Public Comment and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from B. Thomas Fulmer, Department of Mines, Minerals and Energy, P.O. Box 1416, Abingdon, VA 24212, telephone (540) 676-5423.

CHAPTER 160.

VIRGINIA GAS AND OIL BOARD REGULATIONS.

4 VAC 25-160-10. Definitions.

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

"Act" means the Virginia Gas and Oil Act of 1990, Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1 of the Code of Virginia.

"Applicant" or "petitioner" means a person who files an application, petition, appeal or other request for board action.

"Complete application" means all the materials required to be filed by the applicant under this chapter.

"Department" means the Department of Mines, Minerals and Energy.

"Director" means the Director of the Department of Mines, Minerals and Energy or his authorized agent.

"Directional survey" means a well survey that measures the degree of [~~departure~~ deviation] of a hole, or distance, from the vertical and the direction of departure.

"Division" means the Division of Gas and Oil of the Department of Mines, Minerals and Energy.

"Election" means the performance of an act within the time established or required by statute, order or regulation. An election required to be made by board order or regulation must be in writing and (i) be personally delivered to the person or agent of the person described in the order or regulation by the date established or required, or (ii) be mailed to the person or agent of the person described in the order or regulation at the address stated therein and be postmarked by the United States Postal Service before midnight on the date established or required.

"Field" means the general area underlain by one or more pools.

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"Gas/oil ratio" means the product of the number of Mcf of natural gas produced from a well divided by the number of barrels of oil produced from the well as determined by a gas/oil ratio test.

"Gas well" means any well which produces or appears capable of producing a ratio of 6,000 cubic feet (6 Mcf) of gas or more to each barrel of oil, on the basis of a gas-oil ratio test.

"Inclination survey" means a well survey to determine the deviation, using the surface location of the well as the apex, of a well bore from the true vertical beneath the apex on the same horizontal subsurface plane.

"Mcf" means, when used with reference to natural gas, 1,000 cubic feet of gas at a pressure base of 14.73 pounds per square inch gauge and a temperature base of 60°F.

~~"Motes and bounds" means the boundary lines of land, with their terminal points, angles and distances.~~

~~"Mine development plan" or "Registered operations plan" means a plan permit or license application filed with the Division of Mines or the Division of Mined Land Reclamation as part of the licensing or permitting for the legal permission to engage in extraction of coal resources.~~

"Oil well" means any well which produces or appears capable of producing a ratio of less than 6,000 cubic feet (6 Mcf) of gas to each barrel of oil, on the basis of a gas-oil ratio test.

"Pooling" means the combining of all interests or estates in a gas, oil or coalbed methane drilling unit for the development and operations thereof. Pooling may be accomplished either through voluntary agreement or through a compulsory order of the board.

"Respondent" means a person named in an application, petition, appeal or other request for board action and against whom relief is sought by the applicant, or a person who under the terms of a board order, is required to make an election.

"Unit operator" means the gas or oil owner designated by the board to operate in or on a pooled unit.

4 VAC 25-160-20. Authority and applicability.

A. This chapter is promulgated by the Virginia Gas and Oil board pursuant to § 45.1-361.15 of the Code of Virginia.

~~B. This chapter replaces the emergency Conservation Regulations for Gas and Oil, 4 VAC 25-160-10 et seq.~~

~~C. B.~~ As provided for in the Virginia Acts of Assembly, 1990, Chapter 92, all field rules and orders issued pursuant to the provisions of the Oil and Gas Act of 1982, Chapter 22 (§ 45.1-286 et seq.) of Title 45.1 of the Code of Virginia shall remain in force and effect until modified or revoked pursuant to the provisions of the Gas and Oil Act of 1990, Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1 of the Code of Virginia. The requirements of this chapter are in addition to requirements of field rules and orders.

4 VAC 25-160-30. Administrative provisions.

A. The Virginia Gas and Oil Board shall meet on the third Tuesday of each calendar month unless no action is required by the board or unless otherwise scheduled by the board. All hearings shall be scheduled in accordance with the requirements for notice by publication in § 45.1-361.19 of the Code of Virginia. Except where otherwise established by the Act, the board may establish deadlines for filing materials for meetings or hearings scheduled on other than the third Tuesday of each month.

B. Applications to the board must be filed by the following deadlines:

1. All applications, petitions, appeals or other requests for board action must be received by the division at least 30 calendar days prior to the regularly scheduled meeting of the board. *If the 30th day falls on a weekend or a legal holiday, the deadline shall be the prior business day.*

2. When required, *two copies* of the following material must be filed with the division at least seven calendar days prior to the regularly scheduled meeting of the board in order for the application to be considered a complete application:

a. The affidavit demonstrating that due diligence was used to locate and serve persons in accordance with § 45.1-361.19 of the Code of Virginia and 4 VAC 25-160-40 of this chapter; and

b. Proof of notice by publication in accordance with 4 VAC 25-160-40 D of this chapter.

C. A complete application that is not filed by the deadlines of this subsection shall be carried over to the next scheduled meeting of the board. A submission that does not contain a complete application shall not be considered by the board until the application is complete.

D. The division shall assign a docket number to each application or petition [at the time of filing, and shall notify the applicant of the docket number]. The docket number shall be referenced when submitting material regarding the application or petition.

E. In addition to the other requirements of this chapter, applications to the board shall meet the following standards:

1. Each application for a hearing before the board shall be headed by a caption which shall contain a heading including:

a. "Before the Virginia Gas and Oil board";

b. The name of the applicant;

c. The relief sought; and

d. The docket number assigned by the division.

2. Each application shall be signed by the applicant, an authorized agent of the applicant, or an attorney for the applicant, certifying that, "The foregoing application to

the best of my knowledge, information, and belief is true and correct."

3. Exhibits shall be identified by the docket number and an exhibit number and may be introduced as part of a person's presentation.

4. Persons shall submit 10 sets of each application and exhibit. Each person offering exhibits into evidence shall also have available a reasonably sufficient number of exhibits for other persons who are subject to the provisions of §§ 45.1-361.19 and 45.1-361.23 of the Code of Virginia and are expected to be in attendance at the hearing.

F. Applications for the establishment of units, spacing or pooling shall be accompanied by a \$100 nonrefundable fee, payable to the Treasurer of Virginia.

G. All parties in any proceeding before the board are entitled to appear in person or *be represented* by counsel or other qualified representative, as provided for in the Administrative Process Act, § 9-6.14:1 et seq. of the Code of Virginia.

4 VAC 25-160-40. Notice of hearings.

~~A. Each applicant for a hearing to establish field rules, drilling units or who seeks to pool interests in a drilling unit under §§ 45.1-361.20, 45.1-361.21 or 45.1-361.22 of the Code of Virginia shall provide notice in accordance with § 45.1-361.19 of the Code of Virginia.~~

B. A. Each applicant for a hearing to establish an exception to statewide spacing under § 45.1-361.17 of the Code of Virginia shall provide notice by certified mail, return receipt requested, to all gas, oil, coal or mineral owners having an interest underlying any tract located within the distances provided in § 45.1-361.17 of the Code of Virginia or the distance to the nearest well completed in the same pool, whichever is less. Each applicant for a hearing to establish an exception to a well location provided for in a drilling unit established by an order of the board shall provide notice by certified mail, return receipt requested, to all gas, oil, coal or mineral owners having an interest underlying the unit where the exception is requested.

~~C. B. Each applicant shall include, in or with the mailed notice of the hearing, a copy of his application or petition to the board, required under § 45.1-361.19 of the Code of Virginia, the following information:~~

1. *The name and address of the applicant and the applicant's counsel, if any;*
2. *In the case of an application to vacate or amend an order, identification of the order to be vacated or amended;*
3. *A statement of the relief sought and proposed provisions of the order or proposed order;*
4. *Citations of statutes, rules, orders and decided cases supporting the relief sought;*

5. *A statement of the type of well or wells (gas, oil or coalbed methane gas);*

6. a. *For a pooling order, the notice should include: a plat showing the size and shape of the proposed unit and boundaries of tracts within the unit. The location of the proposed unit shall be shown in accordance with the Virginia Coordinate System of 1927, as defined in Chapter 17 (§ 55-287 et seq.) of Title 55 of the Code of Virginia, also known as the State Plane Coordinate System. The proposed unit shall also be located by taking the measured distance in feet from the unit to the nearest 2.5 minute longitude line to the east and the nearest 2.5 minute latitude line to the north on the 7.5 minute [~~(1:24,000)~~ (1:24,000)] topographic map, with a notation of the 7.5 minute topographic map name and series. The plat containing the percentage of acreage in each tract shall be certified by a licensed land surveyor or a licensed professional engineer and attested by the applicant as to its conformity to existing orders issued by the board;*

b. *For a field rule, the notice should include: a description of the pool or pools in the field, the boundaries of the field, information on the acreage and boundaries of the units proposed to be in the field and any proposed allowable production rates; or*

c. *For a location exception, the notice should include: a description of the proposed well location in relation to other wells within statewide spacing limits or in relation to the allowable area for drilling within a unit;*

7. *A description of the interest or claim of the respondent being notified;*

8. *A description of the formation or formations to be produced;*

9. *An estimate of the amount of reserves of the unit;*

10. *An estimate of the allowable costs in accordance with 4 VAC 25-160-100; and*

11. *How interested persons may obtain additional information or a complete copy of the application.*

~~D. C. When the identity or location of any person to whom notice is required to be given in accordance with subsection A or B of this section is unknown at the time the applicant applies for a hearing before the board, the applicant for the hearing shall cause a notice to be published in a newspaper of general circulation in the county, counties, city, or cities where the land or the major portion thereof which is the subject of the application is located. The notice shall include:~~

1. The name and address of the applicant;
2. A description of the action to be considered by the board;
3. A map showing the general location of the area which would be affected by the proposed action or a

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description which clearly describes the location or boundaries of the area which would be affected by the proposed action sufficient to enable local residents to identify the area;

4. The date, time and location of the hearing at which the application is scheduled to be heard; and

5. ~~Where~~ How interested persons may obtain additional information or a complete copy of the application.

~~E. D.~~ Notice of a hearing made in accordance with § 45.1-361.19 of the Code of Virginia or this section shall be sufficient, and no additional notice is required to be made by the applicant upon a postponement or continuance of the hearing.

~~F. E.~~ Each applicant for a hearing to modify an order established under [~~§ 45.1-361.20~~ § 45.1-361.21 or § 45.1-361.22] of the Code of Virginia shall provide notice in accordance with § 45.1-361.19 of the Code of Virginia to each person having an interest underlying the tract or tracts ~~in the area~~ to be affected by the proposed modification.

~~G. F.~~ An applicant filing a petition to modify a forced pooling order established under § 45.1-361.21 or § 45.1-361.22 of the Code of Virginia to change the unit operator based on a change of ~~in~~ the corporate name of the unit operator; a change of ~~in the~~ corporate structure of the unit operator; or a transfer of the unit operator's interests to any single subsidiary, parent or successor by merger or consolidation is not required to provide notice. ~~Each other applicant~~ Other applicants for a hearing to modify a forced pooling order shall provide notice in accordance with § 45.1-361.19 of the Code of Virginia to each ~~person having an interest in the unit which~~ respondent named in the order to be modified whose interest may be affected by the proposed modification.

4 VAC 25-160-50. Applications for field rules.

A. Each application filed under § 45.1-361.20 of the Code of Virginia to establish or modify a field rule, a drilling unit or drilling units shall contain:

1. The name and address of the applicant and the applicant's counsel, if any;
2. In the case of an application to vacate or amend an order, identification of the order to be vacated or amended;
3. A statement of the relief sought and the proposed provisions of the order or a proposed order;
4. Citations of statutes, rules, orders, and decided cases supporting the relief sought;
5. In the case where a field rule is proposed to be established or modified:
 - a. A statement of the type of field (gas, oil or coalbed methane gas);

b. A description of the proposed formation or formations subject to the petition; and

c. A description of the pool or pools included in the field, based on geological and technical data, including ~~a metes and bounds description of the boundaries of the pool or pools and field, referenced to and located on a United States Geological Survey, 7.5 minute topographic map or maps. Effective October 1, 1992, the Virginia Coordinate System of 1927 as defined in Chapter 17 (§ 55-287 et seq.) of Title 55 of the Code of Virginia, also known as the State Plane Coordinate System, shall be used to describe and locate the boundaries of the pool or pools. Applicants are encouraged to use the State Plane Coordinate System prior to October 1, 1992; shown in accordance with the Virginia Coordinate System of 1927, as defined in Chapter 17 (§ 55-287 et seq.) of Title 55 of the Code of Virginia, also known as the State Plane Coordinate System. The boundaries of the pool or pools and field shall also be located by taking the measured distance in feet from the unit to the nearest 2.5 minute longitude line to the east and the nearest 2.5 minute latitude line to the north on the 7.5 minute [(1:24,000) (1:24,000)] topographic map, with a notation of the 7.5 minute topographic map name and series;~~

6. In the case where a drilling unit or units are proposed to be established or modified:

a. A statement of the acreage to be embraced within each drilling unit;

b. A description of the formation or formations to be produced by the well or wells in the unit or units; and

c. ~~A metes and bounds description of the~~ The boundaries of the drilling unit or units, ~~referenced to and located on a United States Geological Survey, 7.5 minute topographic map or maps in accordance with the standards for use of the State Plane Coordinate System of shown in accordance with subdivision A 5 c of this section;~~

7. A statement of the amount of acreage to be included in the order;

8. A statement of the proposed allowable production rate or rates and supporting documentation, if applicable;

9. Evidence that any proposal to establish or modify a unit or units for coalbed methane gas will meet the requirements of § 45.1-361.20 C of the Code of Virginia;

10. An affidavit demonstrating that due diligence was used to locate and serve persons in accordance with § 45.1-361.19 of the Code of Virginia and 4 VAC 25-160-40 of this chapter; and

11. When required, proof of notice by publication in accordance with 4 VAC 25-160-40 D of this chapter; and

12. Copies of proposed exhibits.

4 VAC 25-160-60. Applications for exceptions to minimum well spacing requirements.

A. Applications for an exception to statewide spacing under § 45.1-361.17 of the Code of Virginia or under a field rule issued by the board shall contain the following:

1. The name and address of the applicant and the applicant's counsel, if any;
2. In the case of an application for an exception to spacing established in a field rule, identification of the order governing spacing in the field;
3. A statement of the proposed location of the well in relation to ~~permitted wells permitted or for which a permit application is pending before the Division of Gas and Oil at the time of filing~~ within the distances prescribed in § 45.1-361.17 of the Code of Virginia;
4. A description of the formation or formations to be produced by the well proposed for alternative spacing and the ~~formation or formations produced by neighboring wells identified in subdivision 3 of this section;~~
- ~~5. A description of the spacing of other wells producing from the formation or formations to be produced by the well;~~
- ~~6. 5. A description of the conditions justifying the alternative spacing;~~
- ~~7. 6. An affidavit demonstrating that due diligence was used to locate and serve persons in accordance with 4 VAC 25-160-40 of this chapter; and~~
- ~~8. 7. When required, proof of notice by publication in accordance with 4 VAC 25-160-40 D of this chapter; and.~~
- ~~9. Copies of proposed exhibits.~~

4 VAC 25-160-70. Applications to pool interests in a drilling unit: conventional gas or oil or no conflicting claims to coalbed methane gas ownership.

A. Applications filed under § 45.1-361.21 of the Code of Virginia to pool interests in a drilling unit for conventional gas or oil or for coalbed methane gas where there are no conflicting claims to ownership of the coalbed methane gas, except as provided for in subsection B of this section, shall contain the following:

1. The name and address of the applicant and the applicant's counsel, if any;
2. In the case of an application to vacate or amend an order, identification of the order to be vacated or amended;
3. A statement of the relief sought and proposed provisions of the order or a proposed order;
4. Citations of statutes, rules, orders, and decided cases supporting the relief sought;
5. A statement of the type of well or wells (gas, oil or coalbed methane gas);

6. The permit number or numbers, if any have been issued;

~~7. A metes and bounds description of area to be pooled;~~

~~8. 7. A [map] plat showing the size and shape of the proposed unit and boundaries of tracts within the unit, which effective October 1, 1992, shall be referenced to the State Plane Coordinate System, shown in accordance with the Virginia Coordinate System of 1927, as defined in Chapter 17 (§ 55-287 et seq.) of Title 55 of the Code of Virginia, also known as the State Plane Coordinate System. The proposed unit shall also be located by taking the measured distance in feet from the unit to the nearest 2.5 minute longitude line to the east and the nearest 2.5 minute latitude line to the north on the 7.5 minute [(4-24,000) (1:24,000)] topographic map, with a notation of the 7.5 minute topographic map name and series. Also included shall be the names of owners of record of the tracts, and the percentage of acreage in each tract to the total acreage of the unit, certified by a licensed land surveyor or a licensed professional engineer and attested by the applicant as to its conformity to existing orders issued by the board;~~

~~9. 8. A description of the status of interests to be pooled in the unit at the time the application is filed;~~

~~10. 9. For an application to pool a coalbed methane gas unit, a statement of the percentage of the total interest held by the applicant in the proposed unit at the time the application for the hearing is filed;~~

~~11. 10. A statement of the names of owners and the percentage of interests to be escrowed under § 45.1-361.21 D of the Code of Virginia for each owner whose location is unknown at the time the application for the hearing is filed;~~

~~12. 11. A description of the formation or formations to be produced;~~

~~13. 12. An estimate of production over the life of well or wells, and, if different, an estimate of the recoverable reserves of the unit;~~

~~14. An estimate of the amount of reserves of the unit;~~

~~15. 13. An estimate of the allowable costs in accordance with 4 VAC 25-160-100 of this chapter;~~

~~16. 14. An affidavit demonstrating that due diligence was used to locate and serve persons in accordance with § 45.1-361.19 of the Code of Virginia and 4 VAC 25-160-40 of this chapter; and~~

~~17. 15. When required, proof of notice by publication in accordance with 4 VAC 25-160-40 D of this chapter; and.~~

~~18. Copies of proposed exhibits.~~

B. Applications to amend an order pooling interests in a drilling unit may be filed by written stipulation of all persons affected. The application is not required to contain the information specified in subsection A of this section, but shall

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contain the proposed amended language to the order, shown by interlineation.

C. After the time for election provided in any pooling order has expired, the unit operator shall file an affidavit with the board stating whether or not any elections were made. If any elections were made, the affidavit shall name each respondent making an election and describe the election made. ~~If The affidavit shall state if no elections were made or if any response was untimely, the affidavit shall so state.~~ The affidavit shall be accompanied by a proposed supplemental order to be made and recorded to complete the record regarding elections. The affidavit and proposed supplemental order shall be filed by the unit operator within ~~20~~ 45 days after of the last day on which a timely election could have been delivered or mailed, or within ~~20~~ 45 days after of the last date for payment set forth in the pooling order, whichever occurs last. The applicant shall mail a true and correct copy of any supplemental order to all persons identified in the supplemental order.

4 VAC 25-160-100. Allowable cost which may be shared in pooled gas or oil operations.

A. The unit operator of a pooled unit may share all reasonable costs of operating the unit, including a reasonable supervision fee, with other participating and nonparticipating operators, as provided for in § 45.1-361.21 of the Code of Virginia, which may include:

1. Direct costs:
 - a. Ecological and environmental;
 - b. Rentals and royalties;
 - c. Labor;
 - d. Employee benefits;
 - e. Material;
 - f. Transportation;
 - g. Services;
 - h. Equipment and facilities furnished by the unit operator;
 - i. Damages and losses to joint property;
 - j. Legal expenses;
 - k. Taxes;
 - l. Insurance;
 - m. Abandonment and reclamation;
 - n. Communications; and
 - o. Other expenditures.
2. Indirect charges:
 - a. Drilling and production operations;
 - b. Major construction; and

c. Catastrophe.

B. Where there are conflicting royalty claims to coalbed methane gas, the unit operator of a forced pooled coalbed methane gas unit shall deposit proceeds in accordance with § 45.1-361.22 of the Code of Virginia, to be determined at the wellhead.

C. Where there are conflicting claims and one or more persons have elected to become participating or nonparticipating operators, the unit operator of a forced pooled coalbed methane gas unit shall escrow net proceeds after deduction for royalty and other costs consistent with the terms of this chapter and the board's order regarding the unit.

D. In any dispute which may arise regarding a unit operator's costs, the unit operator shall be entitled to the benefit of a presumption of reasonableness where it is shown that the types of costs being disputed are, by custom and practice, customary and usual within the industry. The unit operator shall not be entitled to a presumption of reasonableness of the amount of the costs being disputed.

E. Unless one or more respondents elect to participate or elect to be a nonparticipating operator on a carried basis, the unit operator shall have no obligation to report costs after the expiration of the election period.

4 VAC 25-160-110. Recordkeeping.

A. Each unit operator shall maintain records of production, income, payments made to lessors *and escrow agents, any suspended payments*, and other information prescribed by the board; until the later of:

1. When the permits for all wells in the unit have been released by the department;
2. Twenty-four months after all escrowed funds for competing claims to ownership of coalbed methane gas in the unit have been paid out under order of the board; or
3. When so ordered by the board.

B. Each unit operator shall maintain [*itemized*] records of all costs charged to participating or nonparticipating operators until the later of:

1. Twenty-four months after all costs attributable to participating or nonparticipating operators have been settled and paid; or
2. When so ordered by the board.

C. Upon transfer of the right to conduct operations in a pooled drilling unit to a new unit operator, the old unit operator shall transfer all records required to be maintained in accordance with this section to the new unit operator. The old unit operator will not be released from responsibility as the unit operator until he has submitted, to the board, evidence that the records have been received by the new unit operator.

D. In the event a unit operator wishes to terminate its legal existence and the unit is not transferred to a new unit operator, or when the permit for any well in the unit has been revoked and the bond forfeited by the department, the unit operator shall transfer, to the board, all records required to be maintained in accordance with this section.

4 VAC 25-160-120. Applications to change the unit operator for a unit established by order of the board.

~~A. The approval of the board is not required to sell, assign or otherwise convey an operator's ownership interest in a unit or group of units unless the operator was appointed by board order as the unit operator.~~

~~B. Voluntary transfer A. Transfer of the right to operate a unit established by the board may must be requested upon approved by the board prior to the transfer of unit operations to a new operator.~~

1. For a voluntary transfer, the proposed new unit operator shall file written notification of the proposed transfer of operations and request the board to amend the order to reflect the transfer. The notification shall include, but not be limited to:

- ~~1. The name and address of the existing unit operator;~~
- ~~2. The name and address of the proposed new unit operator;~~
- ~~3. Written approval from the existing unit operator;~~
- ~~4. Identification of the order to be amended;~~
- ~~5. A description of any changes in the percentage of interests in each tract pooled in the unit, including a statement of the percentage of interest held by the proposed new unit operator if the unit is for coalbed methane gas;~~
- ~~6. A description of any other changes to unit operations to be implemented by the proposed new unit operator;~~
- ~~7. An affidavit demonstrating that due diligence was used to locate and serve persons in accordance with 4 VAC 25-160-40 of this chapter; and~~
- ~~8. Copies of proposed exhibits.~~

~~C. Involuntary 2. An involuntary transfer of the right to operate a unit established by board order may be requested by an applicant or considered by the board on its own motion if the unit operator has not continued gas or oil operations of the unit with due diligence, or the permit for any well in the unit has been revoked by the department. For an involuntary transfer, the proposed new unit operator shall file a written application to transfer the operations, including, but not limited to:~~

~~B. The request for a transfer shall include:~~

- ~~1. The name and address of the existing unit operator;~~
- ~~2. The name and address of the proposed new unit operator;~~

~~3. Identification of the order which is sought to be amended;~~

~~4. A detailed statement of the facts supporting the removal of the existing operator;~~

~~5. A description of any changes in the percentage of interests in each tract pooled in the unit, including a statement of the percentage of interest held by the proposed new unit operator if the unit is for coalbed methane gas;~~

~~6. A description of any other changes to unit operations to be implemented by the proposed new unit operator;~~

~~7. An affidavit demonstrating that due diligence was used to locate and serve persons in accordance with 4 VAC 25-160-40 of this chapter; and~~

~~8. Copies of proposed exhibits.~~

~~3. Written approval from the existing unit operator, or a detailed statement of the facts supporting the removal of the existing operator; and~~

~~4. Identification of the order to be amended.~~

~~C. The notice of the board hearing shall be provided under § 45.1-361.19 B of the Code of Virginia.~~

4 VAC 25-160-130. Appeals of the director's decisions.

A. Appeals of the director's decisions shall be filed in writing, at the office of the division, in accordance with §§ 45.1-361.23 and 45.1-361.36 of the Code of Virginia.

B. A petition to appeal a decision of the director shall contain:

1. The name and address of the petitioner and the petitioner's counsel, if any;
2. Identification of the decision being appealed, and the date the decision was issued;
3. A statement identifying the standing of the petitioner to appeal;
4. A statement setting forth the reasons for the appeal, including errors alleged in the director's decision and the reasons why the decision is deemed contrary to law or regulation;
5. A statement that the issues on appeal were in fact raised as required by § 45.1-361.36 B of the Code of Virginia;
6. A statement setting forth the specific relief requested; and
7. When a stay to any proposed activity allowed as a result of the director's decision is desired, a request for the stay and the basis for granting the stay; and
8. Other information, relevant to the petition, the petitioner wishes to provide.

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C. Upon receipt of an appeal containing a request for a stay, the director shall decide on the request in accordance with § 45.1-361.23 D of the Code of Virginia.

4 VAC 25-160-140. Miscellaneous petitions to the board.

A. Any petition to the board not otherwise provided for in this chapter shall be made in writing, and shall contain:

1. The name and address of the petitioner and the petitioner's counsel, if any;
2. The names and addresses of any persons who are named as respondents in the petition;
3. An affidavit that notice has been given to each respondent, if any, named in the petition;
4. A statement of the issues of the petition; and
5. A statement setting forth the specific relief requested; and
6. ~~Other information, relevant to the petition, the petitioner wishes to provide.~~

B. If a petitioner for a unit under § 45.1-361.21 or § 45.1-361.22 fails to provide notification to an owner of interest of any part of a unit subject to a petition before the board, then such party may file a written objection to the proceedings in the form of a petition as set out in subsection A of this section. Such petition does not require the submission of an application fee as required in 4 VAC 25-160-30 F of this chapter.

4 VAC 25-160-150. Effective dates for and enforcement of board orders.

A. All orders issued by the board under § 45.1-361.20 of the Code of Virginia shall remain in effect until vacated or amended by the board on its own motion or on application from an owner or operator in the field or unit subject to the order.

B. ~~All~~ Unless otherwise provided in the board order, all orders issued by the board under §§ 45.1-361.21 and 45.1-361.22 of the Code of Virginia shall remain in effect:

1. For a period of ~~one year~~ two years from the date of issuance, if gas or oil operations have not commenced on the well or wells in the unit or units established by the order of the board order;
2. If a permit has been issued for a well in a unit subject to the order, until the permit or permits have expired or been released on the well or wells, if gas or oil operations have commenced on the well or wells within the unit or units established by the order; or
3. Until vacated or amended by the board on its own motion or on application from a gas or oil owner or the unit operator in the unit subject to the order.

G. Conditional orders issued by the board under §§ 45.1-361.21 and 45.1-361.22 of the Code of Virginia shall remain

~~in effect in accordance with the terms and conditions of the order, unless vacated or amended by an order of the board.~~

C. In the event that an appeal is taken from any order of the board, the time between the filing of the petition for appeal and the final order of the circuit court shall be excluded in calculating the time period as contained in subsection B of this section.

D. All orders of the board shall be enforced by the director pursuant to the process set out in this chapter and § 45.1-361.24 of the Code of Virginia.

4 VAC 25-160-160. Enforcement. (Repealed.)

A. ~~The director shall enforce the provisions of the Act, this chapter or order of the board, and may use the following methods:~~

1. ~~Notices of violation in accordance with 4 VAC 25-160-170 of this chapter;~~
2. ~~Closure orders in accordance with 4 VAC 25-160-180 of this chapter;~~
3. ~~Petitions to the board to revoke any rights granted to operators by the board;~~
4. ~~Emergency orders in accordance with § 45.1-361.27 D of the Code of Virginia; or~~
5. ~~Any other action in accordance with the Code of Virginia.~~

B. ~~A notice or order shall be served on the person to whom it is issued promptly after issuance, as follows:~~

1. ~~By delivering a copy, by hand, to the person to whom the notice or order is issued or other employee or agent of the person; or~~
2. ~~By sending a copy of the notice or order by certified mail, return receipt requested, to the person to whom the notice or order is issued or his designated agent.~~

C. ~~Service shall be complete upon delivery of the notice or order, or of the mail, and shall not be deemed incomplete because of refusal to accept.~~

D. ~~Nothing in this chapter shall prevent the director from taking any action or from making efforts to obtain voluntary compliance through conference, warning or other means prior to issuing any enforcement notice or order.~~

E. ~~The purpose of taking enforcement actions is to obtain compliance with the provisions of the Act, this chapter or order of the board.~~

4 VAC 25-160-170. Notices of violation. (Repealed.)

A. ~~The director may issue a notice of violation if he finds a violation of Chapter 22.1 of Title 45.1 of the Code of Virginia, this chapter, or any order of the board.~~

B. ~~A notice of violation shall be in writing, signed, and set forth with reasonable specificity:~~

- ~~1. The nature of the violation;~~
- ~~2. A reasonable description of the activity or condition to which it applies;~~
- ~~3. The remedial action required, which may include interim steps; and~~
- ~~4. A reasonable deadline for abatement, which may include interim deadlines for accomplishment of interim steps.~~

~~C. The director may extend the deadline for abatement or for accomplishment of an interim step if the failure to meet the deadline previously set was not caused by the person's lack of diligence. The total time for abatement under a notice of violation, including all extensions, shall not exceed 20 days from the date of issuance, except upon a showing by the person and acceptance by the director that it is not feasible to abate the violation within 20 days, or if the deadline is extended during an appeal. An extension of the deadline for abatement may not be granted when the person's failure to abate within 20 days has been caused by a lack of diligence or intentional delay by the person.~~

~~D. The director shall terminate a notice of violation by written notice when he determines that all violations listed in the notice of violation have been abated.~~

~~E. Any person issued a notice of violation may, before the deadline established for abatement for the violation, request, in writing to the director, an informal fact finding hearing to review the issuance of the notice. The person is relieved of the duty to abate, during an appeal of the notice of violation to the director or board, any violation of Article 2 of the Act, this chapter or board order, except as otherwise provided by regulation.~~

~~F. The director shall conduct an informal fact finding hearing, in accordance with the Administrative Process Act, § 9-6.14:11 of the Code of Virginia, no later than 10 days after receipt of the hearing request. The director shall affirm, modify, or vacate the notice in writing, to the person who requested the hearing, no later than five days after the date of the hearing.~~

4 VAC 25-160-180. Closure orders. (Repealed.)

~~A. The director may immediately order a cessation of operations or of the relevant portion thereof, when:~~

- ~~1. A gas or oil operator continues to produce in excess of an allowable production limit established by the board after having been ordered by the director or board to stop production in excess of the allowable limit; or~~
- ~~2. Repeated notices of violations have been issued for the same condition or practice.~~

~~B. A closure order shall be in writing, signed and shall set forth with reasonable specificity:~~

- ~~1. The nature of the condition, practice or violation;~~

~~2. A reasonable description of the activity or condition to which it applies;~~

~~3. The remedial action required, if any, which may include interim steps; and~~

~~4. A reasonable deadline for abatement, which may include interim deadlines for accomplishment of interim steps.~~

~~C. A closure order shall require the person to take all steps the director deems necessary to abate the violations covered by the order in the most expeditious manner possible.~~

~~D. The director shall terminate a closure order by written notice when he determines that all conditions, practices or violations listed in the order have been abated.~~

~~E. Any person issued a closure order may request an informal fact finding hearing to review the issuance of the order, in writing to the director, within 10 days from receipt of the order. The person may request an expedited hearing, in writing to the director, within three days of receipt of the order.~~

~~F. A person is not relieved of the duty to abate any condition under, or comply with, any requirement of a closure order during an appeal of the order.~~

~~G. The director shall conduct an informal fact finding hearing, in accordance with the Administrative Process Act, § 9-6.14:11 of the Code of Virginia, no later than 15 days after the order was issued, or in the case of an expedited hearing, no later than five days after the order was issued.~~

~~H. The director shall affirm, modify, or vacate the closure order in writing, to the person who requested the hearing, no later than five days after the date of the hearing.~~

4 VAC 25-160-200. Surveys and tests.

A. Deviation tests.

1. An inclination survey shall be made on all rotary drilled wells located in accordance with a field rule established by the board. An inclination survey is not required for wells drilled in accordance with the distance limitations of § 45.1-361.17 of the Code of Virginia.

2. The first shot point shall be at a depth not greater than the bottom of the surface casing or, for a well drilled through a coal seam, at a depth not greater than that of the bottom of the coal protection string. Succeeding shot points shall be no more than 1,000 feet apart, or as otherwise ordered by the director.

3. Inclination surveys conforming to these requirements may be made either during the normal course of drilling or after the well has reached total depth. Survey data shall be certified in writing as being true and correct by the designated agent or person in charge of a permittee's Virginia operations, or the drilling contractor, and shall indicate the resultant lateral deviation as the maximum calculated lateral displacement determined at

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any inclination survey point in a horizon approved for production, by an order of the board or a permit approved by the director, assuming that all displacement occurs in the direction of the nearest boundary of the unit. The resultant lateral deviation shall be recorded on the drilling or completion report filed by the permittee.

~~However, if 4.~~ If a directional survey determining the location of the bottom of the hole is filed upon completion of the well, it shall not be necessary to file the inclination survey data.

~~2- 5.~~ A directional survey shall be made when:

a. A well is directionally controlled and is thereby intentionally deflected from vertical;

b. The resultant lateral deviation of any well, calculated from inclination survey data, is greater than the distance from the center of the surface location of the well bore to the nearest boundary of the area where drilling is allowed in a unit established by the board; or

c. A well is drilled as an exception location and a directional survey is ordered by the board.

~~3- 6.~~ The board or the director, on their own initiative or at the request of a gas or oil owner on a contiguous unit or tract, may require the permittee drilling any well to make a directional survey of the well if there is reasonable cause therefor. Whenever a survey is required by the board or the director at the request of a contiguous owner and the permittee of the well and contiguous owner are unable to agree as to the terms and conditions for making the directional survey, the permittee shall pay for the survey if the bottom hole location is found to be outside of the area approved for drilling, and the contiguous owner shall pay for the survey if the bottom hole location is found to be inside of the area approved for drilling.

~~4- 7.~~ Directional surveys shall be run from total depth to the base of the surface casing or coal protection string, unless otherwise approved by the board or the director. In the event that the proposed or final location of the producing interval or intervals of any well is not in accordance with this section or a board order, the unit operator shall apply to the board for an exception to spacing. However, directional surveys to total depth shall not be required in cases where the interval below the latest survey is less than 500 feet, and in such an instance, a projection of the latest survey shall be deemed to satisfy board requirements.

~~5- 8.~~ The results of each inclination or directional survey made in accordance with this section shall be filed by the permittee with the first drilling or completion report required by the department.

B. Flow potential and gas/oil ratio tests: conventional gas or oil wells.

1. If a gas or oil well appears capable of producing gas or oil, the permittee shall conduct a potential flow test and a gas/oil ratio test within 10 days after the well is completed and capable of producing gas or oil. The permittee shall file the test results, in writing, with the director. The director shall hold the test results confidential in accordance with § 45.1-361.6 of the Code of Virginia.

2. If a permittee deepens or stimulates a well after the initial potential flow test and gas/oil ratio test have been conducted, when determined to be necessary by the permittee or when requested by the board, the permittee shall conduct another potential flow test and gas/oil ratio test and, within 30 days after completing the test, file the results, in writing, with the director.

3. A back-flow method of determining open flow shall be used, such as provided for in the Interstate Oil and Gas Compact Commission, "Manual of Back-Pressure Testing of Gas Wells," 1979. However, when a back-flow method is believed not to be feasible, the permittee shall obtain prior approval from the director, and test the well in accordance with, an alternate method approved by the director that does not entail excessive physical waste of gas.

C. Testing of coalbed methane gas wells. ~~4-~~ If a permittee cannot test the potential flow of a coalbed methane gas well by a back-flow method or complete the test within the time period required in subdivision B 1 of this section, the permittee may request approval from the director to perform a coalbed methane gas production test. Such a test shall only be made when the water production and the gas flow rates are stabilized for a period of not less than 10 days prior to the test. The test shall be conducted for a minimum of 24 hours in the manner approved by the director. The permittee shall file the test results, in writing, with the director. The director shall hold the test results confidential in accordance with § 45.1-361.6 of the Code of Virginia.

D. The board may, by order and after notice and hearing, require a permittee to complete other tests on any well.

4 VAC 25-160-210. Allowable production. (Repealed.)

~~A. The board, on its own motion, on motion from the director or on motion from any gas or oil owner, and after notice and hearing, may establish the maximum allowable production rate for any well or number of wells in a pool. The setting of maximum allowable production rates shall be only for the purpose of preventing waste and protecting correlative rights, and not for prorationing production between pools or geographic areas of the Commonwealth. However, no maximum allowable production rate shall be set for a coalbed methane gas well.~~

~~B. Proration of gas lift wells.~~

~~1. No flowing or gas lift oil well may produce with an excessive gas/oil ratio except with prior approval of the board. Oil wells that are gas lifted with gas from gas wells shall be prorated in the same manner as high-~~

~~ratio, naturally flowing oil wells. The gas/oil ratio, for oil wells that are gas lifted with gas from gas wells, is defined as the total gas output less the total gas input divided by the number of barrels of oil produced. The uneconomic or unreasonable use of gas for gas lift is prohibited.~~

4 VAC 25-160-220. Enhanced recovery. (Repealed.)

~~The board may, upon application, notice and hearing, authorize enhanced recovery projects on a case by case basis. No enhanced recovery project shall be authorized unless at least 51% of all of the gas or oil interests in the area to be covered by the proposed enhanced recovery project consent to the project. The board may, on a case by case basis, establish a minimum percentage greater than 51% for any area of the Commonwealth.~~

4 VAC 25-160-230. Underground storage of natural gas. (Repealed.)

~~No person may conduct any operation involving storage of natural gas in an underground gas storage field until the board has adopted an order governing the underground gas storage field.~~

VA.R. Doc. No. R97-613; Filed July 2, 1997, 11:16 a.m.

DEPARTMENT OF MOTOR VEHICLES

REGISTRAR'S NOTICE: Pursuant to § 58.1-2421 of the Code of Virginia, the Virginia Motor Vehicle Rental Tax Rules and Regulations are not subject to the Administrative Process Act (§ 9-6.14:1 et seq.).

Title of Regulation: 24 VAC 20-100-10 et seq. Virginia Motor Vehicle Rental Tax Rules and Regulations (amending 24 VAC 20-100-10, 24 VAC 20-100-30, 24 VAC 20-100-60, 24 VAC 20-100-70, 24 VAC 20-100-80, 24 VAC 20-100-100, 24 VAC 20-100-130, 24 VAC 20-100-140, 24 VAC 20-100-160, 24 VAC 20-100-190, 24 VAC 20-100-200, 24 VAC 20-100-210, 24 VAC 20-100-220, 24 VAC 20-100-290, 24 VAC 20-100-330, 24 VAC 20-100-340, 24 VAC 20-100-360, 24 VAC 20-100-370, 24 VAC 20-100-380, 24 VAC 20-100-390, 24 VAC 20-100-420, 24 VAC 20-100-430, 24 VAC 20-100-460, 24 VAC 20-100-500, 24 VAC 20-100-520 and 24 VAC 20-100-540; repealing 24 VAC 20-100-40 and 24 VAC 20-100-230 through 24 VAC 20-100-280).

Statutory Authority: § 58.1-2421 of the Code of Virginia.

Effective Date: July 1, 1997.

Summary:

The amendments update the Virginia Motor Vehicle Rental Tax Rules and Regulations by incorporating statutory changes which, for the most part, were made in the 1997 session of the General Assembly. This regulation primarily affects those businesses that rent motor vehicles. Key changes include: (i) the increase of the additional rental tax from 2½% to 4.0%; (ii) the extension of the additional rental tax to certain vehicles

in lieu of tangible personal property taxes; and (iii) the exclusion of motor vehicles with a gross vehicle weight rating or gross combination weight rating of 26,001 pounds or more from the motor vehicle rental tax.

Agency Contact: Copies of the regulation may be obtained from Marc Copeland, Department of Motor Vehicles, P.O. Box 27412, Room 724, Richmond, VA 23269-0001, telephone (804) 367-1875.

24 VAC 20-100-10. Definitions.

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

"Commissioner" means the Commissioner of the Department of Motor Vehicles.

"Commonwealth" means the Commonwealth of Virginia.

"Daily rental passenger car vehicle" means a motor vehicle, other than a motorcycle or a mobile home as defined in § 46.2-100 of the Code of Virginia, used for the transportation of persons or property whether on its own structure or by drawing another vehicle or vehicles, having a gross vehicle weight of 9,000 pounds or less and held for rental as defined in this chapter and rented for a period of less than 12 months.

"Department" means the Department of Motor Vehicles.

"Gross proceeds" means the total amount of the charges made or voluntary contributions received for the rental of a motor vehicle in this state. Gross proceeds includes charges for any services that are part of the rental contract, for collision coverage or waiver of property damage, public liability, or other forms of potential liability for the customer. However, gross proceeds does not include:

1. Cash discounts allowed and actually taken on a rental contract;
2. Finance charges, carrying charges, service charges, or interest from credit given on a rental contract;
3. Charges for motor fuels and special fuels other than motor fuel which are subject to taxes imposed by Chapter 21 (§ 58.1-2100 et seq.) of Title 58.1 of the Code of Virginia; and
4. Charges for optional accidental death insurance.

"Mobile home" means a structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein.

"Mobile office" means an industrialized building unit not subject to federal regulation, which may be constructed on a

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chassis for the purpose of towing to the point of use and designed to be used with or without a permanent foundation, for commercial use and not for residential use; or two or more such units separately towable, but designed to be joined together at the point of use to form a single commercial structure, and which may be designed for removal to and installation or erection on other sites.

"Motor vehicle" means every vehicle, except a mobile office, which is self-propelled or designed for self-propulsion and every vehicle drawn by or designed to be drawn by a motor vehicle, including mobile homes, and every device in, upon, and by which any person or property is, or can be, transported or drawn upon a highway, except devices moved only by human or animal power or, devices used exclusively upon stationary rails or tracks and vehicles, other than mobile homes, used in this Commonwealth but not required to be licensed by the Commonwealth.

"Out-of-state rentor" means a rentor whose principal place of business is outside the Commonwealth but who has one or more places of business within the Commonwealth from which deliveries of rental motor vehicles are made to persons in Virginia.

"Person" means every natural person, firm, partnership, association, or corporation.

"Rental in this state (or Commonwealth)" means any rental in which a person receives delivery of a motor vehicle within the Commonwealth which is delivered to a person in Virginia (including all land or interest in land within the Commonwealth which may be owned by or conveyed to the United States of America or the Commonwealth). If the rental vehicle is delivered to the rental customer in Virginia, it is a "rental in this state" regardless of where the contract is made, where the rental terminates, or where the vehicle is surrendered. The term applies regardless of where the rental agreement is written, where the rental terminates, or where the vehicle is surrendered. Conversely, if delivery is not made in Virginia, there is no "rental in this state" even if the contract is made, the rental terminates, or the vehicle is surrendered in Virginia.

"Renting" or "rental" means the renting, for consideration, without the transfer of ownership, of a motor vehicle for a period of less than 12 months, whether or not the motor vehicle is required to be licensed by the Commonwealth and the possession or use of the motor vehicle by a person for a consideration, without transfer of the ownership of such motor vehicle, for a period of less than 12 months. A motor vehicle which is rented for a period of 12 months or longer is not a rental vehicle, but is considered a leased vehicle; therefore, it is not subject to the provisions of this chapter.

"Rentor" means any person engaged in the business of renting motor vehicles in this state for consideration, whether or not such motor vehicles are required to be licensed in the Commonwealth.

24 VAC 20-100-30. Application to the commissioner; form of application.

A. Applications for certificate of registration must be filed with:

Commissioner, Department of Motor Vehicles
Licensing Section
P.O. Box 27422
Richmond, Virginia 23261-7422

24 VAC 20-100-40. Form of application.

B. Applications must be on forms prescribed by the department; a separate application must be submitted for each place of rental business in this state Commonwealth.

24 VAC 20-100-60. Issuance of certificate of registration.

As soon as practicable after receipt of a rentor's application for certificate of registration, the department, upon examination and approval of the application, will issue to the rentor an official certificate or certificates of registration for the specific place of business or places of business for which the application was filed. The certificate of registration is not reassignable, and it is valid only for the rentor in whose name it is issued and for the transaction of business at the place designated on it. The certificate of registration must be conspicuously displayed at all times at the place for which it was issued.

24 VAC 20-100-70. Change of business location.

If the holder of a certificate of registration desires to change his place of business to another place of business within the state, he is required to inform the department in writing and to return the certificate of registration so that a revised certificate of registration may be issued to him. There is no charge for issuing a new certificate.

24 VAC 20-100-80. Cessation of business.

If the holder of a certificate of registration ceases to conduct his rental business at the place specified in his certificate, or if he sells such place of business, his certificate for that place of business expires upon his cessation of business at that location. The holder of such a certificate is required to inform the department, at the address given in this chapter, in writing, within 45 30 days of his cessation of business at such place. The certificate of registration must be returned to the department with this notice. (See 24 VAC 20-100-520 and 24 VAC 20-100-530.)

24 VAC 20-100-100. Change in business structure treated as change in ownership.

The following changes in the structure of the entity operating a rental business are considered changes in ownership, so that the new operating entity, as a new owner, must apply for a new certificate of registration while the old entity must surrender its old certificate to the department. The changes are:

1. Change of a partnership or sole proprietorship into a corporation;

2. Change of a corporation into a partnership or sole proprietorship;
3. Change of a partnership into a sole proprietorship;
4. Change of a sole proprietorship into a partnership; and
5. Change from one partnership to another partnership where none of the partners remain the same.

24 VAC 20-100-130. Cancellation of rentor's certificate of registration without a hearing.

The commissioner shall cancel any rentor's certificate of registration for:

1. Failure to file a timely motor vehicle rental tax return, provided a reminder of such failure has been mailed to the rentor 10 days prior to cancellation;
2. Failure to remit with any return the taxes payable as stated on the return; or
3. Failure to satisfy an assessment by the commissioner or to institute an appeal of such assessment to the circuit court of the City of Richmond within 15 days of such assessment.

24 VAC 20-100-140. Engaging in business as a rentor without a certificate of registration.

The Motor Vehicle Sales and Use Tax Act, § 58.1-2420 Chapter 24 (§ 58.1-2400 et seq.) of Title 58.1 of the Code of Virginia, provides that any person who engages in business as a rentor in this state without obtaining a certificate of registration or while such certificate of registration is suspended or revoked, including each officer of any corporation which so engages in business, shall be guilty of a Class 1 misdemeanor. Each day's continuance in business without a valid certificate of registration constitutes a separate offense.

24 VAC 20-100-160. Transfer of a motor vehicle from rental status.

If a rentor desires to transfer a motor vehicle registered in Virginia from its rental status, the registration of the motor vehicle must be transferred with the department. The applicable fee will be charged for transfer of the registration. At the time a motor vehicle registration is transferred from rental status, the 3.0% Motor Vehicle Sales and Use Tax will be collected, unless such tax was paid when the vehicle was first registered. No credit against the Motor Vehicle Sales and Use Tax will be allowed for the taxes previously paid tax on the gross proceeds from the rental of that vehicle.

24 VAC 20-100-190. Motor vehicle rental tax taxes.

~~A 4.0% rental tax is levied on the gross proceeds from the rental of all motor vehicles in Virginia. Taxes are levied on the gross proceeds from the rental of motor vehicles in Virginia. The taxes are comprised of a 4.0% rental tax and a 4.0% additional rental tax.~~

The 4.0% rental tax is a state tax and is levied on the gross proceeds from the rental in Virginia of all motor vehicles (refer to definition) with a gross vehicle weight rating or a gross combination weight rating of 26,000 pounds or less.

The 4.0% additional rental tax is levied on the gross proceeds from the rental in Virginia of any daily rental vehicle (refer to definition). The 4.0% additional tax is distributed by the department to the city, town, or county wherein the daily rental vehicle was delivered to the rental customer. No county, city, or town shall impose any tangible personal property tax, license tax, license fee or the requirement of a license tag, sticker or decal upon any daily rental vehicle which is subject to the 4.0% additional rental tax. The 4.0% additional rental tax is in addition to, and not in lieu of, the 4.0% rental tax.

The following table is provided to clarify the tax structure by listing certain types of vehicles and the taxes which apply.

TYPE OF VEHICLE	APPLICABLE TAX
<i>Motor vehicles with a gross vehicle weight rating or gross combination weight rating of 26,000 pounds or less.</i>	<i>4.0% rental tax and 4.0% additional rental tax.</i>
<i>Motor vehicles with a gross vehicle weight rating or gross combination weight rating of 26,001 pounds or more.</i>	<i>4.0% additional rental tax.</i>
<i>Mobile homes.</i>	<i>4.0% rental tax.</i>
<i>Mobile offices.</i>	<i>No tax.</i>
<i>Motorcycles.</i>	<i>4.0% rental tax.</i>

24 VAC 20-100-200. Collection by the rentor from his customer.

All rentors, including out-of-state rentors and occasional rentors, must collect ~~a tax of 4.0% of the 4.0% rental tax and the 4.0% additional rental tax~~ on the gross proceeds from ~~each motor vehicle~~ the rental in this state of motor vehicles in accordance with 24 VAC 20-100-190. ~~The tax 4.0% rental tax and the 4.0% additional rental tax~~ must be collected from the rental customer, and it must be separately stated as a tax and added to the rental price on the rental contract. The tax is a debt from the rental customer to the rentor until paid, and it is recoverable in an action at law in the same manner as other debts. It is unlawful for any rentor to advertise or to hold out to the public, directly, indirectly, or in any manner whatsoever, that the rentor will absorb any part of the rental tax or in any way relieve the rental customer of the obligation to pay such tax.

24 VAC 20-100-210. Transactions exempt from the rental tax and additional rental tax.

The following transactions are exempt from the 4.0% motor vehicle rental tax and the 4.0% additional rental tax in Virginia:

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1. Rentals to the government of the United States or any governmental agency thereof, or to the Commonwealth or any political subdivision thereof, or to any volunteer fire department or rescue squad not operated for a profit;

2. Rentals to accredited consular or diplomatic officers of foreign governments, whether for official or personal use by such officers, provided such officers are nationals of the country by which they are appointed and are not citizens of the United States;

3. Rentals to employees of any governmental agency of the United States or of the Commonwealth while such employees are traveling under formal orders, which orders or similar documentation must be presented to the rentor in order for the rental transaction to qualify for this exemption;

4. Rentals to any person for the purpose of rerental as an established business, as part of an established business, or incidental or germane to an established business. The person who will be rerenting the vehicle must have a rental certificate of registration in order for a transaction to qualify for this exemption; and

5. Rentals to private nonprofit institutions of learning for the sole purpose of use in driver education instruction which is a part of such institution's curriculum for full-time students;

6. *Rentals of self-contained mobile computerized axial tomography scanners to a nonprofit hospital or a cooperative hospital service organization; and*

7. *Rentals of self-contained mobile units designed exclusively for human diagnostic or therapeutic service to a nonprofit hospital or a cooperative hospital service organization established for research in, diagnosis of, or therapy for human ailments.*

24 VAC 20-100-220. Nonexempt transactions.

The following transactions are not exempt from the 4.0% motor vehicle rental tax ~~on motor vehicles or the 4.0% additional rental tax~~. (This list is not all inclusive. Only rentals specifically listed in 24 VAC 20-100-210 are exempt; however, in the interest of clarity, the following transactions which might be thought to be exempt, but which are not, are listed for your information):

1. Rentals to churches, nonprofit schools and colleges and other nonprofit or charitable organizations;

2. Rentals to government employees for their private use and not for official business;

3. Rentals in which delivery of the vehicle is made on federal or state controlled property, so long as such property is within the Commonwealth;

4. Rentals by out-of-state rentors where delivery of the motor vehicle is made in Virginia; and

5. Rentals in which the motor vehicle delivered is not required to be registered in Virginia, so long as delivery of the vehicle is made in Virginia.

24 VAC 20-100-230. ~~Additional 2½% rental tax on daily rental passenger cars. (Repealed.)~~

~~Effective July 1, 1985, an additional 2½% tax is levied on the gross proceeds from the rental in this state of any daily rental passenger car.~~

24 VAC 20-100-240. ~~The 2½% rental tax is additional. (Repealed.)~~

~~The additional 2½% rental tax on daily rental passenger cars is in addition to, and not in lieu of, the 4.0% rental tax on all motor vehicles.~~

24 VAC 20-100-250. ~~Application of the 2½% additional rental tax. (Repealed.)~~

~~The 2½% additional rental tax is applied in exactly the same manner as the 4.0% rental tax on all motor vehicles, except that it applies only to those motor vehicles which are classified as daily rental passenger cars. With that single exception, all definitions, explanations, methods of computation and collection, and all exemptions which apply to the 4.0% rental tax on all motor vehicles rented in this state also apply to the 2½% additional tax on daily rental passenger cars rented in this state.~~

24 VAC 20-100-260. ~~Purpose of the 2½% additional rental tax. (Repealed.)~~

~~The 2½% additional rental tax is earmarked for distribution to the city, town, or county wherein the rental car was delivered to the rental customer. Effective July 1, 1985, no county, city or town shall impose any license tax or license fee upon any daily rental passenger car which is subject to the 2½% additional rental tax.~~

24 VAC 20-100-270. ~~Credit against the additional rental tax for tangible personal property tax paid. (Repealed.)~~

~~Because some Virginia localities already impose a tangible personal property tax on daily rental passenger cars, rentors are permitted to claim any such tangible personal property tax actually paid on a rental car to a Virginia locality as a credit against the additional rental tax on that car. No such credit is allowed against the 4.0% rental tax on all motor vehicles, however.~~

24 VAC 20-100-280. ~~Procedures for crediting tangible personal property tax paid. (Repealed.)~~

~~Full credit for all tangible personal property taxes paid on a daily rental passenger car to a Virginia locality is allowed against the additional rental tax on that car, provided that:~~

~~1. Only those tangible personal property taxes assessed for a tax year ending after June 30, 1981, are creditable, and then only that proportion of such taxes as are attributable to the portion of the tax year after June 30, 1981, are creditable;~~

~~2. The credit may be carried over from month to month for a period of up to six months or until earlier used against the additional tax due. No credit may be carried over more than six months from the time of payment of the tangible personal property taxes. Any credit not used within six months is lost;~~

~~3. The credit is allowed only for tangible personal property taxes actually paid. Credit claimed on such taxes which have been assessed but not actually paid when due is subject to collection as an underpayment of the additional rental tax and to penalties and interest as provided in § 58.1-2411 of the Code of Virginia;~~

~~4. The credit is allowed only against the additional rental tax on daily rental passenger cars; it cannot be taken against the 4.0% rental tax on all motor vehicles; and~~

~~5. The credit is claimed at the time the rentor pays the additional tax to the department. It has no effect upon the rental customer's obligation to pay such additional tax to the rentor, or upon the rentor's obligation to collect it from his customers.~~

24 VAC 20-100-290. Recordkeeping, rental tax returns, and payment of rental taxes and fees.

Every rentor, on or before the 20th day of each month, is required to forward a copy *return* to the commissioner, upon forms prescribed and furnished by the department, showing the gross proceeds from taxable rentals of all motor vehicles *with a gross vehicle weight rating or gross combination weight rating of 26,000 pounds or less* and of all daily rental ~~passenger cars vehicles~~ during the preceding calendar month. The rentor is required to include all pertinent information requested on the monthly tax return. Payment of the amount of tax due must accompany the return. Adequate and complete records, as necessary to complete the tax returns and to determine tax liability, must be maintained by every rentor.

24 VAC 20-100-330. Other security in lieu of surety bond; assignment required with other security.

Any rentor may deposit *one or both* of the following securities with the commissioner in lieu of a surety bond:

1. Negotiable bonds which are direct obligations of the United States government or of the Commonwealth; and
2. A certificate of deposit in any banking institution approved by the commissioner. Certificates of deposit drawn on banks or savings and loan associations within the Commonwealth have been approved by the commissioner.

The amount of security to be required shall be determined in accordance with ~~24 VAC 20-100-320~~ 24 VAC 20-100-310.

Any rentor who deposits other security with the commissioner in lieu of a surety bond, shall deliver with the security an assignment authorizing the commissioner to use or receive payment of the security, or any part thereof, for the purpose of paying any liability of the rentor to the state for

rental taxes due and payable to the commissioner, including penalties and interest accrued thereon, and any damages for which the rentor may be liable by reason of his failure to comply with the provisions of the Virginia Motor Vehicle Sales and Use Tax Act.

24 VAC 20-100-340. When new or additional bond or security required; cancellation of certificate of registration.

In the event that liability upon the surety bond or other security filed by a rentor with the commissioner shall be discharged or reduced, whether by judgment rendered, payment made, or otherwise, or if it is the opinion of the commissioner that any surety on the bond has become unsatisfactory or unacceptable, the commissioner may require the filing of a new bond with like surety and in the same amount, or, in lieu thereof, other security, as provided in ~~24 VAC 20-100-340~~ 24 VAC 20-100-330. The commissioner shall forthwith cancel any rentor's certificate of registration for failure to comply with this requirement.

24 VAC 20-100-360. Release of surety and requirement of new bond; cancellation of certificate of registration.

The surety on a bond filed by any rentor will be released and discharged from any *and all* liability accruing on the bond to the Commonwealth after the expiration of 60 days from the date upon which the surety company has filed a written request with the commissioner to be released and discharged. No such request will operate to relieve, release, or discharge ~~from the surety from~~ any liability already accrued or which shall accrue before the expiration of the 60-day period.

Upon receipt of such notice from a surety company, the commissioner will:

1. Notify the rentor who furnished the bond of the request for release of the surety; and
2. Request the rentor to file a new bond or other security with the commissioner on or before the expiration of 60 days from the date the surety filed a request with the commissioner.

Failure of any rentor to file a new bond or other security as requested will result in the cancellation of the certificate of registration of such rentor.

If a new bond or other security is furnished by the rentor, the commissioner will cancel and surrender the bond of the rentor for which such new bond or other securities were substituted.

24 VAC 20-100-370. Maintenance and preservation of rental records.

Every rentor is required to maintain and preserve adequate and complete records as are necessary to complete the rental tax returns and to determine the amount of tax for which he is liable. Such records must be retained for a period of four years. Such records include, but are not limited to, the following:

Final Regulations

1. A daily record of all cash and credit rentals by place of business, including rentals under any type of financing or installment plan in use, with indications of which rentals involved daily rental ~~passenger cars vehicles~~;
2. A copy of all rental contracts for each vehicle held for rental; and
3. A record of all documentation for any exemptions or adjustments claimed against the rental taxes.

Records are required to be open for inspection and examination at all reasonable hours of the business day by the commissioner or his duly authorized agents. The commissioner has all powers under this Act with respect to the records of such persons as are granted the Tax Commissioner under § 58.1-633 of the Code of Virginia.

If an assessment has been made and an appeal to the commissioner or to the court is pending, all books, records, and reproductions specified above relating to the period covered by the assessment must be preserved until the final disposition of the appeal.

24 VAC 20-100-380. Filing returns for rental taxes.

Returns must be filed monthly, within 20 days of the end of the month for which the return is filed. Rentors having more than one place of business in Virginia may file a consolidated return for all such places of business; however, the return must state the place of business from which all gross proceeds from the rental of daily rental ~~passenger cars vehicles~~ are derived. Rentors who regularly keep books and accounts on the basis of an annual period, which varies between 52 and 53 weeks, may report gross proceeds and taxes in a manner consistent with such accounting period, provided a satisfactory explanation is attached to the first return filed under such accounting period or to the rentor's application for a certificate of registration.

24 VAC 20-100-390. Computation of rental taxes.

The taxes to be paid are computed as a flat 4.0% of the total gross proceeds from the rental in Virginia of all motor vehicles in Virginia with a gross vehicle weight rating or gross combination weight rating of 26,000 pounds or less, plus a flat ~~2½%~~ 4.0% of the total gross proceeds from the rental of all daily rental ~~passenger cars vehicles~~ in Virginia. The only adjustments permitted in the computation are as follows:

1. Proceeds from transactions which are exempt from the rental taxes may be deducted from the gross proceeds on which the taxes are computed; and
2. Bad debt accounts on rental transactions, if such accounts have been charged off as worthless for federal income tax purposes, may be deducted from the gross proceeds on which the taxes are computed. However, any recovery of payment for bad debts previously charged off must be included as gross proceeds in the month for which payment is received; and
3. A credit may be claimed against the additional rental tax on a daily rental passenger car, not including the

~~4.0% rental tax on all motor vehicles, for any tangible personal property tax paid to a Virginia locality on that car. (See 24 VAC 20-100-230 for particulars as to the application of this credit.)~~

24 VAC 20-100-420. Interest and penalties.

Interest of 1½% per month or fraction of a month will be added to any rental taxes not paid when due and to any penalties added to such taxes, until such overdue taxes and penalties have been paid in full. Penalties may be imposed in the following situations:

~~1. Rentors who overcollect rental taxes and fail to account for and pay over such overcollections to the department in a timely filed rental tax return are subject to a penalty of 25% of such overcollection, in addition to being required to pay the overcharge;~~

~~2. 1.~~ Rentors who fail to make a return and pay the rental taxes when due are subject to a penalty of 10% or \$10, whichever is greater, of the taxes due. Returns filed late with no rental taxes due will be subject to the minimum penalty of \$10; and

~~3. 2.~~ Rentors who are found to have filed a false or fraudulent return, or to have ~~wilfully~~ willfully failed to file any return, with intent to defraud the state of any tax due under the Motor Vehicle Sales and Use Tax Act, are subject to a penalty of 50% of the amount of the proper tax due. It is prima facie evidence of intent to defraud the state for a rentor to understate by 50% or more the gross proceeds from rentals in this state.

24 VAC 20-100-430. Waiver of penalties for good cause shown.

The commissioner may, at his discretion, for good cause shown, waive the penalties described in subdivisions 1 and 2 of 24 VAC 20-100-420. The penalty described in subdivision ~~3~~ 2 of 24 VAC 20-100-420 may not be waived.

24 VAC 20-100-460. Uncollected checks submitted for payment of taxes or fees.

If any check submitted to the department for the payment of taxes or fees is returned to the department unpaid because the bank on which the check is drawn finds insufficient funds in the account, no account in the name of the licensee, or that the account is closed, an additional fee of \$25, or 10% of the check, whichever is greater, will be imposed upon the person presenting such check to the department. This penalty applies to checks submitted for any fee or tax required or authorized to be collected by the department and is in addition to any other penalties imposed, except that where there is a specific penalty set forth by statute for the nonpayment or late payment of fees or taxes, this penalty applies only to the extent that it exceeds such specific penalty. The fees received by the commissioner under this section are used to defray the expenses incurred by the department in the collection of bad checks and are in addition to the regular appropriation made by the General Assembly.

24 VAC 20-100-500. Termination of exemption.

When a motor vehicle is no longer used as a rental vehicle, if it is otherwise required to be registered in Virginia, it must be re-registered as a nonrental motor vehicle, and the 3.0% motor vehicle sales and use tax will be collected at ~~the~~ *that* time on the then current value of the vehicle. No credit against this 3.0% motor vehicle sales and use tax is allowed for any rental taxes paid with respect to such vehicle.

24 VAC 20-100-520. Obligation of a former rentor.

Any rentor who sells or terminates a rental business is required to do the following:

1. File final rental tax returns and pay any taxes due within ~~45~~ *30* days of selling or terminating the business;
2. Surrender his certificate of registration to the commissioner with his final return; and
3. File, with his final returns, a letter to the commissioner explaining the conditions of the sale or termination of the business and the names and addresses of any successors to the business.

24 VAC 20-100-540. Rental tax refunds.

If it appears, to the satisfaction of the commissioner, that all or a part of the 4.0% rental tax or the additional ~~2 1/4%~~ *4.0%* rental tax, or both, have been erroneously or illegally collected from or charged to any person and the tax has been forwarded to the department, a refund will be paid to the rentor by the State Treasurer, after the rentor acknowledges that he will refund such taxes to the person who was overcharged. No refund will be made unless a written statement is filed with the commissioner setting forth the reason for the refund. The claim must be in a form prescribed by the commissioner and must be filed within three years of the date of the payment of the tax.

FORMS

Commonwealth of Virginia Rentor's Tax Bond, GSA-119 (Rev. 12/84) MCS-119 (Revised 10/6/95).

Motor Vehicle Rental Tax Return, TSCA-101 (Rev. 10/93) MCS-101 (Revised 6/97).

Application for Certificate of Registration to Collect the Virginia Motor Vehicle Rental Tax, TSCA-123 (Rev. Revised 10/93).

Motor Vehicle Rental Tax Schedule of Additional Tax, TSCA 427 (Rev. 10/93) MCS-127 (Revised 6/97).

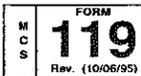
GUIDELINES

Virginia Motor Vehicle Rental Tax Questions and Answers, Guidelines for Rentors (Revised 7/97).

COMMONWEALTH OF VIRGINIA



RENTOR'S TAX BOND



SURETY COMPANY'S

DEPARTMENT OF MOTOR VEHICLES

BOND NUMBER

EFFECTIVE DATE

KNOW ALL MEN BY THESE PRESENTS, That _____ (Name of Rentor) of _____ (City or Town), County of _____, State of _____, whose principal place of business is located at _____, as PRINCIPAL, and _____ (Name of Surety) a corporation organized under the laws of _____, and duly authorized to engage in business in the Commonwealth of Virginia, with its principal office therein located at _____ in the City of _____, as SURETY, are held and firmly bound unto the Commonwealth of Virginia in the sum of _____ dollars (\$ _____) lawful money of the United States of America, to be paid to the said Commonwealth of Virginia, to which payment well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents. Signed, sealed, and delivered this _____ day of _____, A. D. 19 _____

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT:

WHEREAS, PRINCIPAL is engaged in business in the State of Virginia as a "Rentor" of motor vehicles as defined in Title 58, Chapter 24 of the Code of Virginia (1950), as amended, and is the holder of a valid certificate(s) of registration issued by the Commissioner of the Department of Motor Vehicles pursuant to section 58.1-2407 of the Code of Virginia; and WHEREAS, pursuant to section 58.1-2412 of the Code of Virginia, a bond executed by PRINCIPAL and a surety company licensed to do business under the laws of the Commonwealth of Virginia must be on file with the Commissioner of the Department of Motor Vehicles in order for PRINCIPAL to continue to hold a certificate(s) of registration; and WHEREAS, PRINCIPAL and SURETY have entered into this Bond for the purpose of satisfying PRINCIPAL'S obligations as required under section 58.1-2412 of the Code of Virginia; NOW THEREFORE, if PRINCIPAL shall promptly file true and timely reports of and shall promptly pay any and all rental and additional taxes, as those terms are defined in Title 58, Chapter 24 of the Code of Virginia, which are now or which may hereafter be levied or imposed, together with penalties and interest thereon, beginning with the effective date of this Bond and continuing until this Bond is lawfully terminated, then the above obligation shall be void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, This instrument has been duly executed by the above-named PRINCIPAL and SURETY the day and year above written. (Incorporated "Rentors" sign below)

Attest: _____ (Name of Rentor) _____ (Secretary) By _____ (President)

SEAL (Individual and Partnership "Rentors" sign below with witness(es))

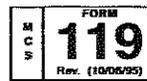
WITNESS: _____ [Seal] _____ [Seal] _____ [Seal]

COUNTERSIGNED: (Not Required) ATTEST. By _____ (Virginia Representative) _____ (Name of Surety Company) [Seal] Address _____ By _____ (Official or Attorney in Fact for Surety Co.) [Seal]

This Bond shall continue in force from year to year, unless terminated in accordance with the provisions of Title 58, Chapter 24 of the Code of Virginia, as amended. SURETY shall be released and discharged from any and all liability to the Commonwealth accruing under the terms of this Bond after the expiration of sixty (60) days from the date upon which SURETY shall have lodged with the Commissioner of the Department of Motor Vehicles written request to be released and discharged from this Bond. Such release and discharge shall not operate to relieve, release or discharge SURETY from any liability accrued under the Bond at the time of the written request or during the sixty-day period following the lodging of the written request.

Approved this _____ day of _____, 19 _____ DEPARTMENT OF MOTOR VEHICLES By _____ (Authorized Signature)

NOTE: INCORPORATED RENTORS AND SURETY MUST EXECUTE AFFIDAVITS ON REVERSE SIDE.



ACKNOWLEDGMENT OF CORPORATE PRINCIPAL

STATE OF _____ of _____ to-wit: I, _____, a notary public in and for the _____ aforesaid, in the State of _____, do certify that on the _____ day of _____, 19 _____, before me personally came, in my _____ aforesaid _____ who, being by me duly sworn, did depose and say that he resides in _____ that he is the President of _____ the corporation described in and which executed the above instrument as PRINCIPAL; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of the said corporation, and that he signed his name thereto by like order. I further certify that my term of office expires on the _____ day of _____, 19 _____ Given under my hand this _____ day of _____, 19 _____ Notary Public

AFFIDAVIT AND ACKNOWLEDGMENT OF SURETY

STATE OF _____ of _____ to-wit: I, _____, a notary public in and for the _____ aforesaid, in the State aforesaid, do certify that _____ personally appeared before me in my _____ aforesaid and made oath that he is _____ of the _____ that he is duly authorized to execute the foregoing bond by virtue of a certain power of attorney of said company, dated _____ and recorded in the Clerk's office of the _____ of _____, in Deed Book No. _____ page _____ that said power of attorney has not been revoked; that the said company has complied with all the requirements of law regulating the admission of such companies to transact business in the State of Virginia; that the said company holds a license of the State Corporation Commission authorizing it to do business in the State of Virginia; that its surplus to policy holders is \$ _____; that the penalty of the foregoing bond is not in excess of ten per centum of said sum; that the said company is not by said bond incurring in the aggregate, on behalf or on account of the principal named in said bond, a liability for an amount larger than one-tenth of its surplus to policyholders; that the said company is neither directly nor indirectly under the same ownership or management as the principal in this bond; that the said company is solvent and fully able to meet promptly all of its obligations, and the said _____ thereupon, in the name and on behalf of the said company, acknowledged the foregoing writing as its act and deed. My term of office expires _____, 19 _____ Given under my hand this _____ day of _____, 19 _____ Notary Public

*Note - This blank must be properly filled out. NOTE: Bond should be executed in Quadruplicate. Original to be filed with Department of Motor Vehicles. Duplicate and Triplicate for Surety Company-Quadruplicate for Principal.

Virginia Register of Regulations 2836

Final Regulations



Department of Motor Vehicles
Motor Carrier Services/Tax & Revenue Services
P. O. Box 27422
Richmond, Virginia 23261-7422

Motor Vehicle Rental Tax Return

MCS-101 (Rev 6/97)

- Please read the instructions on the reverse side before preparing this return.
- Attach MCS-127 Schedule of Additional Tax for multiple locations.

LICENSE NUMBER (USE PREPRINTED LABEL)		REPORT FOR MONTH AND YEAR OF	
NAME OF BUSINESS		FEDERAL ID/EMPLOYER ID/SSN	
STREET ADDRESS		CITY	STATE ZIP CODE
<input type="checkbox"/> COUNTY <input type="checkbox"/> CITY <input type="checkbox"/> TOWN OF _____		LOCALITY CODE	
A	ITEMS	B	C
		4% RENTAL TAX	4% ADDITIONAL TAX
1.	GROSS PROCEEDS ON MOTOR VEHICLE RENTALS FOR REPORTING PERIOD		
A	CREDIT FOR BAD DEBTS		
B	BAD DEBT RECOVERY		
C	ADJUSTED GROSS PROCEEDS (SUM OF LINE 1 AND 1B LESS 1A)		
2.	EXEMPTIONS		
A.	GOVERNMENT RENTALS		
B.	RE-RENTALS		
C.	TOTAL EXEMPTIONS (SUM OF LINE 2A AND 2B)		
3.	NET TAXABLE PROCEEDS (LINE 1C LESS LINE 2C)		
4.	TAX LIABILITY (RENTAL TAX - 4% OF LINE 3 COLUMN B, ADDITIONAL TAX - 4% OF LINE 3 COLUMN C)		
A.	ADJUSTMENTS (DEBIT OR CREDIT)		
6.	ADJUSTED TAX LIABILITY (SUM OR DIFFERENCE OF LINE 4 AND 4A)		
6.	PENALTY ON LATE RETURNS - \$10.00 OR 10%, WHICHEVER IS GREATER		
7.	SUBTOTAL (SUM OF LINES 5 AND 6)		
8.	INTEREST - 1 1/2% PER MONTH ON TAX AND PENALTY (LINE 7)		
9.	TOTAL LIABILITY (SUM OF LINES 7 AND 8)		
10.	COMBINED TOTAL LIABILITY (SUM OF LINE 9, COLUMN B AND LINE 9, COLUMN C)		
<input type="checkbox"/> OUT OF BUSINESS - FINAL RETURN (COMPLY WITH SECTION 24VAC20-100-520 OF THE VIRGINIA MOTOR VEHICLE RENTAL TAX RULES AND REGULATIONS)		PAY THIS AMOUNT	
SIGNATURE		TITLE	
I DECLARE THAT THIS RETURN (INCLUDING ANY ACCOMPANYING SCHEDULES AND STATEMENTS) HAS BEEN EXAMINED BY ME AND TO THE BEST OF MY KNOWLEDGE AND BELIEF IS A TRUE, CORRECT AND COMPLETE RETURN.		TELEPHONE NUMBER	DATE

NOTE: ANY CREDIT IN ONE COLUMN CANNOT REDUCE THE AMOUNT DUE IN ANOTHER COLUMN.

INSTRUCTIONS

- Gross Proceeds.** The gross proceeds during the reporting period from rentals of less than twelve (12) months are entered on Line 1. On Line 1, Column B (4% Rental Tax) enter the gross proceeds from the rental of any motor vehicle and/or trailer except mobile offices and motor vehicles or trailers with a gross vehicle weight rating or gross combination weight rating of 26,001 pounds or more. On Line 1, Column C (4% Additional Tax) enter the gross proceeds from the rental of any motor vehicle and/or trailer except mobile offices, mobile homes, and motorcycles.
- Re-Rentals.** Enter on Line 2B that portion of your gross proceeds derived from rentals to another licensed renter for the purpose of re-rental.
- Total Exemptions.** Enter on Line 2C the sum of Lines 2A and 2B.
- Net Taxable Proceeds.** Enter on Line 3 the difference between Line 1C and Line 2C. This is the amount upon which the motor vehicle rental tax must be calculated.
- Tax Liability.** Multiply the amount on Line 3, Column B by 4% (.04) and enter the result on Line 4, Column B. Multiply the amount on Line 3, Column C by 4% (.04) and enter the result on Line 4, Column C.
- Adjustments.** Enter on Line 4A any credit which is due from a previous reporting period (enter as a negative number) or any additional tax which is due from a previous reporting period (enter as a positive number).
- Adjusted Tax Liability.** Enter the sum or difference (whichever is applicable) of Line 4 and 4A.
- Penalty.** Any return and payment postmarked after the 20th of the month following the reporting period is delinquent. A penalty is imposed at the rate of 10% of the tax due or \$10.00, whichever is greater. Delinquent returns on which no tax is due are subject to the \$10.00 penalty. Enter all penalties due on Line 6. If a \$10 penalty applies, enter \$5 in Column B and \$5 in Column C.
- Subtotal.** Enter on Line 7 the sum of Lines 5 and 6.
- Interest.** Interest is charged on both tax and penalty (Line 7) on delinquent returns at the rate of 1 1/2% per month or portion thereof. A month is measured from the 21st day of the month in which the tax is due to the 21st day of subsequent months. Enter all interest due on Line 8. *Note: Interest is not applicable on delinquent returns that have no tax liability.*
- Total Liability.** Enter on Line 9 the sum of Lines 7 and 8.
- Combined Total Liability.** Enter on Line 10 the sum of Line 9, Column B and Line 9, Column C.

SUPPLEMENTAL INSTRUCTIONS

- Retain a copy of this return and schedules as an essential part of your tax records for four (4) years.
- Reporting Period - Unless an extension of time, for good cause, is requested in writing, the return must be postmarked and payment of tax made on or before the twentieth (20th) day of the month following the reporting period.
- This form is required to be filed for each month, even if no rental transactions occurred during that particular month. A *Schedule of Additional Tax* (MCS-127) is not required to be filed with a zero return.
- For businesses located in two or more localities, a *Schedule of Additional Tax* (MCS-127) must be submitted with this form.
- If you have sold your company or are no longer in the rental business, please be sure to check the "Out of Business" box at the bottom of the front side of this form.



Social Security or Federal Identification Number

COMMONWEALTH OF VIRGINIA

Department of Motor Vehicles
Motor Vehicle Rental Tax
P. O. Box 27422
Richmond, Virginia 23261-7422

TSCA 123 (10/93)

DMV USE ONLY

Registration Number Issued

APPLICATION FOR CERTIFICATE OF REGISTRATION TO COLLECT THE VIRGINIA MOTOR VEHICLE RENTAL TAX

1. Name of Business

Location of Business Street City State Zip Code

County City Town of Locality Code (List additional locations on reverse side of application)

Name of Applicant

Mailing Address (if different from above)

2. If rental tax collections will be reported to the Department of Motor Vehicles through your parent company, indicate the name and address of the parent company below:

Name

Mailing Address

3. If you are a registered motor vehicle dealer in Virginia, please indicate your Certificate Number

4. Check one: Sole Proprietorship Partnership Corporation Unincorporated Association Other, specify

If this is a sole proprietorship give the name and address of the proprietor; if a partnership, give the names and addresses of all partners; if a corporation, give the names, titles and addresses of the principal officers; if an unincorporated association, give the name and address of the member authorized to sign in behalf of the association.

Name Address table with multiple rows for listing names and addresses.

(If this application is for a corporation, an officer of the corporation authorized to sign on behalf of the corporation must sign; if a partnership, one partner must sign; if an unincorporated association, a member must sign; if a sole proprietorship, the proprietor must sign.)

By (Authorized Signature)

Area Code Title

Telephone Number Date

ADDITIONAL LOCATIONS

TSCA 123 (10/93)

Multiple forms for additional locations, each including fields for Location of business, County, City, Town of, Locality Code, Street, City, State, Zip Code.



Department of Motor Vehicles
 Motor Carrier Services/Tax & Revenue Services
 P. O. Box 27422
 Richmond, Virginia 23261-7422

**Motor Vehicle Rental Tax
 Schedule of Additional Tax**
 SEE INSTRUCTIONS ON THE REVERSE SIDE

MCS-127 (Rev. 6/87)

NAME OF BUSINESS		LICENSE NUMBER		REPORT FOR THE MONTH AND YEAR OF		
	FIRST LOCALITY	SECOND LOCALITY	THIRD LOCALITY	FOURTH LOCALITY	FIFTH LOCALITY	TOTALS
A. COUNTY, CITY, OR TOWN						
B. LOCALITY CODE						
1. GROSS PROCEEDS						
1A. CREDIT FOR BAD DEBTS						
1B. BAD DEBT RECOVERY						
1C. ADJUSTED GROSS PROCEEDS						
2. EXEMPTIONS						
2A. GOVERNMENT RENTALS						
2B. RE-RENTALS						
2C. TOTAL EXEMPTIONS						
3. NET TAXABLE PROCEEDS						
4. TAX LIABILITY						
4A. ADJUSTMENTS (DEBIT OR CREDIT)						
						E. ADJUSTED TAX LIABILITY →

Page _____ of _____

THIS SCHEDULE MUST BE SUBMITTED FOR EACH COUNTY, CITY, OR TOWN IN WHICH A RENTAL BUSINESS IS LOCATED.

INSTRUCTIONS

Use a separate column for each locality in which a rental business is located. Complete the form using the following instructions for each locality listed. Use additional pages if needed. The steps outlined below are followed for each page.

Line A: Enter the county, city, or town in which a rental business is located.

Line B: Enter the locality code. Refer to the list furnished by DMV of Virginia cities, counties, and towns with DMV codes.

1. **Gross Proceeds:** Enter the amount of gross proceeds derived from the rental of any motor vehicle and/or trailer except mobile offices, mobile homes, and motorcycles.
- 1A. **Credit for Bad Debts:** Enter the amount of bad debts on rental transactions subject to the 4% Additional Tax which have been charged off as worthless for federal income tax purposes for the appropriate locality during this reporting period.
- 1B. **Bad Debt Recovery:** Enter the amount of rental proceeds charged off on previous returns and subsequently collected during the current reporting period for the appropriate locality.
- 1C. **Adjusted Gross Proceeds:** Deduct Line 1A from Line 1, then add Line 1B and enter the result on Line 1C.
2. **Exemptions:**
 - 2A. **Government Rentals:** Enter the tax exempt portion of gross proceeds derived from any of the following for the appropriate locality:
 - The Federal Government or any of its agencies.
 - The State of Virginia or its political subdivisions (i.e., any town, city, or county).
 - Any volunteer fire department or rescue squad not operated for profit.
 - 2B. **Re-Rentals:** Enter the portion of gross proceeds derived from rentals to another licensed renter for the purpose or re-rental for the appropriate locality.
 - 2C. **Total Exemptions:** Add Line 2A and Line 2B. Enter the result on Line 2C.
3. **Net Taxable Proceeds:** Subtract Line 2C from Line 1C. Enter the result on Line 3.
4. **Tax Liability:** Multiply the amount on Line 3 by 4% (.04). Enter the result on Line 4.
- 4A. **Adjustments:** Enter any credit which is due (-) or any additional tax which is due (+) from any previous reporting period for the appropriate locality.

Add up the figures in each row (for items 1 through 4A), and enter the total amount for each Line in the Totals Column.

5. **Adjusted Tax Liability:** Enter the sum or difference (whichever is applicable) of Lines 4 and 4A in the Totals Column.

FURTHER INSTRUCTIONS

Schedule of Additional Tax is one page:
 Transfer the amounts in each Line in the Totals Column to the corresponding Line in Column C of the Motor Vehicle Rental Tax Return (MCS-101).

Schedule of Additional Tax is more than one page:
 Combine the totals for each Line in the Totals Column for all of the pages to obtain a Grand Total. Transfer the Grand Total (combined sum of each Line for all pages) to the corresponding Line in Column C of the Motor Vehicle Rental Tax Return (MCS-101).

Attach the Schedule of Additional Tax to the Motor Vehicle Rental Tax Return (MCS-101)

VA.R. Doc. No. R97-590; Filed June 30, 1997, 3:01 p.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 30-50-100, 12 VAC 30-50-140 and 12 VAC 30-50-540; adding 12 VAC 30-50-541, 12 VAC 30-50-542 and 12 VAC 30-50-543).

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

Effective Dates: July 1, 1997, through June 30, 1998.

SUMMARY

REQUEST: The Governor is hereby requested to approve this agency's adoption of the emergency regulation entitled High Dose Chemotherapy and Bone Marrow Transplantation. This regulation will authorize DMAS to provide reimbursement for these services for individuals over the age of 21 who have been diagnosed with lymphoma or breast cancer.

RECOMMENDATION: Recommend approval of the Department's request to take an emergency adoption action regarding high dose chemotherapy and bone marrow transplantation. The Department intends to initiate the public notice and comment requirements contained in the Code of Virginia § 9-6.14:7.1.

/s/ Kathryn Kotula, Deputy Director
for Joseph M. Teefey, Director
Department of Medical Assistance Services
Date: May 30, 1997

/s/ Robert C. Metcalf
Secretary of Health and Human Resources
Date: June 27, 1997

/s/ George Allen
Governor
Date: June 30, 1997

DISCUSSION

BACKGROUND: The sections of the State Plan affected by this action are the Narrative for the Amount, Duration, and Scope of Services and Standards for the Coverage of Organ Transplant Services (12 VAC 30-50-100; 12 VAC 30-50-140; 12 VAC 30-50-540).

The Department of Medical Assistance Services (DMAS) currently provides reimbursement for kidney and cornea transplants for Medicaid recipients of all ages (per Supplement 1 to Attachment 3.1 A&B, sections 1 and 5). The facility and patient standards which must be met for reimbursement to occur are set out in the State Plan for Medical Assistance in Attachment 3.1-E, Standards for the Coverage of Organ Transplant Services. The presence of these standards in the State Plan is required by federal law in order for a state to claim federal financial participation.

In 1993, DMAS added to its organ transplant coverages, the coverage for children (younger than 21 years of age) of liver,

heart, allogeneic and autologous bone marrow transplantation. At the same time, coverage was added for children for any other medically necessary transplantation procedures, provided they were not considered experimental or investigational, that were determined to be necessary through health screenings.

This action proposes to add coverage by the Program for bone marrow transplantation procedures for individuals over the age of 21 when preauthorized by DMAS. Legislation passed into law by the 1997 General Assembly requires that DMAS reimburse for this transplant procedure, and the concomitant high dose chemotherapy, for individuals over the age of 21 who have been diagnosed with lymphoma or breast cancer.

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.

Chapter 683 of the 1997 Virginia Acts of Assembly directed DMAS to provide for payment for high-dose chemotherapy and bone marrow transplants on behalf of individuals over the age of twenty-one who have been diagnosed with lymphoma or breast cancer. DMAS was directed to promulgate regulations to implement this change to be effective within 280 days of the enactment of the legislation.

Without an emergency regulation, this amendment to the State Plan 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 established by the General Assembly.

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 General Assembly mandate to provide these services for adults, he must take this adoption action. This issue qualifies as an emergency regulation as provided for in § 9-6.14:4.1(C)(5)(ii), because Chapter 683 of the 1997 Virginia Acts of Assembly requires this regulation be effective within 280 days from the enactment of the law. 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: There are no localities which are uniquely affected by these regulations as they apply statewide. This regulation will have a positive affect on recipients since it provides previously unavailable coverage.

Specific providers which provide these services will be reimbursed for a broader population than previously covered by DMAS. The 1997 General Assembly appropriated \$1,105,000 total funds (\$536,000 General Funds; \$569,000 non-General Funds) for coverage of this service in FY 1997-98.

RECOMMENDATION: Recommend approval of this request to adopt this emergency regulation to become effective July 1, 1997. From its effective date, this regulation is to remain in force for one full year or until superseded by final regulations. Without an effective emergency regulation, the Department would lack the authority to reimburse for high dose chemotherapy and bone marrow transplantation for individuals over the age of 21 and subsequently claim federal matching dollars.

APPROVAL SOUGHT FOR 12 VAC 30-50-100, 12 VAC 30-50-140, and 12 VAC 30-50-543.

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 30-50-100. Inpatient hospital services other than those provided in an institution for mental diseases.

A. Medicaid inpatient hospital admissions (lengths-of-stay) are limited to the 75th percentile of PAS (Professional Activity Study of the Commission on Professional and Hospital Activities) diagnostic/procedure limits. For admissions under four 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 three days up to a maximum of 21 days, the hospital must attach medical justification records to the billing invoice. (See the exception to subsection F of this section.)

B. Medicaid does not pay the Medicare (Title XVIII) coinsurance for hospital care after 21 days regardless of the length-of-stay covered by the other insurance. (See exception to subsection F of this section.)

C. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment to health or life of the mother if the fetus were carried to term.

D. 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 preoperative days. Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital

setting thereby warranting hospital admission. Medically unjustified days in such admissions will be denied.

E. Reimbursement will not be provided for weekend (Saturday/Sunday) admissions, unless medically justified. Hospital claims with admission dates on Saturday or Sunday will be pended for review by medical staff to determine appropriate medical justification for these days. The hospital must write on or attach the justification to the billing invoice for consideration of reimbursement coverage for these days. Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital setting thereby warranting hospital admission. Medically unjustified days in such admissions will be denied.

F. Coverage of inpatient hospitalization will be limited to a total of 21 days for all admissions within a fixed period, which would begin with the first day inpatient hospital services are furnished to an eligible recipient and end 60 days from the day of the first admission. There may be multiple admissions during this 60-day period; however, when total days exceed 21, all subsequent claims will be reviewed. Claims which exceed 21 days within 60 days with a different diagnosis and medical justification will be paid. Any claim which has the same or similar diagnosis will be denied. **EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE:** Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Medical documentation justifying admission and the continued length of stay must be attached to or written on the invoice for review by medical staff to determine medical necessity. Medically unjustified days in such admissions will be denied.

G. 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.

I. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Transplant services for kidneys and corneas shall be covered for all eligible persons. *High dose chemotherapy and bone marrow/stem cell transplantation shall be covered for all eligible persons with a diagnosis of lymphoma or breast cancer.* Transplant services for liver, heart, and ~~bone marrow transplantation and~~

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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/*stem cell* transplants and any other medically necessary transplantation procedures that are determined to not be experimental or investigational require preauthorization. Cornea transplants do not require preauthorization. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. Reimbursement for covered liver, heart, and bone marrow transplant services and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be a fee based upon the greater of a prospectively determined, procedure-specific flat fee determined by the agency or a prospectively determined, procedure-specific percentage of usual and customary charges. The flat fee reimbursement will cover procurement costs; all hospital costs from admission to discharge for the transplant procedure; and total physician costs for all physicians providing services during the transplant hospital stay, including radiologists, pathologists, oncologists, surgeons, etc. The flat fee reimbursement does not include pre- and post-hospitalization for the transplant procedure or pretransplant evaluation. *If the actual charges are lower than the fee, the agency shall reimburse actual charges.* 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 12 VAC 30-50-540.

J. The department may exempt portions or all of the utilization review documentation requirements of subsections A, D, E, F as it pertains to recipients under age 21, G, or H in writing for specific hospitals from time to time as part of their ongoing hospital utilization review performance evaluation. These exemptions are based on utilization review performance and review edit criteria which determine an individual hospital's review status as specified in the hospital provider manual. In compliance with federal regulations at 42 CFR 441.200, Subparts E and F, claims for hospitalization in which sterilization, hysterectomy or abortion procedures were performed, shall be subject to medical documentation requirements.

K. Hospitals qualifying for an exemption of all documentation requirements except as described in subsection J above shall be granted "delegated review status" and shall, while the exemption remains in effect, not be required to submit medical documentation to support 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:

1. The department shall conduct periodic on-site post-payment audits of qualifying hospitals using a statistically valid sampling of paid claims for the purpose of reviewing the medical necessity of inpatient stays.
2. The hospital shall make all medical records of which medical reviews will be necessary available upon request, and shall provide an appropriate place for the department's auditors to conduct such review.
3. The qualifying hospital will immediately refund to the department in accordance with § 32.1-325.1 A and B of the Code of Virginia the full amount of any initial overpayment identified during such audit.
4. The hospital may appeal adverse medical necessity and overpayment decisions pursuant to the current administrative process for appeals of post-payment review decisions.
5. The department may, at its option, depending on the utilization review performance determined by an audit based on criteria set forth in the hospital provider manual, remove a hospital from delegated review status and reapply certain or all prepayment utilization review documentation requirements.

12 VAC 30-50-140. Physician's services whether furnished in the office, the patient's home, a hospital, a skilled nursing facility or elsewhere.

A. Elective surgery as defined by the Program is surgery that is not medically necessary to restore or materially improve a body function.

B. Cosmetic surgical procedures are not covered unless performed for physiological reasons and require Program prior approval.

C. Routine physicals and immunizations are not covered except when the services are provided under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and when a well-child examination is performed in a private physician's office for a foster child of the local social services department on specific referral from those departments.

D. Psychiatric services.

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, 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 a 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 are limited to a maximum of 21 days per admission within 60 days for the same or similar diagnoses and is further restricted to medically necessary inpatient hospital days as determined by the Program. EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Payments for physician visits for inpatient days determined to be medically unjustified will be adjusted.

H. Repealed.

I. Reimbursement shall not be provided for physician services provided to recipients in the inpatient setting whenever the facility is denied reimbursement.

J. Reimbursement will not be provided for physician services performed in the inpatient setting for those surgical or diagnostic procedures listed on the mandatory outpatient surgery list unless the service is medically justified or meets one of the exceptions. The requirements of mandatory outpatient surgery do not apply to recipients in a retroactive eligibility period.

K. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Transplant services for kidneys and corneas shall be covered for all eligible persons. *High dose chemotherapy and bone marrow/stem cell transplantation shall be covered for all eligible persons with a diagnosis of lymphoma or breast cancer.* 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/stem cell transplants and any other medically necessary transplantation procedures that are determined to not be experimental or investigational require preauthorization. Cornea transplants do not require preauthorization. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. Reimbursement for covered liver, heart, and bone marrow transplant services and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be a fee based upon the greater of a prospectively determined, procedure-specific flat fee determined by the agency or a prospectively determined, procedure-specific percentage of usual and customary charges. The flat fee reimbursement will cover procurement costs; all hospital costs from admission to discharge for the transplant procedure; and total physician costs for all physicians providing services during the transplant hospital stay, including radiologists, pathologists, oncologists, surgeons, etc. The flat fee reimbursement does not include pre- and post-hospitalization for the transplant procedure or pretransplant evaluation. *If the actual charges are lower than the fee, the agency shall reimburse actual charges.* 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 12 VAC 30-50-540.

12 VAC 30-50-540. Standards for the coverage of organ transplant services.

The following criteria will be used to evaluate specific organ transplant requests.

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1.1. Patient Selection Criteria for Provision of Kidney Transplantation (KT).

A. Transplantation of the kidney is a surgical treatment whereby a diseased kidney is replaced by a healthy organ. Pre-authorization is required. The following patient selection criteria shall apply for the consideration of all approvals for coverage and reimbursement for kidney transplantation.

1. Current medical therapy has failed and patient has failed to respond to appropriate conservative management;
2. The patient does not have other systemic disease including but not limited to the following:
 - a. Reversible renal conditions;
 - b. Major extra-renal complications (malignancy, systemic disease, cerebral cardio-arterial disease);
 - c. Active infection;
 - d. Severe malnutrition; or
 - e. Pancytopenia.
3. The patient is not in both an irreversible terminal state and on a life support system;
4. Adequate supervision will be provided to assure there will be strict adherence to the medical regimen which is required;
5. The KT is likely to prolong life and restore a range of physical and social functions suited to activities of daily living;
6. A facility with appropriate expertise has evaluated the patient, and has indicated willingness to undertake the procedure;
7. The patient does not have multiple uncorrectable severe major system congenital anomalies;
8. Failure to meet subdivisions 1 through 7 shall result in denial of pre-authorization and coverage for the requested kidney transplant procedures.

1.2. Facility Selection Criteria for Kidney Transplantation (KT).

A. For medical facility to qualify as an approved Virginia Medicaid provider for performing kidney transplants, the following conditions must be met:

1. The facility has available expertise in immunology, infectious disease, pathology, pharmacology, and anesthesiology;
2. The KT program staff has extensive experience and expertise in the medical and surgical treatment of renal disease;
3. Transplant surgeons on the staff have been trained in the KT technique at an institution with a well established KT program;

4. The transplantation program has adequate services to provide specialized psychosocial and social support for patients and families;

5. Adequate blood bank support services are present and available;

6. Satisfactory arrangements exist for donor procurement services;

7. The institution is committed to a program of at least 25 KTs a year;

8. The center has a consistent, equitable, and practical protocol for selection of patients (at a minimum, the DMAS Patient Selection Criteria must be met and adhered to);

9. The center has the capacity and commitment to conduct a systematic evaluation of outcome and cost;

10. In addition to hospital administration and medical staff endorsement, hospital staff support also exists for such a program;

11. The hospital has an active, ongoing renal dialysis service;

12. The hospital has access to staff with extensive skills in tissue typing, immunological and immunosuppressive techniques;

13. Initial approval as KT center requires performance of 25 KTs within the most recent 12 months, with a one year survival rate of at least 90%. Centers that fail to meet this requirement during the first year will be given a one-year conditional approval. Failure to meet the volume requirement following the conditional approval will result in loss of approval.

12 VAC 30-50-541. 2.1. Patient Selection Criteria for Provision of Corneal Transplantation (CT).

A. Transplantation of the cornea is a surgical treatment whereby a diseased cornea is replaced by a healthy organ. While pre-authorization is not required, the following patient selection criteria shall apply for the consideration of all approvals for reimbursement for cornea transplantation.

1. Current medical therapy has failed and will not prevent progressive disability;

2. The patient is suffering from one of the following conditions:

- a. Post-cataract surgical decompensation,
- b. Corneal dystrophy,
- c. Post-traumatic scarring,
- d. Keratoconus, or
- e. Aphakia Bullous Keratopathy;

3. Adequate supervision will be provided to assure there will be strict adherence by the patient to the long term medical regimen which is required;

4. The CT is likely to restore a range of physical and social function suited to activities of daily living;

5. The patient is not in both an irreversible terminal state and on a life support system;

6. The patient does not have untreatable cancer, bacterial, fungal, or viral infection;

7. The patient does not have the following eye conditions:

- a. Trichiasis,
- b. Abnormal lid brush and/or function,
- c. Tear film deficiency,
- d. Raised transocular pressure,
- e. Intensive inflammation, and
- f. Extensive neo-vascularization.

2.2. Facility Selection Criteria for Cornea Transplantation (CT).

A. For medical facility to qualify as an approved Medicaid provider for performing cornea transplants, the following conditions must be met:

1. The facility has available expertise in immunology, infectious disease, pathology, pharmacology, and anesthesiology;

2. The CT program staff has extensive experience and expertise in the medical and surgical treatment of eye disease;

3. Transplant surgeons on the staff have been trained in the CT technique at an institution with a well established CT program;

4. The transplantation program has adequate services to provide social support for patients and families;

5. Satisfactory arrangements exist for donor procurement services;

6. The institution is committed to a program of eye surgery;

7. The center has a consistent, equitable, and practical protocol for selection of patients (at a minimum, the DMAS Patient Selection Criteria must be met and adhered to);

8. The center has the capacity and commitment to conduct a systematic evaluation of outcome and cost;

9. In addition to hospital administration and medical staff endorsement, hospital staff support also exists for such a program;

10. Initial approval as CT center requires performance of corneal transplant surgery, with a one year graft survival rate of at least 75%. Centers that fail to meet this requirement during the first year will be given a one-year conditional approval. Failure to meet this requirement following the conditional approval will result in loss of approval.

12 VAC 30-50-542. 3.1. Patient Selection Criteria for Provision of Liver, Heart, Allogeneic and Autologous Bone Marrow Transplantation and Any Other Medically Necessary Transplantation Procedures That Are Determined to Not be Experimental or Investigational (Coverage for persons younger than 21 years).

A. General. The following general conditions shall apply to these services:

1. Coverage shall not be provided for procedures that are provided on an investigational or experimental basis.

2. There must be no effective alternative medical or surgical therapies available with outcomes that are at least comparable.

3. The transplant procedure and application of the procedure in treatment of the specific condition for which it is proposed have been clearly demonstrated to be medically effective and not experimental or investigational.

4. Prior authorization by the Department of Medical Assistance Services (DMAS) is required. The prior authorization request must contain the information and documentation as required by DMAS.

B. The following patient selection criteria shall apply for the consideration of authorization and coverage and reimbursement:

1. The patient must be under 21 years of age at time of surgery.

2. The patient selection criteria of the transplant center where the surgery is to be performed shall be used in determining whether the patient is appropriate for selection for the procedure. Transplant procedures will be pre-authorized only if the selection of the patient adheres to the transplant center's patient selection criteria, based upon review by DMAS of information submitted by the transplant team or center.

a. The recipient's medical condition shall be reviewed by the transplant team or program according to the transplant facility's patient selection criteria for that procedure and the recipient shall be determined by the team to be an appropriate transplant candidate. Patient selection criteria used by the transplant center shall include, but not necessarily be limited to, the following:

1. Current medical therapy has failed and the patient has failed to respond to appropriate therapeutic management;

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2. The patient is not in an irreversible terminal state, and

3. The transplant is likely to prolong life and restore a range of physical and social function suited to activities of daily living.

3.2. Facility Selection Criteria for Liver, Heart, Allogeneic and Autologous Bone Marrow Transplantation and Any Other Medically Necessary Transplantation Procedures That Are Determined to Not be Experimental or Investigational (Coverage for persons younger than 21 years).

A. General. The following general conditions shall apply:

1. Procedures may be performed out of state only when the authorized transplant cannot be performed in the Commonwealth because the service is not available or, due to capacity limitations, the transplant can not be performed in the necessary time period.

2. Criteria applicable to transplantation services and centers in the Commonwealth also apply to out-of-state transplant services and facilities.

B. To qualify for coverage, the facility must meet, but not necessarily be limited to, the following criteria:

1. The transplant program staff has demonstrated expertise and experience in the medical and surgical treatment of the specific transplant procedure;

2. The transplant surgeons have been trained in the specific transplant technique at an institution with a well established transplant program for the specific procedure;

3. The facility has expertise in immunology, infectious disease, pathology, pharmacology, and anesthesiology;

4. The facility has staff or access to staff with expertise in tissue typing, immunological and immunosuppressive techniques;

5. Adequate blood bank support services are available;

6. Adequate arrangements exist for donor procurement services;

7. Current full membership in the United Network for Organ Sharing, for the facilities where solid organ transplants are performed;

8. Membership in a recognized bone marrow accrediting or registry program for bone marrow transplantation programs;

9. The transplant facility or center can demonstrate satisfactory transplantation outcomes for the procedure being considered;

10. Transplant volume at the facility is consistent with maintaining quality services;

11. The transplant center will provide adequate psychosocial and social support services for the transplant recipient and family;

12 VAC 30-50-543. 4.1 High Dose Chemotherapy and Bone Marrow/Stem Cell Transplantation (Coverage for persons over 21 years of age).

A. General. The following general conditions shall apply to these services:

1. This must be the most effective medical therapy available yielding outcomes that are at least comparable to other therapies.

2. The transplant procedure and application of the procedure in treatment of the specific condition for which it is proposed have been clearly demonstrated to be medically effective.

3. Prior authorization by the Department of Medical Assistance Services (DMAS) is required. The prior authorization request must contain the information and documentation as required by DMAS.

B. The following patient selection criteria shall apply for the consideration of authorization and coverage and reimbursement for individuals who have been diagnosed with lymphoma or breast cancer and have been determined by the treating health care provider to have a performance status sufficient to proceed with such high-dose chemotherapy and bone marrow/stem cell transplant:

1. The patient selection criteria of the transplant center where the treatment is to be performed shall be used in determining whether the patient is appropriate for selection for the procedure. Transplant procedures will be pre-authorized only if the selection of the patient adheres to the transplant center's patient selection criteria, based upon review by DMAS of information submitted by the transplant team or center.

2. The recipient's medical condition shall be reviewed by the transplant team or program according to the transplant facility's patient selection criteria for that procedure and the recipient shall be determined by the team to be an appropriate transplant candidate. Patient selection criteria used by the transplant center shall include, but not necessarily be limited to, the following:

a. The patient is not in an irreversible terminal state (as demonstrated in the facility's patient selection criteria), and

b. The transplant is likely to prolong life and restore a range of physical and social function suited to activities of daily living.

4.2. Facility Selection Criteria High Dose Chemotherapy and Bone Marrow/Stem Cell Transplantation for individuals diagnosed with lymphoma or breast cancer.

A. General. The following general conditions shall apply:

1. Procedures may be performed out of state only when the authorized transplant cannot be performed in the Commonwealth because the service is not available or,

due to capacity limitations, the transplant can not be performed in the necessary time period.

2. Criteria applicable to transplantation services and centers in the Commonwealth also apply to out-of-state transplant services and facilities.

B. To qualify for coverage, the facility must meet, but not necessarily be limited to, the following criteria:

1. The transplant program staff has demonstrated expertise and experience in the medical treatment of the specific transplant procedure;
2. The transplant physicians have been trained in the specific transplant technique at an institution with a well established transplant program for the specific procedure;
3. The facility has expertise in immunology, infectious disease, pathology, pharmacology, and anesthesiology;
4. The facility has staff or access to staff with expertise in tissue typing, immunological and immunosuppressive techniques;
5. Adequate blood bank support services are available;
6. Adequate arrangements exist for donor procurement services;
7. Membership in a recognized bone marrow accrediting or registry program for bone marrow transplantation programs;
8. The transplant facility or center can demonstrate satisfactory transplantation outcomes for the procedure being considered;
9. Transplant volume at the facility is consistent with maintaining quality services; and
10. The transplant center will provide adequate psychosocial and social support services for the transplant recipient and family.

VA.R. Doc. No. R97-603; Filed July 1, 1997, 5:15 p.m.

Title of Regulation: 12 VAC 30-90-10 et seq. **Methods and Standards for Establishing Payment Rates for Long-Term Care (adding Part V, 12 VAC 30-90-380).**

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

Effective Dates: July 1, 1997, through June 30, 1998.

SUMMARY

REQUEST: The Governor is hereby requested to approve this agency's adoption of the emergency regulation entitled Nursing Facility Reimbursement for Individuals with Traumatic Brain Injury to provide a fixed per day payment for TBI residents in addition to the reimbursement otherwise

payable under the provisions of the Nursing Home Payment System.

RECOMMENDATION: Recommend approval of the Department's request to take an emergency adoption action regarding NF Reimbursement for Individuals with Traumatic Brain Injury. 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
Department of Medical Assistance Services
Date: June 12, 1997

/s/ Robert C. Metcalf
Secretary of Health and Human Resources
Date: June 27, 1997

/s/ George Allen
Governor
Date: June 30, 1997

DISCUSSION

BACKGROUND: The section of the State Plan affected by this action is Traumatic Brain Injury Nursing Facility (NF) Reimbursement (Supplement 3 to Attachment 4.19-D) (VR 460-03-4.1943)(12 VAC 30-90-380).

Individuals who have been diagnosed with Traumatic Brain Injury (TBI) are those who have sustained trauma to their brains. Such individuals' injuries may be so severe that they require institutionalization for the remainder of their lives. Such individuals, who may frequently be young and active before their trauma, require methods of care and treatment which are different from that provided to institutionalized, debilitated elderly patients. These young TBI patients frequently exhibit behavioral problems which render them difficult, if not impossible, to care for with the average aging population of NF residents.

Medicaid recipients with Traumatic Brain Injury (TBI), who require long term institutional care, are currently being served in either the general NF setting or in the specialized care NF setting when they meet the criteria for comprehensive rehabilitation. Caring for TBI patients in either the general NF population or in the Specialized Care setting is a less than satisfactory service solution. TBI patients with behavioral problems who do not require active rehabilitation present unique service needs beyond those of typical nursing facility residents. This circumstance produces a gap in the continuum of services available that is intended to be served by this proposed program for this population.

Over the last few years, DMAS staff have discussed the atypical resource needs of this special population with several service providers. These providers have explained that the services this population require are not adequately reimbursed within the general nursing facility services reimbursement methodology.

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DMAS concurs with this assessment as a result of the experiences of one provider who developed a dedicated facility unit for the purpose of serving TBI individuals with concurrent behavior problems. The following case study, submitted by this provider, presents a useful illustration of the unique needs of these individuals.

'Edward' is a 48 year old male who suffered a TBI in an automobile accident. Upon emerging from a year long coma, Ed received extensive rehabilitation and regained the ability to walk, feed himself, and assist in self-care activities. However, Ed's brain injury produced severe behavioral changes including an inability to manage frustration and a tendency toward agitated outbursts. Ed will verbally and physically exhibit aggressive behaviors when interacting with staff or other residents. Ed's unpredictable and inappropriate behaviors require constant, careful management to prevent injury to Ed and others.

The nature of the behavior problems presented by these individuals produces a safety problem for other residents especially for the frail elderly who comprise the bulk of residents in typical nursing facilities. These behavior problems require facilities to provide additional staff resources to maintain a safe environment for all facility residents.

Beyond the safety concerns, these individuals, usually much younger than the average nursing facility resident, also require a more intensive schedule of activities during the day. These individuals require services that engage them in activities which promote appropriate behaviors.

In the facility examined by DMAS, TBI residents are occupied in individual and group activities for all but two of their waking hours. A recreation therapist trained in serving TBI residents is dedicated to the unit. In addition, a neuropsychologist conducts several weekly programs for these residents. The use of care settings dedicated to serving these individuals provides unique necessary services and prevents the safety problems which may result from intermixing TBI individuals with typical geriatric long term care individuals.

Resident Criteria

Resident eligibility criteria developed for the TBI program have been designed to limit eligibility for this program to individuals with problematic behaviors. Individuals served in the program will be required to have documented abusive, aggressive, or disruptive behavior. The resident criteria will also prohibit facilities from serving individuals younger than 14 years of age within the same unit as adult TBI patients. Pediatric TBI residents, being physically vulnerable in the same setting with adult TBI residents, will still be served in nursing facilities or in community based care services.

To meet the criteria for admission and continued stay for the Traumatic Brain Injury program, there must be documented evidence in the resident's medical record that:

- The resident meets the minimum nursing facility criteria as specified in 12 VAC 30-60-300, as well as meet the preadmission screening requirements for nursing facility level of care;
- The resident has a physician's diagnosis of TBI which is also recorded on the Patient Intensity Rating System Review (DMAS-80) form by diagnosis code 85000 (trauma to the brain);
- Abusive, aggressive, or disruptive behavior has been documented within 30 days prior to admission and also recorded on the Patient Intensity Rating System Review (DMAS-80) form by coding of behavior pattern 3 or 4. Behavior coding on the Patient Rating System Review form must also be supported by documentation in the medical record;
- The resident is at least 14 years old; and
- The resident must be appropriate for nursing facility placement and the facility must be able to safeguard him such that the resident will not be a physical or emotional danger to himself or other residents on the unit.

Provider Criteria

Provider eligibility criteria developed for the program require facilities to establish a dedicated unit of 20 beds or more and to provide additional professional services to support the patients' special needs. These criteria are intended to concentrate individuals with TBI into specially dedicated facilities thereby satisfying safety concerns for other facility residents and achieving economies of scale permitting facilities to economically and efficiently provide the additional required services. The provider must provide all services that are available to the general nursing facility population in accordance with established standards and regulations for nursing facility care to include programming that is individualized and geared toward the needs and interests of the unit's population. The provider must meet these specified criteria to receive the add-on reimbursement for the TBI program:

- Provide a dedicated unit of at least 20 beds that is physically separated by a doorway that is either locked or maintained with an alarm system that sounds at the unit nursing station when opened.
- Certify all beds on the dedicated unit for licensed nursing facility care. (To receive payment the resident must reside in a Medicaid certified bed.)
- Locate at least one nursing station on the unit and that nursing station must serve the dedicated unit only.
- Maintain a contractual agreement with a psychiatrist and a neuropsychologist to serve the resident population as needed.
- Provide a licensed registered nurse (RN) to function in a charge nurse capacity on the unit whose sole

responsibility is for the care and oversight of this designated unit. This RN cannot have other responsibilities outside of the unit during the period for which she is designated as the charge nurse for the dedicated unit. The RN charge nurse must have experience caring for the population with head injuries before serving in this capacity. Temporary agency nurses may not be used to fulfill the charge nurse requirement.

- Ensure that each resident on the unit is evaluated on an annual basis by a licensed clinical psychologist with expertise in neuropsychology or a neurologist. If a resident is admitted and has not been evaluated by a neuropsychologist or neurologist in the past calendar year, an evaluation must be completed within the first thirty days of the resident's stay.
- Coordinate educational services for the resident with the appropriate public school system, if the resident has not completed all educational requirements for high school education as specified by the State Board of Education. Coordination will entail making the necessary contacts and providing necessary information to the appropriate school division. The facility shall keep records of such coordination contacts.

Payment Methodology

With this emergency regulation and effective dates of service on and after July 1, 1997, a per day rate add-on is to be paid for recipients who meet the eligibility criteria for the TBI program and who are residents in a designated TBI unit of 20 beds or more that meets the provider eligibility criteria for the program. The value of the rate add-on shall be \$50.00 on July 1, 1997. The rate add-on for any qualifying provider's fiscal year shall be adjusted for inflation using the DRI moving average that is used to adjust ceilings and rates for inflation under the Nursing Home Payment System. The TBI rate add-on shall be a fixed per day amount, paid in addition to the reimbursement otherwise payable under the provisions of the Nursing Home Payment System.

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.

The 1997 Appropriations Act item 322(D)(3) states: "The Department of Medical Assistance Services shall amend its regulations governing nursing home reimbursement to be effective July 1, 1997, to implement an adjustment to the

nursing home operating rate for the additional reasonable costs of care of nursing home residents who are victims of traumatic brain injuries. This rate adjustment shall be applicable only to residents with traumatic brain injuries and related behavioral problems to be defined in regulation, and who are in a unit of a nursing home that meets the criteria of a traumatic brain injury unit, also to be established in regulation. Among these criteria shall be the condition that a traumatic brain injury unit must be a unit of not less than 20 beds."

Without an emergency regulation, this amendment to the State Plan 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 July 1, 1997, effective date established by the General Assembly.

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 item in the 1997 Appropriations Act, he must take this adoption action. This issue qualifies as an emergency regulation as provided for in § 9-6.14:4.1(C)(5)(ii), because Virginia statutory law or the appropriation act or federal law requires this regulation to 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: The 1997 Appropriations Act provided \$500,000 total funds (\$243,000 GF) for these services in FY 1998. DMAS estimates that between one and three providers and between 10 and 50 recipients will qualify for the program during the first annual period of operation. Implementation of the program will not result in an expansion of the number of individuals eligible for nursing facility services, since the program is designed to serve individuals with TBI who are otherwise receiving nursing facility services. There are no localities which are uniquely affected by these regulations as they apply statewide.

RECOMMENDATION: Recommend approval of this request to adopt this emergency regulation to become effective July 1, 1997. From its effective date, this regulation is to remain in force for one full year or until superseded by final regulations. Without an effective emergency regulation, the Department would lack the authority to reimburse nursing facilities appropriately for the level of care and intensity of services required by individuals who have been diagnosed to have Traumatic Brain Injury.

APPROVAL SOUGHT FOR METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES FOR LONG-TERM CARE: TRAUMATIC BRAIN INJURY PROGRAM (VR 460-03-4.1943) (12 VAC 30-90-380).

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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:

PART V.

TRAUMATIC BRAIN INJURY (TBI) PROGRAM.

12 VAC 30-90-380. Traumatic Brain Injury (TBI) Program.

The Traumatic Brain Injury (TBI) Program shall provide a fixed per day payment for nursing facility residents with TBI, who are served in the program in accordance with resident and provider criteria, in addition to the reimbursement otherwise payable under the provisions of the Nursing Home Payment System (NHPS). Effective for dates of service on and after July 1, 1997, a per day rate add-on shall be paid for recipients who meet the eligibility criteria for the TBI program and who are residents in a designated TBI unit of 20 beds or more that meets the provider eligibility criteria for the program. The value of the rate add-on shall be \$50.00 on July 1, 1997. The TBI rate add-on shall be a fixed per day amount, paid in addition to the reimbursement otherwise payable under the provisions of the Nursing Home Payment System. The rate add-on for any qualifying provider's fiscal year shall be adjusted for inflation using the DRI moving average that is used to adjust ceilings and rates for inflation under the Nursing Home Payment System.

1. Resident Criteria: To meet the criteria for admission and continued stay for the TBI program, there shall be documented evidence in the resident's medical record of all of the following:

- (a) The resident shall meet the minimum nursing facility criteria as specified in 12 VAC 30-60-300, as well as meet the preadmission screening requirements for nursing facility level of care;
- (b) The resident has a physician's diagnosis of TBI which is also recorded on the Patient Intensity Rating System Review (DMAS-80) form by diagnosis code 85000 (trauma to the brain);
- (c) Abusive, aggressive, or disruptive behavior has been documented within 30 days prior to admission and also recorded on the Patient Intensity Rating System Review (DMAS-80) form by coding of behavior pattern 3 or 4. Behavior coding on the Patient Intensity Rating System Review form must also be supported by documentation in the medical record;
- (d) The resident is at least 14 years old; and
- (e) The resident must be appropriate for nursing facility placement and the facility must be able to safeguard him such that the resident will not be a physical or emotional danger to himself or other residents on the unit.

2. Provider Criteria: Nursing facilities which may be approved to provide this service shall operate a dedicated unit of 20 beds or more and provide additional

professional services to support the special needs of these individuals. These criteria shall concentrate individuals with TBI into specially dedicated facilities thereby satisfying safety concerns and achieving economies of scale necessary for the nursing facilities. At a minimum, the provider shall meet all of the criteria outlined below to receive the add-on reimbursement for the TBI program for residents who meet the TBI program resident criteria.

- (a) Provide all services that are available to the general nursing facility population in accordance with established standards and regulations for nursing facilities to include programming that is individualized and geared toward the needs and interests of the unit's population;
- (b) Provide a dedicated unit of at least 20 beds that is physically separated by a doorway that shall be either locked or maintained with an alarm system that sounds at the unit nursing station when opened;
- (c) Certify all beds on this dedicated unit for licensed nursing facility care. To receive payment the resident must reside in a Medicaid certified bed;
- (d) Locate at least one nursing station on the unit and that nursing station must serve the dedicated unit only;
- (e) Maintain a contractual agreement with a psychiatrist and a neuropsychologist to serve the resident population as needed;
- (f) Provide a registered nurse to function in a charge nurse capacity on the unit whose sole responsibility is for the care and oversight of the designated unit. This registered nurse cannot have other responsibilities outside of the unit during the period for which she is designated as the charge nurse for the dedicated unit. The registered nurse working in a charge nurse capacity must have sufficient experience working with the population with head injuries before serving in this capacity. Temporary agency nurses cannot be used to fulfill the charge nurse requirement;
- (g) Ensure that each resident on the unit is evaluated on an annual basis by a licensed clinical psychologist with expertise in neuropsychology or a neurologist. If a resident is admitted and has not been evaluated by a neuropsychologist or neurologist in the past calendar year, an evaluation must be completed within the first thirty days of the resident's stay in the TBI program; and
- (h) Coordinate educational services for the resident with the appropriate public school system, if the resident has not completed all educational requirements for high school education as specified by the State Board of Education. Coordination is defined as making the necessary contacts and providing necessary information to the appropriate school division. The facility shall keep records of such coordination contacts.

Title of Regulation: Consumer Directed Personal Attendant Services for Elderly and Disabled Individuals.

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

Effective Dates: July 1, 1997, through June 30, 1998.

SUMMARY

REQUEST: The Governor is hereby requested to approve this agency's adoption of the emergency regulation entitled Consumer-Directed Personal Attendant Services. This regulation will allow the Department of Medical Assistance Services (DMAS) to implement another service delivery method as an option to long-term care community based services, effective July 1, 1997.

RECOMMENDATION: Recommend approval of the Department's request to take an emergency adoption action regarding Consumer-Directed Personal Attendant Services. The Department intends to initiate the public notice and comment requirements contained in the Code of Virginia § 9-6.14:7.1.

/s/ Kathryn T. Kotula, Deputy Director
for Joseph M. Teefey, Director
Department of Medical Assistance Services
Date: May 29, 1997

/s/ Robert C. Metcalf
Secretary of Health and Human Services
Date: June 27, 1997

/s/ George Allen
Governor
Date: June 30, 1997

DISCUSSION

BACKGROUND: The regulations affected by this action are (VR 460-04-8.16 (12 VAC 30-120-Part VIII)).

Personal attendant services (PAS) are defined as long-term maintenance or support services which are necessary to enable an elderly or disabled individual to remain at or return to his home rather than enter a nursing facility or hospital for a specified condition. PAS assists the elderly or disabled recipient with basic health-related services, such as activities of daily living (eating, bathing, grooming, dressing, ambulation, and toileting); assists with normally self-administered medications; and/or provides basic household maintenance services essential to health in the home. These services do not include the performance of skilled nursing services.

DMAS already offers an agency-directed model of PAS to Virginians through a federal home and community-based care waiver known as the Elderly and Disabled Waiver. Currently, the Elderly and Disabled Waiver recipient is only able to receive personal care services from an approved

agency contracted with DMAS. The agency-directed model controls the structure of the service delivery system by assuming primary responsibility for certifying, selecting, scheduling, and terminating the services of the personal attendant, thereby leaving the recipient few choices. In fiscal year 1996, DMAS spent approximately \$61.5 million on the agency-directed model of personal care services.

Unlike the agency-directed model, a consumer-directed model of service is based upon the principle that individuals should have the primary responsibility for making decisions regarding the assistance they receive. The proposed Medicaid-funded consumer-directed service model will allow certain elderly and disabled consumers who, after demonstrating their ability to manage and supervise those attendants, will be able to hire their own personal attendants. A personal attendant is considered to be an extension of the consumer's body, performing actions that the consumer is no longer able to perform himself. Consumer-directed services have been demonstrated in other states and the Commonwealth (through the Department of Rehabilitative Services) to have a tremendous positive impact on consumers. Consumers who hire, train, and supervise their own attendants report less staff turnover, greater flexibility in meeting the consumers' schedules and preferences, and greater satisfaction with the way the personal attendants perform their duties.

How a Consumer Accesses and Utilizes Consumer-Directed PAS

The consumer and/or family requests assistance with long-term care needs, and the consumer is evaluated by the Nursing Home Pre-Admission Screening (NHPAS) Team using a standardized assessment tool, the Uniform Assessment Instrument (UAI). Once the consumer is determined to be eligible for Medicaid funded long-term care services, the consumer is offered a choice of home and community based services in lieu of nursing home care. If the consumer indicates interest in Consumer-Directed PAS, the consumer will be assessed to determine if the consumer is able to independently manage his own personal attendant.

Once the NHPAS team authorizes Consumer-Directed PAS, the consumer chooses the provider agency which will provide service coordination. The service coordinator will visit the consumer and train the consumer on the rights and responsibilities associated with Consumer-Directed PAS, and will develop a plan of care with the consumer based on the UAI and the number of approved personal attendant hours. The service coordinator will send a copy of the UAI and additional documentation with which the NHPAS team authorized the service and a copy of the plan of care to DMAS for final approval for Consumer-Directed PAS. The service coordinator will visit the consumer periodically to monitor the plan of care and to ensure that services are appropriate to the consumer's needs.

The consumer is considered the employer in this program. The consumer will be responsible for hiring, training, supervising, and firing his personal attendant. The consumer

Emergency Regulations

will also have access to names of potential personal attendants through a registry that will be maintained by the service coordinator. The service coordinator will be available to the consumer to provide assistance as needed. The consumer will develop a contract with the personal attendant, and will keep track of the number of hours worked by the personal attendant. The consumer will submit a bi-weekly timesheet to the service coordinator, who will verify that the number of approved hours are not exceeded. The timesheet will be sent to the fiscal agent, who handles fiscal responsibilities on behalf of the consumer and pays the personal attendant.

The consumer will be reassessed every six months to reevaluate the need for personal attendant services and the appropriateness of Consumer-Directed PAS. If the consumer decides he is no longer interested in receiving Consumer-Directed PAS, and would prefer the agency-directed model of personal care services, the service coordinator will arrange for the consumer to be reassessed for personal care services and will be switched to the Elderly and Disabled Waiver.

History

A heightened interest in consumer directed PAS by consumers and certain providers prompted an investigation of the possibilities of providing Medicaid-funded consumer-directed services in Virginia. In 1995, the General Assembly approved House Joint Resolution 539 (HJR 539), requesting the evaluation of the feasibility of amending the current Medicaid Elderly and Disabled waiver to allow individuals to hire their own personal attendants. DMAS subsequently convened a workgroup of the major stakeholders to evaluate the impact of offering a consumer-directed model of personal care services. The workgroup's results were reported in House Document 18 (1996), entitled "A Study of Consumer-Directed Services."

Based upon the recommendations of the study, the 1996 General Assembly approved HJR 125, requesting DMAS to, "with all due haste, request a waiver from the federal government and implement with all due haste consumer-directed personal attendant services, in conjunction with the agency-directed model currently available, to Virginians who are elderly or who have disabilities". The resolution is strongly supported by the Governor's Principles for Disability Service guidelines, which are committed to services which foster independence and assist people with disabilities to achieve the needed skills or technologies to remain or become independent.

DMAS submitted its report, "Medicaid-Funded Consumer-Directed Personal Assistance Services", to the General Assembly in November, 1996. The proposed model for Medicaid-funded consumer-directed PAS would be offered in conjunction with the Medicaid-funded agency-directed PAS model currently available to elderly and disabled Virginians. In response to the General Assembly's mandate to implement "with all due haste" a consumer-directed alternative to the existing agency-directed model of service, DMAS requested the authority to promulgate emergency

regulations to allow program implementation effective July 1, 1997. Item 322(D)(6) of Chapter 924 of the Acts of the Assembly required the agency to take this action.

Prior to its submission of "Medicaid-Funded Consumer-Directed Personal Assistance Services" to the General Assembly, DMAS solicited comments in October 1996 from the stakeholders involved in the provision of personal assistance services to the elderly and consumers with disabilities. The comments received focused concern on personal attendant standards and qualifications, assurance of quality of care, liability, provider requirements, reimbursement, and supervision of the plan of care.

Over the course of the next several months, DMAS worked with other state agencies, representatives of the home care industry, and advocates for persons with disabilities and the elderly. DMAS also sought advice from the Office of the Attorney General regarding issues of liability and the scope of services performed by unlicensed personal attendants. Before and during the 1997 General Assembly, the DMAS proposed the Medicaid-funded consumer-directed PAS model to solicit comments and resolve concerns. Presentations to various groups were as follows:

At five different meetings (between October 1996 and March 1997) of the Board of Medical Assistance Services (BMAS), the DMAS Director presented the consumer-directed PAS concept and answered questions related to the development and implementation of this service model. BMAS also reviewed the waiver application that DMAS sent to the Health Care Financing Administration (HCFA), which requested the authority to reimburse for this service as a Medicaid-funded community-based care service. The public attended the meetings and provided comments regarding consumer-directed personal attendant services during this time;

Between November 1996 and January 1997, DMAS met with the following groups for discussions of or presentations about consumer-directed PAS:

- (i) The Department of Rehabilitative Services (DRS) Personal Assistance Services Advisory Board;
- (ii) The Disability Services Commission;
- (iii) The House Appropriations Committee; and
- (iv) The Health and Human Resources Subcommittee of the House Appropriations Committee.

During the 1997 General Assembly the emergency regulations budget bill language (Item 322(D)(6) of Chapter 924 of the Acts of the Assembly) was amended by agreement with: (i) the home care industry; (ii) aging advocates, and (iii) members of the disability community. The amended language allows only persons eligible to receive services through the Department of Rehabilitative Services PAS program and who are determined to be at risk of nursing facility placement to be eligible for Medicaid-funded consumer-directed PAS waiver beginning July 1, 1997. All

other eligible Virginians will be able to receive Medicaid-funded consumer-directed PAS after the full Administrative Process Act is complete.

Although the emergency regulatory process does not have a specified formal period of public comment, DMAS has demonstrated a willingness to and will continue to entertain input from all interested parties.

AUTHORITY TO ACT: The Code of Virginia (1950) as amended, § 32.1-324, grants to the Director of DMAS the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board of Medical Assistance Services (BMAS) 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 is initiating the public notice and comment process contained in Article 2 of the APA.

Without an emergency regulation, this amendment to the State Plan 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 July 1, 1997, effective date established by the General Assembly.

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 BMAS, to comply with 1996 HJR 125, he is to implement "with all due haste" a program which will provide the citizens of the Commonwealth with consumer-directed personal attendant services. This issue qualifies as an emergency regulation as provided for in § 9-6.14:4.1(C)(5)(ii), because Virginia statutory law or the appropriation act of federal law 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 also initiating the Administrative Process Act Article 2 procedures.

FISCAL/BUDGETARY IMPACT: The Medicaid-funded consumer-directed PAS program will be offered under the Social Security Act § 1915(c) home and community based-care waiver, which must be a cost-effective alternative to institutionalization. This waiver is projected to be budget neutral because the population served by this waiver is the same population that is being served under existing home and community-based waivers. Consumers eligible for Medicaid long-term care services could choose consumer-directed PAS as an option to existing home and community-based services.

It is projected that 107 consumers who are receiving or are on the waiting list for Personal Attendant Services from the Virginia Department of Rehabilitative Services as of the

effective date of this regulation and who meet the financial and eligibility criteria for Medicaid funded long term care services will access consumer-directed PAS services under this emergency regulation. All other Virginians who are eligible for this waiver will be able to access consumer-directed PAS once the full Administrative Process Act requirements are complete. An estimated 200 consumers will receive consumer-directed PAS during the first year the program is offered.

There are no localities which are uniquely affected by these regulations as they apply statewide.

RECOMMENDATION: Recommend approval of this request to adopt this emergency regulation to become effective July 1, 1997. From its effective date, this regulation is to remain in force for one full year or until superseded by final regulations. Without an effective emergency regulation, the Department would lack the authority to implement Medicaid-funded consumer-directed personal attendant services on July 1, 1997. This would mean failure to comply with the 1996 General Assembly mandate to implement consumer-directed personal attendant services.

APPROVAL SOUGHT FOR VR 460-04-8.16 (12 VAC 30-120-Part VIII)).

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:

PART VIII.

CONSUMER-DIRECTED PERSONAL ATTENDANT SERVICES FOR ELDERLY AND DISABLED INDIVIDUALS.

§ 1. Definitions.

"Activities of Daily Living (ADL)" means personal care tasks, i.e., bathing, dressing, toileting, transferring, bowel/bladder control, and eating/feeding. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Committee for recipient" means a person who has been legally invested with the authority, and charged with the duty of managing the estate and/or making decisions to promote the well-being of a person who has been determined by the circuit court to be totally incapable of taking care of his person or handling and managing his estate because of mental illness or mental retardation. A committee shall be appointed only if the court finds that the person's inability to care for himself or handle and manage his affairs is total.

"Current functional status" means the individual's degree of dependency in performing activities of daily living (ADL).

"DMAS" means the Department of Medical Assistance Services.

"DRS" means the Department of Rehabilitative Services. DRS currently operates the Personal Assistance Services Program, which is a state-funded program that provides a limited amount of personal care services to Virginians.

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"DSS" means the Department of Social Services.

"Fiscal agent" means an agency or organization that will be contracted by DMAS to handle employment, payroll, and tax responsibilities on behalf of the recipient who is receiving consumer-directed personal attendant services (PAS).

"Guardian" means a person who has been legally invested with the authority and charged with the duty of taking care of the person and managing his property and protecting the rights of the person who has been declared by the circuit court to be incapacitated and incapable of administering his own affairs. The powers and duties of the guardian are defined by the court and are limited to matters within the areas where the person in need of a guardian has been determined to be incapacitated.

"Home and community-based care" means a variety of in-home and community-based services reimbursed by DMAS (Personal Care, Adult Day Health Care, Respite Care, and Assisted Living,) authorized under a Social Security Act § 1915(c) waiver designed to offer individuals an alternative to institutionalization. Individuals may be preauthorized to receive one or more of these services either solely or in combination, based on the documented need for the service or services in order to avoid nursing facility placement. The Nursing Home Pre-Admission Screening team or DMAS shall give prior authorization for any Medicaid-funded home and community-based care.

"Instrumental Activities of Daily Living (IADL)" means social tasks, i.e., meal preparation, shopping, housekeeping, laundry, money management. A person's degree of independence in performing these activities is part of determining appropriate level of care and services. Meal preparation is planning, preparing, cooking and serving food. Shopping is getting to and from the store, obtaining/paying for groceries and carrying them home. Housekeeping is dusting, washing dishes, making beds, vacuuming, cleaning floors, and cleaning bathroom/kitchen. Laundry is washing/drying clothes. Money management is paying bills, writing checks, handling cash transactions, and making change.

"Nursing Home Pre-Admission Screening" means the process to: (1) evaluate the medical, nursing, and social needs of individuals referred for pre-admission screening, (2) analyze what specific services the individuals need, (3) evaluate whether a service or a combination of existing community services are available to meet the individuals' needs, and (4) authorize Medicaid funded nursing facility or community-based care for those individuals who meet nursing facility level of care and require that level of care.

"Nursing Home Pre-admission Screening Team" means the entity contracted with DMAS which is responsible for performing nursing home pre-admission screening. For individuals in the community, this entity is a committee comprised of staff from the local health department and local DSS. For individuals in an acute care facility who require screening, the entity is a team of nursing and social work

staff. A physician shall be a member of both the local committee or acute care team.

"Participating provider" means an institution, facility, agency, partnership, corporation, or association that meets the standards and requirements set forth by DMAS, and has a current, signed contract with DMAS.

"Personal attendant" means, for purposes of this regulation and exemption from Worker's Compensation, a domestic servant.

"Personal attendant services (PAS)" means long-term maintenance or support services necessary to enable the mentally alert and competent individual to remain at or return home rather than enter a nursing care facility. Personal attendant services include hands-on care, of both a supportive and health-related nature, specific to the needs of a medically stable, physically disabled individual. Supportive services are those which substitute for the absence, loss, diminution, or impairment of a physical function. Services may include but not necessarily be limited to, assistance with ADLs, and when specified, services may include assistance with IADLs which are incidental to the care furnished, or which are essential to the health and welfare of the recipient.

"Plan of care (POC)" means the written plan of services certified by the screening team physician as needed by the individual to ensure optimal health and safety for the delivery of home and community-based care.

"Providers" means those individuals or facilities registered, licensed, and/or certified, as appropriate, and enrolled by DMAS to render services to Medicaid recipients eligible for services.

"Service coordinator" means the registered nurse, social worker, or case manager who is responsible for ensuring that the assessment, development and monitoring of the plan of care, management training, and review activities as required by DMAS are accomplished. This individual is an employee of a provider that contracts with DMAS to provide consumer-directed PAS.

"State Plan for Medical Assistance" or "the Plan" means the document containing the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"Uniform Assessment Instrument (UAI)" means the standardized multi-dimensional questionnaire which assesses a person's social, physical health, mental health, and functional abilities. The UAI is used to gather information for the determination of a person's care needs and service eligibility, and for planning and monitoring a customer's care across various agencies for long-term care services.

§ 2. General coverage and requirements for Consumer-Directed PAS as a home and community-based care waiver service.

A. Coverage statement.

1. Coverage of Consumer-Directed PAS shall be provided under the administration of the DMAS to disabled and elderly individuals who must be mentally alert and have no cognitive impairments who would otherwise require the level of care provided in a nursing facility. Individuals must be able to manage their own affairs without help from another individual and not have a guardian or committee. If disabled, individuals receiving services must be at least 18 years of age. Individuals eligible for Consumer-Directed PAS must be able to hire and train their own personal attendants and supervise the attendant's performance.

B. Recipient qualification and eligibility requirements. Individuals receiving services under this waiver must be currently receiving services in the DRS PAS Program or be on the DRS PAS Program's waiting list as of the effective date of this emergency regulation, and meet the following requirements:

1. Individuals receiving services under this waiver must be eligible under one of the following eligibility groups: Aged, Blind or Disabled recipients eligible under 42 CFR 435.121, and the special home and community based waiver group at 42 CFR 435.217 which includes individuals who are eligible under the State Plan if they were institutionalized.

2. Under this waived service, the coverage groups authorized under § 1902(a)(10)(C)(i)(III) of the Social Security Act will be considered as if they were institutionalized for the purpose of applying institutional deeming rules.

3. Virginia shall reduce its payment for home and community-based services provided for an individual by that amount of the individual's total income (including amounts disregarded in determining eligibility) that remains after allowable deductions for personal maintenance needs, deductions for other dependents, and medical needs have been made according to the guidelines in 42 CFR § 435.735. DMAS will reduce its payment for home and community-based waiver services by the amount that remains after deducting the amounts as specified in 42 CFR § 435.726, listed below:

(a) For individuals to whom § 1924(d) applies, Virginia waives the requirement for comparability pursuant to § 1902(a)(10)(B), deduct the following in the respective order:

(1) An amount for the maintenance needs of the individual which is equal to the categorically needy income standard for a non-institutionalized individual.

(2) For an individual with only a spouse at home, the community spousal income allowance determined in accordance with § 1924(d) of the Social Security Act.

(3) For an individual with a family at home, an additional amount for the maintenance needs of the

family determined in accordance with § 1924(d) of the Social Security Act.

(4) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but covered under the Plan.

(b) For individuals to whom § 1924(d) does not apply, deduct the following in the respective order:

(1) An amount for the maintenance needs of the individual which is equal to the categorically needy income standard for a non-institutionalized individual.

(2) For an individual with a family at home, an additional amount for the maintenance needs of the family which shall be equal to the medically needy income standard for a family of the same size.

(3) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but covered under the state Medical Assistance Plan.

C. Assessment and authorization of home and community-based care services.

1. To ensure that Virginia's home and community-based care waiver programs serve only individuals who would otherwise be placed in a nursing facility, home and community-based care services shall be considered only for individuals who are seeking nursing facility admission or for individuals who are at imminent risk of nursing facility admission. Home and community-based care services shall be the critical service that enables the individual to remain at home rather than being placed in a nursing facility.

2. The individual's status as an individual in need of home and community-based care services shall be determined by the NHPAS Team after completion of a thorough assessment of the individual's needs and available support. Screening and preauthorization of home and community-based care services by the NHPAS Team or DMAS staff is mandatory before Medicaid will assume payment responsibility of home and community-based care services.

3. An essential part of the NHPAS Team's assessment process is determining the level of care required by applying existing criteria for nursing facility care according to established nursing home pre-admission screening processes.

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4. The team shall explore alternative settings and/or services to provide the care needed by the individual. If nursing facility placement or a combination of other services are determined to be appropriate, the screening team shall initiate referrals for service. If Medicaid-funded home and community-based care services are determined to be the critical service to delay or avoid nursing facility placement, the screening team shall develop an appropriate plan of care and initiate referrals for service.

5. To ensure that Virginia's home and community-based care services continue to be a cost-effective alternative to institutionalization, home and community-based care services shall be considered only for individuals whom the cost of Medicaid-reimbursed home and community-based care would not exceed the Medicaid cost of institutional care.

6. Home and community-based care services shall not be provided to any individual who resides in a board and care facility (or adult care residences (ACRs)) nor who is an inpatient in general acute care hospitals, skilled or intermediate nursing facilities, or intermediate care facilities for the mentally retarded.

7. Medicaid will not pay for any home and community-based care services delivered prior to the authorization date approved by the NHPAS Team.

8. Any authorization and POC for home and community-based care services will be subject to the approval of DMAS prior to Medicaid reimbursement for waiver services.

§ 3. General conditions and requirements for home and community-based care participating providers.

A. General requirements. Providers approved for participation shall, at a minimum, perform the following activities:

1. Accept referrals for services only when staff is available to initiate services.

2. Provide services and supplies to recipients in full compliance with Title VI of the Civil Rights Act of 1964 which prohibits discrimination on the grounds of race, color, religion, or national origin and of Section 504 of the Rehabilitation Act of 1973 which prohibits discrimination on the basis of a disability.

3. Assure freedom of choice to recipients in seeking medical care from any institution, pharmacy, practitioner, or other provider qualified to perform the service or services required and participating in the Medicaid Program at the time the service or services were performed. Also assure the recipient's freedom to reject medical care and treatment.

4. Provide services and supplies to recipients in the same quality and mode of delivery as provided to the general public.

5. Maintain and retain business and professional records sufficient to document fully and accurately the nature, scope and details of the health care provided.

a. Such records shall be retained for at least five years from the last date of service or as provided by applicable state laws, whichever period is longer. If an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every exception resolved. Records of minors shall be kept for at least five years after such minor has reached the age of 18 years.

b. Policies regarding retention of records shall apply even if the provider discontinues operation. DMAS shall be notified in writing of storage, location, and procedures for obtaining records for review should the need arise. The location, agent, or trustee shall be within the Commonwealth of Virginia.

6. Submit charges to DMAS for the provision of services and supplies to recipients in amounts not to exceed the provider's usual and customary charges to the general public. The provider will accept as payment in full the amount established by DMAS payment methodology from the first day of eligibility.

7. Immediately notify DMAS, in writing, of any change in the information which the provider previously submitted to DMAS. The provider will use program-designated billing forms for submission of charges.

8. The provider agrees to furnish to DMAS, the Attorney General of Virginia or his authorized representatives, or the State Medicaid Fraud Control Unit information on request and in the form requested. The Commonwealth's right of access to provider agencies and records shall survive any termination of this agreement.

9. Disclose all financial, beneficial, ownership, equity, surety, or other interests in any and all firms, corporations, partnerships, associations, business enterprises, joint ventures, agencies, institutions, or other legal entities providing any form of health care services to recipients of Medicaid.

10. Hold confidential and use for authorized DMAS purposes only all medical and identifying information regarding recipients served. A provider shall disclose information in his possession only when the information is used in conjunction with a claim for health benefits or the data is necessary for the functioning of DMAS. DMAS shall not disclose medical information to the public.

11. Change of Ownership. When ownership of the provider agency changes, DMAS shall be notified within 15 calendar days prior to the date of the change.

B. Requests for Participation. Requests will be screened by DMAS to determine whether the provider applicant meets the basic requirements for participation.

C. *Provider Participation Standards.* For DMAS to approve contracts with Home and Community-Based Care providers the following standards shall be met:

1. Financial solvency.
2. Disclosure of ownership.
3. Staffing requirements.

D. *Adherence to provider contract and special participation conditions.* In addition to compliance with the general conditions and requirements, all providers enrolled by DMAS shall adhere to the conditions of participation outlined in their individual provider contracts.

E. *Review of provider participation standards and renewal of contracts.* DMAS is responsible for assuring continued adherence to provider participation standards. DMAS shall conduct ongoing monitoring of compliance with provider participation standards and DMAS policies and annually recertify each provider for contract renewal with DMAS to provide home and community-based services. A provider's noncompliance with DMAS policies and procedures, as required in the provider's contract, may result in a written request from DMAS for a corrective action plan which details the steps the provider must take and the length of time permitted to achieve full compliance with deficiencies which have been cited.

F. *Recipient choice of provider agencies.* If there is more than one approved provider agency in the community, the individual will have the option of selecting the provider agency of his choice.

G. *Termination of provider participation.* A participating provider may voluntarily terminate his participation in Medicaid by providing 30 days' written notification. DMAS may administratively terminate a provider from participation upon 30 days' written notification. DMAS may also cancel a contract immediately or may give notification in the event of a breach of the contract by the provider as specified in the DMAS contract. Such action precludes further payment by DMAS for services provided to recipients subsequent to the date specified in the termination notice.

H. *Reconsideration of adverse actions.* A provider shall have the right to appeal adverse action taken against it by DMAS. Adverse action includes, but shall not be limited to, termination of the provider agreement by DMAS, and retraction of payments from the provider by DMAS for noncompliance with applicable law, regulation, policy or procedure. All disputes regarding provider reimbursement or termination of the agreement by DMAS for any reason shall be resolved through administrative proceedings conducted at the office of DMAS in Richmond, Virginia. These administrative proceedings and judicial review of such administrative proceedings shall be pursuant to the Virginia Administrative Process Act (Code of Virginia, Title 9, Chapter 1.1:1, Section 9-6.14:1 et seq.) and the State Plan for Medical Assistance provided for in Title 32.1, Chapter 10, Section 32.1-325 of the Code of Virginia and duly promulgated regulations. Court review of final agency

determinations concerning provider reimbursement shall be made in accordance with the Administrative Process Act.

I. *Termination of a provider contract upon conviction of a felony.* The Code of Virginia, Chapter 10, Department of Medical Assistance Services, Section 32.1-325(c), mandates that "Any such (Medicaid) agreement or contract shall terminate upon conviction of the provider of a felony." A provider convicted of a felony in Virginia or in any other of the 50 states must, within 30 days, notify the Medicaid Program of this conviction and relinquish its provider agreement. Reinstatement will be contingent upon provisions of State law. Additionally, termination of a provider contract will occur as may be required for federal financial participation.

J. *Participating provider agency's responsibility for the recipient information form (DMAS-122).* It is the responsibility of the provider agency to notify DMAS and DSS, in writing, when any of the following circumstances occur:

1. Home and community-based care services are implemented.
2. A recipient dies.
3. A recipient is discharged or terminated from services.
4. Any other circumstances (including hospitalization) which cause home and community-based care services to cease or be interrupted for more than 30 days.

K. *Changes or termination of care.* It shall be the responsibility of the provider agency to notify DMAS, in writing, within five days when any of the following changes in the authorized hours or termination of provider agency services occur:

1. Decreases in amount of authorized care by the provider.
 - a. The provider agency may decrease the amount of authorized care only if the recipient and the participating provider both agree that a decrease in care is needed and that the amount of care in the revised POC is appropriate.
 - b. The participating provider is responsible for devising the new POC and calculating the new hours of service delivery.
 - c. The individual responsible for supervising the recipient's care shall discuss the decrease in care with the recipient, document the conversation in the recipient's record, and shall notify the recipient of the change by letter.
 - d. If the recipient disagrees with the decrease proposed, DMAS shall be notified to conduct a special review of the recipient's service needs.
2. Increases in amount of authorized care. If a change in the recipient's condition (physical, mental, or social) necessitates an increase in care, the participating provider shall assess the need for increase and, if appropriate, develop a plan of care for services to meet

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the changed needs. The provider may implement the increase in hours without approval from DMAS as long as the amount of service does not exceed the amount established by DMAS as the maximum for the level of care designated for that recipient. Any increase to a recipient's plan of care which exceeds the number of hours allowed for that recipient's level of care or any change in the recipient's level of care must be pre-approved by DMAS.

3. Non-emergency termination of home and community-based care services by the participating provider. The participating provider shall give the recipient 10 days written notification of the intent to terminate services. The letter shall provide the reasons for and effective date of the termination. The effective date of services termination shall be at least 10 days from the date of the termination notification letter.

4. Emergency termination of home and community-based care services by the Participating Provider. In an emergency situation when the health and safety of the recipient or provider agency personnel is endangered, DMAS must be notified prior to termination. The 10 day written notification period shall not be required. If appropriate, the local DSS Adult Protective Services supervisor must be notified immediately.

5. DMAS termination of home and community-based care services. DMAS shall have the ultimate responsibility for assuring appropriate placement of the recipient in home and community-based care services, and the authority to terminate such services to the recipient for any but not necessarily be limited to these reasons:

a. Reasons services may be terminated:

(1) The home and community-based care service is not the critical alternative to prevent or delay institutional placement.

(2) The recipient no longer meets the level-of-care criteria. (Under Consumer-Directed PAS, this includes cognitive impairment and/or the inability to independently manage a personal attendant.)

(3) The recipient's environment does not provide for his health, safety, and welfare.

(4) An appropriate and cost-effective POC cannot be developed.

b. DMAS shall notify the recipient by letter. The effective date of termination shall be at least 10 days from the date of the termination notification letter. At the same time, DMAS will also advise the recipient in writing of their right to appeal the decision.

L. Suspected abuse or neglect. Pursuant to § 63.1-55.3, Code of Virginia, if a participating provider agency knows or suspects that a home and community-based care recipient is being abused, neglected, or exploited, the party having

knowledge or suspicion of the abuse, neglect, or exploitation shall report this to the local DSS adult protective services worker and DMAS.

§ 4. Personal Attendant Services (PAS). The following are specific requirements governing the provision of PAS.

A. General. PAS may be offered to individuals in their homes as an alternative to more costly institutional care. When the individual referred for PAS is already receiving another home and community-based care service, the DMAS utilization review staff shall assess the need for the additional PAS and authorize it if necessary to avoid more costly institutional care. In no event shall the additional services exceed cost-effectiveness for this individual.

B. Special provider participation conditions. In addition to the general requirements above, to be enrolled as a Medicaid consumer-directed PAS provider and maintain provider status, the following requirements shall be met:

1. The provider shall operate from a business office.

2. The provider must have sufficient qualified staff who will function as service coordinators to perform the needed POC development and monitoring, reassessments, service coordination, and support activities as required by the Consumer-Directed Personal Attendant Services program.

3. It is preferred that the service coordinator possess a minimum of an undergraduate degree in a human services field or be a registered nurse. In addition, it is preferable that the service coordinator have two years of satisfactory experience in the human services field working with persons with severe physical disabilities or the elderly. The service coordinator must possess a combination of work experience and relevant education which indicates possession of the following knowledge, skills, and abilities. Such knowledge, skills and abilities must be documented on the application form, found in supporting documentation or observed during the interview. Observations during the interview must be documented. The knowledge, skills, and abilities shall include, but not necessarily be limited to:

a. Knowledge of:

(1) Types of functional limitations and health problems that are common to different disability types and the aging process, as well as strategies to reduce limitations and health problems;

(2) Physical assistance typically required by people with severe physical disabilities or elderly persons, such as transferring, bathing techniques, bowel and bladder care, and the approximate time those activities normally take;

(3) Equipment and environmental modifications commonly used and required by people with physical disabilities or elderly persons which

reduces the need for human help and improves safety;

(4) Various long-term care program requirements, including nursing home and adult care residence placement criteria, Medicaid waiver services, and other federal, state, and local resources that provide personal assistance services;

(5) DMAS consumer directed personal attendant services program requirements, as well as the administrative duties for which the recipient will be responsible;

(6) Conducting assessments (including environmental, psychosocial, health, and functional factors) and their uses in care planning;

(7) Interviewing techniques;

(8) The recipient's right to make decisions about, direct the provisions of, and control his attendant care services, including hiring, training, managing, approving time sheets, and firing an attendant;

(9) The principles of human behavior and interpersonal relationships; and

(10) General principles of record documentation.

b. Skills in:

(1) Negotiating with recipients and service providers;

(2) Observing, recording, and reporting behaviors;

(3) Identifying developing, and/or providing services to persons with severe disabilities or elderly persons; and

(4) Identifying services within the established services system to meet the recipient's needs;

c. Abilities to:

(1) Report findings of the assessment or onsite visit, either in writing or an alternative format for persons who have print impairments;

(2) Demonstrate a positive regard for recipients and their families;

(3) Be persistent and remain objective;

(4) Work independently, performing position duties under general supervision;

(5) Communicate effectively, verbally and in writing; and

(6) Develop a rapport and communicate with different types of persons from diverse cultural backgrounds;

4. The agency must have registered nurse (RN) consulting services available, either by a staffing arrangement or through a contracted consulting arrangement. The RN consultant is to be available as

needed to consult with recipients and service coordinators on issues related to the health needs of the recipient.

5. Service coordinator duties.

a. The service coordinator must make an initial, comprehensive home visit to develop the POC with the recipient and provide management training. Recipients who cannot receive management training at the time of the initial visit must receive management training within seven days of the initial visit. After the initial visit, two routine visits must occur in the recipient's home within 60 days of the initiation of care or the initial visit to monitor the POC. The service coordinator will continue to monitor the POC on an as needed basis, not to exceed a minimum of one routine visit every 30 days per recipient.

b. A reevaluation of the recipient's level of care will occur six months after initial entry into the program, and concurrent reevaluations will occur at a minimum of every six months. During visits to the recipient's home, the service coordinator shall observe, evaluate, and document the adequacy and appropriateness of personal attendant services with regard to the recipient's current functioning and cognitive status, medical and social needs. The service coordinator shall review the personal attendant's time sheets to verify that approved hours were not exceeded and discuss the recipient's satisfaction with the type and amount of service. The service coordinator's summary shall note, but not necessarily be limited to:

(1) Whether personal attendant services continue to be appropriate and medically necessary to prevent institutionalization;

(2) Whether the POC is adequate to meet the needs of the recipient;

(3) Any special tasks performed by the attendant and the attendant's qualifications to perform these tasks;

(4) Recipient's satisfaction with the service;

(5) Hospitalization or change in medical condition, functioning or cognitive status;

(6) Other services received and their amount; and

(7) The presence or absence of the attendant in the home during the service coordinator's visit.

5. The service coordinator shall be available to the recipient by telephone.

6. The service coordinator will submit a criminal record check pertaining to the personal attendant on behalf of the recipient and report findings of the criminal record check to the recipient. Personal attendants who have been convicted of crimes described in 12 VAC 30-90-180

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will not be reimbursed for services provided to the recipient.

7. The service coordinator shall verify bi-weekly timesheets signed by the recipient and the personal attendant to ensure the number of approved hours on the POC are not exceeded; and send timesheets to the fiscal agent on behalf of the recipient. If discrepancies are identified, the service coordinator will contact the recipient to resolve discrepancies. If a recipient is consistently being identified as having discrepancies in his timesheets, the service coordinator will contact DMAS to resolve the situation. Service coordinators shall not verify or send to the fiscal agent timesheets for personal attendants who have been convicted of crimes described in 12 VAC 30-90-180.

C. *Personal Attendant Registry.* The provider agency shall maintain a Personal Attendant Registry. The registry shall contain names of persons who have experience with providing personal attendant services or who are interested in providing personal attendant services. The registry shall be maintained as a supportive source for the recipient who may use the registry to obtain names of potential personal attendants.

D. *Required documentation in recipients' records.* The provider agency shall maintain all records of each consumer-directed PAS recipient. At a minimum these records shall contain:

1. All copies of the completed UAIs, the Long-Term Care Pre-Admission Screening Authorization (DMAS-96), all plans of care, and all DMAS-122's.
2. All DMAS Utilization Review forms.
3. Service coordinator's notes contemporaneously recorded and dated during any contacts with the recipient and during visits to the recipient's home.
4. The personal attendant criminal record check.
5. All correspondence to the recipient and to DMAS.
6. Reassessments made during the provision of services.
7. Contacts made with family, physicians, DMAS, formal, informal service providers and all professionals concerning the recipient.
8. All training provided to the personal attendant or attendants on behalf of the recipient.
9. All Recipient Progress Reports, as specified below.
10. All management training provided to the recipients, including the recipient's responsibility for the accuracy of the timesheets.

E. *Recipient Progress Report.* The provider is required to submit to DMAS bi-annually for every recipient a Recipient Progress Report, an updated UAI, and any monthly visit/progress reports. This information is used to assess the

recipient's ongoing need for Medicaid-funded long-term care and appropriateness and adequacy of services rendered.

F. *Recipients will hire their own personal attendants and manage and supervise the attendants' performance.*

1. Attendant qualifications include, but shall not be necessarily limited to the following requirements. The attendant must:

- a. Be 18 years of age or older;
- b. Have the required skills to perform attendant care services as specified in the recipient's POC;
- c. Possess basic math, reading, and writing skills;
- d. Possess a valid Social Security number;
- e. Submit to a criminal records check. The personal attendant will not be compensated for services provided to the recipient if the records check verifies the personal attendant has been convicted of crimes that are described in 12 VAC 30-90-180.
- f. Be willing to attend training at the recipient's request;
- g. Understand and agree to comply with the DMAS Consumer-Directed PAS program requirements; and
- h. Be registered in a Personal Attendant Registry, which will be maintained by the provider agency chosen by the recipient.

2. *Restrictions.* Attendants shall not be members of the recipients' family. Family is defined as a parent or stepparent, spouse, children or stepchildren, siblings or stepsiblings, grandparents or stepgrandparents, grandchildren, or stepgrandchildren. In addition, anyone who has legal guardianship or is a committee for the recipient shall also be prohibited from being an attendant under this program.

G. *The recipient's inability to obtain personal attendant services and substitution of attendants.* The provider agency shall ensure the recipient has an emergency back-up plan in case the personal attendant does not report for work as expected or terminates employment without prior notice. This shall include, but not necessarily be limited to, providing the recipient with a list of persons on the personal attendant registry who can provide temporary assistance until the attendant returns or the recipient is able to select and hire a new personal attendant. If a recipient is consistently unable to hire and retain the employment of an attendant and there is no one available from the registry to provide personal attendant services, the provider agency must:

1. Contact DMAS to transfer the recipient to another agency which provides Medicaid-funded personal care services, or
2. Contact the local health department and request a Nursing Home Pre-Admission Screening to determine if another long-term care option is appropriate.

§ 5. *Fiscal Services.* These requirements govern the handling of fiscal responsibilities on behalf of the waiver recipient.

A. *General.* The fiscal agent will be reimbursed by the DMAS to perform certain tasks as an agent for the recipient/employer who is receiving consumer-directed PAS. The fiscal agent, which will be recognized by the IRS, will properly handle employment tax responsibilities on behalf of the recipient.

B. A fiscal agent may be a state agency or other organization, and will sign a contract with the DMAS that clearly defines the roles and tasks expected of the fiscal agent and the DMAS. Roles and tasks which will be defined for the fiscal agent in the contract will consist of but not necessarily be limited to the following:

1. The fiscal agent will file for and obtain employer agent status with the federal and state tax authorities;
2. Once the recipient has been authorized to receive Consumer-Directed PAS, the fiscal agent will register the recipient as an employer, including providing assistance to the recipient in completing forms required to obtain employer identification numbers from federal agencies, state agencies, and unemployment insurance agencies;
3. The fiscal agent will prepare and maintain original and file copies of all forms needed to comply with federal, state, and local tax payment, payment of unemployment compensation insurance premiums, and all other reporting requirements of employers;
4. Upon receipt of the required completed forms from the recipient, the fiscal agent will remit the required forms to the appropriate agency and maintain copies of the forms in the recipient's file. The fiscal agent will return copies of all forms to the recipient for the recipient's permanent personnel records;
5. The fiscal agent will prepare all unemployment tax filings on behalf of the recipient as employer, and make all deposits of unemployment taxes withheld according to the appropriate schedule;
6. The fiscal agent will receive and process attendant bi-weekly timesheets.
7. The fiscal agent will prepare and process the payroll for the recipient's attendants, performing appropriate income tax, FICA, SUTA, FUTA, and other withholdings according to federal and state regulations. Withholdings include, but are not limited to, all judgments, garnishments, tax levies or any related holds on the funds of the attendants as may be required by local, state, or federal law;
8. The fiscal agent will prepare payrolls for the recipient's personal attendant according to approved time sheets and after making appropriate deductions;
9. The fiscal agent will make payments on behalf of the recipient for federal withholding FICA (employer and

employee shares), state withholding, unemployment compensation taxes, and other payments required and as appropriate;

10. The fiscal agent will distribute bi-weekly payroll checks to the recipient's attendants on behalf of the recipient;

11. At the recipient's request, the fiscal agent will provide the recipient with regular summaries of payroll and deductions made on the recipient's behalf;

12. The fiscal agent will maintain accurate payroll records by preparing and submitting to DMAS, on a semi-monthly basis, an accurate accounting of all payments on personal attendants to whom payments for services were made, including a report of federal and state tax withholdings, FICA, SUTA, and FUTA payments for each covered attendant;

13. The fiscal agent will maintain such other records and information as DMAS may require, in the form and manner prescribed by DMAS;

14. The fiscal agent will generate W-2 forms for all personal attendants who meet statutory threshold amounts during the tax year;

15. The fiscal agent will establish a customer service mechanism in order to respond to calls from recipients and personal attendants regarding lost or late checks, or other questions regarding payments that are not related to the authorization amounts generated from DMAS;

16. The fiscal agent will keep abreast of all applicable state and federal laws and regulations relevant to the responsibilities it has undertaken with regard to these filings;

17. The fiscal agent will use program-designated billing forms or electronic billing to bill DMAS;

18. The fiscal agent will be capable of requesting electronic transfer of funds from DMAS;

C. *Confidentiality of Medicaid Information.* The fiscal agent and all subcontracting bookkeeping firms, as appropriate, will maintain the confidentiality of Medicaid information in accordance with the following:

1. The fiscal agent agrees to ensure that access to Medicaid information will be limited to the fiscal agent. The fiscal agent shall take measures to prudently safeguard and protect unauthorized disclosure of the Medicaid information in its possession. The fiscal agent shall establish internal policies to ensure compliance with federal and state laws and regulations regarding confidentiality including, but not limited to, 42 CFR § 431, Subpart F, and Virginia Code Section 2.1-377, et. seq. In no event shall the fiscal agent provide, grant, allow, or otherwise give, access to Medicaid information to anyone without the express written permission of the DMAS Director. The fiscal agent shall assume all

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liabilities under both state and federal law in the event that the information is disclosed in any manner.

2. Upon the fiscal agent receiving any requests for Medicaid information from any individual, entity, corporation, partnership or otherwise, the fiscal agent must notify DMAS of such requests within 24 hours. The fiscal agent shall ensure that there will be no disclosure of the data except through DMAS. DMAS will treat such requests in accordance with DMAS policies.

3. In cases where the information requested by outside sources can be released under the Freedom of Information Act (FOIA), as determined by DMAS, the fiscal agent shall provide support for copying and invoicing such documents.

D. *Contract between the fiscal agent and the recipient.* A contract between the fiscal agent and the recipient will be used to clearly express those aspects of the employment relationship that are to be handled by the fiscal agent, and which are to be handled by the recipient. The contract will reflect that the fiscal agent is performing these tasks on behalf of the recipient who is the actual employer of the attendant. Before the recipient begins receiving services, the fiscal agent will send the contract to the recipient to review and sign. The fiscal agent must have a signed contract with the recipient prior to the reimbursement of personal attendant services.

§ 6. *Recipient Responsibilities.* These requirements govern the responsibilities of the waiver recipient.

A. *Training.* The recipient must be authorized for Consumer-Directed PAS and successfully complete management training performed by the service coordinator before the recipient can hire a personal attendant.

B. *Responsibilities as employer.* The recipient is the employer in this program, and is responsible for hiring, training, supervising and firing personal attendants. Specific duties include checking references of personal attendants, determining that personal attendants meet basic qualifications, training personal attendants, supervising the personal attendants' performance, and submitting timesheets to the service coordinator on a consistent and timely basis. The recipient must have an emergency back-up plan in case the personal attendant does not show up for work as expected or terminates employment without prior notice.

C. *Service coordinator and fiscal agent.* The recipient shall cooperate with the service coordinator, who monitors the plan of care and provides supportive services to the recipient. The recipient shall also cooperate with the fiscal agent, who handles fiscal responsibilities on behalf of the recipient. Recipients who do not cooperate with the service coordinator and fiscal agent will be disenrolled from Consumer-Directed PAS.

VA.R. Doc. No. R97-604; Filed July 1, 1997, 5:17 p.m.

STATE CORPORATION COMMISSION

BUREAU OF INSURANCE

June 27, 1997

Administrative Letter 1997-7

TO: All Companies Regulated by the Bureau of Insurance
and Other Interested Parties

RE: Mail Sent to the Bureau of Insurance

Please be advised that the United States Postal Service has recently informed the Bureau of Insurance that any mail sent to the Bureau's street address will be returned to the sender, except for overnight mail. All mail, except overnight mail, must be addressed to the Bureau's Post Office Box mailing address which remains P.O. Box 1157, Richmond, Virginia 23218. Please notify your employees and agents of this change in Post Office procedures in order to avoid returned mail. Thank you.

/s/ Alfred W. Gross
Commissioner of Insurance

VA.R. Doc. No. R97-612; Filed July 2, 1997, 11:21 a.m.

MARINE RESOURCES COMMISSION

FINAL REGULATIONS

NOTICE: Effective July 1, 1984, the Marine Resources Commission was exempted from the Administrative Process Act for the purpose of promulgating certain regulations. However, the Commission is required to publish the full text of final regulations.

Title of Regulation: 4 VAC 20-270-10 et seq. Pertaining to Time Restrictions on Commercial Crabbing (amending 4 VAC 20-270-40).

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: July 1, 1997.

Preamble:

This regulation establishes time, season, peeler pot limits and softshell crab minimum size limits for commercial crabbing in Virginia.

Agency Contact: Copies of the regulation may be obtained from Deborah Cawthon, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2248.

4 VAC 20-270-40. Season limits.

It shall be unlawful for any person to place, set or, fish or knowingly leave any hard crab pot or peeler crab pot in any tidal waters of Virginia from December 1 through March 31.

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R97-594; Filed June 30, 1997, 4:06 p.m.

Title of Regulation: 4 VAC 20-370-10 et seq. Pertaining to the Culling of Crabs (amending 4 VAC 20-370-20).

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: July 1, 1997.

Preamble:

This regulation describes the (i) procedures that must be followed to cull harvested crabs to the legal limits and (ii) procedures for crab processing houses to import dark sponge crabs from other states.

Agency Contact: Copies of the regulation may be obtained from Deborah Cawthon, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2248.

4 VAC 20-370-20. Culling requirements.

A. All crabs taken from the tidal waters of Virginia shall be culled to the legal size and possession limits by the catcher during the harvesting process at the location of the harvest.

B. The catcher shall use culling containers (other than bushel baskets and barrels normally used for crabs) for the purpose of culling crabs during the harvesting process. Crabs placed loose in any boat are subject to be culled at any time. The provisions of this section shall not apply to the harvesting of crabs from a licensed crab trap (crab pound).

C. During culling, all undersize crabs shall be immediately returned to the water as required by § 28.2-708 of the Code of Virginia. ~~Upon arrival at the dock or landing point all crabs shall have been culled.~~

D. It shall be unlawful for any person to possess for a period longer than is necessary for immediate determination of the presence of a dark egg mass, more than 10 dark sponge crabs per United States standard bushel or 35 dark sponge crabs per barrel. During culling, those dark sponge crabs in excess of the allowance level shall be immediately returned to the water alive and shall not be altered or destroyed in any manner.

E. It shall be unlawful for any person to possess for a period longer than is necessary for immediate determination of unnatural removal of eggs, a female blue crab that has been scrubbed or has in any manner other than natural hatching had the eggs removed therefrom.

F. Any marine patrol officer may grade or cull any number of barrels, baskets or containers of crabs in any person's possession. If the officer finds more than 10 dark sponge crabs per United States standard bushel or 35 per barrel, he shall seize the entire quantity of crabs in or from each such container, and the person who possessed the crabs shall immediately return them to the water. Refusal to return the crabs to the water is a separate offense from any other violation.

G. Nothing in this section shall prohibit the possession of dark sponge crab which have been taken outside of Virginia waters by crab processing houses meeting the following conditions:

1. It shall be unlawful for any crab processing house to import or possess any dark sponge crabs from any other state or jurisdiction without first providing notice to the operations office of its intent to import dark sponge crabs.

2. Any crab processing house shall notify the operations office of its intent to import or possess dark sponge crabs from another state at least 24 hours in advance, either by telephone (~~1-800-541-4646 or 804-247-2265/2266~~) (1-757-541-4646 or 757-247-2265/2266) or by FAX (804) 247-8026 (757-247-8026). Each crab processing house shall provide the operations office with their company name, manager's name, business location, phone number, quantity of crabs to be imported, source of crabs, arrival date and approximate time.

3. Such imported crabs shall be accompanied by a bill of sale which shall include the name of the seller, address and phone number of the seller, the license number of

the seller if such license is required in the jurisdiction of harvest, the date of sale, and the quantity of crabs sold or purchased under the bill of sale.

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R97-595; Filed June 30, 1997, 4:06 p.m.

Title of Regulation: 4 VAC 20-600-10 et seq. Pertaining to Pound Net License Sales (amending 4 VAC 20-600-30).

Statutory Authority: §§ 28.2-201 and 28.2-204.1 of the Code of Virginia.

Effective Date: June 26, 1997.

Preamble:

This regulation limits the sale of pound net licenses for any calendar year to the number of pound nets licensed during calendar year 1994.

Agency Contact: Copies of the regulation may be obtained from Deborah Cawthon, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2248.

4 VAC 20-600-30. Limit on sale of licenses.

A. Except as provided in 4 VAC 20-600-40, the total number of pound net licenses issued for ~~1996~~ any calendar year shall be limited to the number of pound net licenses sold on or before August 5, 1994, for calendar year 1994. No additional pound net licenses shall be sold for any calendar year ~~1996~~.

B. All eligible license renewals by those licensees who meet the requirements of subsection A of this section, applications for vacant locations, if available, and requests for transfer of license shall be made in accordance with 4 VAC 20-20-10 et seq.

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R97-582; Filed June 30, 1997, 4:05 p.m.

Title of Regulation: 4 VAC 20-700-10 et seq. Pertaining to Crab Pots (amending 4 VAC 20-700-20).

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: July 1, 1997.

Preamble:

This regulation establishes a requirement for the use of cull rings in crab pots.

Agency Contact: Copies of the regulation may be obtained from Deborah Cawthon, Regulatory Coordinator, Marine

Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2248.

4 VAC 20-700-20. Cull ring requirements.

A. It shall be unlawful for any person to place, set or fish any crab pot in Virginia's tidal waters which does not contain at least two unobstructed cull rings of size and location within the pot as hereinafter described, except as provided in subsection B of this section. One cull ring shall be at least 2 5/16 inches inside diameter, and the other cull ring shall be at least 2 3/16 inches inside diameter. These cull rings shall be located one each in opposite exterior side panels of the upper chamber of the pot.

B. The required 2 5/16 inches inside diameter cull ring may be obstructed in crab pots set within the crab dredge areas as set forth in 4 VAC 20-90-10 et seq., ~~or within Pocomoke or Tangier Sounds~~ or on the seaside of Accomack and Northampton Counties ~~or within Pocomoke or Tangier Sound proper~~. Any crab pot set within any tributary or subtributary of Pocomoke or Tangier Sound shall not contain any obstructed cull rings.

C. Peeler pots with a mesh size less than 1 1/2 inches shall be exempt from the cull ring requirement.

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R97-593; Filed June 30, 1997, 4:06 p.m.

Title of Regulation: 4 VAC 20-970-10 et seq. Pertaining to Spadefish (amending 4 VAC 20-970-30).

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: July 1, 1997.

Preamble:

This regulation establishes a possession limit on spadefish harvested by commercial hook and line or any recreational gear.

Agency Contact: Copies of the regulation may be obtained from Deborah Cawthon, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2248.

4 VAC 20-970-30. Spadefish possession limit.

A. It shall be unlawful for any person fishing with hook and line, rod and reel, hand line, spear, gig or other recreational gear to possess more than six spadefish. Any spadefish taken after the possession limit of six fish has been reached shall be returned to the water immediately.

B. When fishing from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied

Marine Resources Commission

by six. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit.

C. During the period July 1, 1997, through October 1, 1997, it shall be unlawful for any person fishing with a licensed commercial hook and line to possess more than six spadefish. Any spadefish taken by a licensed commercial hook-and-line fisherman after the possession limit of six fish has been reached shall be returned to the water immediately.

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R97-592; Filed June 30, 1997, 4:05 p.m.

Virginia Tax Bulletin

Virginia Department of Taxation

June 20, 1997

97-3

INTEREST RATES THIRD QUARTER 1997

Rates remain unchanged: State and certain local interest rates are subject to change every quarter based on changes in federal rates established pursuant to I.R.C. § 6621. The federal rates for the third quarter of 1997 remain at 9% for tax underpayments (assessments), 8% for tax overpayments (refunds), and 11% for "large corporate underpayments" as defined in I.R.C. § 6621(c). Code of Virginia § 58.1-15 provides that the underpayment rate for Virginia taxes will be 2% higher than the corresponding federal rates. Accordingly, the Virginia rates for the third quarter of 1997 remain at 11% for tax underpayments, 8% for tax overpayments, and 13% for "large corporate underpayments."

Rate for Addition to Tax for Underpayments of Estimated Tax

Taxpayers whose taxable year ends on September 30, 1997: For the purpose of computing the addition to the tax for underpayment of Virginia estimated income taxes on Form 760C (for individuals, estates and trusts), Form 760F (for farmers and fishermen) or Form 500C (for corporations), the 11% underpayment rate will apply through the due date of the return, October 15, 1997.

Local Tax

Assessments: Localities assessing interest on delinquent taxes pursuant to Code of Virginia § 58.1-3916 may impose interest at a rate not to exceed 10% for the first year of delinquency, and at a rate not to exceed 10% or the federal underpayment rate in effect for the applicable quarter, whichever is greater, for the second and subsequent years of delinquency. For the third quarter of 1997, the federal underpayment rate is 9%.

Refunds: Localities which have provided for refunds of erroneously assessed taxes may provide by ordinance that such refunds are repaid with interest at a rate which does not exceed the rate imposed by the locality for delinquent taxes.

BPOL Refunds: Effective January 1, 1997, interest on any refund will be paid at the same rate as assessments under Code of Virginia § 58.1-3916.

Recent Interest Rates

Accrual Period		Overpayment	Underpayment	Large Corporate
<u>Beginning</u>	<u>Through</u>	<u>(Refund)</u>	<u>(Assessment)</u>	<u>Underpayment</u>
1-Jan-87	30-Sep-87	8%	9%	----
1-Oct-87	31-Dec-87	9%	10%	----
1-Jan-88	31-Mar-88	10%	11%	----
1-Apr-88	30-Sep-88	9%	10%	----
1-Oct-88	31-Mar-89	10%	11%	----
1-Apr-89	30-Sep-89	11%	12%	----
1-Oct-89	31-Mar-91	10%	11%	----
1-Apr-91	30-Jun-91	9%	10%	----
1-Jul-91	31-Dec-91	9%	12%	14%
1-Jan-92	31-Mar-92	8%	11%	13%
1-Apr-92	30-Sep-92	7%	10%	12%
1-Oct-92	30-Jun-94	6%	9%	11%
1-Jul-94	30-Sep-94	7%	10%	12%
1-Oct-94	31-Mar-95	8%	11%	13%
1-Apr-95	30-Jun-95	9%	12%	14%
1-Jul-95	31-Mar-96	8%	11%	13%
1-Apr-96	30-Jun-96	7%	10%	12%
1-Jul-96	30-Sep-97	8%	11%	13%

For additional information: Contact the Office of Customer Services, Virginia Department of Taxation, P. O. Box 1115, Richmond, Virginia 23218-1115, or call the following numbers for additional information about interest rates and penalties.

Individual & Fiduciary Income Tax	(804) 367-8031
Corporation Income Tax	(804) 367-8037
Withholding Tax	(804) 367-8037
Soft Drink Excise Tax	(804) 367-8098
Aircraft Sales & Use Tax	(804) 367-8098
Other Sales & Use Taxes	(804) 367-8037

The Legislative Record

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SJR 259

Joint Subcommittee Studying Electric Utility Restructuring

March 25, 1997, Richmond

The joint subcommittee began its second year of studying electric utility restructuring. The meeting featured a staff summary of the joint subcommittee's 1996 activities and an update on restructuring activities currently underway at the Virginia State Corporation Commission. Additionally, presentations on state and local taxation of public utilities served to launch the joint subcommittee's special task force looking at the potential impact of restructuring on tax revenues. The joint subcommittee also

received testimony from heating, ventilation and air conditioning (HVAC) companies, who renewed their request for joint subcommittee assistance in examining the potential competitive impact of public utility entry into the HVAC market.

1996 Activities

The General Assembly's study of electric utility restructuring began in 1996 under the auspices of SJR 118. The study was undertaken to determine whether deregulating the retail electricity market is appropriate and in the public interest. Retail deregulation in its simplest form encompasses customer choice of electric service providers at the retail level. Large industrial electricity customers and others favoring a deregulated market told the joint subcommittee that conventional electricity delivery through franchised service territories is expensive and inefficient. The subcommittee focused its 1996 meetings on gathering information about this issue and establishing a forum for restructuring stakeholders such as investor-owned utilities, municipal power suppliers, independent power producers, and electricity customers.

Retail choice advocates say that all electricity customers—business, residential and industrial—are best served by an open market that includes the traditional players (such as investor-owned utilities and electric cooperatives) plus a cadre of new entrants that include independent power producers and power marketers. However, Virginia's electric cooperatives and at least one investor-owned utility emphasized that Virginia's electric service is presently reliable and moderately priced. What is not broken, they said, does not require repair.

Nevertheless, at last count at least 40 states have retail competition under legislative consideration, and a handful of states, including New Hampshire, Pennsylvania and California, have enacted retail competition legislation es-

- 5 Health Care Commission**
- 8 Coal and Energy Commission**
- 9 Joint Reapportionment Committee**
- 10 HJR 519: Future of Transportation**
- 11 HJR 632: Baseball Stadium Financing**
- 12 HJR 622: Noncredit Education for Workforce Training**
- 14 HJR 498: Science and Technology**
- 15 SJR 261: Governmental Services in Richmond**

VIRGINIA DIVISION OF LEGISLATIVE SERVICES

Volume 13, Issue 22

Monday, July 21, 1997

tabilitating pilot and other experimental programs permitting retail customer choice. In New Hampshire, for example, full retail choice in all customer classes is as close as 1998, while in Pennsylvania, retail choice will be fully phased in by the year 2001. The key question before the joint subcommittee is whether Virginia should join these states in laying the statutory groundwork for business, residential and industrial customer choice in a deregulated retail electricity market.

Restructuring Activity at the SCC

The Virginia State Corporation Commission (SCC) has been examining the potential for electric industry restructuring in Virginia for the past two years. In November 1996, the SCC released a series of orders directing state-regulated electric utilities to furnish detailed information designed to help the SCC and its public utilities staff analyze the potential for retail competition in Virginia. In its July 1996 report to the SCC's commissioners, the SCC staff recommended a go-slow approach to restructuring, suggesting that (i) the SCC monitor retail pilot programs in other states; (ii) regulated electric utilities furnish detailed pricing information, segmenting the costs of generation, transmission and distribution; and (iii) a thorough industry-wide cost of service study be undertaken. The SCC orders implemented these staff recommendations.

The SCC's general counsel told the joint subcommittee that the SCC staff has responded to the SCC orders and to the joint subcommittee's request for a restructuring model (to be presented to the SCC by November 7) by forming a series of work groups to assist the SCC in examining restructuring models, cost/benefits, stranded costs, reliability and environmental concerns. SCC staff has been directed to file with the commission in 1997 a series of restructuring-related reports, including a report on retail competition experiments in other states that is to be filed by September 1. These groups will continue to meet throughout the year, and the SCC has agreed to keep the joint subcommittee apprised of their activities.

Impact on State and Local Tax Revenues

An emerging issue in the restructuring debate is the potential impact of retail competition on state and local tax revenues. Reports from other states—particularly those with restructuring legislation on the books—suggest that state and local officials are recognizing the potential impact of restructuring on state tax revenues. States and localities typically tax electric utilities' revenue streams and their property and equipment. A substantially deregulated retail market could result in significant tax revenue reductions if (i) the "gross receipts" method of taxing electric utilities were eliminated, and (ii) electric utilities' installations and operating centers were idled because of competition and their property assessments (for local tax purposes) reduced accordingly.

The SCC's director of public service taxation told the joint subcommittee that Virginia's electric utilities are assessed a gross receipts tax of approximately two percent, levied and collected

by the SCC. This statutory tax produced approximately \$93 million for the Commonwealth's general fund in the 1996 tax year (based on gross receipts of about \$5 billion). Electric utilities are also taxed up to .2 percent on their gross revenues to fund SCC regulatory oversight of their activities. During the 1996 tax year, Virginia's 22 SCC-regulated electric companies paid approximately \$5.3 million into the regulatory fund.

The SCC also assesses electric utilities' property for local tax purposes and furnishes these assessments to localities, which then apply the local rates. With the exception of automobiles and trucks, electric utilities' property is taxed at the real estate rate, a rate lower than other rates, including the machinery and tools or personal property tax rates. For the 1996 tax year, the total assessed value of all electric utility property within Virginia was over \$14 billion. A Virginia Municipal League (VML) representative estimated that in fiscal year 1995, electric utilities paid approximately \$205 million in property taxes to localities across the Commonwealth. VML also estimates that electric utilities may have paid as much as \$27 million in local license taxes in 1996 and an additional \$1.3 million in personal property taxes on their vehicles.

Public utility property tax payments are significant sources of local tax revenues to many Virginia localities. Spread over Virginia's population of 6.5 million, public utilities' \$205 million property tax payments amount to payments of \$34 per person in the Commonwealth. However, in Bath County, where public utilities pay nearly \$7.5 million annually in property taxes (accounting for over 80 percent of the county's annual tax revenue), the per capita figure is \$1,576 per county resident; Surry County, with public utility tax revenues of \$8.1 million, has a similar per capita figure of \$1,259. Thus, localities with significant electric utility installations have an important stake in the restructuring debate. If restructuring idles electrical power generation facilities, for example, their likely reassessment at substantially lower values could have a substantial negative impact on local tax revenues.

Task Force on State and Local Taxation

The joint subcommittee approved a tentative issue agenda for a 12-member task force examining restructuring's potential impact on state and local tax revenues. The task force held its organizational meeting following the task force's meeting, discussing many of the issues raised before the joint subcommittee. Task force members include representatives from the Department of Taxation, the SCC, the Office of the Attorney General, the VML, the Virginia Chamber of Commerce, the Virginia Association of Counties, investor-owned utilities, electric cooperatives, and independent power producers.

Task force members will examine Virginia's current electric utility tax structure and similar tax structures in other states (both with and without retail competition in place) to help the joint subcommittee assess the tax component of a retail market. As part of this review, the task force will look at (i) the federal tax-exempt status of electric cooperatives, (ii) the tax-exempt

status of municipal power suppliers, (iv) the potential effects of unbundling generation from transmission and distribution on the tax assessments of electric utility property, (iv) taxation of interstate power sales in a restructured market, and (vi) the impact of electric utility tax structure modifications on citizens of the Commonwealth.

Public Utility Entry into the HVAC Market

Representatives of heating, ventilation and air conditioning (HVAC) companies appeared before the joint subcommittee, renewing their concerns about the anticipated entry of Virginia Power and Washington Gaslight Company into the heating and cooling equipment service contract and warranty repair market. The Air Conditioning Contractors of America (ACCA) and other HVAC industry representatives believe these utilities' market power, coupled with direct access to a sizable customer base (generated by its regulated activities), poses an anticompetitive threat to HVAC companies. At the request of the joint subcommittee, the parties in interest agreed to meet during the spring and summer to determine whether some compromise could be reached on this issue and to report their progress at the joint subcommittee's August 12 meeting.

1997 Work Plan

The joint subcommittee's 1997 work will be focused on (i) examining legislative models emerging from other states and from federal restructuring legislation, (ii) analyzing restructuring's potential impact on state and local tax revenues, and (iii) preparing to receive and review the SCC's draft of a restructuring working model, which may include experiments and pilot programs.

The joint subcommittee established a tentative schedule for three future meetings. A work session to examine restructuring models and legislation from other states and the federal government is scheduled for June. The local and state taxation task force is scheduled to present its findings to the joint subcommittee in August. A November meeting will be convened to receive the SCC's restructuring model.

Finally, the joint subcommittee learned that a Congressional subcommittee, slated to convene field hearings on electric utility restructuring in several U.S. cities during the month of April, had scheduled one of these hearings in Richmond on April 18. Joint subcommittee members requested Senator Reasor to appear at the Richmond field hearing and to advise the Congressional subcommittee's members of Virginia's legislative study on this issue.

Task Force Meetings

April 28, 1997, Richmond

The task force convened its second meeting on April 28 to receive an extensive report on the tax components of

Pennsylvania's electric utility restructuring legislation. Pennsylvania is widely regarded as the first state to address this issue directly in retail competition legislation. A staff advisor to the Pennsylvania Public Utility Commission (PPUC) on electricity and natural gas restructuring economics briefed the task force.

In December 1996, Pennsylvania's "Electricity Generation Customer Choice Act" was signed into law, culminating over three years of regulatory and legislative retail competition activity. The PPUC economist told the task force that momentum for the restructuring law's enactment resulted from (i) electricity's importance to Pennsylvania's economic development, (ii) the failure of monopoly regulation to deliver electricity at moderate rates, and (iii) federal statutory and regulatory support for retail competition. An initial pilot program for five percent of Pennsylvania's electricity customers (in each customer class; e.g., residential, business, etc.) will begin in the fall of 1997, followed by a phase-in of retail competition. All customers will be phased in by January 2001.

Tax revenues were a large issue before the Pennsylvania legislature during the debate over restructuring. Some utilities argued that the state treasury would lose over \$800 million annually from its then-current electric utility taxation yield of approximately \$1 billion. The PPUC began examining the issue in the spring of 1996 with members of the commission, the Pennsylvania Department of Revenue, the Governor's office and stakeholders in the restructuring debate.

The working group attempted to calculate potential revenue losses to Pennsylvania's general fund from restructuring—principally from the potential inability to collect the Pennsylvania gross receipts tax (GRT) from out-of-state generators selling to Pennsylvania electricity customers. Unlike Virginia, potential local property tax losses (resulting from generating plant write-downs to market value) were not an issue—at least not directly—since Pennsylvania's tax structure permits increasing the tax rate on electric utility property if significant, market-driven assessment declines occur.

The working group's primary objective was to develop a "revenue-neutral" taxation provision for the restructuring bill, establishing a baseline revenue of \$984 million (the state's 1995 GRT revenues) until 2002. The working group eventually developed the tax provisions contained in the 1996 restructuring bill. These provisions require that all Pennsylvania retail electricity market participants (including out-of-state generators) pay Pennsylvania's gross receipts tax and ancillary taxes currently paid by electric utilities. Out-of-state electricity sellers must be licensed to sell electricity in Pennsylvania, and it is this license requirement that is intended to establish a constitutionally sufficient "nexus" to Pennsylvania's taxing authority. The tax provisions also contain a "revenue neutral reconciliation" (RNR) feature, which adjusts the GRT tax receipts rising above or falling below \$984 million — GRT receipts in 1995-1996. Thus, the GRT rate will float until 2002 to ensure an annual revenue stream of at least \$984 million.

The RNR surcharge is the key to the Pennsylvania restructuring bill's revenue neutrality tax strategy. In addition to hedging against the possible success of an out-of-state generator's challenge to the "nexus" provision's constitutionality, as well as simple, price-induced GRT declines, the RNR surcharge covers potential deficiencies resulting from tax revenue declines in (i) capital stock and franchise tax revenues (declines in net worth of electric utilities with stranded investment), (ii) corporate net income tax revenues (shrinking income statements), and (iii) sales and use tax and GRT losses driven by less than full stranded cost recovery during the transition period between 1996 and 2002.

The PPUC staff economist estimated that Virginia's restructuring-related tax losses (state and local) would total approximately \$50 million annually (\$40 million in locality losses; \$10 million in GRT losses), assuming (i) no transition period for GRT losses and (ii) an immediate write-down to market value of stranded plants and no write-ups of transmission or fossil fuel units. However, with a transition period and with a long-term write-down of net generation strandings, he said, this figure could be substantially less than \$50 million for years following the start of the transition period.

Members of the task force expressed concerns about adopting restructuring tax provisions modeled after the Pennsylvania bill, questioning the likelihood of Pennsylvania's prevailing on a constitution-based challenge to the mandatory licensing and GRT taxation of out-of-state electricity sellers and marketers. Task force members expressed interest in learning more about the "nexus" issue at its next meeting, particularly from the Office of the Attorney General and from stakeholders in Virginia's restructuring debate. Additionally, the task force agreed to receive a report on restructuring and state and local taxation from DeLoitte & Touche, a public accounting firm engaged by Virginia Power to analyze this issue.

June 3, 1997, Richmond

The June 3 meeting of the tax task force continued the examination of the potential effect of electrical utility restructuring on tax revenues for the Commonwealth and its localities. This meeting focused particularly on the predicted revenue shortfalls, which will occur if out-of-state electric companies begin supplying electricity to Virginia customers and no corresponding changes are made to the current tax structure. The task force discussed potential changes to the tax structure that would maintain the current level of revenue for the Commonwealth and localities and the legal issues surrounding the taxation of out-of-state utilities supplying electricity to Virginia customers.

A representative from the public accounting firm of Deloitte & Touche briefed the task force on the highlights of a national study of tax issues relating to electric utility deregulation. This study was conducted for the National Association of Regulatory Utilities Commissioners and the National Conference of State Legislators. The speaker asserted that states will not

achieve the economic benefit expected by the proponents of deregulation if the companies competing after deregulation are subject to varying tax regimes. He further explained that the economic benefits from deregulation come from having electricity provided by the lowest cost provider and that subjecting providers of electricity to different tax regimes allows the lowest taxed provider to succeed rather than the provider with the lowest cost.

The task force was reminded that the Commonwealth derives almost all of its tax revenue from electrical utilities as a result of a gross receipts tax (gross revenues of the business, with no deduction for expenses) levied against all Virginia-based investor owned utilities. This gross receipts tax is not imposed on out-of-state providers. Localities receive a majority of their tax revenues from electrical utilities through property taxes and a consumer utility tax. Out-of-state providers are not subject to these two taxes either.

Data presented to the task force suggested that the current tax structure allows out-of-state companies marketing electricity in Virginia to realize cost savings of nine percent as a result of avoiding the tax liability presently incurred by Virginia utilities. Additionally, the task force was informed that Virginia and its localities could face a projected revenue loss of \$100 million due to a combination of declining electricity prices, lower property tax base, and an increased market share for tax advantaged out-of-state providers.

Representatives from American Electric Power and Virginia Power urged the task force to recommend amending the tax structure to create a "level playing field" for all participants seeking to market electricity in Virginia. They urged the task force to consider proposals that (i) preserve the current level of revenue received by the Commonwealth and its localities and (ii) do not provide tax advantages for out-of-state providers at the expense of in-state utilities.

These Virginia utilities suggested achieving this goal by abolishing the gross receipts tax and replacing it with a corporate net income tax. While such a change may result in decrease in revenues, such shortfalls could be made up with revenue from a tax applicable to all end-users. This would not discriminate against either Virginia or out-of-state utilities and, according to proponents, will not result in an increased tax liability for end-users because they presently pay these taxes indirectly through the current regulated rates.

A representative from the Attorney General's office presented analysis on the legal issues related to taxing out-of-state utilities. Any tax levied by the Commonwealth on an out-of-state electric utility must not violate the constitutional protections afforded by the due process clause and the commerce clause. While courts tend to be more flexible when reviewing tax schemes involving regulated industries, a degree of contact must exist between the entity being taxed and the state levying the tax. This contact, or "nexus," will determine whether a state may levy taxes against out-of-state utilities.

Several members of the task force expressed concern over the tax scheme created in Pennsylvania as a result of electric utility deregulation. This scheme expanded the gross receipts tax so that both local and out-of-state suppliers of electricity in Pennsylvania are subject to this tax. Critics of the Pennsylvania plan stated that this scheme would result in expensive and time-consuming litigation over whether a proper "nexus" exists. The unresolved legal issues were promoted as another justification for the replacement of the gross receipts tax with a combination corporate income tax and end-user tax.

Representatives of Virginia's localities discussed the potential loss of revenue caused by electricity deregulation. A consumer utility tax, imposed by localities at varying rates, is currently collected by Virginia's utilities and paid back to localities. There are currently no provisions that would require out-of-state utilities to either collect this tax or pay the resulting revenue back to localities. This tax source generated over \$170 million in revenue for localities in 1995. These represen-

tatives also expressed concern over the potential loss of revenue from property taxes collected against utilities that may result from deregulation.

The task force expressed the need to begin breaking down electricity bills in order to determine the median tax per kilowatt unit of electricity under the current tax scheme. Staff was directed to begin working with taxation staff within the Division of Legislative Services and the finance committees of the General Assembly to provide more feasibility data to the task force at its next meeting on July 15 in Richmond.

The Honorable Jackson E. Reasor, *Chairman*
Legislative Services contact: Arlen K. Bolstad



Joint Commission on Health Care

May 6, 1997, Richmond

1997 Work Plan

At the May 6th meeting, staff presented an overview of the joint commission's 1997 legislative package and a draft work plan that outlines its schedule of meetings and studies for 1997. The joint commission's tentative schedule includes meetings on June 3rd, July 2nd, August 5th, September 16th, October 7th, November 12th, December 2nd and January 6th (1998). All meetings will begin at 10:00 a.m. and will be held in Senate Room A of the General Assembly Building. Materials presented to the joint commission generally are available through the Internet the day following the meeting.

The joint commission's work plan includes studies on a wide range of health care issues, including (i) "point-of-service" health insurance plans (SJR 297/HJR 631); (ii) minimum standards for hospital-based pediatric care (HJR 569); (iii) the health status and conditions of African-Americans (SJR 355); (iv) high risk insurance pools (SJR 337); (v) payment of wellness club memberships for Medicaid recipients when prescribed by a physician; and (vi) pre-existing conditions and community rating in health insurance policies (SB 1181).

The two most significant studies to be conducted by the joint commission during 1997 will be to resolve several outstanding long-term care and aging issues and improve access to health care for Virginia's indigent and uninsured populations.

Long-Term Care/Aging Study

Pursuant to SJR 316 and HJR 655 (1997), the joint commission will address outstanding long-term care and aging issues pertaining to the licensing, financing, organization, and regulation of long-term care facilities and community-based services. The resolutions also direct the joint commission to study respite care and long-term care insurance policies.

A subcommittee established by Senator Walker to oversee the study will be participating in site visits to various long-term care and aging facilities and programs during the course of the study, which will be conducted during the late summer and fall. The subcommittee will brief the joint commission at the August 5th, September 16th and October 7th meetings.

Indigent/Uninsured Study

SJR 298 (1997) directs the joint commission, in cooperation with a number of state agencies and other health care-related organizations, to make recommendations for improving access to care for Virginia's indigent and uninsured populations.

The study will include an analysis of (i) a recently completed survey of the insurance status of Virginians; (ii) the underlying reasons for persons being uninsured; (iii) the impact that not-for-profit to for-profit hospital conversions may be having on the indigent and uninsured; (iv) the impact that the provision of care for the indigent and uninsured has on individual providers and hospitals; (v) the role that projects supported by the Virginia Health Care Foundation and the Virginia Indigent Health Care Trust Fund play in meeting the needs of the unin-

sured; (vi) the appropriateness of expanding Medicaid coverage to certain segments of the uninsured population; and (vii) whether subsidies to purchase private health insurance should be implemented.

A subcommittee to oversee this study will be participating in site visits to various programs designed to provide care for indigent and uninsured persons and will present its findings at the June 3rd, July 2nd, and August 5th joint commission meetings.

June 3, 1997, Richmond

Indigent/Uninsured Study

The first phase of the indigent/uninsured study (SJR 298) included an analysis of a recently completed telephone survey of the insurance status of Virginians. The survey, which was sponsored by the Virginia Health Care Foundation, was conducted by the Virginia Commonwealth University Survey Research Laboratory and replicated a similar survey conducted in 1993. The primary focus of the analysis was to determine what changes in the uninsured population had occurred over the last several years and to assess the reasons why persons are uninsured.

When compared to the uninsured population in 1993, the 1996 survey found that:

- The total number and percentage of Virginia's population who are uninsured have remained relatively stable since 1993 (1993: 14 percent; 1996: 13 percent).
- There has been little change in the uninsured population when analyzed by age and region of the state.
- There was a substantial increase in the percentage of the uninsured whose annual household income is \$50,000 or more (1993: 6 percent; 1996: 12 percent).
- There was a substantial increase in the percentage of the uninsured defined as "other minorities" (1993: 4 percent; 1996: 15 percent).
- There was a substantial decrease in the percentage of the uninsured who are African-Americans (1993: 34 percent; 1996: 20 percent). This decrease is due primarily to recent expansions in the Medicaid population.
- There was a significant increase in the percentage of uninsured adults who are employed full-time (1993: 41 percent; 1996: 57 percent).

The following are some of the key characteristics of the 1996 uninsured population as determined by the survey:

- Lower income persons (annual household income less than \$20,000 per year), younger adults (ages 18-29), and "other minorities" make up a significantly higher percentage of the uninsured population than the population at large.
- Small employers (with fewer than 5 employees) have the highest percentage of workers who are uninsured (28 percent).
- A substantial portion of Virginia's uninsured population is

at or near the federal poverty level (FPL), some of whom may be eligible for Medicaid.

- Cost/affordability of coverage remains the most significant barrier to coverage for the uninsured.

The Phase I report also included an analysis of recent Medicaid expansions to assess their impact on the uninsured population. The following key findings were reported:

- The largest increase in the Medicaid population since 1989 has been children under 21 years of age, and within this category, the number of children ages 1-5 and 6-14 have seen the greatest growth.
- Despite Medicaid expansions for children, the percentage of the uninsured who are age 0-17 has increased slightly since 1993 (1993: 17 percent; 1996: 19 percent).
- Based on household income levels, a sizable portion of uninsured children ages 0-5 and 6-19 may be eligible for Medicaid.
- There is a sizable number of uninsured families at or below 200 percent of the FPL; children under age 18 in these families would be eligible for services through the Virginia Children's Medical Security Insurance Plan being developed by the Department of Medical Assistance Services pursuant to HB 2682 (1997).

Phases II and III of the indigent/uninsured study will be presented at the July 2nd and August 5th joint commission meetings. Based on the survey results, which define the indigent/uninsured populations, the Phase II and III reports will analyze various ways to improve access to care for these citizens.

Telemedicine Issues

Telemedicine is defined broadly as the practice of health care delivery, diagnosis, consultation, treatment, transfer of medical data, and education using interactive audio, video and data communications. An administrator with the Council on Information Management presented a status report on two studies that were conducted regarding telemedicine (HJR 53 and HJR 109, 1996). A task force composed of experts currently participating in telemedicine projects was established to conduct the two studies.

The first study analyzed the barriers to implementation of telemedicine in Virginia and identified the following:

- reimbursement for telemedicine services,
- telemedicine acceptance,
- licensure and credentialing,
- legal and medical malpractice liability,
- confidentiality,
- telecommunications regulation,
- cost, and
- infrastructure planning and development.

The task force concluded that these barriers do not reflect inherent limitations in technology that compromise the clinical process, but rather societal practices and restrictions. The task

force further concluded that more research is needed to determine how best to utilize telemedicine in the Commonwealth.

The second study looked at reimbursement issues regarding telemedicine, specifically whether the Commonwealth should develop a reimbursement policy for telemedicine services by state health programs (i.e., state employee benefits program and Medicaid). The task force found that there are three major factors that affect reimbursement for telemedicine: (i) absence of coordinated action by providers and state governments, (ii) lack of acceptance by third-party payers, and (iii) lack of knowledge about telemedicine.

The task force recommended that, given the present lack of experience to support the use of telemedicine as a safe, medically effective set of procedures and the dynamic nature of the technology, a reimbursement policy for telemedicine services by state health programs not be implemented at this time. Other task force recommendations included:

- The General Assembly should recognize the practice of telemedicine as a legitimate means by which an individual may receive certain medical services from a health care provider without person-to-person contact with the provider.
- No state funded health care service program should require face-to-face contact between a health care provider and a patient for substantially equivalent services appropriately provided through telemedicine.
- The Joint Commission on Health Care, in conjunction with the Council on Information Management, should coordinate telemedicine research in the state to promote and support its use.
- State organizations that provide reimbursement for telemedicine should monitor and evaluate the services using accepted research methodologies.
- To monitor the implementation of telemedicine in Virginia, the General Assembly should consider funding health services research regarding quality, efficiencies and cost effectiveness of telemedicine services when provided by state and/or local public providers.

Long-Term Care and Aging Study

The work plan for conducting the long-term care and aging study (SJR 298/HJR 655) was reviewed and discussed at

the June 3rd meeting. The central issues that will be addressed by the study include: (i) regulation of nursing home beds within continuing care retirement communities (CCRCs); (ii) past re-organization issues; (iii) respite care; (iv) long-term care insurance; (v) the use of vouchers as proposed in HJR 219 (1996); and (vi) the Program for All-Inclusive Care for the Elderly.

The near-term areas of focus will be basic education and review of key long-term care issues, including activities in other states, organizational issues, the nursing home certification survey process, and regulation of nursing home beds within CCRCs.

Annual Report

In addition to individual study reports, which are published for each study conducted by the joint commission, an annual report is published each year which summarizes the activities of the joint commission, provides information about its legislative package for the year, and discusses health care policy issues facing Virginia and the nation.

The 1996 Annual Report has been published as Senate Document No. 29 and is available from the Joint Commission staff (804-786-5445) or the bill room (804-786-6984).

Website on the Internet

Persons interested in following the work of the Joint Commission on Health Care can do so by visiting its home page on the Internet. The website address is: <http://legis.state.va.us/jchc/jchchome.htm>. Internet users can (i) find information regarding meeting schedules and agendas, staff reports, legislation, and activities, (ii) download staff reports and presentations, (iii) submit comments on draft reports and proposed legislation, and (iv) send e-mail to the staff.

The Honorable Stanley C. Walker, *Chairman*
Staff contact: Jane Norwood Kusiak



Coal and Energy Commission

May 12, 1997, Abingdon

The commission's first meeting of the year, held in conjunction with the Virginia Coal Council's 19th Annual Conference and Exposition, focused on Clean Air Act issues.

Representatives from Virginia Power made presentations on two different but related Clean Air Act issues that affect the electric power and fuel supply industries. The first issue was the work of the Ozone Transport Assessment Group (OTAG), a group of 37 state environmental agency officials that was formed with the encouragement of the United States Environmental Protection Agency (EPA). The group is addressing the possibility that, because ozone and ozone precursors are mobile in the atmosphere, some regions of the country may not be able to attain the air quality standard for ozone unless additional emissions reductions are imposed in other regions of the country. The second issue was the proposed revision of the national ambient air quality standards for ozone and particulate matter.

Ozone Transport Assessment Group

The commission has been monitoring the OTAG process since its inception. At meetings in 1995 and 1996, the commission and its subcommittees heard different presentations from representatives of the Center for Energy and Economic Development, (a nonprofit organization dedicated to promoting coal as an energy source), OTAG and the Virginia Department of Environmental Quality (DEQ). The Virginia Power presentation at the May 1997 meeting provided an update.

OTAG's objective is "to identify and recommend a strategy to reduce transported ozone and its precursors which, in combination with other measures, will enable attainment and maintenance of the ozone standard in the OTAG region." The group has no regulatory authority. It has been utilizing a model in an attempt to determine how ozone transport is affecting ozone levels in various parts of the 37-state region, and how additional controls on emissions might increase air quality in the various regions. It is scheduled to complete its work in June 1997.

According to Virginia Power, the results of the modeling effort indicate that additional emissions controls in the entire region will provide little benefit (reductions of 2 to 6 parts per billion) in reducing peak ozone levels in the Northeast corridor, most of which is not in compliance with the air quality standard for ozone. While such controls will provide some areas with reductions of 20 or more parts per billion, this will occur primarily in areas which have already attained the standard. OTAG is now examining the effects of imposing controls in smaller geographic zones.

Northern Virginia is in the same region as the rest of the Northeast corridor, while the rest of Virginia has been placed

in a "buffer zone" in which controls could be imposed that would not be imposed on states to the west and south of Virginia. DEQ has performed modeling that indicates that applying such stricter controls would provide minimal benefits (reductions of 2 to 3 parts per billion) in ozone levels in the Northeast at a very high potential cost.

In January, EPA published a notice of intent to require states to submit amendments to their Clean Air Act state implementation plans "to ensure that emission reductions are achieved as needed to prevent significant transport of ozone pollution across state boundaries in the Eastern United States." Virginia Power questions why the agency took this action prior to the completion of OTAG's work.

Virginia Power has a number of other concerns about the OTAG process and EPA's proposal to require states to implement the alternatives being evaluated by OTAG before the group makes its recommendations. According to Virginia Power, the time constraints under which the group has been operating are resulting in compromises in sound science and judgment. The model that the group has been using was made public late in the process, in November 1996, and there are questions about the accuracy of the model and the emissions inventories being relied upon. Virginia Power's position is that OTAG's heavy focus on the utility sector is unfounded and that the costs that are likely to be imposed on the utility sector as well as other industries may be very large.

Proposed Air Quality Standards

EPA is under a court order to reevaluate the national ambient air quality standard for ozone, due to a lawsuit filed by the American Lung Association, because EPA failed to examine the standard within the time frame required by the Clean Air Act. The agency has proposed to toughen the standard and change the way that ozone levels are measured. Simultaneously, EPA has proposed changing the particulate matter (soot) standard in a similar way. Virginia Power questions whether the scientific information available on the health effects of these two pollutants indicates that the standards should be changed. Virginia Power pointed out that of the 32 health studies cited by EPA in the particulate matter proposal, 20 were done at one institution, the Harvard School of Public Health. Some of these studies have not been released to the public. EPA estimates that the costs of the particulate matter proposal will be about \$6 billion per year. It has been estimated that the costs of the new ozone standard in the Chicago area alone will be between \$2.5 and \$7 billion per year. Under the new proposals, EPA projects that 229 areas in the United States will newly become nonattainment areas for ozone and 167 areas will become nonattainment areas for particulate matter.

EPA, which has been confronted with increased Congressional opposition to both of the proposed new standards, is scheduled to make final decisions on them in July. Virginia Power's position on the two standards is that the current ozone standard is adequate to protect public health and that the particulate mat-

ter standard should not be changed without more research on its health effects.

Commission Response

Commission members requested that the chairman write letters on behalf of the commission to the Administrator of the EPA, the President and Vice-president, and Virginia's Congressional delegation expressing concern about both EPA's ozone transport proposal and the new standards for ozone and particulate matter.

Other Issues

Other issues raised at the meeting included the transmission line that is proposed to be located between Oceana, West Virginia, and Cloverdale, Virginia. American Electric Power

representatives briefed the commission on the need for the line. Representatives of the Virginia Oil and Gas Association (VOGA) raised several issues that had been discussed prior to the 1997 session by the Oil and Gas Subcommittee but not resolved. The primary issue of concern to VOGA is the ability of owners of coal to effectively veto coalbed methane development. This and other issues may be the subject of Oil and Gas Subcommittee meetings in the coming year. Finally, the issue of global warming was raised. The commission agreed to discuss the issue at its next meeting and to focus on effects that proposed controls would have on the coal industry and other fuel suppliers and on the utility sector.

The Honorable Jackson E. Reasor, Jr., *Chairman*
Legislative Services contact: Nicole R. Beyer



§24.2-300

Joint Reapportionment Committee

May 28, 1997, Richmond

The Joint Reapportionment Committee oversees preparations for redistricting and coordinates the Commonwealth's work with the Census Bureau to provide census population reports and maps used in the redistricting process. The committee convened its first meeting to look ahead to the 2000 census and redistricting process and to hear reports on the status of the present congressional redistricting litigation.

Congressional Litigation and Redistricting

Representatives from the Attorney General's office reported that the Commonwealth has filed its appeal with the United States Supreme Court seeking reversal of the District Court decision in *Moon v. Meadows*, which held that the Third Congressional District is unconstitutional. The ACLU, which joined the Commonwealth in defending the present plan, filed its jurisdictional statement before May 30. Plaintiffs have 30 days to file a response.

The Supreme Court reviews the substance of the request for an appeal. It can decide to hear the appeal or summarily affirm the District Court decision. [The Court rejected the Commonwealth's appeal and affirmed the District Court ruling on Friday, June 27. The Court announced its ruling without a written opinion.]

Staff reported that the 1990s redistricting computer system is being maintained for use in drawing congressional plans and

that up-to-date local precinct lines are being incorporated in the redistricting system to the extent possible. Thus if redistricting is required, new plans could follow current precinct lines, which should ease the administration of elections and reduce voter confusion. The plans would be based on the 1990 census population data.

The committee noted that Supreme Court opinions are expected by the end of this term in cases from Georgia and Florida. These court decisions may give some indication of how the court might rule on the Virginia appeal and some guidance on the rules to be followed if congressional districts are redrawn.

The Court announced its decision in the Georgia congressional district case on June 19. The Court, by a 5-4 majority, affirmed a federal district court's redistricting plan for Georgia that reduced the number of majority black districts from three to one (of that state's 11 congressional districts).

On June 25, the Court, by a 5-4 majority, affirmed the twenty-first Florida Senate district earlier approved by the Federal District Court.

The committee will review these developments with staff and the Attorney General's office representatives at a future meeting.

Preparations for the 2001 Redistricting

Phase I: Census Data Programs—Block Boundaries (1995-1997). Staff reported that Virginia has proceeded to cooperate with the Census Bureau in Phase I for the 2000 census pursuant to authorization by the Governor and the General Assembly leadership. This Block Boundary Suggestion Program (BBSP) work is the first step to assure that the blocks shown on the

2000 census maps and used to report population statistics will be compatible with Virginia precincts and districts.

Phase II: Census Data Programs--Precinct Boundaries (1998-1999). Phase II will permit participating states to identify the precinct lines to be shown on census maps and to obtain population statistics for each precinct. Virginia participated in Phase II for the 1990 census. The committee agreed to recommend to the Governor and General Assembly leadership that Virginia participate in Phase II for the 2000 Census.

1998-2000 Budget Request

Costs associated with Phase II of the Census Redistricting Data Program, the Reapportionment Task Force meetings sponsored by the National Conference of State Legislatures, and staff training and research are estimated to be \$152,500 for the first year of the biennium.

It is too early to develop precise cost estimates for replacing obsolete computer hardware and software for the 2001 redistricting. The 1988-1990 budget directed the Joint Reapportionment Committee to develop cost estimates and "submit specific budget requirements for the second year of the biennium" to the money committee chairs "no later than December 1, 1988." The committee adopted a motion to support a request

for \$152,500 for the first year of the 1998-2000 biennium and budget language to have the committee prepare cost estimates for the second year of the biennium by December 1, 1998.

Local Precincts

In the 1980s the General Assembly passed legislation to freeze precinct lines from July 1, 1988, through the redistricting process until June 1, 1991. The lines were frozen so that the precinct lines given to the Census Bureau during Phase II in 1988 and 1989 would remain in place for use in redistricting as shown in the census maps and statistical reports.

Staff recommended that the committee consider legislation for introduction at the 1998 Session to freeze precinct lines beginning September 1, 1998. The committee endorsed this recommended precinct freeze and directed staff to prepare legislation for introduction in the 1998 Session and to advise localities of the committee's action and give advance notice of the legislation.

The Honorable Marian Van Landingham, *Chair*
Legislative Services contact: Mary Spain



HJR 519

Commission on the Future of Transportation in Virginia

May 19, 1997, Richmond

Chairman Robinson opened the meeting with a report from Delegate Marian Van Landingham, chair of the commission's Subcommittee on the Transportation Disadvantaged. Delegate Van Landingham commented that the provision of transportation services for rural residents, the disabled, and the poor is funded by a patchwork of federal, state, and local sources that are insufficient to support the creation of new transportation services for these persons. She noted that a regular funding scheme is needed to provide adequate services to the transportation disadvantaged and stated that this issue will be addressed in future subcommittee meetings. Following the subcommittee report, staff from the Senate Finance and House Appropriations Committees summarized three previous transportation studies for the commission.

The Dulles Rail Project

The director of the Department of Rail and Public Transportation described the proposed financing plan for the design and construction of a metro-like rail system from Falls Church

to Dulles Airport, continuing into Loudoun County and terminating in the vicinity of Route 772. The financing plan for the project is based on a 1995 projection of \$1.45 billion in capital costs. This estimate includes \$620 million for construction of the rail line and stations and \$240 million for systems for power collection and distribution, train controls, communication, and a new rail vehicle storage facility. The projection also contemplates expenditures of \$40 million to expand park and ride facilities and \$140 million to purchase buses and 100 rail vehicles. Start-up and testing costs of \$280 million and contingency fund of \$130 million complete the total capital cost projection.

The financing plan for the project relies on the following five funding sources: (i) federal grants, (ii) Dulles Airport contribution, (iii) state contribution, (iv) cross-border leases, and (v) special tax district revenues. The director noted that Virginia is seeking 80 percent of the capital financing from federal grants and will apply these funds under the Federal Transit Administration's Innovative Financing Program, which will allow the state to front-load federal funds and apply state and local funds at later stages of the construction project. He also commented that the department recently received and was encouraged by a proposal for private funding and operation of the rail system. However, he emphasized that consideration of the proposal is still in the early stages and an opportunity for the submission of other private funding proposals must be provided.

Virginia's Ports

The deputy director of the Virginia Port Authority provided the commission with a brief overview of Virginia's ports. Prior to 1971, Virginia's general cargo marine terminals were owned and operated by the three port cities of Norfolk, Newport News, and Portsmouth. Competition for cargo business among these cities resulted in inefficiency and prevented central marketing strategies, thereby hampering Virginia's efforts to improve its shipping industry. To address these problems, the Commonwealth acquired all three port facilities in 1971 and centralized the operation of the ports in 1981 by creating Virginia International Terminals (VIT), a private non-stock corporation supervised by the Virginia Port Authority (VPA) and the Secretary of Transportation. In order to fund port operations, the 1987 Virginia General Assembly created the Commonwealth Port Fund, which receives an annual allocation of 4.2 percent of the Transportation Trust Fund or approximately \$20 million per year.

The Virginia Port Authority currently operates four facilities. The Norfolk International Terminal is Virginia's largest container facility (811 acres) and has on-dock rail in addition to roll-on/roll-off and project cargo capabilities. Portsmouth Marine Terminal rests upon 219 acres and is primarily a container facility. The Commonwealth's third largest port is the Newport News Marine Terminal which handles bulk freight, such as rubber and tobacco, and container cargo. The VPA is presently constructing facilities to enhance Newport News' cruise ship terminal to expand this port's base of operations. The fourth major facility operated by the VPA is the Inland Port at Front Royal. This "port" is not located on a body of water, but serves as an intermodal ramp where tractor-trailers deliver container cargo to freight trains, which then transport the containers to the three Hampton Roads ports. Principal exports from Virginia's port facilities include pulp and waste paper, lumber, paper and paperboard, alcoholic beverages, and auto parts. Leading imports include natural rubber, auto parts, iron, steel, and alcoholic beverages.

HJR 632

Joint Subcommittee Studying Financing Options for the Purpose of Constructing a Baseball Stadium in Virginia

May 15, 1997, Annandale

The joint subcommittee met at the Northern Virginia Planning District Commission in Annandale for a presentation by the director of the Virginia State Lottery regarding the nature and scope of additional lottery games to assist in financing a baseball stadium. The subcommittee also heard from the chair-

The VPA's deputy director noted that 80 percent of all inbound freight is transported outside of Virginia, primarily to the Midwestern states. Because New York City and several Canadian ports also rely on Midwestern markets, these ports remain Virginia's chief competition for shipping business. The deputy director concluded his presentation by stating that Virginia's ports provide a full package of dockage facilities, labor, railroads, and highways necessary to successfully compete with any port along the Atlantic coast.

Advisory Committee on Needs

The co-chairman of the commission's Advisory Committee on Needs reported that it is presently gathering additional information from transportation agencies throughout the Commonwealth and is analyzing potential projects on the basis of time to complete, cost to complete, and financial shortfall. Chairman Robinson requested that the advisory committee match up categories of needs by geographic regions. The next meeting of the Advisory Committee on Needs is scheduled for July 21.

Future Meetings

Full commission meetings are planned for August 11 (final report of the Transportation Needs Advisory Committee), September 3 (final report of the Education Advisory Committee), November 17, and December 10 (consideration of the commission's Final Report).

The Honorable William P. Robinson, Jr., *Chairman*
Legislative Services contact: Alan B. Wambold



man of the Virginia Baseball Stadium Authority concerning the authority's current activities.

Lottery Options

A December 2, 1996, report presented various lottery options for helping to finance a baseball stadium. Since that report, the lottery department has ruled out a daily millions game, and 1997 legislation prohibits the implementation of a video or keno game.

According to the director, the lottery department remains optimistic that it will be able to create games to raise \$14 million (on an annualized basis) for a baseball stadium, while protecting the \$348 million anticipated for the general fund.

The director recommended, and the committee agreed, that a separate fund will be maintained by the lottery for baseball specific games, but there will be no designation on the games themselves to indicate which games produce funds for the general fund and which produce funds for baseball.

Baseball Stadium Authority

The chairman presented the authority's annual report and indicated that while the site selection process was continuing, the primary focus was recruiting a team. It was noted that one possible means of recruiting a team would be as a result of an existing baseball team requesting and being permitted to switch leagues, thereby permitting a move to a new site such as Virginia. The other possibilities are a simple move by an existing team, if permitted, or one of two new franchises to be granted by the end of the year 1999.

HJR 622

Joint Subcommittee to Study Noncredit Education for Workforce Training in Virginia

June 11, 1997, Newport News

The joint subcommittee is directed to examine "the needs of business and industry, the lack of funding for non-credit training and retraining courses requested by business and industry, and the absence of a public policy to provide sound and continuous training opportunities for businesses in the Commonwealth." In addition, the joint subcommittee is specifically charged to identify the courses and programs of study in highest demand by business and industry in Virginia; develop a process for assessing the future demand and appropriate public policy for non-credit education and workforce training programs; recommend the appropriate share of the costs of such programs to be borne by the Commonwealth; and recommend initiatives that will sustain a highly skilled labor force to meet the needs of existing business and industry and facilitate the recruitment of new businesses.

Preparing a Skilled Workforce

An increasingly global marketplace, characterized by sophisticated communications, ever-changing computer technology, and intense foreign competition, has prompted significant changes in state economic development policies in recent decades. Experts contend that states should address the preparation of a highly skilled work force—one that is capable of assuming greater responsibility for a wide variety of tasks and that possesses the flexibility and skills required to make decisions and to adapt to changing tasks. Because individuals cur-

Next Meeting

The joint subcommittee anticipates meeting again in the fall to review specific lottery games to be implemented for baseball. A specific place and time for that meeting have not been set.

The Honorable Vincent F. Callahan, Jr., *Co-Chairman*
The Honorable Richard L. Saslaw, *Co-Chairman*
Legislative Services contact: Stephanie Hamlett



rently in the workforce must keep pace with ongoing changes in technology and business, continuing education and workforce training must be available to provide opportunities to acquire or upgrade job skills. Employers in the United States spend approximately \$30 billion annually for formal worker training.

The result of an historically unfocused national approach to worker training, experts contend, has been a "complex and fragmented network of adult training efforts" characterized by education, social, and economic development initiatives that incorporate training as part of their missions. Among these initiatives are government-funded training programs targeting certain "special needs" workers. Two-thirds of \$5.7 billion expended annually by the federal government for employment and training is consumed by the Job Training Partnership Act, comprised primarily of programs addressing training assistance for disadvantaged youth and adults, dislocated workers, summer youth employment and training, and the Job Corps. A number of state initiatives complement these federal programs.

Workforce Training in Virginia

The director of training for Newport News Shipbuilding (NNS) noted the "vital role" of community colleges in workforce development. NNS spends approximately \$20 million annually on internal workforce training efforts, which include voluntary, off-hours training through night school; media-based learning centers; an accredited, four-year apprentice school; a program design and development group; production and maintenance skills training; reading and mathematics improvement programs; and a tuition reimbursement initiative through which over 1,300 requests were granted last year, totaling over \$500,000.

Some of these initiatives, particularly those offered off-hours and on a voluntary basis, are offered in cooperation with the public schools and Thomas Nelson Community College

(TNCC). Specifically, TNCC teaches some courses in design and advanced operations curricula with the NNS apprentice school and evening classes in industrial management certificate program for NNS supervisors. Most of the workforce training at NNS, however, is provided by its staff and training organization, which employs 119 individuals. The NNS representative urged state and local governments to help ensure adequate preparation for new entrants to the workforce; basic educational skills as well as occupational training are necessary ingredients for the incoming worker. Also noted was an "outdated view of noncredit instruction"; the state's failure to support noncredit workforce instruction hampers the ability of community colleges to respond more effectively to workforce training needs. Although community colleges may serve some long-term training needs in established credit-bearing courses, some of these traditional course offerings are ill-matched to industrial training needs. The time required for curriculum development, approval, and implementation of new credit programs slows the community college response to training needs.

Also noted was the creation of economic incentives for employer-sponsored training. These incentives, such as the tax credit provided by HB 2367 (1997), would help business through a direct tax benefit and would also encourage employers to train their own workers, rather than simply recruit from other companies that do provide training. Finally, the state, as a "catalyst" for development, might also support workforce training by "designing and funding organizations which promote regional approaches" and the development of systems rather than programs. Public schools, regional vocational centers, community colleges, certain programs in four-year institutions, government-sponsored training programs, employer-provided training, and training provided by private, for-profit entities might

all be considered elements of a system addressing regional workforce development.

Representatives of private, proprietary schools noted that these institutions also provide workforce training at costs comparable to that of community colleges. Discussion then focused on the amount of state funding needed to assist community colleges in the delivery of noncredit instruction. While \$10 million might be necessary to cover current costs across the community college system, the availability of state support might increase the number of businesses seeking this training alternative.

Members also discussed whether community college instruction had been rejected by business as too costly; how assessments might be made regarding what types of noncredit instruction should be provided or supported; whether some noncredit courses could be designed as credit courses, and therefore covered by state funding; and what coordination between business and educators would be necessary to obviate the need for additional training for community college graduates. Members also noted three distinct issues: preparation prior to employment; personal improvement objectives, such as those that might be addressed through tuition reimbursement; and targeted in-service training.

The Honorable Alan A. Diamonstein, *Chairman*
Legislative Services contact: Kathleen G. Harris



HJR 498**Joint Subcommittee on
Science and Technology***April 30, 1997, Richmond*

On April 30, Robert M. O'Neil, former president of the University of Virginia and current director of the Thomas Jefferson Center for the Protection of Free Expression in Charlottesville, discussed first amendment issues raised in *ACLU v. Reno*. The case, which challenges the Communications Decency Act passed by Congress in 1996, was argued before the United States Supreme Court on March 19. The decision, among the high court's most significant in the latter third of the twentieth century, will help set the limits of free speech on the Internet well into the twenty-first century. The court's opinion is expected in a few weeks.

The subcommittee also took testimony from representatives of:

- The Library of Virginia regarding HJR 444, requesting the library to develop a strategic information technology plan for the Commonwealth's public library system.
- The State Corporation Commission regarding HJR 635, requesting the SCC to continue its efforts to open up competition in the local exchange market between telephone, cable, and other communications companies.
- The State Council of Higher Education regarding SJR 218, requesting SCHEV to examine the demand for computer scientists, engineers, and other technologically skilled workers in Virginia industry.
- The Center for Innovative Technology regarding SJR 226, expressing the sense of the General Assembly in connection with certain emerging scientific and technological assets located in the Commonwealth and requesting the CIT to report on the status of such assets.

These resolutions were recommended by the joint subcommittee in 1996 and passed by the 1997 General Assembly. Staff presentations were made regarding additional legislation recommended by the subcommittee and passed by the 1997 General Assembly:

- SB 923 (Chapter 917), which provides legal recognition for digital signatures; allows digital signatures to serve in place of notarized or acknowledged signatures when filing documents with executive agencies of the Commonwealth; and requires

the Council on Information Management to promulgate regulations on or before September 1, 1998, on the use of digital signatures.

- HB 2138 (Chapter 847), which creates the Joint Commission on Technology and Science as a permanent legislative agency. The commission will consist of nine legislators, five from the House of Delegates and four from the Senate. The commission will generally study all aspects of technology and science and stimulate, encourage, promote, and assist in the development of technology and science in the Commonwealth through sound public policies.

The subcommittee discussed and approved a law and technology survey developed for lawyers and legal assistants to help identify those areas of civil and criminal law that have failed to keep pace with advances in technology. The survey is being distributed by various legal associations and organizations and will be available later this summer on the joint commission's website.

May 21, 1997, Richmond

On May 21, the subcommittee met in conjunction with the Virginia Technology Summit, sponsored by the CIT, the Virginia Technology Council, and the Virginia Chamber of Commerce. The Joint Legislative Audit and Review Commission made a presentation regarding JLARC's studies of the Commonwealth's data processing services and the potential problems created when computer programs, software, and databases are unable to properly read and process the Year 2000; i.e., a 2-digit date of "00." The budget requires JLARC's studies, being conducted by the Gartner Group, to be completed by January 1, 1998.

Effective July 1, 1997, the Joint Commission on Technology and Science will replace the HJR 498 subcommittee. The joint commission will hold its first meeting on July 1, 1997, at 1:30 p.m. in House Room D to establish its work plan for the 1997 interim, expected to be drawn largely from the subcommittee's final report, published as House Document No. 81 (1997).

The Honorable Kenneth R. Plum, *Chairman*
Legislative Services contact: Diane E. Horvath



SJR 261

Delivery of Governmental Services in the Greater Richmond Area

The Joint Subcommittee Studying the Delivery of Governmental Services in the Greater Richmond Area discussed its work plan at its first 1997 meeting. This study is a continuation of SJR 383 (1995) and SJR 61 (1996).

The subcommittee agreed that the first item it should address is the consultant's, David M. Griffith & Associates, final report of its findings concerning water and sewer, social services and other human services. The final report on transportation was delivered to the subcommittee in January, immediately prior to the 1997 Session. The consultant will be contacted and asked to send the report to the subcommittee members in order for them to review it prior to the actual presentation, which should be in July or August.

It was brought to the attention of the subcommittee that the Greater Richmond Chamber of Commerce had just released a report on transportation in the Greater Richmond area in which it outlined six transportation projects crucial to growth and eco-

nomie development. All agreed that an invitation should be sent to former Governor Gerald Baliles, chairman of the Regional Transportation Advocacy Board, to address the subcommittee concerning the report.

In another area of regional cooperation, it was brought to the attention of the subcommittee that an agreement on welfare reform had been entered into recently between the City of Richmond, Chesterfield County, Hanover County and Henrico County. More information about this, along with other regional efforts recently undertaken, will be forthcoming at a future meeting.

Finally, it was suggested that the steering committee review the topics discussed by the subcommittee in its first year (1995) to be sure all areas of interest concerning regionalism have been investigated, as this is the final year for this subcommittee. The steering committee will meet before the next meeting of the subcommittee in order to report any topics that need further study.

The Honorable Henry L. Marsh III, *Chairman*
Legislative Services contact: Joan E. Putney



Filing Deadlines

By action of the 1995 General Assembly, two categories of bills now must be filed by the first day of the General Assembly Session.

Local Fiscal Impact (§ 30-19.03:1; Chapter 743, 1995 Acts of Assembly)

Any bill that mandates an additional expenditure by any county, city, or town must be filed on or before the first day of the session. A mandate has the effect of (i) requiring the performance of a new or expanded service or maintaining an existing service at a specific level, (ii) assuming administrative costs in support of state-related programs, or (iii) furnishing capital facilities for state-related activities. There

is an exemption for bills requested by the Governor or "filed in accordance with the rules of the General Assembly."

Prison Impact (§ 30-19.1:6; Chapter 462, 1995 Acts of Assembly)

All bills requiring a statement of fiscal impact on the operating costs of state correctional facilities must be filed on or before the first day of the session. A fiscal impact statement is required for any bill that would result in a net increase in periods of imprisonment in state correctional facilities, including those bills that (i) add new crimes for which imprisonment is authorized, (ii) increase the periods of imprisonment for existing crimes, (iii) impose minimum or mandatory terms of imprisonment, or (iv) modify the law governing the release of prisoners in such a way that the time served in prison will increase.

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FOR SUBSCRIPTION INFORMATION, CONTACT:
Special Projects
Division of Legislative Services
910 Capitol Street, 2nd Floor
Richmond, Virginia 23219
(804) 786-3591



GENERAL NOTICES/ERRATA

Symbol Key

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

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

Public Comments on Regulations to Assure the Protection of Participants in Human Research

The Department of Mental Health, Mental Retardation and Substance Abuse Services invites comment from the public on **12 VAC 35-180-10 et seq. Regulations to Assure the Protection of Participants in Human Research**, as part of a review of its regulations being conducted under Executive Order 15(94). The department welcomes comment on this regulation with regard to any matter governed by the Executive Order, including whether the regulation (i) is essential to protect the health and safety of the citizens or necessary for the performance of an important government function; (ii) is mandated or authorized by law; (iii) offers the least burdensome; alternative and most reasonable solution; (iv) is clearly written and easily understandable; and (v) has a favorable or unfavorable impact upon the family.

Written or faxed comments may be submitted through 5 p.m. on Friday, August 8, 1997. In corresponding with the department, please identify the regulation by citing the VAC number that precedes the regulation name, and the full title of the regulation. Copies of the regulation may be obtained from the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services.

Contact: Marion Greenfield, Office of Planning and Regulations, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218, telephone (804) 786-6431, FAX (804) 371-0092.

BOARD OF PSYCHOLOGY

† Additional Comment Period

Notice is hereby given that the Board of Psychology is seeking additional comment on a Notice of Intended Regulatory Action that was last published in the *Virginia Register* on April 14, 1997 (13:15 VA.R. 1635 April 14, 1997).

The Board of Psychology intends to consider **amending** regulations entitled: **18 VAC 125-20-10 et seq. Regulations Governing the Practice of Psychology**. The purpose of the proposed action is to clarify and simplify the regulations, eliminate duplication, improve the format, simplify the late reinstatement procedure, establish an endorsement/reciprocity procedure for applicants with lengthy experience licensed in other states, update the education

requirement for all categories of licensure, consider including temporary licensure provisions as authorized by statute, consider reducing the face-to-face supervision requirement, update diplomat titles for examination waiver, simplify the reexamination requirement, include a requirement for notifying the board of a name or address change, and consider incorporating some of the ethical standards of the American Psychological Association.

In order to be considered, comments must be received by August 20, 1997. Submit written comments to Janet Delorme, Department of Health Professions, Board of Psychology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, or via e-mail at jdd1@dhp.state.va.us. To submit your comments by telephone, call (804) 662-9575.

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 may be obtained from: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

Internet: Forms and other *Virginia Register* resources may be printed or downloaded from the *Virginia Register* web page: <http://legis.state.va.us/codecomm/regindex.htm>

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

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

23219-2327, telephone (804) 225-2801, FAX (804) 371-8381, toll-free 1-800-552-3402, or (804) 225-2271/TDD ☎

BOARD FOR ACCOUNTANCY

July 21, 1997 - 9 a.m. – Open Meeting

July 22, 1997 - 9 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, committee reports, disciplinary cases and other matters requiring board action. All meetings are subject to cancellation. The meeting time is subject to change. Call the board at least 24 hours in advance of the meeting. A public comment period will be held at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Board for Accountancy, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD ☎

GOVERNOR'S ADVISORY BOARD ON AGING

August 18, 1997 - 5 p.m. -- Open Meeting

August 19, 1997 - 8 a.m. -- Open Meeting

Department for the Aging, 700 East Franklin Street, 10th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to discuss potential regulatory revisions and conduct other board business.

Contact: Kimlah Hyatt, Staff to the Board, Department for the Aging, 700 E. Franklin St., 10th Floor, Richmond, VA

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Virginia Aquaculture Advisory Board

† August 14, 1997 - 10 a.m. – Open Meeting

Washington Building, 1100 Bank Street, 2nd Floor Conference Room, Richmond, Virginia. ♿

A regular meeting to discuss issues related to Virginia aquaculture. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate in the meeting should contact the secretary to the board at least five days before the meeting date so that suitable arrangements can be made for any appropriate accommodation.

Contact: T. Robins Buck, Secretary, Virginia Aquaculture Advisory Board, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Suite 211, Richmond, VA 23219, telephone (804) 371-6094.

Virginia Horse Industry Board

† August 26, 1997 - 10 a.m. – Open Meeting

Virginia Cooperative Extension—Charlottesville/Albemarle Unit, 168 Spotnap Road, Lower Level Meeting Room, Charlottesville, Virginia. ♿

The board will discuss current and future marketing plans and 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 accommodation in order to participate in the meeting should contact the secretary to the board at least five days before the meeting date so that suitable

arrangements can be made for any appropriate accommodation.

Contact: Andrea S. Heid, Equine Marketing Specialist, Department of Agriculture and Consumer Services, 1100 Bank St., Suite 211, Richmond, VA 23219, telephone (804) 786-5842 or FAX (804) 371-7786.

Plasticulture Task Force

August 12, 1997 - 7 p.m. – Open Meeting
Eastern Shore Agricultural Research Station, 33446 Research Road, Painter, Virginia. (Interpreter for the deaf provided upon request)

A meeting pursuant to House Resolution 40 of the 1997 General Assembly regarding water quality management measures utilized in the practice of plasticulture. Brief public comment will be received at the beginning of the meeting. Persons desiring to participate at the meeting and requiring special accommodations or interpreter services should contact the task force at least two weeks prior to the meeting so that suitable arrangements can be made. Written comments may be submitted to the task force prior to August 12, 1997, at the address below.

Contact: Perida Giles, Policy Analyst, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Room 209, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-5175 or (804) 371-6344/TDD

Virginia Sheep Industry Board

† **July 31, 1997 - 10 a.m. – Open Meeting**
Evers Restaurant, Rt. 11, Exit 240 off I-81, 1 mile north of Mt. Crawford, Virginia.

The board will hear reports on (i) predator control efforts, (ii) additional matching funds, (iii) the market situation, (iv) Scrapie, and (v) the sale of Augusta Wool Pool to Mid-States Cooperative. The board will discuss levels of funding for promotional events and hear the formal proposal for the Virginia-North Carolina Shepherds Symposium Program. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate in the meeting should contact the secretary to the board at least five days before the meeting date so that suitable arrangements can be made for any appropriate accommodation.

Contact: Mike Carpenter, Program Director, Livestock Marketing Services, Department of Agriculture and Consumer Services, 116 Reservoir St., Harrisonburg, VA 22801, telephone (540) 434-0779 or FAX (540) 434-5607.

Virginia Small Grains Board

July 22, 1997 - 8 a.m. – Open Meeting
Richmond Airport Hilton, 5501 Eubank Road, Sandston, Virginia.

A meeting to hear FY 1996-97 project reports and receive 1997-98 project proposals. The board will allocate funding for FY 1997-98 projects. Additionally, action will be taken on any other new business that comes 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 Philip T. Hickman at least five days before the meeting date so that suitable arrangements can be made.

Contact: Philip T. Hickman, Program Director, Virginia Small Grains Board, Washington Bldg., 1100 Bank St., Room 1005, Richmond, VA 23219, telephone (804) 371-6157 or FAX (804) 371-7786.

Virginia Soybean Board

August 8, 1997 - Noon -- Open Meeting
Duncan Farms, 28322 Holland Lane, New Church, Virginia.

A meeting to discuss checkoff revenues and the financial status of the board following the end of the fiscal year ending June 30, 1997, and to hear reports from the chairman, United Soybean Board representatives and other committee representatives. 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 Winegrowers Advisory Board

July 23, 1997 - 10 a.m. – Open Meeting
State Capitol, Capitol Square, House Room 1, Richmond, Virginia.

The annual meeting of the board to induct new board members and elect officers for the upcoming year. 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 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

Calendar of Events

Consumer Services, 1100 Bank St., Room 1010, Richmond, VA 23219, telephone (804) 371-7685.

STATE AIR POLLUTION CONTROL BOARD

August 4, 1997 - 9 a.m. – Public Hearing
Department of Environmental Quality, 629 East Main Street, First Floor, Training Room, Richmond, Virginia.

August 25, 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 State Air Pollution Control Board intends to amend regulations entitled: **9 VAC 5-20-10 et seq. Regulations for the Control and Abatement of Air Pollution: General Provisions and 9 VAC 5-80-10 et seq. Regulations for the Control and Abatement of Air Pollution: Permits for Stationary Sources (Revision SS)**. The regulation amendments concern provisions covering state operating permits for stationary sources. Permits may be issued under this program at the request of either source owner or board to accomplish a variety of purposes: to designate a source as a synthetic minor, to combine a source's requirements under multiple permits into one permit, to implement emissions trading requirements, to cap the emissions of a source contributing to a violation of any air quality standard, to establish requirements necessary to implement the federal Clean Air Act or the Virginia Air Pollution Control Law. Changes to permits may be accomplished through administrative permit amendments, minor permit amendments, or significant permit amendments. The board may issue a general permit covering a source category containing numerous similar sources that meet certain criteria. New provisions (9 VAC 5-80-800 et seq.) are being proposed to replace existing provisions (9 VAC 5-80-40), which are proposed for repeal.

Request for Comments: The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.

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, an analysis conducted by the department (including a statement of purpose, a statement of estimated impact and benefits of the proposed regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, identification of and comparison with federal requirements, and a discussion of alternative approaches), 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 Timberlake Road
Lynchburg, Virginia
Ph: (804) 582-5120

Valley Regional Office
Department of Environmental Quality
4411 Early Road
Harrisonburg, Virginia 22801
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 and 10.1-1322 of the Code of Virginia.

Public comments may be submitted until 4:30 p.m., Monday, August 25, 1997, to the Director, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Contact: Dr. Kathleen Sands, Policy Analyst, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4413, FAX (804) 698-4510, toll-free 1-800-592-5482, or (804) 698-4021/TDD ☎

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND LANDSCAPE ARCHITECTS

† August 4, 1997 - 9:30 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 department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

Board for Architects

† August 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 department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: 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 Professional Engineers

† August 28, 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 interpretive services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made for an appropriate accommodation. The department 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 23230-4917, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

ASSISTIVE TECHNOLOGY LOAN FUND AUTHORITY

July 24, 1997 - 1 p.m. -- Open Meeting
Department of Social Services, 730 East Broad Street,
Training Room #1, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The annual board meeting to conduct general business and approve loan applications in executive session.

Contact: Michael Scione, Executive Director, Assistive Technology Loan Fund Authority, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23288, telephone (804) 662-9993 or (804) 662-9990/TDD ☎

AUCTIONEERS BOARD

July 23, 1997 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct general board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: 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

† August 21, 1997 - 9:30 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Richmond, Virginia. ☎

A general board meeting. Public comment will be heard for 15 minutes prior to the beginning of the meeting. Following the meeting informal conferences will take place at 1:30 p.m. No public comment will be heard.

Contact: Elizabeth Young Tisdale, Executive Director, 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 ☎

Calendar of Events

BOARD FOR BARBERS

August 4, 1997 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☎

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least two weeks prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500, FAX (804) 367-2475 or (804) 367-9753/TDD ☎

BOARD FOR BRANCH PILOTS

† **August 4, 1997 - 9:30 a.m.** -- Open Meeting
† **August 5, 1997 - 9:30 a.m.** -- Open Meeting
VA Port Authority, 600 World Trade Center, Norfolk, Virginia. ☎

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

Northern Area Review Committee

† **July 29, 1997 - 10 a.m.** -- Open Meeting
Chesapeake Bay Local Assistance Department, 805 East Broad Street, Suite 701, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to review Chesapeake Bay Preservation Area programs for the Northern Area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the meeting; however, written comments are welcome.

Contact: Carolyn J. Elliott, Executive Secretary, 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 ☎

Southern Area Review Committee

† **July 29, 1997 - 2 p.m.** -- Open Meeting
Chesapeake Bay Local Assistance Department, 805 East Broad Street, Suite 701, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to review Chesapeake Bay Preservation Area programs for the Southern Area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the meeting; however, written comments are welcome.

Contact: Carolyn J. Elliott, Executive Secretary, 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 ☎

VIRGINIA STATE CHILD FATALITY REVIEW TEAM

† **July 23, 1997 - 10 a.m.** -- Open Meeting
Tyler Building, 1300 East Main Street, 7th Floor Conference Room, Richmond, Virginia. ☎

A meeting to discuss the status of ongoing studies and update the team on administrative matters. The second part of the meeting will be closed for confidential case review.

Contact: Suzanne J. Keller, Coordinator, Virginia State Child Fatality Review Team, 9 N. 14th St., Richmond, VA 23219, telephone (804) 786-1048, FAX (804) 371-8595, or toll-free 1-800-447-1706.

COMPENSATION BOARD

† **July 31, 1997 - 10 a.m.** -- Open Meeting
† **August 28, 1997 - 11 a.m.** -- Open Meeting
† **September 25, 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

† August 6, 1997 - 9:30 a.m. -- Open Meeting
Virginia Beach Pavillion Convention Center, 1000 19th Street,
Virginia Beach, Virginia. (Interpreter for the deaf provided
upon request)

The department, through a grant provided from the Virginia Coastal Resources Program, is holding a workshop to discuss an ecotour guide certification program. Goals of the workshop are to introduce the ecotour guide certification program concept and to develop a proposal for the creation of a voluntary certification program. The public is invited to attend and participate in the workshop. Please confirm your attendance with Faye McKinney, Department of Conservation and Recreation, (804) 786-7951.

Contact: Thomas Smith, Division Director, Department of Conservation and Recreation, Division of Natural Heritage, Main Street Station, 1500 E. Main St., Suite 312, Richmond, VA 23219, telephone (804) 786-7951.

Falls of the James Scenic River Advisory Board

August 7, 1997 - Noon -- Open Meeting
City Hall, 900 East Broad Street, 5th Floor, Planning
Commission Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to review river issues and programs.

Contact: Richard G. Gibbons, Environmental Program Manager, Department of Conservation and Recreation, Division of Planning and Recreation Resources, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132, FAX (804) 371-7899, or (804) 786-2121/TDD

Board on Conservation and Development of Public Beaches

July 21, 1997 - 11 a.m. -- Open Meeting
Virginia Beach Convention Center, Virginia Beach, Virginia.

A meeting to discuss proposals from localities requesting matching grant funds from the board, review progress on Senate Joint Resolution 338 regarding the value of beaches, and receive public comments about public beaches or about the activities of the board.

Contact: Carlton Lee Hill, Engineer, Department of Conservation and Recreation, 203 Governor St., Suite 206, Richmond, VA 23219, telephone (804) 786-3998 or FAX (804) 786-1798.

BOARD FOR CONTRACTORS

Disciplinary Committee

† August 5, 1997 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia.

A meeting to review board member reports and summaries from informal fact-finding conferences held pursuant to the Administrative Process Act, and to review consent order offers in lieu of further disciplinary proceedings. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least two weeks prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Michelle N. Couch, Legal Assistant, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8524.

BOARD OF CORRECTIONAL EDUCATION

July 23, 1997 - 10 a.m. -- Open Meeting
Department of Correctional Education, James Monroe
Building, 101 North 14th Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A monthly meeting to discuss general business.

Contact: Patty Ennis, Board Clerk, Department of Correctional Education, James Monroe Bldg., 101 N. 14th St., 7th Floor, Richmond, VA 23219, telephone (804) 225-3314.

CRIMINAL JUSTICE SERVICES BOARD

July 25, 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 Criminal Justice Services Board intends to amend regulations entitled: **6 VAC 20-160-10 et seq. Rules Relating to the Court-Appointed Special Advocate Program.** The purpose of the proposed action is to amend the current regulations related to the court-appointed special advocate programs to ensure that they are in support of and consistent with the mission and growth of the program in Virginia.

Statutory Authority: §§ 9-173.6 and 9-173.8 of the Code of Virginia.

Contact: Fran Ecker, Section Chief, Juvenile Services Unit, Criminal Justice Services Board, 805 E. Broad St., 10th Floor, Richmond, VA 23219, telephone (804) 786-3967 or FAX (804) 371-8981.

Calendar of Events

DEPARTMENT FOR THE DEAF AND HARD-OF-HEARING

Advisory Board

August 13, 1997 - 10 a.m. -- Open Meeting
Koger Center, 1602 Rolling Hills Drive, Ratcliffe Building, Suite 203, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular quarterly meeting of the advisory board. Public comment will be received with advance notice.

Contact: Gloria Cathcart, Human Services Program Specialist, Department for the Deaf and Hard-of-Hearing, 1602 Rolling Hills Dr., Ratcliffe Bldg., Suite 203, Richmond, VA 23229-5012, telephone (804) 662-9502 (V/TTY) or toll-free 1-800-552-7917 (V/TTY).

BOARD OF DENTISTRY

Advertising Committee

August 22, 1997 - 10 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to hear informal conferences on 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 ☎

Continuing Education Committee

August 22, 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 to review requests for continuing education. Public comment will be taken at the beginning of the meeting.

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 ☎

August 22, 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 to hear informal conferences on 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 ☎

Informal Conference Committee

July 25, 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 23230-1717, telephone (804) 662-9906 or (804) 662-7197/TDD ☎

VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP

† September 2, 1997 - 11 a.m. -- Open Meeting
Department of Economic Development, 901 East Byrd Street, Riverfront Plaza, West Tower, 19th Floor, Board Room, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting of the Board of Directors.

Contact: Kimberly M. Ellett, Administrative Assistant, Virginia Economic Development Partnership, P.O. Box 798, Richmond, VA 23218-0798, telephone (804) 371-8108, FAX (804) 371-8112 or (804) 371-0327/TDD ☎

VIRGINIA FIRE SERVICES BOARD

† August 21, 1997 - 6 p.m. -- Public Hearing
Holiday Inn, U.S. Route 11, I-81 and I-77 Exit #73, Wytheville, Virginia.

A public hearing to discuss fire training and policies as part of the State Fire Marshal Study. The hearing is open to the public for input and comments will be heard at the beginning of the meeting. This public hearing is tentative. Please call to confirm.

Contact: Michael Cline, Acting Executive Director, Department of Fire Programs, James Monroe Bldg., 101 N. 14th St., 18th Floor, Richmond, VA 23219, telephone (804) 371-0220.

† August 22, 1997 - 9 a.m. -- Open Meeting
Holiday Inn, U.S. Route 11, I-81 and I-77 Exit #73,
Wytheville, Virginia.

A business meeting to discuss training and policies. The hearing is open to the public for comments and input.

Contact: Michael Cline, Acting 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

† August 21, 1997 - 8:30 a.m. -- Open Meeting
Holiday Inn, U.S. Route 11, I-81 and I-77 Exit #73,
Wytheville, Virginia.

A meeting to discuss fire training and policies. The meeting is open to the public for input and comments.

Contact: Michael Cline, Acting 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

† August 21, 1997 - 1 p.m. -- Open Meeting
Holiday Inn, U.S. Route 11, I-81 and I-77 Exit #73,
Wytheville, Virginia.

A meeting to discuss fire training and policies. The meeting is open to the public for input and comments.

Contact: Michael Cline, Acting 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

† August 21, 1997 - 10 a.m. -- Open Meeting
Holiday Inn, U.S. Route 11, I-81 and I-77 Exit #73,
Wytheville, Virginia.

A meeting to discuss fire training and policies. The meeting is open to the public for comments and input.

Contact: Michael Cline, Acting Executive Director, Department of Fire Programs, James Monroe Bldg., 101 N. 14th St., 18th Floor, Richmond, VA 23219, telephone (804) 371-0220.

BOARD OF FORESTRY

July 21, 1997 - 12:30 p.m. -- Open Meeting
Denny's Restaurant, Best Western, 250 Conieville Boulevard,
Route 11, Mt. Jackson, Virginia. (Interpreter for the deaf provided upon request)

The board will meet at Neff Lumber Mills in Broadway, Virginia, for a tour of wood-using industries and urban interface fire problems in woodland home sites. Please notify the department with requests for interpreter services five working days prior to the meeting.

Contact: Barbara A. Worrell, Administrative Staff Specialist, Department of Forestry, P.O. Box 3758, Charlottesville, VA 22903, telephone (804) 977-6555 or (804) 977-6555/TDD

July 22, 1997 - 8:30 p.m. -- Open Meeting
Denny's Restaurant, Best Western, 250 Conieville Boulevard,
Route 11, Mt. Jackson, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct general business. Please notify the department with requests for interpreter services five working days prior to the meeting.

Contact: Barbara A. Worrell, Administrative Staff Specialist, Department of Forestry, P.O. Box 3758, Charlottesville, VA 22903, telephone (804) 977-6555 or (804) 977-6555/TDD

BOARD OF GAME AND INLAND FISHERIES

† August 21, 1997 - 9 a.m. -- Open Meeting
† August 22, 1997 - 9 a.m. -- Open Meeting
Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The board will consider for adoption regulations governing the 1997-1998 migratory waterfowl (ducks, geese and swans) seasons, based on the framework provided by the U.S. Fish and Wildlife Service. Contingent on proposed amendments from the July 17-18 meeting, the board may also adopt final amendments to 4 VAC 15-40-60, Game: In General; Hunting with dogs or possession of weapons in certain locations during closed season, as this section pertains to possessing or carrying cased or concealed weapons in the national forests, on department-owned lands, and on lands managed by the department under cooperative agreement during the closed season. The board will solicit comments from the public during the public hearing portion of the meeting, at which time any interested citizen present shall be heard.

The board will also review possible proposals for legislation for the 1998 session of the General Assembly and will select meeting dates for 1998 board meetings. General and administrative issues may be discussed by the board. The board may hold an executive session before the public session begins on August 21. If the board completes its entire agenda on August 21, it may not convene on August 22.

Contact: Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4010 West Broad St., Richmond, VA 23230, telephone (804) 367-1000 or FAX (804) 367-2427.

Calendar of Events

DEPARTMENT OF GENERAL SERVICES

Design-Build/Construction Management Review Board

August 15, 1997 - 10 a.m. -- Open Meeting
The Library of Virginia, 800 East Broad Street, Richmond, Virginia ☎

A meeting of the board to review any projects which may have been submitted.

Contact: Nathan I. Broocke, Director, Division of Engineering and Buildings, Department of General Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-3263 or (804) 786-6152/TDD ☎

BOARD FOR GEOLOGY

† **August 13, 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 department. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request for accommodation at least two weeks in advance of the meeting.

Contact: William H. Ferguson, II, Board Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2406, FAX (804) 367-2475, or (804) 367-9753/TDD ☎

DEPARTMENT OF HEALTH (STATE BOARD OF)

July 23, 1997 - 9:30 a.m. -- Public Hearing
3600 Centre, 3600 West Broad Street, 3rd Floor Conference Room, Richmond, Virginia ☎ (Interpreter for the deaf provided upon request)

Pursuant to § 32.1-102.3:2 of the Code of Virginia, there will be a public hearing on the proposed Request for Applications (RFA). This RFA is a request for certificate of public need (COPN) applications for projects which will result in an increase in the number of beds in which nursing home facility services are provided in the Commonwealth of Virginia. The RFA issuance process is outlined in the Virginia Medical Care Facilities COPN Rules and Regulations at 12 VAC 5-220-320. Copies of the proposed Request for Applications can be obtained by contacting the Certificate of Public Need Program of the Center for Quality Health Care Services and Consumer Protection of the Virginia Department of Health, 3600 West Broad Street, Suite 216, Richmond, VA 23230, or by calling (804) 367-2126.

Contact: Carrie Eddy, Policy Analyst, Center for Quality Health Care Services, Department of Health, 3600 W. Broad St., Suite 216, Richmond, VA 23230, telephone (804) 367-2157, FAX (804) 367-2149, or toll-free 1-800-828-1120/TDD ☎

Commissioner's Waterworks Advisory Committee

July 29, 1997 - 10 a.m. -- Open Meeting
American Electric Power, 40 Franklin Road, S.W., Roanoke, Virginia.

A general business meeting of the committee. The committee meets on the third Thursday of odd months at various locations around the state. Meeting locations and dates will be announced.

Contact: Thomas B. Gray, P.E., Special Projects Manager, Division of Water Supply Engineering, Department of Health, 1500 E. Main St., Room 109, Richmond, VA 23219, telephone (804) 786-1087 or FAX (804) 786-5567.

BOARD FOR HEARING AID SPECIALISTS

† **August 1, 1997 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 2, Richmond, Virginia ☎

Board members and invited subject matter experts will meet to conduct an exam workshop. A public comment period will be held at the beginning of the workshop. After the public comment period, the workshop will be conducted in closed executive session under authority of § 2.1-342 A 11 of the Code of Virginia due to the confidential nature of the examination. The public will not be admitted to the closed executive session.

Contact: George O. Bridewell, Examination Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8572 or (804) 367-9753/TDD ☎

September 8, 1997 - 8:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 3, Richmond, Virginia ☎

A routine business meeting. 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 department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD ☎

HEMOPHILIA ADVISORY BOARD

† August 11, 1997 - 10 a.m. -- Open Meeting
Tyler Building, 1300 East Main Street, 3rd Floor, Conference Room, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The annual meeting of the board to continue the work of advising the State Board of Health in the implementation of a program to provide health services for persons with hemophilia and related diseases. The agenda will include (i) a discussion of recent developments in hemophilia treatment and their implications for the program, (ii) an assessment of the needs of patients in Southwest Virginia, (iii) issues concerning access to factor concentrate medication and (iv) proposed changes to the program.

Contact: Jan Kuhn, Hemophilia Nurse Coordinator, P.O. Box 980461, Richmond, VA 23298-0461, telephone (804) 786-3306.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

July 28, 1997 - 8 a.m. -- Open Meeting
Virginia Tech, Blacksburg, Virginia.

A general business meeting. The council's committees will meet in the morning and the council will meet in the afternoon. For specific times and room locations, contact the council.

Contact: Michael McDowell, Public Information Director, State Council of Higher Education, James Monroe Bldg., 101 N. 14th St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2637 or FAX (804) 786-0572.

VIRGINIA HIGHER EDUCATION TUITION TRUST FUND

July 21, 1997 - 9:30 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, 3rd Floor, Richmond, Virginia. ☎

A regular meeting.

Contact: Diana F. Cantor, Executive Director, Virginia Higher Education Tuition Trust Fund, James Monroe Building, 101 N. 14th St., 5th Floor, Richmond, VA 23219, telephone (804) 786-0719, toll-free 1-888-567-0540 or 1-800-253-0737/TDD ☎

HOPEWELL INDUSTRIAL SAFETY COUNCIL

August 5, 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.

COUNCIL ON INFORMATION MANAGEMENT

Task Force On Land Records Management

† July 30, 1997 - 10 a.m. -- Open Meeting
1100 Bank Street, Suite 901, Richmond, Virginia. ☎

A meeting of the task force created to develop plans to upgrade land records management technology and report to the 1998 General Assembly.

Contact: Linda Hening, Administrative Assistant, Council on Information Management, 1100 Bank St., Suite 901, Richmond, VA 23219, telephone (804) 225-3622 or toll-free (800) 828-1120/TDD ☎

DEPARTMENT OF LABOR AND INDUSTRY

Virginia Apprenticeship Council

July 21, 1997 - 10 a.m. -- Open Meeting
700 Centre, 704 East Franklin Street, Second Floor, Conference Room, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting of the council to discuss council mission and role.

Contact: Fred T. Yontz, Apprenticeship Program Manager, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 371-0295, FAX (804) 786-8418 or (804) 786-2376/TDD ☎

† August 6, 1997 - 10 a.m. -- Open Meeting
State Capitol, House Room 1, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A subcommittee meeting to review a request from Colonial Mechanical Corporation asking the council to issue an exemption from the requirement of examination for the apprentices of the Colonial Mechanical Corporation's Apprenticeship Program. The subcommittee will report its findings and recommendation to the full Apprenticeship Council at the regular council meeting September 18, 1997.

Calendar of Events

Contact: Fred Yontz, Apprenticeship Program Manager, Department of Labor and Industry, 13 S. 13th St., Richmond, VA 23219, telephone (804) 371-0295, FAX (804) 786-8418 or (804) 786-2376/TDD ☎

STATE LAND EVALUATION ADVISORY COUNCIL

August 12, 1997 - 10 a.m. -- Open Meeting

September 23, 1997 - 10 a.m. -- Open Meeting

Department of Taxation, 2220 West Broad Street, Richmond, Virginia. ☎

A meeting to adopt suggested ranges of values for agricultural, horticultural, forest and open-space land use and the use-value assessment program.

Contact: H. Keith Mawyer, Property Tax Manager, Department of Taxation, Office of Customer Services, Property Tax Unit, 2220 W. Broad St., Richmond, VA 23220, telephone (804) 367-8020.

LITTER CONTROL AND RECYCLING FUND ADVISORY BOARD

† **August 11, 1997 - 10 a.m. -- Open Meeting**

Strawberry Hill, 600 East Laburnum Avenue, Administration Building, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A work session of the board to review and make recommendations on pending competitive applications for litter prevention and recycling educational programs. For details, call Paddy Katzen.

Contact: Paddy Katzen, Special Assistant to the Secretary of Natural Resources, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 698-4488 or e-mail pmkatzen@deq.state.va.us.

LONGWOOD COLLEGE

Board of Visitors

July 25, 1997 - 9 a.m. -- Open Meeting

Longwood College, Lancaster Building, Room 215, Farmville, Virginia. ☎

A meeting to conduct routine business of the Facilities and Services Committee and Finance Committee of the Longwood Board of Visitors.

Contact: Patricia P. Cormier, President, Longwood College, 201 High St., Farmville, VA 23909, telephone (804) 395-2004 or FAX (804) 395-2821.

July 25, 1997 - 10:45 a.m. -- Open Meeting

Longwood College, Lancaster Building, Room 215, Farmville, Virginia. ☎

A meeting of the Academic Affairs/Student Affairs Committees to conduct routine business.

Contact: Patricia P. Cormier, President, Longwood College, 201 High St., Farmville, VA 23909, telephone (804) 395-2001 or FAX (804) 395-2821.

July 25, 1997 - 1:30 p.m. -- Open Meeting

Longwood College, Lancaster Building, Room 215, Farmville, Virginia. ☎

A meeting to conduct routine business.

Contact: Patricia P. Cormier, President, Longwood College, 201 High St., Farmville, VA 23909, telephone (804) 395-2004 or FAX (804) 395-2821.

MARINE RESOURCES COMMISSION

July 22, 1997 - 9:30 a.m. -- Open Meeting

August 26, 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

August 12, 1997 - 9 a.m. -- Open Meeting

American Cancer Society, 4240 Park Place Court, Glen Allen, Virginia. ☎ (Interpreter for the deaf provided upon request)

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 23218-2448, telephone (804) 786-7367.

BOARD OF MEDICAL ASSISTANCE SERVICES

† **September 16, 1997 - 10 a.m.** – Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, Richmond, Virginia.

The board will discuss matters of policy relating to the Medicaid program.

Contact: Cynthia Klisz Morton, Board Liaison, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-8099.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

August 22, 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 30-120-360 et seq. Part VI, Medallion II.** Federal regulations at 42 CFR 434.67 require the State Plan for Medical Assistance to include provisions for monitoring HMOs for violations specified in the federal regulations. This regulation adds a provision for monitoring physician incentive plans developed by HMOs.

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

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) 371-8854 or FAX (804) 371-4981.

Pharmacy Liaison Committee

July 28, 1997 - 1 p.m. – Open Meeting
August 25, 1997 - 1 p.m. – Open Meeting
September 22, 1997 - 1 p.m. – Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor, Board Room, Richmond, Virginia.

A meeting to conduct routine business and consider pharmacy issues relative to Medicaid and industry communication.

Contact: David Shepherd, R.Ph., Supervisor, Pharmacy Unit, Department of Medical Assistance Services, 600 E. Broad St., Richmond, VA 23219, telephone (804) 225-2773.

BOARD OF MEDICINE

July 31, 1997 - 10 a.m. – Open Meeting
August 8, 1997 - 10 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.

A panel of the board will convene, pursuant to §§ 54.1-2400 and 9-6.14:12 of the Code of Virginia, to inquire into allegations that certain practitioners 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 ☎

Credentials Committee

† **August 9, 1997 - 8 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Rooms 3 and 4, Richmond, Virginia. ♿
(Interpreter for the deaf provided upon request)

The Credentials Committee will meet in open and closed session to conduct general business, interview and review medical credentials of applicants applying for licensure in Virginia, and to discuss any other items which may come before the committee. The committee will receive public comments of those persons appearing on behalf of candidates.

Contact: Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9960, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

Executive Committee

† **August 8, 1997 - 8 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Rooms 2 and 3, Richmond, Virginia. ♿
(Interpreter for the deaf provided upon request)

The Executive Committee will meet in open and closed session to review disciplinary files requiring administrative action, adopt amendments and approve for promulgation regulations as presented, and act on other issues that come before the board. The chairman will entertain public comments on agenda items for 15 minutes following the adoption of the agenda.

Contact: Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9960, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

Calendar of Events

Informal Conference Committee

July 24, 1997 - 9 a.m. – Open Meeting

August 21, 1997 - 9:30 a.m. – Open Meeting
Williamsburg Marriott, 50 Kingsmill Road, Williamsburg, Virginia.

August 5, 1997 - 8:30 a.m. – Open Meeting
Sheraton Inn, 2801 Plank Road, Fredericksburg, Virginia.

August 7, 1997 - 10:30 a.m. – Open Meeting
Roanoke Airport Marriott, 2801 Hershberger Road, N.W., Roanoke, 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) 662-7693, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

July 24, 1997 - 10 a.m. – Open Meeting

Department for the Visually Handicapped, 397 Azalea Avenue, Library Conference Room, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to address issues related to system reform funding methodologies and hear updates from the Priority Populations/Case Rate Funding Subcommittee, the Performance Outcome Measurement System Subcommittee, and the Consumer/Family Involvement Subcommittee.

Contact: An-Li Hoban, Senior Secretary, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3921 or FAX (804) 371-0092.

† **August 27, 1997 - 10 a.m.** – Public Hearing
James Madison Building, 109 Governor Street, 5th Floor Conference Room, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A public hearing to receive comments on the Virginia Substance Abuse Prevention and Treatment and Community Mental Health Services Block Grant Applications for Federal Fiscal Year 1998. Copies of these applications are available for review at the Office of Mental Health, Mental Retardation and Substance Abuse Services, 12th Floor, James Madison Building and at each community services board office.

Comments may be made at the hearing or in writing by no later than August 27, 1997, to the Office of the Commissioner, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218. Any person wishing to make a presentation at the hearing should contact Sterling G. Deal, Ph.D. Copies of oral presentations should be filed at the time of the hearing.

Contact: Sterling G. Deal, Ph.D., Resource Analyst, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23238, telephone (804) 371-2148, FAX (804) 371-0091, or (804) 371-8977/TDD ☎

State Human Rights Committee

† **July 25, 1997 - 9 a.m.** -- Open Meeting
The Double Tree Hotel, 2350 Seminole Trail, Charlottesville, Virginia.

A regular meeting of the committee to discuss business and conduct hearings relating to human rights issues. Agenda items are listed for the meeting.

Contact: 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 or (804) 371-8977/TDD ☎

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

Human Rights Study Group

July 25, 1997 - 10 a.m. -- Public Hearing
The Airport Marriott, Roanoke, Virginia. ☎ (Interpreter for the deaf provided upon request)

† **August 8, 1997 - 10 a.m.** -- Public Hearing
Northern Virginia Training Center, Fairfax, Virginia. ☎ (Interpreter for the deaf provided upon request)

† **August 15, 1997 - 10 a.m.** -- Public Hearing
Southeastern Virginia Training Center, Chesapeake, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to allow public input into the review of current human rights policies, and how those policies affect treatment in state mental health and mental retardation facilities and in community programs.

Contact: Marlene 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) 371-2308.

VIRGINIA MILITARY INSTITUTE

Board of Visitors

August 30, 1997 - 8:30 a.m. -- Open Meeting
Virginia Military Institute, Smith Hall Board Room, Lexington,
Virginia. ☎

A regular meeting to elect the president, vice president and secretary, and to hear committee reports. The Board of Visitors provides an opportunity for public comment at this meeting immediately after the superintendent's comments.

Contact: Colonel Edwin L. Dooley, Jr., Secretary to the Board, Virginia Military Institute, Superintendent's Office, Lexington, VA 24450, telephone (540) 464-7206 or (540) 464-7660/TDD ☎

STATE MILK COMMISSION

August 8, 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 State Milk Commission intends to **repeal** regulations entitled: **2 VAC 15-10-10 et seq. Public Participation Guidelines** and **adopt** regulations entitled: **2 VAC 15-11-10 et seq. Public Participation Guidelines**. The amendments reflect revisions and restatements of prior regulations and agency policy to conform to the Virginia Register Form, Style, and Procedure Manual. The revisions define, clarify, and standardize regulation terms. It also more clearly designates the purpose of the regulation, incorporates procedures for the composition and maintenance of mailing lists of interested parties and the distribution of the same. The amendments include procedures to petition for rulemaking; notices of intended regulatory action; notice of public comment, notices of meetings, and public hearings; and periodic review of regulations. Procedures for the formation and use of ad hoc committees are also included.

Statutory Authority: §§ 3.1-340 and 9-6.14:7.1 of the Code of Virginia.

Contact: Edward C. Wilson, Deputy Administrator, State Milk Commission, 200 N. Ninth St., Suite 1015, Richmond, VA 23219, telephone (804) 786-2013, FAX (804) 786-3779, or (804) 786-2013/TDD ☎

August 8, 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 State Milk Commission intends to amend regulations entitled: **2 VAC 15-20-10**

et seq. Regulations for the Control, Regulation and Supervision of Virginia Milk Industry. The proposed amendments will improve the form, style and language through restatements of existing regulations and policy and improve, reduce or eliminate certain regulatory burdens on the Virginia milk industry.

Statutory Authority: § 3.1-340 of the Code of Virginia.

Contact: Edward C. Wilson, Deputy Administrator, State Milk Commission, 200 N. Ninth St., Suite 1015, Richmond, VA 23219, telephone (804) 786-2013, FAX (804) 786-3779, or (804) 786-2013/TDD ☎

† **August 27, 1997 - 10:30 a.m.** -- Open Meeting
Department of Forestry, 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 will consider the proposed agency regulations 2 VAC 15-11-10 et seq., Public Participation Guidelines and 2 VAC 15-20-10 et seq., Regulations for the Control, Regulation and Supervision of Virginia Milk Industry. 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 ☎

VIRGINIA MUSEUM OF NATURAL HISTORY

Board of Trustees

† **August 9, 1997 - 9 a.m.** -- Open Meeting
Virginia Museum of Natural History, 1001 Douglas Avenue,
Martinsville, Virginia. ☎

A meeting to include reports from the development, executive, finance, legislative, marketing, nominating, outreach, personnel, planning and facilities, and research and collections committees. Public comment will be received following approval of the minutes of the April meeting.

Contact: Rhonda J. Knighton, Administrative Staff Assistant, Virginia Museum of Natural History, 1001 Douglas Ave., Martinsville, VA 24112, telephone (540) 666-8616 or (540) 666-8638/TDD ☎

Calendar of Events

Development Committee

† August 9, 1997 - 8 a.m. -- Open Meeting
Dutch Inn, 2360 Virginia Avenue, Collinsville, Virginia. ☎

A meeting to discuss development issues.

Contact: Rhonda J. Knighton, Administrative Staff Assistant, Virginia Museum of Natural History, 1001 Douglas Ave., Martinsville, VA 24112, telephone (540) 666-8616 or (540) 666-8638/TDD ☎

Marketing Committee

† August 9, 1997 - Noon -- Open Meeting
Virginia Museum of Natural History, 1001 Douglas Avenue, Martinsville, Virginia. ☎

A meeting to discuss marketing issues.

Contact: Rhonda J. Knighton, Administrative Staff Assistant, Virginia Museum of Natural History, 1001 Douglas Ave., Martinsville, VA 24112, telephone (540) 666-8616 or (540) 666-8638/TDD ☎

Outreach Committee

† August 9, 1997 - 8 a.m. -- Open Meeting
Dutch Inn, 2360 Virginia Avenue, Collinsville, Virginia. ☎

A meeting to discuss (i) board assistance to statewide teacher training programs and to exhibits development and (ii) the redesign of the museum's newsletter and web site.

Contact: Rhonda J. Knighton, Administrative Staff Assistant, Virginia Museum of Natural History, 1001 Douglas Ave., Martinsville, VA 24112, telephone (540) 666-8616 or (540) 666-8638/TDD ☎

Research and Collections Committee

† August 9, 1997 - 7:30 a.m. -- Open Meeting
Dutch Inn, 2360 Virginia Avenue, Collinsville, Virginia. ☎

A meeting to discuss (i) appointment and renewal of research associates, (ii) revision of research policies and collections policy, and (iii) acquisition of the University of Virginia fossil collection.

Contact: Rhonda J. Knighton, Administrative Staff Assistant, Virginia Museum of Natural History, 1001 Douglas Ave., Martinsville, VA 24112, telephone (540) 666-8616 or (540) 666-8638/TDD ☎

BOARD OF NURSING

† July 21, 1997 - 1 p.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A panel of the board will conduct formal hearings. 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 ☎

† July 22, 1997 - 9 a.m. -- Open Meeting

† July 23, 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 regular board meeting to consider matters relating to education programs, discipline of licensees, licensure by examination and other matters under the jurisdiction of the board. Public comment will be received during an open forum beginning at 11 a.m. July 22, 1997. On July 23, 1997, the board will conduct formal hearings. 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 ☎

† July 24, 1997 - 8:30 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 with licensees or certificate holders or both. 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 ☎

Education Special Conference Committee

† July 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 Education Special Conference Committee to review proposals and reports from nursing and nurse aide education programs and prepare recommendations for the board. 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 ☎

Special Conference Committee

† July 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 Special Conference Committee, comprised of two or
three members of the board, will conduct informal
conferences with licensees or certificate holders or both.
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

BOARD FOR OPTICIANS

† August 29, 1997 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Richmond, Virginia.

An open meeting to discuss regulatory review and other
matters requiring board action, including disciplinary
cases. All meetings are subject to cancellation or
change. Call the board office 24 hours in advance of the
meeting to confirm date and time. 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 interpretive
services should contact the board at least 10 days prior
to the meeting so that suitable arrangements can be
made for an appropriate accommodation. 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, telephone (804)
367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD

BOARD OF PHARMACY

† July 31, 1997 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 4, Richmond, Virginia.
(Interpreter for the deaf provided upon request)

A working meeting of the regulation committee to
continue development of proposed regulations pursuant
to the NOIRA published March 17, 1997. Public
comment 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.

BOARD OF LICENSED PROFESSIONAL COUNSELORS, MARRIAGE AND FAMILY THERAPISTS AND SUBSTANCE ABUSE TREATMENT PROFESSIONALS

August 8, 1997 - 8:30 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Richmond, Virginia.

The Executive Committee will meet at 8:30 a.m. to
review credentials. Public comment will not be heard. At
10 a.m. there will be a regular meeting of the board to
conduct general board business, consider committee
reports and correspondence and any other matters
under the jurisdiction of the board, and conduct
regulatory review. Public comments will be heard at the
beginning of the 10 a.m. board meeting.

Contact: Evelyn B. Brown, Executive Director, or Joyce
Williams, Administrative Assistant, Department of Health
Professions, 6606 W. Broad St., 4th Floor, Richmond, VA
23230, telephone (804) 662-9912 or FAX (804) 662-9943.

BOARD OF PSYCHOLOGY

September 23, 1997 - 10 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 1, Richmond, Virginia.

A regular meeting to discuss general board business,
establish meeting dates for 1998, and make committee
assignments. Proposed amendments to the Regulations
Governing the Practice of Psychology pursuant to
Executive Order 15(94) will be adopted. Public comment
will be received at the beginning of the meeting.

Contact: Janet Delorme, Deputy Executive Director,
Department of Health Professions, 6606 W. Broad St., 4th
Floor, Richmond, VA 23230, telephone (804) 662-9575, FAX
(804) 662-9943, or (804) 662-7197/TDD

Regulatory Committee

July 24, 1997 - 1 p.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 4, Richmond, Virginia.

A meeting to discuss Executive Order 15(94)
amendments to the Regulations Governing the Practice
of Psychology and to review sex offender treatment
provider training program content. Public comment will
be received at the beginning of the meeting.

Contact: Janet Delorme, Deputy Executive Director,
Department of Health Professions, 6606 W. Broad St., 4th
Floor, Richmond, VA 23230, telephone (804) 662-9575, FAX
(804) 662-9943, or (804) 662-7197/TDD

Calendar of Events

VIRGINIA RACING COMMISSION

July 25, 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 Virginia Racing Commission intends to amend regulations entitled: **11 VAC 10-20-260 et seq. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering.** The purpose of the proposed action is to establish conditions under which pari-mutuel wagering shall be conducted on horse racing in the Commonwealth.

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

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

REAL ESTATE APPRAISER BOARD

August 12, 1997 - 10 a.m. – Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ♿

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days 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) 367-0500, FAX (804) 367-2475, or (804) 367-9753/TDD ♿

RECYCLING MARKETS DEVELOPMENT COUNCIL

† **July 30, 1997 - 10 a.m.** – Open Meeting
Central Virginia Waste Management Authority, 2104 West Laburnum Avenue, Board Room, Richmond, Virginia. ♿
(Interpreter for the deaf provided upon request)

A regular quarterly meeting. Items to be discussed include legislation from the 1997 General Assembly session which impacted the council. The meeting will be dependent on a quorum of 10. Subcommittee meetings may be held prior to or after the general council meeting. Call Paddy Katzen for details at (804) 698-4488 or e-mail pmkatzen@deq.state.va.us.

Contact: Paddy Katzen, Special Assistant to the Secretary of Natural Resources, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 698-4488.

BOARD OF REHABILITATIVE SERVICES

September 25, 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 ♿

VIRGINIA RESOURCES AUTHORITY

August 12, 1997 - 9:30 a.m. -- Open Meeting
The Mutual Building, 909 East Main Street, Suite 700, 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

July 24, 1997 - 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.

SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

† **August 20, 1997 - 10 a.m.** -- Open Meeting
General Assembly Building, 910 Capitol Street, Senate Room A, Richmond, Virginia.

A meeting to hear appeals of the Department of Health's denials of septic tank permits.

Contact: Gary L Hagy, Acting Secretary, Department of Health, 1500 E. Main St., Room 115, P.O. Box 2448,

Richmond, VA 23218, telephone (804) 225-4022 or FAX (804) 225-4003.

VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

Loan Committee

July 22, 1997 - 10 a.m. – Open Meeting
Department of Business Assistance, 901 East Byrd Street, 19th Floor, Main Board Room, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

A meeting to review applications for loans submitted to the authority for approval. Meeting time is subject to change.

Contact: Cathleen Surface, Executive Director, Virginia Small Business Financing Authority, 901 E. Byrd St., 19th Floor, Richmond, VA 23219, telephone (804) 371-8256, FAX (804) 225-3384, or (804) 371-0327/TDD ☎

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

September 5, 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 State Board of Social Services intends to amend regulations entitled: **22 VAC 40-680-10 et seq. Virginia Energy Assistance Program.** The proposed amendments contain several clarifications, add the phrase "energy burden" to the list of factors used in determining the benefit amount for fuel assistance, add the purchase of primary fuel to the crisis assistance component, and delete the requirement of meeting 100% energy burden for weatherization assistance.

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

Contact: Charlene H. Chapman, Program Manager, Energy and Emergency Assistance, Department of Social Services, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1751 or FAX (804) 692-1709.

TREASURY BOARD

July 23, 1997 - 9 a.m. – Open Meeting
James Monroe Building, 101 North 14th Street, Treasury Board Room, 3rd Floor, Richmond, Virginia. ☎

A regular business meeting.

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 VOLUNTARY FORMULARY BOARD

August 13, 1997 - 10 a.m. – Public Hearing
Washington Building, 1100 Bank Street, 2nd Floor, Board Room, Richmond, Virginia.

A public hearing to consider the proposed adoption and issuance of revisions to the Virginia Voluntary Formulary. The proposed revisions to the formulary add drugs and drug products to the formulary that became effective on January 15, 1996, and its most recent supplement. Copies of the proposed revisions to the formulary are available for inspection at the Virginia Department of Health, Bureau of Pharmacy Services, James Monroe Building, 101 North 14th Street, Room S45, P.O. Box 2448, Richmond, VA 23218. Written comments sent to the above address and received prior to 5 p.m. on August 13, 1997, will be made a part of the hearing record.

Contact: James K. Thomson, Director, Bureau of Pharmacy Services, Virginia Voluntary Formulary, James Monroe Bldg., 101 N. 14th St., Room S-45, Richmond, VA 23219, telephone (804) 786-4326.

September 4, 1997 - 10:30 a.m. -- Open Meeting
Washington Building, 1100 Bank Street, 2nd Floor, Board Room, Richmond, Virginia.

A meeting to review public hearing records and product data for products being considered for inclusion in the Virginia Voluntary Formulary.

Contact: James K. Thomson, Director, Bureau of Pharmacy Services, Virginia Voluntary Formulary, James Monroe Bldg., 101 N. 14th St., Room S-45, Richmond, VA 23219, telephone (804) 786-4326.

STATE WATER CONTROL BOARD

August 11, 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 State Water Control Board intends to adopt regulations entitled: **9 VAC 25-195-10 et seq. General VPDES Permit for Concentrated Aquatic Animal Production Facilities.** The purpose of the proposed regulation is to adopt a general VPDES permit which will establish limits for the discharge of wastewater associated with concentrated aquatic animal production facilities.

Question and Answer Period: A question and answer period will be held one-half hour prior to the public hearing at the same location. Interested citizens will have an opportunity to ask questions pertaining to the proposal at that time.

Accessibility to Persons with Disabilities: The public hearing will be held at facilities believed to be accessible to persons with disabilities. Any person with questions should contact Mr. Michael B. Gregory at the information contact address.

Calendar of Events

Persons needing interpreter services for the deaf should notify Mr. Gregory no later than July 1, 1997.

Request for Comments: The board is seeking written comments from interested persons on both the proposed regulatory action and the draft permit, and comments regarding the costs and benefits of the proposal or any other alternatives. Written comments on the proposed issuance of the permit and on the proposed regulation must be received no later than 4 p.m. on August 11, 1997, and should be submitted to Mr. Gregory. 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 has conducted analyses on the proposed regulation related to the basis, purpose, substance, issues and estimated impacts. These are available upon request from Mr. Gregory at the information contact address.

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

Contact: Michael B. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4065 or FAX (804) 698-4032.

INDEPENDENT

STATE CORPORATION COMMISSION

Special Advisory Commission On Mandated Health Insurance Benefits

† July 29, 1997 - 10 a.m. -- Public Hearing
General Assembly Building, 910 Capitol Street, House Room D, Richmond, Virginia. ☎

Insurance coverage for reconstructive breast surgery, early intervention services, and hemophilia and related congenital bleeding disorders are on the agenda at this meeting of the Special Advisory Commission. The advisory commission considers and makes recommendation on insurance coverage issues proposed by the legislature. Anyone wishing to comment at the July 29 public hearing is encouraged to submit information in writing in the format prescribed by the advisory commission's guidelines. To obtain a copy of the guidelines, contact the State Corporation Commission's Bureau of Insurance at (804) 371-9537, or toll-free at 1-800-552-7945.

Contact: Rebecca Shelton, Insurance Analyst, State Corporation Commission, Bureau of Insurance, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9537, FAX (804) 371-9944, toll free (800) 552-7945 or (804) 371-9206/TDD ☎

STATE LOTTERY BOARD

† July 30, 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 business meeting of the board. Public comment will be received at the beginning of the meeting.

Contact: Barbara L. Robertson, Board, Legislative, and Regulatory Coordinator, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7774 or FAX (804) 692-7775.

LEGISLATIVE

VIRGINIA CODE COMMISSION

† August 13, 1997 - 10 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, Speaker's Conference Room, 6th Floor, Richmond, Virginia. ☎

A meeting to conduct commission business.

Contact: E. M. Miller, Jr., Director, or Jane D. Chaffin, Deputy Registrar, Division of Legislative Services, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591 or FAX (804) 692-0625.

CHRONOLOGICAL LIST

OPEN MEETINGS

July 21

- Accountancy, Board for
- Conservation and Recreation, Department of
 - Board on Conservation and Development of Public Beaches
- Forestry, Board of
- Higher Education Tuition Trust Fund, Virginia
- Labor and Industry, Department of
 - Virginia Apprenticeship Council
- † Nursing, Board of
 - Education Special Conference Committee
 - Special Conference Committee

July 22

- Accountancy, Board for
- Agriculture and Consumer Services, Department of
 - Virginia Small Grains Board
- Forestry, Board of
- Marine Resources Commission
- † Nursing, Board of
- Small Business Financing Authority
 - Loan Committee

July 23

Agriculture and Consumer Services, Department of
- Virginia Winegrowers Advisory Board
Auctioneers Board
† Child Fatality Review Team, State
Correctional Education, Board of
† Nursing, Board of
Treasury Board

July 24

Assistive Technology Loan Fund Authority
Medicine, Board of
- Informal Conference Committee
Mental Health, Mental Retardation and Substance Abuse
Services, Department of
- Pilot Leadership Team
† Nursing, Board of
Psychology, Board of
- Regulatory Committee
Richmond Hospital Authority
- Board of Commissioners

July 25

Dentistry, Board of
- Informal Conference Committee
Longwood College
- Board of Visitors
† Mental Health, Mental Retardation and Substance
Abuse Services, Department of
- State Human Rights Committee

July 28

Higher Education for Virginia, State Council of
Medical Assistance Services, Department of
- Pharmacy Liaison Committee

July 29

† Chesapeake Bay Local Assistance Board
- Northern Area Review Committee
- Southern Area Review Committee
Health, Department of
- Commissioner's Waterworks Advisory Committee

July 30

† Information Management, Council on
- Task Force on Land Records Management
† Lottery Board, State
† Recycling Markets Development Council, Virginia

July 31

† Agriculture and Consumer Services, Department of
- Virginia Sheep Industry Board
† Compensation Board
Medicine, Board of
† Pharmacy, Board of

August 1

† Hearing-Aid Specialists, Board for

August 4

† Architects, Professional Engineers, Land Surveyors
and Landscape Architects, Board for
Barbers, Board for

† Branch Pilots, Board for

August 5

† Branch Pilots, Board for
† Contractors, Board for
- Disciplinary Committee
Hopewell Industrial Safety Council
Medicine, Board of
- Informal Conference Committee

August 6

† Conservation and Recreation, Department of
† Labor and Industry, Department of
- Virginia Apprenticeship Council

August 7

Conservation and Recreation, Department of
- Falls of the James Scenic River Advisory Board
Medicine, Board of
- Informal Conference Committee

August 8

Agriculture and Consumer Services, Department of
- Virginia Soybean Board
† Medicine, Board of
- Executive Committee
Licensed Professional Counselors, Marriage and Family
Therapists and Substance Abuse Treatment
Professionals, Board of

August 9

† Medicine, Board of
- Credentials Committee
† Museum of Natural History, Virginia
- Board of Trustees
- Development Committee
- Marketing Committee
- Outreach Committee
- Research and Collections Committee

August 11

† Hemophilia Advisory Board
† Litter Control and Recycling Fund Advisory Board

August 12

Agriculture and Consumer Services, Department of
- Plastics Task Force
Land Evaluation Advisory Council, State
Maternal and Child Health Council
- School Health Subcommittee
Real Estate Appraiser Board
Resources Authority, Virginia

August 13

† Code Commission, Virginia
Deaf and Hard-of-Hearing, Department for the
- Advisory Board
† Geology, Board for

August 14

† Agriculture and Consumer Services, Department of
- Virginia Aquaculture Advisory Board

Calendar of Events

August 15

General Services, Department of
- Design-Building/Construction Management Review Board

August 18

Aging, Governor's Advisory Board on

August 19

Aging, Governor's Advisory Board on

August 20

† Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
- Board for Architects
† Sewage Handling and Disposal Appeal Review Board

August 21

† Audiology and Speech-Language Pathology, Board of
† Fire Services Board, Virginia
- Fire/EMS Education and Training Committee
- Fire Prevention and Control Committee
- Legislative/Liaison Committee
† Game and Inland Fisheries, Board of
Medicine, Board of
- Informal Conference Committee

August 22

Dentistry, Board of
- Advertising Committee
- Continuing Education Committee
† Fire Services Board, Virginia
† Game and Inland Fisheries, Board of

August 25

Medical Assistance Services, Department of
- Pharmacy Liaison Committee

August 26

† Agriculture and Consumer Services, Department of
- Virginia Horse Industry Board
Marine Resources Commission

August 27

† Milk Commission, State

August 28

† Compensation Board
† Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
- Board for Professional Engineers

August 29

† Opticians, Board for

August 30

Military Institute, Virginia
- Board of Visitors

September 2

† Economic Development Partnership, Virginia
- Board of Directors

September 4

Voluntary Formulary Board, Virginia

September 8

Hearing Aid Specialists, Board for

September 16

† Medical Assistance Services, Department of

September 22

Medical Assistance Services, Department of
- Pharmacy Liaison Committee

September 23

Land Evaluation Advisory Council, State
Psychology, Board of

September 25

† Compensation Board
Rehabilitative Services, Board of

PUBLIC HEARINGS

July 23

Health, State Board of

July 25

Mental Health, Mental Retardation and Substance Abuse Services Board, State
- Human Rights Study Group

July 29

† Corporation Commission, State
- Special Advisory Commission on Mandated Health Insurance Benefits

August 4

Air Pollution Control Board, State

August 8

† Mental Health, Mental Retardation and Substance Abuse Services Board, State
- Human Rights Study Group

August 13

Voluntary Formulary Board, Virginia

August 15

† Mental Health, Mental Retardation and Substance Abuse Services Board, State
- Human Rights Study Group

August 21

† Fire Services Board, Virginia

August 27

† Mental Health, Mental Retardation and Substance Abuse Services, Department of