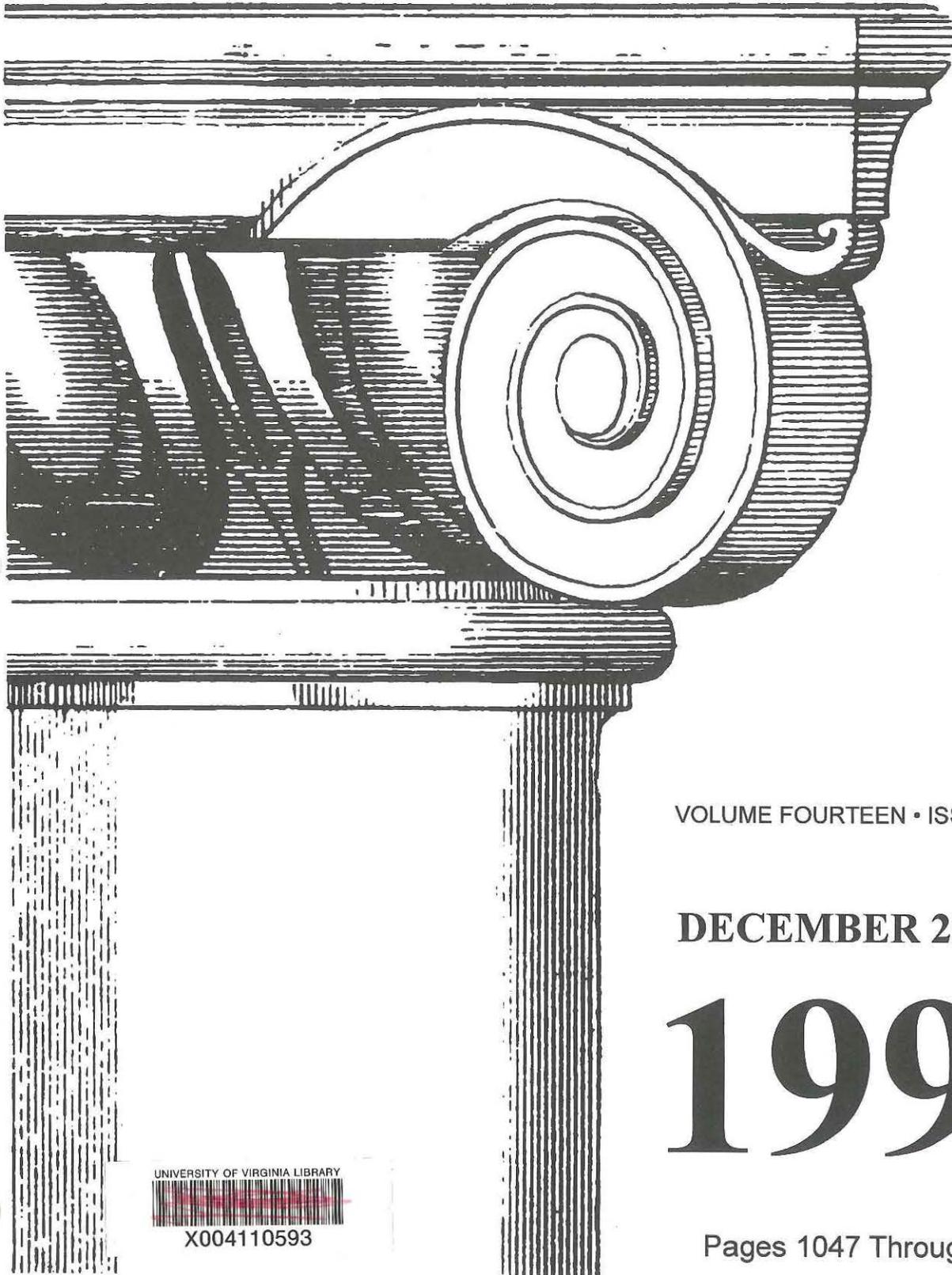


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THE VIRGINIA REGISTER

OF REGULATIONS



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DECEMBER 22, 1997

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THE VIRGINIA REGISTER INFORMATION PAGE

THE VIRGINIA REGISTER is an official state publication issued every other week throughout the year. Indexes are published quarterly, and the last index of the year is cumulative. THE VIRGINIA REGISTER has several functions. The 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

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TITLE 3. ALCOHOLIC BEVERAGES

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 5-50-10 et seq. Retail Operations.** 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 exemption to happy hour regulations for educational tastings. The agency intends to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until December 31, 1997.

Contact: W. Curtis Coleburn, Secretary, Department of Alcoholic Beverage Control, P.O. Box 27491, Richmond, VA 23261-9491, telephone (804) 213-4409 or FAX (804) 213-4411.

VA.R. Doc. No. R98-66; Filed October 8, 1997, 10:29 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) 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-premises and off-premises 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: § 4.1-111 of the Code of Virginia.

Public comments may be submitted until December 31, 1997.

Contact: W. Curtis Coleburn, Secretary, Department of Alcoholic Beverage Control, P.O. Box 27491, Richmond, VA

23261-9491, telephone (804) 213-4409 or FAX (804) 213-4411.

VA.R. Doc. No. R98-65; Filed October 8, 1997, 10:29 a.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with §§ 9-6.14:4.1 C 12 and 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to consider adopting regulations entitled: **9 VAC 25-151-10 et seq. General VPDES Permit for Discharges of Storm Water Associated with Industrial Activity.** This rulemaking is proposed in order to continue to regulate discharges currently permitted under three existing general permits which expire on June 30, 1999. The general permit will establish requirements for discharges of storm water from industrial sites formerly covered under general permits for Heavy Manufacturing (9 VAC 25-150-10 et seq.), Light Manufacturing (9 VAC 25-160-10 et seq.) and Miscellaneous Industries (9 VAC 25-170-10 et seq.). Since these industrial sites will be governed in the future by a single regulation, the board intends to consider repealing regulations entitled: (i) **9 VAC 25-150-10 et seq. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Storm Water Discharges Associated with Industrial Activity from Heavy Manufacturing,** (ii) **9 VAC 25-160-10 et seq. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Storm Water Discharges Associated with Industrial Activity from Light Manufacturing Facilities,** and (iii) **9 VAC 25-170-10 et seq. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Storm Water Discharges Associated with Industrial Activity from Transportation Facilities, Landfills, Land Application Sites and Open Dumps, Material Recycling Facilities and Steam Electric Power Generating Facilities** to accommodate all of the industrial storm water categories.

The board also intends to consider amending regulations entitled: **9 VAC 25-180-10 et seq. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Storm Water Discharges from Construction Sites.** This rulemaking is proposed in order to reissue the existing general permit which expires on June 30, 1999.

Notices of Intended Regulatory Action

The intent of these general permit regulations is to establish standard language for control of storm water discharges through the development of Storm Water Pollution Prevention Plans and to set minimum monitoring and reporting requirements. A site-specific Storm Water Pollution Prevention Plan will be required to be developed by the permittee for each individual facility covered by the general permits. Facilities will be required to implement the provisions of the plan as a condition of the permit.

A technical advisory committee will be formed to assist in the development of the regulations. The primary function of the committee will be to develop recommendations to the board for the content of the general permits through a process of negotiation and consensus. Persons who desire to be on the committee should notify the agency contact person in writing by 4:30 p.m. on Monday, January 12, 1998, and provide name, address, telephone number and the organization you represent (if any). Notification of the composition of the technical advisory committee will be sent to all applicants. Following publication of the draft general permit regulations in the Virginia Register, the board will hold at least one public hearing to provide opportunity for public comment.

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

Public comments are solicited on the content of the draft general permit regulations. Comments may be submitted until 4:30 p.m. on Monday, January 12, 1998.

Contact: Richard Ayers, Office of Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA, 23240, telephone (804) 698-4075, FAX (804) 698-4032.

VA.R. Doc. No. R98-104, R98-106, R98-107, R98-108; Filed November 17, 1997, 3:39 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with §§ 9-6.14:4.1 C 12 and 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to consider amending regulations entitled: **9 VAC 25-190-10 et seq. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nonmetallic Mineral Mining.** This rulemaking is proposed in order to reissue the existing general permit which expires on June 30, 1999. The general permit will establish limitations and monitoring requirements for discharges of wastewater from stone quarries and sand and gravel mines. As with an individual VPDES permit, the effluent limits in the general permit will be set to protect the quality of the waters receiving the discharges. A technical advisory committee will be formed to assist in the development of the regulation. The primary function of the committee will be to develop recommendations to the board for the content of the reissued general permit through a process of negotiation and consensus. Persons who desire to be on the committee should notify the agency contact person in writing by 4:30 p.m. on Monday, January 12, 1998, and provide name, address, telephone number and the

organization you represent (if any). Notification of the composition of the technical advisory committee will be sent to all applicants. Following publication of the draft general permit regulation in the Virginia Register, the board will hold at least one public hearing to provide opportunity for public comment.

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

Public comments are solicited on the content of the draft general permit regulation. Comments may be submitted until 4:30 p.m. on Monday, January 12, 1998.

Contact: Michael Gregory, Office of Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA, 23240, telephone (804) 698-4065, FAX (804) 698-4032.

VA.R. Doc. No. R98-105; Filed November 17, 1997, 3:39 p.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-16.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled: **Utilization Review Criteria.** The purpose of the proposed action is to clarify the Department of Medical Assistance Services' role in utilization review policy and procedures and distinguish its role from that of the state survey and licensing agency for certain health care facilities and associated providers, agencies or providers. The agency does not intend to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until January 7, 1998.

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. R98-95; Filed November 14, 1997, 11:15 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-16.14:7.1 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 and 12 VAC 30-80-10 et seq. Methods and Standards for Establishing Payment Rate; Other Types of**

Care. The purpose of the proposed action is to allow the bundling of services/supplies under a per diem reimbursement methodology for certain durable medical equipment/supplies and pharmacy services. The agency does not intend to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until December 24, 1997, to Linda Hamm, Division of Program Operations, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

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

VA.R. Doc. No. R98-88; Filed November 3, 1997, 3:06 p.m.

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES 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 Mental Health, Mental Retardation and Substance Abuse Services Board intends to consider repealing regulations entitled: **12 VAC 35-120-10 et seq. Rules and Regulations to Assure the Rights of Patients of Psychiatric Hospitals and Other Psychiatric Facilities Licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.** The purpose of the proposed action is to repeal regulations that will be superseded by 12 VAC 35-115-10 et seq., Rules and Regulations to Assure the Rights of Clients in Facilities and Programs Operated, Funded or Licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 37.1-10 and 37.1-84.1 of the Code of Virginia.

Public comments may be submitted until January 22, 1998.

Contact: Marion Greenfield, Policy Analyst, Department of Mental Health, Mental Retardation and Substance Abuse Services, Office of Planning and Regulations, P.O. Box 1797, Richmond, VA 23218, telephone (804) 786-6431 or FAX (804) 371-0092.

VA.R. Doc. No. R98-137; Filed December 3, 1997, 10:10 a.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

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 Dentistry intends to consider amending regulations entitled: **18 VAC 60-20-10 et seq. Virginia Board of Dentistry Regulations.** The purpose of the proposed action is to amend regulations in order to increase certain fees in compliance with § 54.1-113 of the Code of Virginia. The agency intends to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until January 7, 1998.

Contact: Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906 or FAX (804) 662-9943.

VA.R. Doc. No. R98-100; Filed November 17, 1997, 12:04 p.m.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

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 Funeral Directors and Embalmers intends to consider amending regulations entitled: **18 VAC 65-20-10 et seq. Regulations of the Board of Funeral Directors and Embalmers.** The purpose of the proposed action is to amend regulations in order to increase certain fees in compliance with § 54.1-113 of the Code of Virginia. The agency intends to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until January 7, 1998.

Contact: Elizabeth Young Tisdale, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907 or FAX (804) 662-9943.

VA.R. Doc. No. R98-98; Filed November 17, 1997, 12:04 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Funeral Directors and Embalmers intends to consider amending regulations

Notices of Intended Regulatory Action

entitled: **18 VAC 65-40-10 et seq. Resident Trainee Program for Funeral Service.** The purpose of the proposed action is to amend regulations in order to increase certain fees in compliance with § 54.1-113 of the Code of Virginia. The agency intends to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until January 7, 1998.

Contact: Elizabeth Young Tisdale, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907 or FAX (804) 662-9943.

VA.R. Doc. No. R98-98; Filed November 17, 1997, 12:04 p.m.

BOARD OF HEALTH PROFESSIONS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-16.14:7.1 of the Code of Virginia that the Board of Health Professions intends to consider amending regulations entitled: **18 VAC 75-20-10 et seq. Regulations Governing Practitioner Self-Referral.** The purpose of the proposed action is to amend regulations on the procedures to be followed in the administration of the Practitioner Self-Referral Act. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-2400 and 54.1-2510 of the Code of Virginia.

Public comments may be submitted until December 24, 1997, to Elaine J. Yeatts, Deputy Executive Director, Board of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717.

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

VA.R. Doc. No. R98-85; Filed October 27, 1997, 12:31 p.m.

BOARD OF MEDICINE

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled: **18 VAC 85-50-10 et seq. Regulations Governing the Practice of Physician Assistants.** The purpose of the proposed action is to amend regulations in order to permit a physician assistant to apply without an additional fee for a license to practice as a volunteer in a nonprofit clinic. The agency intends to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until January 21, 1998.

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

VA.R. Doc. No. R98-125; Filed November 20, 1997, 11:14 a.m.

BOARD OF LICENSED PROFESSIONAL COUNSELORS, MARRIAGE AND FAMILY THERAPISTS AND SUBSTANCE ABUSE TREATMENT PROFESSIONALS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-16.14:7.1 of the Code of Virginia that the Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals intends to consider amending regulations entitled: **18 VAC 115-30-10 et seq. Regulations Governing the Certification of Substance Abuse Counselors.** The purpose of the proposed action is to amend regulations in order to implement a statutory mandate for licensure of substance abuse treatment practitioners. Amendments will include qualifications for licensure, fees, standards of practice and a change in the title of this chapter. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-2400 and 54.1-3503 of the Code of Virginia.

Public comments may be submitted until January 7, 1998.

Contact: Janet Delorme, Deputy Executive Director, Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9912 or FAX (804) 662-9943.

VA.R. Doc. No. R98-97; Filed November 17, 1997, 12:04 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-16.14:7.1 of the Code of Virginia that the Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals intends to consider amending regulations entitled: **18 VAC 115-40-10 et seq. Regulations Governing the Certification of Rehabilitation Providers.** The purpose of the proposed action is to amend regulations in order to implement a statutory mandate to replace emergency regulations promulgated under provisions of Chapter 839 of the 1997 Acts of the Assembly. Chapter 839 more precisely defines the scope of practice for individuals that exercise professional judgment in the provision of vocational rehabilitation services, and clearly restricts the mandate for certification to those individuals. The agency

Notices of Intended Regulatory Action

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

Statutory Authority: §§ 54.1-2400, 54.1-3505 and 54.1-3515 of the Code of Virginia.

Public comments may be submitted until December 24, 1997, to Janet Delorme, Deputy Executive Director, Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717.

Contact: Evelyn B. Brown, Executive Director, Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9912 or FAX (804) 662-9943.

VA.R. Doc. No. R98-84; Filed October 27, 1997, 12:31 p.m.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

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 Waterworks and Wastewater Works Operators intends to consider amending regulations entitled: **18 VAC 160-20-10 et seq. Board for Waterworks and Wastewater Works Operators Regulations.** The purpose of the proposed action is to amend existing regulations governing the licensure of waterworks and wastewater works operators to (i) modify the definition section, (ii) clarify the entry/experience requirements for licensure and modify the procedures and provisions regarding renewal and reinstatement, and (iii) establish an efficient staggered system for collection of renewal fees. 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 December 29, 1997.

Contact: Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD ☎

VA.R. Doc. No. R98-91; Filed November 5, 1997, 11:21 a.m.

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TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR THE DEAF AND HARD-OF-HEARING

Notice of Intended Regulatory Action Extension of Comment Period

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department for the Deaf and Hard-of-Hearing intends to consider amending regulations entitled: **22 VAC 20-30-10 et seq. Regulations Governing Interpreter Services for the Deaf and Hard of Hearing.** The purpose of the proposed action is to (i) improve clarity and reduce redundancy with statutory code language; (ii) add provisions for maintenance of Virginia Quality Assurance Screening (VQAS) levels; and (iii) add provisions for a consumer input and grievance procedure. In addition, the department will clarify language about the confidentiality of VQAS results and the availability of information about candidate levels to the public. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 63.1-85.4 and 63.1-85.4:1 of the Code of Virginia.

Public comments may be submitted until January 17, 1998. This date has been extended from December 10, 1997.

Contact: Leslie G. Hutcheson, Policy and Planning Manager, Department for the Deaf and Hard-of-Hearing, 1602 Rolling Hills Drive, Suite 203, Richmond, VA 23229-5012, telephone (804) 662-9703/TDD ☎, FAX (804) 662-9718 or toll-free 1-800-552-7917/TDD ☎

VA.R. Doc. No. R98-80; Filed October 21, 1997, 4:12 p.m.

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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.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

REGISTRAR'S 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 20-720-10 et seq. *Pertaining to Restrictions on Oyster Harvest in Virginia Harvests (amending 4 VAC 20-720-105).*

Statutory Authority: §§ 28.2-201 and 28.2-507 of the Code of Virginia.

Effective Date: December 1, 1997.

Preamble:

This regulation sets times of closure and other restrictions on the harvest of oysters from all oyster grounds in the Chesapeake Bay and its tributaries and on the Seaside of Eastern Shore.

Agency Contact: Copies of the regulation may be obtained from Katherine V. Leonard, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2120.

CHAPTER 720.

Pertaining to Restrictions on Oyster Harvest in Virginia Harvests.

4 VAC 20-720-105. Special Pocomoke and Tangier Sound broodstock restoration project.

A. This project will begin ~~December 2, 1996~~ *December 1, 1997*, and will continue until the quota has been caught, or until the project has been terminated by the commissioner, whichever occurs first.

B. In this project there will be a quota of 2,500 bushels of clean cull oysters. It shall be unlawful to harvest oysters in this area after the 2,500 bushel quota has been reached or after the project has been terminated.

C. All clean cull oysters harvested in the Pocomoke and Tangier Sound Management Areas shall be sold to the Marine Resources Commission for an oyster broodstock restoration project on the Great Wicomico, *Pungoteague*, or *Piankatank Reef site sites*. It shall be unlawful to sell any

oysters from Pocomoke and Tangier Sound Management Areas except to the Marine Resources Commission.

D. Price will be set by the commission at a fair market value.

E. The commissioner may terminate the project at any time if the project is not economically feasible.

F. Only standard oyster dredges (maximum weight 100 pounds with attachment, maximum width of 50 inches, maximum tooth length four inches, minimum teeth spacing three inches) or standard oyster patent tongs (maximum weight 100 pounds, maximum teeth length four inches) may be used in the project.

G. No hard clam bycatch is allowed.

H. No blue crab bycatch is allowed.

I. Harvesting activity shall terminate by 2 p.m. daily so that all oysters can be loaded on the commission buyboat or *planted on a program reef site* prior to sunset.

J. Oysters shall be offloaded daily.

K. Permits to harvest oysters in Pocomoke and Tangier Sounds shall be required for all participants.

L. Participants who violate any part of this chapter or other applicable Marine Resources Commission regulations will forfeit all harvested oysters to this project and receive no compensation.

VA.R. Doc. No. R98-135; Filed November 26, 1997, 9:46 a.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

BOARD OF CORRECTIONS

REGISTRAR'S NOTICE: This regulation is excluded from the Administrative Process Act in accordance with §§ 9-6.14:4.1 B 9 and 9-6.14:4.1 B 10 of the Code of Virginia, which excludes agency action relating to (i) inmates of prisons or other such facilities or parolees therefrom and (ii) the custody of persons in, or sought to be placed in, mental, penal or other state institutions as well as the treatment, supervision, or discharge of such persons.

Title of Regulation: 6 VAC 15-30-10 et seq. *Standards for State Correctional Facilities (Repealed).*

VA.R. Doc. No. R98-132; Filed November 25, 1997, 11:23 a.m.

Title of Regulation: 6 VAC 15-31-10 et seq. Standards for State Correctional Facilities.

Effective Date: January 16, 1998.

Summary:

The new standards reflect completely revised operational and management standards for state-operated prisons, field units, work release centers, and work centers. The Board of Corrections simultaneously repeals the current Standards for State Correctional Facilities, 6 VAC 15-30-10 et seq.

Agency Contact: Copies of the regulation may be obtained from Woody Woodard, Department of Corrections, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 674-3237.

CHAPTER 31.
STANDARDS FOR STATE CORRECTIONAL FACILITIES.

PART I.
GENERAL PROVISIONS.

6 VAC 15-31-10. Definitions.

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

"Automatic smoke detection system" means a hard-wired smoke alarm.

"Control center" means a manned secure post which has responsibility for observing and controlling entrance and exit traffic and may include monitoring alarm and detection systems, operating communications systems, and controlling inmate movement and counts.

"Department" means the Department of Corrections.

"Department head" means the individual, or his designee, who is responsible for an overall functional area of the institution.

"Furnishings in inmate living areas" means any item authorized by the department to be placed in inmate living areas.

"General detention" means special purpose bed assignments utilized under proper administrative process for the immediate secure confinement of inmates pending review for an appropriate assignment.

"Hazardous material" means a substance, other than a common household product, that will cause death, severe illness, or injury if used in an unsafe manner.

"Indigent inmate" means any inmate who has no more than \$5.00 in the inmate account to spend at the inmate's discretion during a calendar month, has no job, and has no other source of income; or any inmate who is newly received into an institution and has no available funds and no hygiene items.

"Inmate living area" means cells, rooms, dormitories, and day rooms.

"Institution" means major institutions, field units, and work release centers, but does not necessarily include work centers.

"Institutional chaplains" means chaplains as designated by Chaplain Service of the Churches of Virginia, Inc., or other chaplains designated by the warden/superintendent.

"Isolation" means special purpose bed assignments utilized under proper administrative process for the disciplinary management of inmates.

"Organized system of information storage" means a method for the storage and retrieval of information.

"Policy and procedure manuals" means any of the following documents: Department of Corrections Policy and Procedure Manual, division directives or procedures, or the Institution Operating Procedures Manual.

"Prehearing detention" means special purpose bed assignments utilized under proper administrative process for the immediate confinement of inmates who have been charged with an offense, are awaiting a disciplinary hearing, and are considered to be a potential threat to persons or property or for escape.

"Qualified mental health professional" means a psychiatrist, psychologist, social worker, or nurse who is qualified by virtue of appropriate training and experience to render mental health services within their discipline.

"Segregation" means special purpose bed assignments operated under maximum security regulations and procedures and utilized under proper administrative process for the protective custody or custodial management of inmates.

"Warden/superintendent" means the individual responsible for the overall management and operation of an institution, or the individual's designee.

6 VAC 15-31-20. Legal standard.

Nothing contained in this chapter shall be construed as setting a legal standard for the management or operation of any facility for purposes of litigation by inmates.

6 VAC 15-31-30. Responsibility; enforcement.

A. The warden/superintendent shall be responsible for ensuring that the requirements described in this chapter are implemented.

B. This chapter shall be enforced through the Board of Corrections' regulation, 6 VAC 15-20-10 et seq., Regulations Governing Certification and Inspection.

6 VAC 15-31-40. (Reserved).

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PART II.

GENERAL ADMINISTRATION AND MANAGEMENT.

6 VAC 15-31-50. General administration.

A. The mission of the institution within the context of the Department of Corrections' mission shall be stated in writing and shall be supported by written annual goals and objectives.

B. The institution shall be headed by a warden/superintendent who is responsible for and has the authority to manage and direct all activities of the institution established by law, department, or division directives or procedures.

C. The institution shall develop, if necessary, and maintain written agreements between the institution or the department with other public agencies or private operators and providers which define their roles, responsibilities, and relationships to the institution.

D. The institution shall maintain an organizational chart showing the formal, as well as the functional, organizational structure of the institution.

6 VAC 15-31-60. Communication.

A. Written procedure and practice shall provide that regular meetings are held between the warden/superintendent and all department heads. Such meetings shall be documented. There shall be a system of two-way communication between all levels of staff and inmates.

B. Written procedure and practice shall require that the warden/superintendent visit the institution's living and activity areas at least weekly. If a designee conducts the visit, that designee shall be an assistant warden or duty officer. Visits shall be documented.

C. Institutions shall maintain written procedure and practice which coordinate a public information program with the public, the media, and other agencies in accordance with departmental procedures.

D. Institutions shall develop written operational procedures, maintain such procedures in a manual, and review these procedures at least every 12 months, or within such timeframes which may be required by other departmental directive. Such procedures, as well as division directives or procedures, shall be made available to all employees. All reviews of procedures shall be documented.

6 VAC 15-31-70. Fiscal management.

A. Consistent with applicable policies and procedures, the warden/superintendent shall be responsible for fiscal policy, management, and control. Management of fiscal operations may be delegated to a designated staff person.

B. All institutional financial, budgetary, and accounting practices and procedures shall be in accordance with the Code of Virginia, the Commonwealth Accounting and Reporting System, and other state and departmental policy

and financial systems, to include petty cash, internal controls, and signature control on checks or other moneys.

C. The institution shall comply with applicable state and departmental policies and procedures governing inventory control, requisition, and purchase of supplies, equipment, and insurance.

D. The institution shall comply with applicable state and departmental policies and procedures governing the operation of inmate accounts, commissary, and other inmate funds.

6 VAC 15-31-80. Personnel.

A. The institution shall make accessible to all employees the Virginia Personnel Act, Chapter 10 (§ 2.1-110 et seq.) of Title 2.1 of the Code of Virginia; the State Employee Grievance Procedure; the State Personnel Manual; and the Department of Corrections Policy and Procedures Manual.

B. All institution personnel procedures shall be in accordance with applicable state and departmental personnel policies and procedures.

C. The warden/superintendent shall review, at least every 24 months or sooner if required, the staffing requirements for all categories of personnel to ensure inmate access to staff, programs, and services. Such reviews shall be documented.

D. A background investigation shall be conducted on departmental employees in accordance with applicable departmental procedures. Such investigations shall be documented.

6 VAC 15-31-90. Training and staff development.

A. Major institutions shall maintain written procedure and practice which ensure that the facility's training programs are overseen by a qualified supervisory employee. All applicable training programs shall meet standards set by the Department of Criminal Justice Services (DCJS), and the qualified supervisory employee shall be a certified DCJS instructor.

B. If the facility has full-time training personnel, these personnel shall have completed at least an appropriate train-the-trainer course approved by DCJS.

C. Major institutions shall provide for ongoing evaluation of all orientation, in-service, and specialized training programs and shall provide for documentation for such assessments.

D. All new employees shall receive the department's orientation no more than 180 days after initially reporting to work.

E. Corrections officers shall be employed on the condition that they satisfactorily complete required corrections officer training within the first 12 months of employment and any other departmental mandated training.

F. Staff employed in the corrections officer series, and other employees with mandated in-service training, shall

successfully complete the in-service training required by DCJS. Other employees shall meet in-service training requirements as determined by the Department of Corrections.

G. Written procedure and practice shall ensure that all personnel authorized to use firearms, chemical agents, nondeadly weapons, and deadly force receive appropriate training before being assigned to a post involving the possible use of such weapons. Competency in firearms shall be demonstrated in accordance with departmental timeframes.

H. All noncustodial employees designated by the director to carry a firearm in an emergency situation shall satisfactorily complete noncustodial firearm training before carrying the weapon.

I. Staff and inmates using hazardous materials or chemicals shall be informed of the hazards and shall be instructed in their proper use and in emergency procedures. The procedures utilized to train staff and inmates shall be adequately documented and records shall be maintained for future reference.

J. Written procedure and practice shall require that medical and security personnel shall be trained in the handling of infectious material.

K. Individuals in supervisory and management positions shall successfully complete supervisory or management training at least every 24 months.

L. Treatment staff shall receive appropriate training for the services they deliver, such as specialized programs of substance abuse or sex offender treatment. Mental health services staff shall receive annually at least 16 hours of continuing education or training that is appropriate to their positions, as approved by their supervisor.

6 VAC 15-31-100. Records.

A. The institution shall utilize an organized system of information storage, retrieval, review, security, and documentation, which shall be in accordance with departmental procedures.

B. Staff having access to management information shall be trained in and responsive to the security and confidentiality requirements of this system. Inmates shall not have access to management information systems and confidential management information.

C. Written procedures and practice governing the establishment, utilization, content, privacy, security, and accuracy of the institutional criminal record folders and institutional medical folders shall be in conformance with department and division directives or procedures.

D. When an inmate is permanently transferred from one institution to another, the institutional criminal records folder and institution medical folder shall be simultaneously transferred to the receiving institution.

E. There shall be at least one master index identifying the housing, bed, and work assignments of all inmates. The institution shall maintain a daily written report of inmate population movement as required by department and division directives or procedures.

PART III. PHYSICAL PLANT.

6 VAC 15-31-110. Physical plant.

A. Inmate living areas shall have sanitation facilities to include access to:

1. A toilet above floor level which is available for use without staff assistance 24 hours a day;
2. A wash basin with potable water, and hot and cold water;
3. A bed above floor level;
4. Enclosable storage space or locker; and
5. Natural lighting.

Special housing requirements may be altered to ensure safety and security.

B. Space separate from the cell or bed areas shall be provided for inmate exercise and leisure time activities.

C. Space shall be provided for an inmate commissary or canteen, or provisions shall be made for a commissary service.

D. Space shall be provided for a visiting room or area for contact visiting and, if required, noncontact visiting. There shall be a designated space to permit screening and searching of both inmates and visitors.

E. Disabled inmates shall be housed in a manner that provides for their safety and security. Rooms, cells, or housing units used by the disabled shall be designed for their use and shall provide for integration with the general population. Appropriate programs and activities shall be accessible to disabled inmates confined in the facility.

F. Space shall be provided at the institution to store and issue clothing, bedding, cleaning supplies, inmates' property, and other items required for daily operations.

G. Adequate space shall be provided for administrative, security, professional, and clerical staff. This space shall include conference rooms, storage room for records, and toilet facilities. Adequate space shall be provided for janitorial closets accessible to the living and activity areas.

H. Separate and adequate space shall be provided for mechanical and electrical equipment.

I. Written procedure and practice shall specify a preventive maintenance program for the physical plant. The program shall include documentation of work performed, provisions for emergency repairs or replacement in life-threatening situations, and provisions for capital repairs.

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J. Lighting in inmate rooms or cells shall be at least 20 foot-candles at desk level in living areas and in personal grooming areas and shall be documented. Circulation shall be at least seven cubic feet per minute of outside air or recirculated air containing no less than 25% outside air per minute per occupant. Inspection of air circulation/recirculation equipment shall be documented.

K. Inmates shall have access to shower areas with hot and cold water.

PART IV.

SAFETY AND EMERGENCY PROCEDURES.

6 VAC 15-31-120. Safety and emergency procedures.

A. There shall be written emergency plans which outline duties of staff, procedures, and evacuation routes. Emergency plans shall include responses in the event of fire, chemical release, power, water, heat loss, natural disaster, taking of hostages, riots, disturbances, escape, bomb threats, and adverse job actions. There shall be a posted floor plan showing fire evacuation routes. The fire plan shall be reviewed annually by the Office of the State Fire Marshal.

B. Fire drills shall be performed in accordance with the fire emergency plan and shall include evacuation of inmates (except where security would be jeopardized). Fire drills shall be held, documented, and evaluated for effectiveness at least every three months.

C. There shall be documentation that, through annual site visits, the local fire department is familiar with the available equipment, physical layout, and emergency procedures of the institution. Additional site visits shall be required in cases of structural changes or additions to the facility.

D. The institution shall have the equipment necessary to maintain essential lights, power, and communications in an emergency. Testing shall be performed weekly and shall be documented.

E. The institution shall have a fire inspection every 12 months by an outside, qualified organization approved by the Department of Corrections. Action plans shall be written and submitted through designated departmental channels, and a copy to the individual responsible for institutional safety.

F. There shall be a weekly fire, safety, and sanitation inspection of the facility by a qualified departmental staff member. In conjunction with the individual responsible for institutional safety, action plans to correct deficiencies shall be written. These action plans shall be directed to the warden/superintendent.

G. The institution shall have a manual fire alarm or an automatic smoke detection system or an automatic fire suppression system in all industrial, sleeping, and living areas, and action plans shall be written and submitted for all areas of deficiency. Other areas of the institution shall also have fire detection and suppression equipment as required by the Office of the State Fire Marshal.

H. Written procedure and practice shall specify the institution's fire protection equipment type, use, and testing, including:

1. Availability of the equipment at appropriate locations throughout the institution;
2. Training on the use of the equipment;
3. Inspecting extinguishers at least every 12 months;
4. Inspecting range hoods at least every six months and cleaning as necessary. Inspections shall be performed by trained and qualified personnel;
5. Inspecting detection and suppression systems at least every three months; and
6. Quarterly testing of fire alarms for function.

I. Furnishings in inmate living areas, including cleanable, nontoxic and flame-retardant mattresses and pillows, shall be selected based on known fire safety performance characteristics and in conformance with departmental procedures.

J. Written procedure and practice shall provide for a safety awareness program which is to be coordinated, designed, implemented, and documented by the individual responsible for institutional safety.

PART V.

SECURITY AND USE OF FORCE.

6 VAC 15-31-130. Security management.

A. There shall be a manual containing all procedures for institutional security and control with detailed instructions for implementing these procedures.

B. There shall be a written post order for each security post and a requirement for corrections officers to read and be familiar with the order each time they assume a new post. Supervising personnel shall document that the post order has been discussed with the officer. Post orders shall be reviewed at least every 12 months, and such reviews shall be documented.

C. Written procedure and practice shall require that a post log is maintained for each permanent post and other areas deemed necessary by the warden/superintendent. Written procedure and practice shall also require that supervisors prepare shift reports that record routine information, emergency situations, and unusual incidents.

D. Written procedure and practice shall provide a system of accountability for all security equipment.

E. Written procedure and practice shall govern perimeter control, such that appropriate means are utilized to ensure that inmates remain within the perimeter and to prevent unauthorized access by the general public.

F. Written procedure and practice shall ensure that the institution maintains a control center which is staffed 24 hours a day.

G. The facility shall have a communication system between a control center and inmate living areas.

H. Written procedure and practice shall govern a system for physically counting inmates. The system shall include strict accountability for approved temporary absences of inmates.

I. Written procedure and practice shall provide that staff regulate inmate movement.

J. Written procedure and practice shall provide for searches of facilities, staff, inmates, visitors, mail, and other property to control contraband and provide for disposition of the contraband pursuant to state law. Written procedure and practice shall also govern disposition of personal property, and security provisions involved in such disposition, in the event of an inmate death.

K. Written procedure and practice shall govern the operation and use of official and personal vehicles, including provisions for parking in areas designated by the warden/superintendent and for ensuring that the vehicle is left locked with the windows rolled up when not in use.

L. Written procedure and practice shall govern the use of force, firearms, nonlethal weapons, chemical agents, and security equipment.

1. Officers shall be authorized to use nondeadly force only where it is reasonable to do so. Force shall be limited to the amount of force that the officer reasonably believes is necessary in the given situation, including force that is reasonably required to:

- a. Prevent an escape or the commission of a felony or misdemeanor;
- b. Defend himself or others against physical assault;
- c. Prevent serious damage to property;
- d. Enforce facility regulations and order;
- e. Prevent or quell a riot or rebellion; and
- f. Prevent serious self-injury to the inmate.

2. Properly trained and authorized employees may exercise their authority and use deadly force in accordance with § 53.1-29 of the Code of Virginia to:

- a. Prevent escapes;
- b. Suppress rebellion; and
- c. Defend or protect himself or others in the course of his assigned duties.

M. Written procedure and practice shall require that the chief security officer or designee conduct at least weekly inspections of all security systems. The results of inspections shall be reported in writing to the unit head. Documentation of corrective action shall be required.

N. Written procedure and practice shall govern the distribution, use, and control of keys within the institution.

O. Written procedure and practice shall govern the maintenance, storage, and use of all tools, culinary equipment, and hazardous materials, including flammable, toxic, and caustic materials, as well as weapons and security equipment.

P. Written procedure and practice shall provide for the preservation, control, and disposition of all physical evidence obtained in connection with a violation of law or established procedure. At a minimum, the procedures shall address the following:

1. Chain of custody;
2. Evidence handling; and
3. Location and storage requirements.

PART VI.

SPECIAL HOUSING AND DISCIPLINARY PROCESS FOR DAMAGED PROPERTY.

6 VAC 15-31-140. Special housing assignments.

A. Written procedure and practice shall provide that an inmate shall be placed in isolation for a rule violation only after a disciplinary hearing.

B. Inmates may be assigned to isolation for a maximum period of 15 days. Continuous confinement in isolation for more than 15 days shall require the review and approval of the deputy director and appropriate health authority. Inmates held in isolation for periods exceeding 30 days shall be provided the same privileges as inmates in segregation.

C. Written procedure and practice shall govern assignments and review of assignments to special housing. Such procedure and practice shall include a review of segregation status at least every 90 days by a classification review process.

D. General and prehearing detention shall be administrative assignments for the immediate secure confinement of inmates pending investigation or disciplinary hearing or review by a classification review process.

E. Except in emergencies, the number of inmates confined to each cell or room shall not exceed the number for which it is designed. Should an emergency create an excess in occupancy, the warden/superintendent shall provide temporary written approval and immediately proceed to alleviate the situation as promptly as possible by making other arrangements for the inmates so confined.

F. Special housing cells or units shall be well ventilated, adequately lighted, appropriately heated, and maintained in sanitary conditions at all times. A general log shall be kept and the temperature shall be recorded at least once each shift. Inmates shall be housed in an environment in which the temperature does not fall below 65°F and when the temperature exceeds 85°F, mechanical air circulation shall be provided.

G. Inmates in special housing shall dress in state-issued clothing and shall be furnished:

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1. Underwear;
2. Shower shoes;
3. One mattress;
4. One pillow;
5. One pillow case;
6. Two sheets;
7. Blankets as needed;
8. One towel; and
9. One washcloth.

In isolation cases only, the bedding may be removed during the daytime hours. For safety and security reasons, all items may be removed from the cell.

H. Written procedure and practice shall provide that inmates in special housing shall be permitted to shower and shave not less than twice per week. Clothing and underwear shall be changed not less than twice per week.

I. Written procedure and practice shall provide that inmates in special housing can write and receive letters on the same basis as inmates in the general population, except inmates in isolation may not receive the contents of their packages until approved by the warden/superintendent.

J. Written procedure and practice shall provide that inmates in special housing have access to federal and state courts through access to a court appointed or private attorney, or an appropriate law library, or a combination thereof.

K. Inmates in isolation shall forfeit the privileges of receiving visits from family, relatives, or friends; however, under exceptional circumstances, permission may be obtained from the warden/superintendent of the institution for such visits. Attorney visits to an inmate in isolation may not be restricted by the warden/superintendent, and attorneys shall be allowed access to the inmate during normal work hours.

L. Written procedure and practice shall provide that inmates in isolation will be allowed to keep only the following:

1. Legal materials;
2. Religious materials; and
3. Personal hygiene items defined exactly as:
 - a. Toothbrush;
 - b. Toothpaste;
 - c. Soap;
 - d. Plastic comb; and
 - e. Feminine hygiene products (for female inmates).

If the offender does not have the items listed in this subsection, and is indigent, the institution shall furnish them.

All other items of inmate personal property shall be stored upon assignment to isolation. Inmate personal property shall be inventoried by either an officer and the inmate, or by two corrections officers. The inmate shall be given a receipt for all personal property upon assignment to isolation. Inmates serving isolation sentences may purchase postage stamps, writing materials, and over-the-counter medications.

M. Written procedures shall specify the personal property that an inmate may retain while in segregation status.

N. Written procedure and practice shall provide that a visitation schedule for segregated inmates shall be established by the warden/superintendent.

O. Written procedure and practice shall provide that inmates in segregation are allowed a minimum of one hour of exercise three separate days per week. This exercise shall be outdoors unless weather does not permit it.

P. Written procedure and practice shall provide inmates in segregation access to the commissary. Commissary purchases may be restricted only for security and medical reasons. No item of a hazardous nature shall be allowed.

Q. In addition to supervision provided by the unit officers, the special housing unit shall be visited daily by the shift supervisor or higher authority. Each inmate in special housing shall be checked no less than once per hour at staggered times by a corrections officer. Such visits and checks shall be documented.

R. A permanent individual log shall be maintained in the special housing unit for each inmate. This log shall contain:

1. Date of admission;
2. Weight of the inmate upon entering and leaving;
3. Name, date, and time of the corrections officer making the required hourly check;
4. Medical requests and visits;
5. Medications administered or refused;
6. Meals refused; and
7. Other pertinent information.

S. Written procedure and practice shall provide for reasonable access to medical, dental, and mental health services while in special housing status. Health assessments of inmates in special housing shall be conducted as required by departmental procedures.

6 VAC 15-31-150. Inmate payment for damaged property.

Written procedure and practice shall require that a program be developed for inmate payment of damaged property pursuant to § 53.1-228.1 of the Code of Virginia. Such a program shall be in accordance with departmental procedures and shall require:

1. Procedures for recovering from an inmate the cost of replacing or repairing any facility-owned or facility-issued property which is proven to have been intentionally

damaged or destroyed by the inmate. At a minimum, the procedures shall specify the following information:

- a. Fee amounts;
 - b. Payment procedures; and
 - c. Written notification to inmates of proposed fee changes.
2. The inmate shall be notified in writing of damaged property charges to the inmate account.
 3. A separate account or accounting process shall be established and used exclusively for the deposit and disbursement of damaged property reimbursements. Fee collections and disbursements shall be governed by generally accepted accounting principles.
 4. Due process shall be afforded for each inmate charged with responsibility for damaged property.
 5. Inmates shall be advised of the damaged property program at the time of admission or orientation.

PART VII. FOOD SERVICE AND SANITATION.

6 VAC 15-31-160. Food service.

- A. Food service operations shall be supervised by a full-time staff member who is experienced in food service management.
- B. All menus shall meet or exceed the dietary allowances stated in the Recommended Dietary Allowances, National Academy of Sciences, 1989.
- C. Written procedure and practice shall require that accurate records are maintained of all meals served and that meals are planned in advance to ensure proper food flavor, temperature, and appearance.
- D. Written procedure and practice shall provide for special diets as prescribed by responsible medical or dental personnel and monitored by medical personnel.
- E. Written procedure and practice shall provide for reasonable accommodation for inmates whose religious beliefs require adherence to religious dietary laws.
- F. Written procedure and practice shall provide that meals are served under conditions that minimize regimentation, except when security or safety conditions dictate otherwise. All meals shall be served under direct supervision of staff members.
- G. Written procedure and practice shall require that at least three meals (including two hot meals) are provided at regular meal times during each 24-hour period, with no more than 14 hours between the beginning of the evening meal and the beginning of breakfast. Variations may be allowed based on weekend and holiday food service demands and security needs provided basic nutritional goals are met.
- H. Food service personnel, including inmates, shall receive a preassignment medical examination by medical

personnel and an examination at least every 12 months thereafter to ensure freedom from diarrhea, skin infections, and other illnesses transmissible by food or utensils. Inmates and other persons working in food service shall be monitored continuously for health and cleanliness by the food service manager or designee.

I. Written procedure and practice shall require weekly inspections of all food service areas, including dining and food preparation areas and equipment, by the person supervising food service operations or his designee.

J. Shelf goods shall be maintained properly and safely. Refrigerated foods shall be maintained at 35 to 40°F and frozen foods shall be maintained at 0°F, or below. Refrigeration and dishwater temperature shall be checked daily and documented.

6 VAC 15-31-170. Sanitation and hygiene.

- A. The institution shall comply with the requirements of appropriate regulatory agencies with regard to the potable water supply, control of vermin and pests, emissions, and waste disposal systems.
- B. Written housekeeping procedure and practice for all areas of the facility's physical plant shall provide for daily housekeeping and regular maintenance by assigning specific duties and responsibilities to staff and inmates.
- C. Toilet, shower, and bathing facilities shall be operational and sufficient to ensure basic health and basic hygiene. The opportunity for at least three showers per week shall be made available to the general population.
- D. Written procedure and practice shall provide for the issue of clean, suitable clothing to inmates. Special clothing shall be provided to inmates assigned to food service, hospital, sanitation, and other special work details, as needed. Protective clothing and safety equipment shall be provided when appropriate.
- E. Written procedure and practice shall provide for, at a minimum:
 1. Clean bedding;
 2. Towels;
 3. Blankets; and
 4. Washcloths.
- F. Written procedure and practice shall provide for the weekly laundering of all state-issued linens and state-issued clothing.
- G. Written procedure and practice shall provide that hair care services that comply with applicable health requirements are available to inmates.
- H. Written procedure and practice shall require that articles necessary for maintaining proper and personal hygiene are available to all inmates through the unit commissary. Indigent inmates shall be issued necessary personal hygiene articles.

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PART VIII.

HEALTH SERVICES AND COPAY REQUIREMENTS.

6 VAC 15-31-180. General health care procedures.

A. Written procedure and practice shall provide that the warden/superintendent, in conjunction with the health authority, ensures that inmates are provided with health care services and that the institution's medical unit is operated in accordance with applicable laws and regulations.

B. Written procedures and practice shall provide access to adequate health care, for a system for processing complaints about health care, and that these procedures are communicated orally and in writing to inmates upon arrival at the facility in language which can be clearly understood by each inmate.

C. Written procedure and practice shall provide for continuity of health care from admission to discharge or transfer.

D. The Office of Health Services shall conduct a documented quality assurance review for each institution every other year. Action plans shall be written for all areas of deficiency.

E. Written procedure and practice shall govern the use of restraints for medical and psychiatric purposes and shall identify the authorization needed, as well as when, where, and how restraints may be used and for what duration of time.

6 VAC 15-31-190. Responsible health authority.

Written procedure and practice shall require that:

1. The warden/superintendent ensures the appointment of a designated health authority who, at a minimum, may be a physician, head nurse, or health administrator and is responsible for the health care of the inmates pursuant to a written agreement or contract or job description.

2. All medical, psychiatric, dental, and nursing matters involving medical judgment are the sole province of the responsible physician, dentist, and nurse, respectively.

3. The health authority meets with the warden/superintendent at least every three months and submits reports of the health care delivery system and health environment of the institution.

4. The health authority submits monthly activity reports to the Office of Health Services.

5. The health authority reports to the warden/superintendent immediately any serious health threat that may affect staff and inmate health and safety.

6. The health authority reviews each health care policy, procedure, and program at least every 12 months and revises them as needed. Each review and revision shall bear the date and signature of the reviewer.

6 VAC 15-31-200. Health services facilities and equipment.

Written procedure and practice shall require the following:

1. The warden/superintendent shall provide adequate space, equipment, supplies, and materials for the delivery of health care as determined by the health authority in accordance with the level of care provided by the institution.

2. First aid kits and emergency medical supplies shall be available in areas determined by the health authority in conjunction with the warden/superintendent.

3. Health services staff shall be responsible for ensuring all medical equipment is checked and tested according to manufacturers' recommendations. Medical equipment shall be safeguarded from inmate access.

4. Institutionally-owned ambulances shall be operated in accordance with regulations promulgated by the Office of Emergency Medical Services (EMS), certified by EMS, operated by certified drivers, and that a certified emergency medical technician accompanies an inmate being transported for medical reasons.

6 VAC 15-31-210. Health care personnel.

Written procedure and practice shall require the following:

1. All health care personnel who provide health care services to inmates shall meet state licensure, certification, and health services registration requirements, and that verification of current credentials and licenses is on file in the facility.

2. Duties and responsibilities of health care personnel shall be governed by written job descriptions approved by the health authority, kept on file at the facility, and a copy given to the employee.

3. All treatment by health care personnel, other than a physician, dentist, psychologist, optometrist, and other independent provider shall be performed pursuant to written protocols by personnel authorized by law to give such orders.

4. Nonmedical personnel involved in the distribution or administration of non-over-the-counter medications or in providing other medical services shall be trained according to the department's Office of Health Services' procedures using an approved course by the Virginia Board of Nursing.

5. On-site emergency first aid, CPR, and crisis intervention shall be administered appropriately. In addition, direct care and custodial staff shall be trained to recognize signs and symptoms of mental illness and chemical dependency.

6. Inmates shall not be used for the following duties:

a. Performing direct patient care services, with the exception of assisting in feeding and movement by wheelchair, stretcher, and turning patient over in bed;

b. Scheduling health care appointments;

c. Determining access of other inmates to health care services;

d. Handling or having access to surgical instruments, needles, medications, and health records; or

e. Operating diagnostic and therapeutic instruments.

7. Health care staff shall have access to professional books, publications, and reference materials on current and advances in health care.

8. Health care personnel shall be provided opportunities for orientation, training, and continuing education.

6 VAC 15-31-220. Health care programs in which inmates pay a portion of the costs.

An inmate copay program for health care services shall be administered in accordance with § 53.1-32 of the Code of Virginia and with departmental procedures and shall require the following elements:

1. Written procedures shall govern the health care copay program and, at a minimum, specify the following information:

- a. Health care services which are subject to fees;
- b. Fee amounts;
- c. Payment procedures;
- d. Health care services which are provided at no cost;
- e. Fee application to medical emergencies, chronic care, and preexisting conditions; and
- f. Written notification to inmates of proposed fee changes.

2. Inmate payment for medical services shall be in accordance with set fees based upon only a portion of the costs of these services.

3. Inmates shall be advised of health care services and payment procedures at the time of admission or orientation. Such orientation shall be acknowledged in writing.

4. Written procedure and practice shall provide that no inmate will be denied access to medically necessary services based upon ability to pay.

5. A separate account or accounting process shall be established and used exclusively for the deposit and disbursement of health service fees. Fee collections and disbursements shall be governed by generally accepted accounting principles.

6 VAC 15-31-230. Health screenings and examinations.

Written procedure and practice shall require the following:

1. All newly incarcerated inmates shall undergo medical, dental, and mental health screening by health-

trained or qualified personnel to include a complete medical history, physical examination, screening laboratory tests, and other tests as ordered by the responsible physician or dentist. All findings shall be recorded on forms approved by the health authority, and a medical classification and location code shall be assigned to each inmate.

2. All inmates undergoing intrasystem transfers shall undergo a health review by health-trained or qualified personnel upon arrival at the institution or no later than one working day thereafter if the facility does not have 24-hour medical coverage.

3. Identification and management of tuberculosis and other communicable diseases shall be addressed, and these procedures shall be updated as new information becomes available.

6 VAC 15-31-240. Mental health services.

A. Each institution with mental health services staff shall have written procedure and practice which establish the provision of mental health services to inmates and which address at least the following:

- 1. A description of the mental health services provided at the facility, including levels of care;
- 2. Initial and ongoing assessment of the mental health status and treatment needs of the inmates;
- 3. Crisis intervention;
- 4. Individual or group therapy or both;
- 5. Transfer of inmates requiring mental health services beyond an institution's resources; and
- 6. A system for continuity of care and follow-up procedures, including discharge planning.

B. Written procedures and practice shall ensure individualized treatment planning by mental health services staff for inmates assigned to designated mental health units. Such planning shall be documented.

C. Written procedure and practice shall ensure documentation and recordkeeping of all mental health services provided at the institution.

D. Written procedure and practice shall ensure the limits of confidentiality regarding mental health services provided in a correctional setting, including the means by which inmates are informed of these limits and under what circumstances information may be released.

E. Written procedure and practice shall ensure a suicide prevention and intervention plan. The plan shall address the identification and assessment of potentially suicidal inmates and the housing, monitoring, and referral of these inmates.

F. Written procedure and practice shall ensure a written mental health training program provided to employees (nonmental health services staff) assigned to work in designated housing units (i.e., mental health units;

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segregation, isolation, and detention units; and parole violator units). This training program shall be developed, reviewed, and provided by mental health services staff. Security staff assigned to any one of these designated housing units shall complete their training as soon as possible and no later than nine months after their assignment to the unit. Following completion of the training, security staff assigned to any of these units shall complete a minimum of one day of in-service training every two years related to mental health issues.

6 VAC 15-31-250. Levels of care.

Written procedure and practice shall require the following:

1. Treatment of an inmate's health problems shall not be limited by the resources available within the institution, and that hospital care is available for acute illness or surgery at a facility outside the institution.
2. The warden/superintendent, in conjunction with the health authority, shall make available all levels of health care to include self-care, first aid, 24-hour emergency care, 24-hour infirmary care, hospital care, and chronic and convalescent care, as required by the inmate's condition.
3. Qualified health care personnel shall conduct regularly scheduled sick call, which shall be available to all inmates.
4. The warden/superintendent, in conjunction with the Office of Health Services, shall contract the services of medical, dental, or mental health specialists, in accordance with procedures approved by the director.
5. Inmates shall be prohibited from choosing their own health care provider. Documentation shall be made of refusal to accept treatment.
6. Written informed consent for inmate health care shall be obtained when required and documented. When health care is rendered against the patient's will, it shall be in accord with state and federal laws and regulations.

6 VAC 15-31-260. Specialized health care programs.

Written procedure and practice shall require the following:

1. A program of health education shall be available to all inmates of an institution.
2. Special treatment programs shall be available for inmates requiring close medical supervision as determined by the responsible physician, dentist, or qualified mental health professional.
3. Management of chemically dependent inmates shall be made under the supervision of a qualified health care practitioner.
4. Medical and dental prostheses, subject to copayment, shall be provided when the health of the inmate would otherwise be affected, as determined by the responsible physician or dentist.

5. A system shall be established whereby pregnant inmates may obtain obstetrical, medical, and social services.

6. Special diets shall be prescribed as needed and monitored by health care staff.

6 VAC 15-31-270. Health records.

Written procedure and practice shall require the following:

1. Institutions shall document that copies of the health records of all inmates transferred from a jail are transferred to the custody of medical personnel at the receiving institution, and that confidentiality of the records is preserved during the transfer.
2. A complete health record for each inmate shall be created, organized, maintained, and stored according to such procedures, and shall document all the health services rendered during the entire period of incarceration.
3. The principle of confidentiality of the health record shall be upheld and shall support the following requirements:
 - a. The health record shall be maintained separately from the institutional record;
 - b. Access to the health record shall be controlled by the health authority and shall be granted only to those who require it under departmental procedures and applicable law; and
 - c. The health authority shall share with the warden/superintendent information regarding security and the inmates' medical management, transfer, and ability to participate in programs.
4. Appropriate documentation shall accompany the inmate to all departmental facilities whether for intrasystem transfer or for medical consultations and that the confidentiality of the record is strictly maintained during such transfer.
5. Inactive health record files shall be retained as permanent records in compliance with departmental procedures and state and federal laws and regulations.

6 VAC 15-31-280. Pharmacy services.

A. Written procedure and practice shall require that pharmaceutical services at an institution are in strict compliance with state and federal laws, applicable pharmaceutical regulations, and departmental procedures.

B. Written procedure and practice shall provide for the proper management of pharmaceuticals and address the following:

1. A formulary specifically developed for the department.
2. Prescription practices, including requirements that:

- a. Psychotropic medications are prescribed only when clinically indicated as one facet of a program of therapy;
 - b. "Stop order" time periods are required for all medications; and
 - c. The prescribing provider reevaluates a prescription prior to its renewal.
3. Procedure for the receipt, storage, dispensing, and administration or distribution of medications.
 4. Maximum security storage and periodic inventory of all controlled substances, syringes, and needles, in accordance with departmental procedures.
 5. Administration of medication by persons properly trained and under the supervision of the health authority and warden/superintendent.
 6. Accountability for administering or distributing medications in a timely manner, according to physician orders.

6 VAC 15-31-290. Serious illness and death.

Written procedure and practice shall specify and govern the following:

1. The process by which those individuals designated by the inmate are notified in case of serious illness, injury, or death.
2. The actions to be taken in the event of an inmate death, including notification of the medical examiner, management of records, and transportation of the body.

**PART IX.
LEGAL AND PROGRAMMATIC RIGHTS.**

6 VAC 15-31-300. Legal and programmatic rights of inmates.

Written procedure and practice shall require the following:

1. Inmates shall have access to federal and state courts through access to a court appointed or private attorney, or an appropriate law library, or a combination thereof.
2. Program access, work assignments, and administrative decisions shall be made without regard to an inmate's race, religion, national origin, sex, disability, or political views. Inmates shall be protected from personal abuse, corporal punishment, personal injury, disease, property damage, and harassment. Freedom shall be allowed in personal grooming except when a valid interest justifies otherwise.
3. Inmates shall have access to the mass communications media, subject to departmental procedures.
4. An inmate grievance procedure shall be available to all inmates and includes at least one level of review and specific time limits.

**PART X.
RULES AND DISCIPLINE.**

6 VAC 15-31-310. Inmate rules and discipline.

A. Written rules of inmate conduct shall specify prohibited acts and penalties which may be imposed for violations. A copy of all rules and disciplinary procedures and penalties shall be made available to all inmates and employees. Signed acknowledgment of receipt of the rulebook shall be maintained in the inmate's file. Institutional rules shall be reviewed annually and revised as necessary.

B. Written procedure and practice shall provide an inmate disciplinary procedure that is available to all inmates and includes:

1. Written reports of alleged offenses;
2. Notification of hearings;
3. The availability of inmate advisors appointed by the institution;
4. The ability to question the reporting officer;
5. Specific time limits;
6. Written findings and reasons for decisions;
7. At least one level of review and appeal; and
8. Provisions for expungement.

**PART XI.
MAIL, TELEPHONE, AND VISITING.**

6 VAC 15-31-320. Mail, telephone, and visiting.

Written procedure and practice shall govern the following:

1. Inmate correspondence.
 - a. Inmate mail. Inmate mail shall not be read except where there is a reasonable belief that there is a threat to institutional order and security, and only in accordance with departmental procedures.
 - b. Outgoing letters. Inmates may send letters to specified classes of persons and organizations, as designated in departmental procedures.
 - c. Incoming and outgoing letters. Incoming and outgoing letters shall be held for no more than 24 hours, excluding weekends and holidays.
2. Postage allowance. Provisions shall be made for indigent inmates to correspond by mail in order to maintain community ties.
3. Inmate access to publications.
4. Telephone privileges.
5. Visiting privileges. Procedures shall specify the time, screening, frequency, and number of visitors, as well as provisions for special visits.

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PART XII.

RECEPTION, ORIENTATION, AND CLASSIFICATION.

6 VAC 15-31-330. Reception and orientation.

Where applicable, written procedure and practice shall govern the following:

1. The admission of new inmates and parole violators to the system.
2. The preparation of a summary admission report for all new admissions. The report shall include the following information:
 - a. Legal aspects of the case;
 - b. Summary of criminal history, if any;
 - c. Social history;
 - d. Medical, dental, and mental health history;
 - e. Occupational experience and interests;
 - f. Educational status and interests;
 - g. Vocational programming;
 - h. Recreational preference and needs assessment;
 - i. Psychological evaluation with staff recommendations; and
 - j. Preinstitution assessment information.
3. New inmates shall receive written orientation materials. When a literacy or language problem exists, a staff member shall assist the inmate in understanding the material. Completion of orientation shall be documented by a statement signed and dated by the inmate. Inmates transferred from other institutions shall receive an orientation to the new institution.
4. For major institutions, excluding dormitory-style facilities, screening shall be conducted for double-celling in a room or cell for those inmates assigned to multiple bed areas.

6 VAC 15-31-340. Classification.

Written procedure and practice shall require an institutional classification program which provides the following:

1. Consistency with division directives or procedures and provisions for staff and inmate participation in classification reviews;
2. The review, evaluation, and approval of specific inmate program objectives, assignments to special housing, and assurance that inmates are afforded due process in classification reviews as necessary;
3. Objectives and methods for achieving those objectives;
4. Uniform procedures to determine inmate program needs;

5. A monitoring and evaluation mechanism to determine whether the objectives are being met;

6. Determination of appropriate security status; and

7. The review of each inmate's individual treatment plan at least every 12 months, and updates made as needed.

PART XIII.

OTHER PROGRAMS.

6 VAC 15-31-350. Work programs.

A. Written procedure and practice shall provide for a work program for the general population inmates which takes into account the inmate's level of risk to staff and the general public, as well as the institution's needs. Procedures shall provide that work performance is evaluated and the results considered in awarding incentives.

B. Employees shall be trained in inmate work supervision and other areas related to that work assignment prior to independent functioning as a work supervisor.

6 VAC 15-31-360. Educational services.

A. The institution shall provide space and maintain facilities for academic, vocational, and library programs offered by the Department of Correctional Education.

B. The warden/superintendent shall coordinate the scheduling of activities with the principal or supervisor of the educational program.

6 VAC 15-31-370. Inmate recreation and activities.

A. Written procedure and practice shall provide for a recreational program that includes leisure time activities and outdoor exercise.

B. Every inmate (excluding isolation and prehearing detention) who is not employed in outdoor work should have the opportunity for at least one hour of exercise three separate days per week. This exercise shall be outdoors unless weather does not permit it.

C. At institutions with more than 400 inmates, the recreational program shall be supervised by a full-time, qualified person, and at institutions with less than 400 inmates, a member shall be designated on a part-time basis as a recreation officer.

D. Adequate facilities and equipment for the planned recreation or exercise activities shall be available to the inmate population and shall be maintained in good condition.

6 VAC 15-31-380. Religious programs.

A. Written procedure and practice shall provide for access to religious programs for all inmates on a voluntary basis. No preference shall be given to one religious denomination, faith, or sect over another.

B. Institutional chaplains shall have access to all areas of the institution to attend to the religious needs of the inmates.

C. The facility shall ensure that counseling by spiritual leaders is confidential and in accordance with departmental procedures.

D. Adequate and appropriate space for worship shall be made available by the institution.

6 VAC 15-31-390. Institutional counseling and program services.

A. Written procedure and practice shall provide for a system of core programs at each facility appropriate to the needs of inmates which shall include, at a minimum, life skills, substance abuse, and other counseling services as appropriate.

B. Core programs shall meet program standards and guidelines established by the department.

C. Written procedure and practice shall provide that each inmate is assigned a counselor. Staff shall be available to counsel inmates upon request, and provision shall be made for counseling and crisis intervention services.

D. Treatment and professional services shall be provided by persons qualified by either formal education or training required by the department, and written procedure and practice shall provide that persons providing treatment and professional services are certified or licensed as required by law or regulations.

E. Written procedure and practice shall provide that institutional staff identify at least every 12 months the needs of the inmate population to ensure that the necessary programs and services are available, including programs and services to meet the needs of inmates with specific types of problems.

6 VAC 15-31-400. Release preparation and work release.

A. Institutions shall provide that all inmates have access to a program of release preparation prior to their release to the community.

B. Work release programs shall include written operational procedures. Written procedure and practice shall provide for rules of conduct and sanctions, a system of supervision to minimize inmate abuse of program activities, a complete recordkeeping system, and efforts to obtain community cooperation and support.

6 VAC 15-31-410. Citizen involvement and volunteers.

A. Written procedure and practice shall specify the lines of authority, responsibility, and accountability for the institution's citizen involvement and volunteer services program.

B. Written procedure and practice shall provide that each volunteer completes an appropriate, documented orientation or training program prior to assignment.

C. Volunteers shall agree in writing to abide by all facility procedures, particularly those relating to the security and confidentiality of information.

D. Volunteer services shall be provided by volunteers qualified by formal education, training, or experience to perform the services which they provide.

DOCUMENT INCORPORATED BY REFERENCE

Recommended Dietary Allowance, National Academy of Sciences, 1989.

VA.R. Doc. No. R98-133; Filed November 25, 1997, 11:23 a.m.

BOARD OF JUVENILE JUSTICE

REGISTRAR'S NOTICE: Pursuant to § 9-6.14:7.1 K of the Code of Virginia the Board of Juvenile Justice suspended the regulatory process on 6 VAC 35-40-10 et seq. Predispositional and Postdispositional Group Home Standards (Repealing), 6 VAC 35-70-10 et seq. Standards for Juvenile Correctional Centers (Repealing), 6 VAC 35-90-10 et seq. Standards for Post Dispositional Confinement for Secure Detention and Court Service Units (Repealing), 6 VAC 35-100-10 et seq. Standards for Secure Detention (Repealing), 6 VAC 35-120-10 et seq. Standards for Family Group Homes (Repealing) and 6 VAC 35-140-10 et seq. Standards for Juvenile Residential Facilities. The regulatory process was suspended in order to solicit additional public comments.

A public hearing was held on November 12, 1997 at the Department of Juvenile Justice, and on November 19, 1997, the Board of Juvenile Justice adopted the final regulations. The regulations become effective on January 1, 1998.

The bracketed text reflects changes to the final regulation previously published in 14:2 VA.R. 256-269 October 13, 1997.

Title of Regulation: 6 VAC 35-40-10 et seq. Predispositional and Postdispositional Group Home Standards (REPEALED).

Title of Regulation: 6 VAC 35-70-10 et seq. Standards for Juvenile Correctional Centers (REPEALED).

Title of Regulation: 6 VAC 35-90-10 et seq. Standards for Post Dispositional Confinement for Secure Detention and Court Service Units (REPEALED).

Title of Regulation: 6 VAC 35-100-10 et seq. Standards for Secure Detention (REPEALED).

Title of Regulation: 6 VAC 35-120-10 et seq. Standards for Family Group Homes (REPEALED).

Title of Regulation: 6 VAC 35-140-10 et seq. Standards for Juvenile Residential Facilities.

Statutory Authority: §§ 16.1-309.9, 66-10 and 66-25.1 of the Code of Virginia.

Effective Date: January 1, 1998.

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Summary:

These Standards for Juvenile Residential Facilities replace five separate regulations governing secure detention homes, postdispositional confinement in secure detention, predispositional and postdispositional group homes, family group homes, and juvenile correctional centers. Since Standards for the Interdepartmental Regulation of Residential Facilities for Children, commonly referred to as "CORE Standards," will continue to apply to these facilities, the deletion of standards that duplicated CORE will not change fundamental requirements.

These consolidated standards also provide, for the first time, standards for juvenile boot camps, work camps, juvenile industries projects in juvenile correctional centers, and independent living programs. The consolidated standards also reflect changes in the law, such as the mental health screening required when a juvenile is admitted to secure detention.

In general, the consolidated standards are simpler and more flexible than the regulations they replace, while continuing to protect resident juveniles, staff, volunteers and visitors in the facilities and the safety of the public.

Summary of Public Comments 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 Donald Carignan, Regulatory Coordinator, Board of Juvenile Justice, P.O. Box 1110, Richmond, VA 23228-1110, telephone (804) 371-0743.

CHAPTER 140.

STANDARDS FOR JUVENILE RESIDENTIAL FACILITIES.

PART I.

GENERAL PROVISIONS.

6 VAC 35-140-10. Definitions.

Unless the context clearly indicates otherwise, terms that are defined in Standards for the Interdepartmental Regulation of Residential Facilities for Children shall have the same meaning when used in this chapter, and the following words and terms have the following meanings:

"Board" means Board of Juvenile Justice.

"Boot camp" means a short-term secure or nonsecure juvenile residential program that includes aspects of basic military training, such as drill and ceremony.

~~"Control room" means a room on a living unit where staff can monitor the activities of juveniles on the unit and serves as the staff office.~~

"Department" means the Department of Juvenile Justice.

~~"Detention home" means a local or regional public or private locked residential secure facility which has~~

~~construction fixtures designed to prevent escape and to restrict the movement and activities of houses juveniles held in lawful custody who are ordered detained pursuant to the Code of Virginia.~~

"Family operated group home" means a private home in which juveniles may reside upon placement by a lawful child-placing agency.

"Health-trained staff person" means a person trained to provide assistance to a physician, physician's assistant, or other professional medical staff by performing such duties as preparing or reviewing screening forms for needed follow up, preparing residents and their records for sick call, and assisting in the implementation of medical orders regarding diets, housing and work assignments.

"Independent living program" means a residential program designed to help residents obtain skills which will allow them to become self-sufficient adults and which provides limited supervision by adults and encourages independent decision making.

"Infraction" or "rule violation" means a violation of the program's rules of conduct, in one of the following degrees of severity:

"Major rule violation" means any action that is illegal or any action expressly prohibited by those legally responsible for administration and operation of the facility ~~including any actions which threaten~~ which threatens the life, safety or security of persons or property and requires due process for resolution.

"Moderate infraction" or "intermediate infraction" means a violation of the program's rules of conduct ~~causing a loss of some significance and~~ requiring use of due process procedures ~~that may result in disciplinary confinement, loss of privileges, or lengthened time in the program~~ for resolution.

"Minor infraction" means a violation of the program's rules of conduct that staff may resolve informally ~~without imposing serious penalties.~~

"Isolation" means the confinement of a resident, after due process, in a single self-contained cell for a specified period of time as a disciplinary sanction for rule infractions. During isolation, all activities with the exception of eating, sleeping, personal hygiene, reading and writing are restricted and the resident is not permitted to participate in activities with other residents.

~~"Juvenile" or "youth" means any person less than 18 years of age.~~

"Juvenile correctional center" means a secure facility operated by, or under contract with, the Department of Juvenile Justice to house and treat persons committed juveniles to the department. Unless the context clearly indicates otherwise, the term includes the reception and diagnostic center.

"Main control center" means the central point within a secure facility where security activities are monitored and controlled 24 hours a day, with equipment, staffing and access appropriate to the facility's security level.

"Master file" means the complete record of a juvenile committed resident which is retained at the reception and diagnostic center.

"Medical record" means the complete record of medical screening and examination information and ongoing records of medical and ancillary service delivery including all findings, diagnoses, treatments, dispositions, prescriptions and their administration.

"Military style discipline" means a system whereby staff in a boot camp, Junior ROTC program or other military-style program are authorized to respond to minor infractions at the moment they notice the infraction being committed by imposing immediate sanctions. The offender may be directed immediately to perform some physical feat, such as pushups or some other sanction as provided for in the facility's written policies and procedures.

"Personal control unit room" means an area containing a sleeping room with locked doors, which houses where residents are housed who have serious behavior problems or who are a threat to which threaten self, others or facility security.

"Resident" means a juvenile or other person who is legally placed in or formally admitted to the facility. In some facilities, residents may be referred to as wards or detainees.

"Room confinement" means restricting a resident to his room.

"Secure facility" means a local, regional or state publicly or privately operated residential facility for children which has construction fixtures designed to prevent escape and to restrict the movement and activities of juveniles held in lawful custody.

"Segregation" means the placement of a resident, after proper administrative process, in a housing unit reserved for special management of residents for purposes of protective care or custodial management.

"Shall" means that an obligation to act is imposed.

~~"Summary punishments" means those punishments in a boot camp or Junior Reserve Officer Training Corps (JROTC) program that staff may impose at the moment they notice a minor infraction being committed, such as directing the offender to perform some physical feat, such as 20 pushups.~~

"Transfer file" means the complete record of a juvenile committed resident which accompanies the juvenile resident to whatever facility the juvenile resident is transferred to while in direct state care.

"Volunteer" means any individual or group who, of their own free will, and without any financial gain, provides goods or services to the program without compensation.

"Wilderness work camp" means a secure residential facility in a remote wilderness setting providing a program of therapeutic hard work to increase vocational skills.

6 VAC 35-140-20. Other applicable standards.

These standards will be applied in conjunction with Standards for the Interdepartmental Regulation of Residential Facilities for Children, jointly issued by the Board of Juvenile Justice, the State Board of Education, the State Mental Health, Mental Retardation and Substance Abuse Services Board, and the Board of Social Services. ~~Family operated group homes are not subject to the Standards for the Interdepartmental Regulation of Residential Facilities for Children.~~

6 VAC 35-140-30. Applicability.

A. All residential programs must meet the applicable standards in Parts I (6 VAC 35-140-10 et seq.) and II (6 VAC 35-140-50 et seq.) of this chapter.

B. Detention homes, juvenile correctional centers, wilderness work camps and boot camps operated as secure facilities must also meet the applicable standards in Part III (6 VAC 35-140-430 et seq.) of this chapter.

~~6 VAC 35-140-40. Substitute standards authorized on trial basis.~~

~~To encourage the development of outcome based performance measures in juvenile residential facilities, and to provide for trial testing of such measures, the board may, on a case-by-case basis and for a specified time, authorize individual programs to use an outcome based or performance based measure in place of a specific requirement of this regulation.~~

~~6 VAC 35-140-50. 6 VAC 35-140-40. Periodic review of regulation; Previous regulations terminated.~~

~~A. These standards shall be reviewed beginning three years after their effective date, and revised or amended pursuant to the Administrative Process Act.~~

~~B. This chapter replaces the following: Standards for Juvenile Correctional Centers (6 VAC 35-70-10 et seq.); Standards for Secure Detention (6 VAC 35-100-10 et seq.); Standards for Family Group Homes (6 VAC 35-120-10 et seq.); Holdover Standards (6 VAC 35-80-10 et seq.); Standards for Post Dispositional Confinement for Secure Detention and Court Service Units (6 VAC 35-90-10 et seq.); and Predispositional and Postdispositional Group Home Standards (6 VAC 35-40-10 et seq.).~~

PART II.

STANDARDS FOR ALL JUVENILE RESIDENTIAL FACILITIES.

Article 1.

Program Operation.

~~6 VAC 35-140-60. 6 VAC 35-140-50. Nondiscrimination.~~

Written policy, procedure and practice shall provide that:

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1. Youth are not discriminated against based on race, national origin, color, creed, religion, sex [or sexual orientation,] or disability;

2. Males and females in coeducational programs have equal access to all programs and activities; they may be housed in the same unit, but not the same sleeping room;

3. ~~Consistent with facility security,~~ Reasonable accommodation is made to integrate youth residents with disabilities with the general population and grant them access to program and service areas, provided such accommodation is consistent with facility security and is unlikely to place the ~~juvenile~~ resident or others into situations of direct threat to health or safety; and

4. Youth are not subjected to corporal or unusual punishment, humiliation, mental abuse, or punitive interference with the daily functions of living, such as eating or sleeping.

6 VAC 35-140-60. Residents' admission and orientation.

Written policy, procedure and practice governing the admission and orientation of residents shall provide for:

1. Verification of legal authority for placement;
2. Search of the resident and the resident's possessions, including inventory and storage or disposition of property, as appropriate;
3. Medical screening;
4. Notification of family including admission, visitation, and general information;
5. Interview with resident to answer questions and obtain information;
6. Explanation to resident of program services and schedules; and
7. Assignment of resident to a housing unit or room.

6 VAC 35-140-65. Orientation to facility rules and disciplinary procedures.

A. During the orientation to the facility, residents shall be given written information describing facility rules, the punishments for rule violations, and the facility's disciplinary procedures. These shall be explained to the resident and documented by the dated signature of resident and staff.

B. Where a language or literacy problem exists which can lead to a resident misunderstanding facility rules and regulations, staff or a qualified person under the supervision of staff shall assist the resident.

6 VAC 35-140-70. Resident's grievance procedure.

Written policy, procedure and practice shall provide that residents are oriented to and have continuing access to a grievance procedure which provides for:

1. Resident participation in the grievance process, with assistance from staff upon request;

2. Documented, timely responses to all grievances with the reasons for the decision;

3. At least one level of appeal;

4. Administrative review of grievances;

5. Protection of residents from reprisal for filing a grievance; [and]

6. Retention of all documentation related to grievances for three years from the date of the filing of the grievance [- and

7. Hearing of an emergency grievance within eight hours.]

~~6 VAC 35-140-70.~~ 6 VAC 35-140-75. Residents' mail.

~~A.~~ In accord with Written procedures policy, procedure and practice shall provide that:

1. In the presence of a witness, staff may ~~;-~~ 4. open and inspect incoming and outgoing mail for contraband, but shall not read it; and

2. ~~Open and inspect outgoing mail when there is reason to suspect that a resident's mail contains contraband or threatens safety or security.~~ Based on legitimate interests of facility order and security, staff may read, censor or reject residents' mail and shall notify residents when incoming or outgoing letters are withheld in part or in full;

~~B.~~ 3. Staff shall not open or read correspondence and mail:

4. a. From a court, legal counsel, administrators of the grievance system or administrators of the department; or

2. b. Addressed to parents, family, legal guardian, guardian ad litem, counsel, courts, officials of the committing authority, public officials or grievance administrators; unless permission has been obtained from a court of competent jurisdiction or when there is a reasonable belief that the security of a [state] facility is threatened as provided for by written [department] procedures;

4. Incoming and outgoing letters shall be held for no more than 24 hours and packages for no more than 48 hours, excluding weekends and holidays;

5. Cash, stamps and other specified items [shall may] be held for the resident;

~~C.~~ 6. Upon request, each youth resident shall be given postage and writing materials for all legal correspondence and to mail at least two letters per week in addition to all legal correspondence; and

~~D.~~ 7. Residents shall be permitted to correspond at their own expense; youths shall be permitted to correspond

with any person or organization provided such correspondence does not pose a threat to facility order and security and is not being used to violate or to conspire to violate the law.

6 VAC 35-140-80. Telephone calls.

~~The facility shall have~~ Residents shall be permitted [reasonable] access to a telephone in accordance with policies and procedures governing residents' use of the telephone that take into account the need for facility security and order, resident behavior, and program objectives.

6 VAC 35-140-90. Visitation.

~~The facility shall have~~ A. Residents shall be permitted to have visitors, consistent with written policies and procedures governing visits, and that take into account the need for facility security and order and the behavior of individual residents and visitors.

B. The facility shall have a designated visiting area.

6 VAC 35-140-100. School classrooms.

In facilities that operate school programs at the facility, school classrooms shall be designed in consultation with the appropriate education authorities to comply with applicable state or local requirements.

~~6 VAC 35-140-100. Youths'~~ **6 VAC 35-140-110. Residents' funds.**

Written policy, procedure and practice shall provide that youths' residents' funds are used only for their benefit; to pay court ordered restitutions, fines or costs for payments ordered by a court of competent jurisdiction; or to pay institution fines imposed through restitution for damaged property or personal injury as determined by disciplinary procedures.

~~6 VAC 35-140-110. Juvenile grievance procedure.~~

~~All residents shall have access to a grievance process that by policy, procedure and practice provides for:~~

- ~~1. Staff and resident participation in the grievance process;~~
- ~~2. Documented, timely responses to all grievances, with the reasons for the decision;~~
- ~~3. At least one level of appeal;~~
- ~~4. Administrative review of grievances.~~

6 VAC 35-140-120. Contraband.

~~The facility shall have and follow~~ Written procedures to policy, [procedures procedure] and practice shall provide for the control, detect detection and dispose disposition of contraband.

6 VAC 35-140-130. Criminal activity.

Written policy, procedure and practice shall require that:

1. All ~~known~~ criminal activity by residents is reported to the facility director or family group home supervisor or designee program administrator for appropriate action; and

2. Any ~~known~~ felony committed on or off the premises by residents or staff is reported, as appropriate, to the facility director or group home supervisor or designee, to the program administrator and the appropriate state police, or local law-enforcement, or the intake officer agency.

6 VAC 35-140-140. Transportation.

It shall be the responsibility of the facility to have transportation available or to make the necessary arrangements for routine and emergency transportation ~~shall be available.~~

6 VAC 35-140-150. Nonresidential programs and services.

Any nonresidential services offered shall comply with all applicable laws and regulations.

6 VAC 35-140-160. Insurance.

A. Each residential program shall have:

1. Liability insurance for all employees;
2. Insurance to protect volunteers, if applicable the program uses volunteers;
3. Premises liability insurance;
4. Vehicle insurance for facility vehicles.

B. Staff shall be informed when hired of the requirements to provide insurance coverage while using personal vehicles for official business.

6 VAC 35-140-170. Computer security.

If log book type information is recorded on computer, all entries shall post the date, time and name of the person making an entry; the computer shall be so equipped as to prevent previous entries ~~cannot be~~ from being overwritten.

6 VAC 35-140-180. Release procedures.

Residents shall be released only in accord with written policy and procedure.

Article 2.
Health Care.

~~6 VAC 35-140-190. Health screening and mental health screening at admission.~~

Written policy, procedure and practice shall require that:

1. All youth newly admitted to a facility or system To prevent newly-arrived residents who pose a health or safety threat to themselves or others from being admitted to the general population, all residents shall immediately upon admission undergo a preliminary health screening consisting of a structured interview and observation by

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~~individuals who have been trained to use health care personnel or health-trained staff, using a health screening tool or instrument form that has been approved by the facility's health authority.~~

~~2. In secure detention facilities, a mental health screening shall be provided in accordance with § 16.1-248.2 of the Code of Virginia.~~

3. 2. Youth admitted to the facility who pose a health or safety threat to themselves or others are not admitted to the facility's general population but provision shall be made for them to receive comparable services.

4. 3. Immediate health care is provided to youth residents who need it.

6 VAC 35-140-200. Training regarding special medical needs of residents.

Written policy, procedure and practice shall provide that staff shall be trained in universal precautions regarding HIV and shall follow procedures for dealing with residents ~~who are HIV positive~~ or who have infectious or communicable diseases.

6 VAC 35-140-210. Informed consent as to health care.

Written policy, procedure and practice shall provide that:

1. The informed consent to health care shall be obtained from the youth resident, parent, guardian or legal custodian as required by law.

2. Residents may refuse, in writing, medical treatment and care.

3. When health care is rendered against the resident's will, it shall be in accordance with applicable laws and regulations.

6 VAC 35-140-220. Residents' medical record.

A. Written policy, procedure and practice shall provide that residents' active medical records shall be:

1. Kept confidential from unauthorized persons and in a file separate from the case record;

2. Readily accessible in case of emergency; and

3. Made available to authorized staff ~~as defined in policy and procedure.~~

B. Residents' inactive medical records shall be retained and disposed of as required by The Library of Virginia.

6 VAC 35-140-230. Hospitalization of residents.

When a resident needs hospital care, a parent or legal guardian, a staff member, or a law-enforcement officer, as appropriate, shall accompany the resident and stay at least during admission and, in the case of securely detained or committed residents, until appropriate ~~continuing supervision is arranged~~ security arrangements are made.

6 VAC 35-140-240. Payment for treatment of preexisting conditions. (Reserved.)

~~The facility shall pay for the treatment of preexisting medical, dental, psychological or psychiatric conditions when:~~

~~1. The condition gives rise to a health emergency or the health authority determines that treatment of such a preexisting condition is necessary to the youth's health while a resident at the facility; and~~

~~2. The facility administrator has determined that no other source of payment is available.~~

6 VAC 35-140-250. Suicide prevention.

Written policy, procedure and practice shall provide that there is a suicide prevention and intervention program developed in consultation with a local or state mental health authority, and all direct care staff are trained in it.

Article 3.
Personnel.

6 VAC 35-140-260. Background checks on personnel.

A. All persons selected for employment after January 1, 1998, all family group home parents, all persons who teach in the facility or provide professional services on a regular basis, and all volunteers and interns who work ~~on a regular basis and will be alone with one juvenile, one-on-one~~ with residents shall immediately undergo a check, as specified in department procedures, of references, criminal records, central registry and, if appropriate, driving record.

B. If direct care staff are hired pending the completion of background checks, they shall always work with staff whose background checks have been completed.

6 VAC 35-140-270. Physical examination.

When the qualifications for a position require a given level of health or physical ability, all persons selected for such positions shall be examined by a physician at the time of employment to ensure ~~that~~ they have the level of medical health ~~and~~ or physical ability required to perform assigned duties.

6 VAC 35-140-280. Training.

A. Initial orientation and annual training shall be provided to all staff, relief staff, volunteers, interns and family group home parents, in accord with each position's job description and annual training plan. ~~As applicable to the position, the annual training plan shall address:~~

~~1. The training required by 6 VAC 35-140-200, 6 VAC 35-140-210, 6 VAC 35-140-260, 6 VAC 35-140-670 and 6 VAC 35-140-690;~~

~~2. Training required by the Standards for the Interdepartmental Regulation of Residential Facilities for Children; and~~

~~3. Training goals and objectives specific to the position.~~

B. Prior to assuming their duties, staff responsible for supervising residents shall receive an orientation that addresses at least the following items:

1. The facility's program philosophy and services;
2. Residents' rules and the facility's behavior management program;
3. Residents' rights and responsibilities;
4. Residents' disciplinary and grievance procedures;
5. Security and emergency procedures; and
6. Documentation requirements.

C. All full-time staff who provide direct services or supervision to residents or families shall receive at least 40 hours of training annually, not including initial orientation. As applicable to the individual's position, this training shall include the training required by:

1. The Standards for the Interdepartmental Regulation of Residential Facilities for Children; and
2. The standards in this regulation dealing with [; :]
 - a. Suicide prevention (6 VAC 35-140-250);
 - b. Special medical needs of residents (6 VAC 35-140-200);
 - c. Health screenings at admission (6 VAC 35-140-190); and
 - d. Mechanical restraints (6 VAC 35-140-680).

6 VAC 35-140-290. Outside personnel working in the facility.

A. Facility staff shall monitor all situations in which outside personnel ~~working~~ perform any kind of work in the immediate presence of youth in the facility.

B. Adult inmates or persons assigned to perform services as a result of a conviction in an adult court shall not work in areas of the facility where youth are present.

Article 4.
Safety and Physical Environment.

6 VAC 35-140-300. Showers.

Residents shall have ~~access to showers~~ the opportunity to shower daily.

6 VAC 35-140-310. Inspections.

All safety, emergency and communications systems shall be inspected by designated staff according to a schedule which is approved by the facility administrator and which meets all applicable regulations.

6 VAC 35-140-320. Repair or replacement of defective equipment.

Whenever equipment is found to be defective, immediate steps shall be taken to rectify the situation and to repair or replace the defective equipment.

6 VAC 35-140-330. Lighting in housing and activity areas.

A. Sleeping and activity areas shall provide natural lighting.

B. There shall be night lighting sufficient to observe residents.

6 VAC 35-140-340. Fire prevention.

A. There shall be a fire prevention plan that provides for an adequate fire protection service.

B. The facility shall have receptacles for disposing of flammable materials.

C. All flammable, toxic and caustic materials shall be stored and used in accord with federal, state and local requirements.

D. Flame retardant and nontoxic materials shall be used in construction and furnishings.

Article 5.
Independent Living Programs.

6 VAC 35-140-350. Independent living programs.

Independent living programs shall have a written description of the curriculum and methods used to teach living skills, which shall include finding and keeping a job, managing personal finances, household budgeting, and other life skills.

Article 6.
Standards for Family Group Homes.

6 VAC 35-140-360. Requirements of family group home systems.

Family group home systems shall have written policies and procedures for:

1. Setting the number of youth to be housed in each home and room of the home, and prohibiting youth and adults from sharing sleeping rooms without specific approval from the program administrator;
2. Providing supervision of and guidance for the family group home parents and relief staff;
3. Admitting and orienting ~~juveniles placed in a home~~ residents;
4. ~~Promptly~~ Preparing and ~~periodically~~ reviewing a treatment plan for each ~~juvenile~~ resident within 30 days of admission, or 72 hours in the case of a temporary care facility, and reviewing the plan quarterly;

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5. Providing appropriate programs and services from intake through release;

6. Providing ~~youth~~ residents with spending money;

7. Managing ~~juvenile~~ resident records and releasing information;

8. Providing medical and dental care to ~~juveniles~~ residents;

9. Notifying ~~interested parties promptly~~ parents, guardians, the placing agency and the regulatory authority of any serious incident as specified in department policy;

10. Making a ~~qualified~~ program supervisor or designated staff person available to ~~youths~~ residents and house parents 24 hours a day;

11. Ensuring the secure control of any firearms and ammunition in the home.

6 VAC 35-140-370. Examination by physician.

Each ~~youth~~ resident admitted to a family group home ~~for more than 60 days~~ shall have a physical examination including tuberculosis screening within ~~44~~ 30 days of admission, unless the ~~youth~~ resident was examined within six months prior to admission to the program.

6 VAC 35-140-380. Requirements of family group homes.

Each family group home shall have:

1. A fire extinguisher, inspected annually;
2. Smoke alarm devices in working condition;
3. Alternative methods of escape from second story;
4. Modern sanitation facilities;
- ~~5. Inspection of private water supplies;~~
5. Freedom from physical hazards;
- ~~7.~~ 6. A written emergency plan that is communicated to all new residents at orientation;
- ~~8.~~ 7. A An up-to-date listing of medical and other emergency resources in the community;
- ~~9.~~ 8. A separate bed for each ~~juvenile~~ resident, with clean sheets and linens weekly;
- ~~10.~~ 9. A bedroom that is well illuminated and ventilated; that is in good repair; that is not a hallway, unfinished basement or attic; and that provides conditions for privacy through the use of dividers or furniture arrangements;
- ~~11.~~ 10. A place to store ~~youths'~~ residents' clothing and personal items;
- ~~12.~~ 11. Sanitary toilet and bath facilities that are adequate for the number of residents;

~~13.~~ 12. A safe and clean place for indoor and outdoor recreation;

13. Adequate and comfortable furniture;

~~15.~~ 14. Adequate laundry facilities or laundry services;

~~16.~~ 15. A clean and pleasant dining area; ~~and~~

~~17.~~ 16. Adequate and nutritionally balanced meals; and

17. Daily provision of clean clothing and articles necessary for maintaining proper personal hygiene.

Article 7. Boot Camps.

6 VAC 35-140-390. Staff physical and psychological qualifications.

The boot camp shall include in the qualifications for staff positions a statement of:

1. The physical fitness level requirements for each staff position; and
2. Any psychological assessment or evaluation required prior to employment.

6 VAC 35-140-400. Juveniles' Residents' physical qualifications.

The boot camp shall have written policies and procedures that ~~govern~~ [~~address~~ govern]:

1. Admission ~~criteria, including the physical conditioning a youth must demonstrate to qualify for admission~~ a required written statement from a physician that the juvenile meets the American Pediatric Council's guidelines to participate in contact sports and from a licensed mental health professional that the juvenile is an appropriate candidate for a boot camp program; and
2. Discharge, should a ~~juvenile~~ resident be physically unable to keep up with the program.

6 VAC 35-140-410. Juveniles' Residents' nonparticipation.

The boot camp shall have written procedures approved by the department for dealing with ~~youth~~ residents who are not complying with boot camp program requirements.

6 VAC 35-140-420. Program description.

The boot camp shall have a written program description that states:

1. How ~~youths'~~ residents' physical training, work assignment, education and vocational training and treatment program participation will be interrelated;
2. The length of the boot camp program and the kind and duration of treatment and supervision that will be provided upon the ~~juvenile's~~ resident's release from the residential program;

3. Whether youth residents will be cycled through the program individually or in platoons; and
4. The program's incentives and sanctions, including whether military or correctional discipline will be used; if military style discipline is used, written procedures shall specify what summary punishments are permitted.

PART III.

STANDARDS FOR ALL SECURE FACILITIES.

Article 1.

General Requirements of Secure Facilities.

6 VAC 35-140-430. Mental health assessment in secure detention.

Written policy, procedure and practice shall provide that:

1. As part of the intake process in each secure detention facility, staff [trained in the application of an approved assessment tool] shall ascertain the resident's need for a mental health assessment; and
2. If staff determine that a mental health assessment is needed, it shall take place within 24 hours of such determination.

6 VAC 35-140-430 6 VAC 35-140-440. Classification plan.

Juveniles Residents shall be assigned to sleeping rooms and living units according to a written plan that takes into consideration facility design, staffing levels, and the behavior and characteristics of individual juveniles and characteristics of the facility's juvenile population residents.

6 VAC 35-140-440. Juvenile's 6 VAC 35-140-450. Resident's physical examination; responsibility for preexisting conditions.

A. Within five days of admission, all juveniles residents who are not directly transferred from another secure juvenile residential facility shall be medically examined by a physician or a qualified health care practitioner operating under the supervision of a physician to determine if the youth resident requires medical attention or poses a threat to the health of staff or other juveniles residents.

B. The secure custody facility shall not accept financial responsibility for preexisting medical, dental, psychological or psychiatric conditions except on an emergency basis.

6 VAC 35-140-450. 6 VAC 35-140-460. Health authority.

A physician, health administrator or health agency shall be designated the health authority responsible for arranging all levels of health care, consistent with law and medical ethics.

6 VAC 35-140-460. 6 VAC 35-140-470. Medical space and equipment.

There shall be a central medical room with medical examination facilities equipped in consultation with the health authority.

6 VAC 35-140-470. Juveniles' 6 VAC 35-140-480. Residents' personal possessions.

Juveniles' Residents' personal possessions shall be inventoried and documented in the case file upon admission and either:

1. Securely stored during the juvenile's residence and returned upon release;
2. Given to the juvenile's resident's parents or guardians; or
3. Shipped to the juvenile's resident's last known address.

6 VAC 35-140-480. 6 VAC 35-140-490. Area and equipment restrictions.

A. Written procedures shall govern access to all areas where food or utensils are stored.

B. All security, maintenance, educational, recreational, culinary, and medical equipment shall be inventoried and controlled.

C. Juveniles Residents shall not be permitted to work in the detention home food service.

6 VAC 35-140-490. 6 VAC 35-140-500. Reading materials.

Reading materials that are appropriate to residents' ages and levels of competency shall be available to all juveniles, residents and shall be coordinated by a designated person.

6 VAC 35-140-500. 6 VAC 35-140-510. Postdispositional detention placements.

A. If a detention home [or group home] accepts postdispositional placements, it shall have written policies, procedure and practice governing the postdispositional program which shall have regard for reasonable utilization of the facility.

B. When a juvenile is ordered by a court, pursuant to § [16.1-248.1 B 16.1-284.1 B] of the Code of Virginia, into a facility that houses postdispositionally detained youth, the facility shall:

1. Obtain from the supervising agency a copy of the court order, the resident's most recent social history, and any other written information considered by the court during the sentencing hearing; and
2. Have a written plan with the court service unit within five days to enable such youth to take part in one or more community locally available treatment programs appropriate for their rehabilitation which may be provided in the community or at the facility.

6 VAC 35-140-510. 6 VAC 35-140-520. Housing and activity areas.

In all secure detention facilities and in juvenile correctional centers constructed after January 1, 1998, [in] sleeping [rooms] and activity areas [residents] shall [have] access to [provide] fresh drinking water and toilet facilities.

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~~6 VAC 35-140-520. Sleeping rooms in personal control units.~~

~~There shall be no more than two juveniles in each room in personal control units.~~

6 VAC 35-140-530. Outdoor recreation.

~~There shall be a level, well-drained an appropriate outdoor area in which residents are permitted to exercise daily, subject to unless prevented by documented adverse weather conditions and or threat to facility security, behavior management and discipline procedures.~~

6 VAC 35-140-540. Supervision of juveniles residents by staff.

A. Staff shall provide 24-hour awake supervision seven days a week.

B. ~~In juvenile correctional centers,~~ When both males and females are housed in the same living unit, at least one male and one female staff member shall be actively supervising at all times.

C. ~~In secure detention facilities,~~ Staff shall always be in plain view of staff of the opposite sex when entering an area occupied by juveniles residents of the opposite sex.

~~6 VAC 35-140-550. Major rule violations.~~

~~A. During the orientation to the facility, major rule violations and the punishments for such violations shall be explained to the juvenile and documented by the juvenile's and staff member's signatures and date.~~

~~B. Where a language or literacy problem exists which can lead to resident misunderstanding of facility rules and regulations, staff or a qualified person under the supervision of staff shall assist the resident.~~

~~6 VAC 35-140-560.~~ **6 VAC 35-140-550. Due process.**

~~The secure facility shall have and follow procedures for:~~
A. In each secure detention facility, when a rule violation occurs which is punishable by confinement for 48 hours or less, written policy, procedure and practice shall provide for:]

- [1. Reporting major rule violations to supervisory personnel;
2. Conducting a timely, impartial investigation and hearing including provisions for the youth to participate in and to be represented at the hearing;
3. Recording and notifying the parties of the hearing's findings and any action taken;
4. Expunging all reference to the charges if the youth is found innocent;
5. Reviewing the hearing record to ensure conformity with policy and regulations; and
6. Permitting the juvenile to appeal the decision.]

[B.] In each secure [~~custody~~ detention] facility, [when a rule violation occurs which is punishable by confinement for more than 48 hours, and in all other secure custody facilities when a major or moderate rule violation occurs,] written policy, procedure and practice shall provide the following:

1. Staff shall prepare a disciplinary report when a resident has committed a major or moderate violation of facility rules [~~or a minor violation that is required by department procedure to be reported~~].

2. When necessary to protect the facility's security or the safety of the resident or others, a resident who is charged with a [major] rule violation may be confined pending a due process hearing for up to 24 hours; an administrator who was not involved in the incident must approve any longer confinement.

3. A resident who is charged with a major or moderate rule violation shall be:

- a. Given a written copy of the charge within 24 hours of the infraction;
- b. Scheduled for a hearing no later than 48 hours after the infraction, excluding weekends and holidays; and
- c. Given 24 hours notice of the time and place of the hearing, but the hearing may be held within 24 hours with the resident's written consent.

4. Disciplinary hearings on rule violations shall be conducted by an impartial person or panel of persons; a record of the proceedings shall be made and shall be kept for six months.

5. Residents charged with rule violations shall be present at the hearing unless they waive that right in writing or through their behavior but may be excluded during the testimony of any resident whose testimony must be given in confidence. The reason for the resident's absence or exclusion shall be documented.

6. Residents shall be permitted to make a statement and present evidence at the hearing and to request witnesses on their behalf. The reasons for denying such requests shall be documented.

7. At the resident's request, a staff member shall represent the resident at the hearing and question witnesses. A staff member shall be appointed to help the resident when it is apparent that the resident is not capable of effectively collecting and presenting evidence on his own behalf.

8. A written record shall be made of the hearing decision and given to the resident. The hearing record shall be kept in the resident's file and in the disciplinary committee's records.

9. The disciplinary report shall be removed from the file of a resident who is found not guilty.

10. The facility administrator or designee shall review all disciplinary hearings and dispositions to ensure conformity with policy and regulations.

11. The resident shall have the right to appeal the disciplinary hearing decision to the facility administrator or designee within 24 hours of receiving the decision. The appeal shall be decided within 24 hours of its receipt, and the resident shall be notified in writing of the results within three days. These time frames do not include weekends and holidays.

~~6 VAC 35-140-570.~~ **6 VAC 35-140-560. Room confinement and isolation.**

A. Written policy, procedures and practice shall govern how and when ~~juveniles~~ residents may be confined ~~within the facility~~ to a room and shall provide for:

1. Staff checks at least every 30 minutes and more often if indicated by the circumstances;
2. Staff checks at least every 15 minutes when the resident is on suicide watch; and
3. At least one hour of physical exercise daily.

B. If a ~~juvenile~~ resident in secure detention is confined to his room for more than 24 hours, the superintendent or designee shall be notified. If the confinement extends to more than 72 hours, the confinement shall be immediately reported to the regional manager along with the steps being taken or planned by the facility to resolve the situation and followed immediately with a faxed copy of the report to the regional manager.

C. If a ~~juvenile~~ resident in a juvenile correctional center is confined for more than 24 hours, the superintendent or designee shall be notified. If the confinement extends to 72 hours, the Chief of Operations for Juvenile Correctional Centers, or designee, must approve the continued confinement. Residents who are confined to their rooms shall be given an opportunity to exercise daily.

D. Room confinement as a sanction, or isolation, shall not exceed five days.

[E. The director or designee shall make personal contact with the resident each day of confinement.]

~~6 VAC 35-140-580.~~ **6 VAC 35-140-570. Questioning of residents.**

~~No local, state or federal authority shall be permitted to question a resident without~~ The facility shall have written policy, procedure and practice governing the permission of required to be obtained from the committing agency, attorney, parent or guardian or other person standing in loco parentis before permitting any local, state or federal authority to question a resident.

6 VAC 35-140-580. Facility area searches.

Written policy, procedure and practice shall provide for regular searches of the facility and shall provide for respecting residents' rights to their own property.

6 VAC 35-140-590. Searches of juveniles residents.

Written policy, procedure and practice shall provide for searches of residents' persons to maintain facility security and control contraband and shall specify that:

1. ~~Unreasonable searches and undue force are prohibited~~ The resident shall not be touched any more than is necessary to conduct a comprehensive search.
2. Only qualified medical personnel conduct body cavity searches and only when specifically authorized by the facility director or a court. [Inspections are to be fully documented in the resident's medical file.]
3. Strip searches are performed visually by staff of the same sex as the resident in an area that ensures privacy.
4. Any witness to a body cavity search or strip search is of the ~~resident's sex~~ same gender as the resident.

6 VAC 35-140-600. Main Control center.

~~Staff shall monitor and coordinate~~ To maintain the internal security, ~~safety and communications systems from~~ of the facility, a ~~main~~ control center ~~with restricted~~ that is secured from residents' access shall be staffed 24 hours a day to integrate all external and internal security functions and communications networks.

6 VAC 35-140-610. Communications systems.

A. There shall be a ~~communications system~~ means for communicating between the ~~main~~ control center and living areas.

B. The facility shall be able to provide communications in an emergency.

C. A secure custody facility shall have a communications system linked to the community, and written procedures governing its use.

6 VAC 35-140-620. Keys.

~~A. Each key's current location shall be readily accounted for~~ The facility shall have a written key control plan to keep keys secure at all times.

~~B. Keys shall be identified in a manner appropriate to the level of security.~~

~~C. B. Fire and emergency keys shall be instantly identifiable by sight and touch.~~

~~D. C. There shall be different masters for the interior security and outer areas.~~

~~E. Keys shall be kept secure at all times.~~

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6 VAC 35-140-630. Control of perimeter.

There shall be a written plan to control the perimeter by appropriate means to contain confined juveniles residents and to prevent unauthorized access by the public.

6 VAC 35-140-640. Escapes.

~~The secure facility shall have and follow~~ Written policies, [procedures procedure] and practice shall govern staff actions to be taken regarding escapes and AWOLS.

6 VAC 35-140-650. Transportation of detained youth juveniles; transfer to department.

A. Detained juveniles shall be transported in accord with "Guidelines for Transporting Juveniles in Detention" issued by the board in accord with § 16.1-254 of the Code of Virginia.

B. When a juvenile is transported to the department from a detention home, all information pertaining to the youth's juvenile's medical, educational, behavioral and family problems circumstances during the resident's stay in detention shall be sent to the department (i) with the juvenile, if the home is given at least 24 hours notice; or (ii) as soon as possible within 24 hours after the youth juvenile is transported, if such notice is not given.

6 VAC 35-140-660. Chemical agents.

~~A. Written procedure and practice shall provide for a progressive response to juvenile behavior which at a minimum begins with verbal calming and delineates when physical, mechanical or chemical restraints may be used, including documentation requirements.~~

~~B. Written policy shall restrict the use of a chemical agent only to instances of justifiable protection of residents and staff and shall prohibit the use of any chemical agent as a means of punishment.~~

~~C. Only those chemical agents that have been approved by the board shall be permitted in the facility. There shall be a written description, including the name and chemical analysis, of the chemical agent to be maintained for use. Written procedure shall prohibit the use of any other chemical agent except one that has the same analysis and composition.~~

~~D. Written procedure and practice shall require the safe and secure storage of the chemical agent and shall specify:~~

- ~~1. Which staff have access to and are authorized to use the chemical agent;~~
- ~~2. The circumstances under which staff members may carry the chemical agent on their person; and~~
- ~~3. That only properly trained staff may use the chemical agent. A program of training shall include at least:
 - ~~a. An understanding of the circumstances under which the chemical agent may be used;~~~~

~~b. An overview of the chemical agent's symptoms and their duration; the chemical agent's medical and physiological effects; and the requirements for storage, maintenance and replacement;~~

~~c. How to properly use the chemical agent;~~

~~d. Decontamination procedures; and~~

~~e. First aid, postexposure observation for nonmedical staff, and treatment.~~

~~E. Written procedure and practice shall require periodic inspection of the chemical agent consistent with the scheduled inspection of other security devices, and must provide for the disposal of outdated canisters as required by the manufacturer.~~

~~F. Written procedure must specify the decontamination steps to be followed after the situation is stabilized and the requirements for postexposure observation. At a minimum it shall include close monitoring of the subject's breathing for 24 hours and the provision of emergency medical treatment, if needed.~~

~~G. Written procedure shall provide for immediate reporting of the use of the chemical agent to the facility administrator or designee, and the completion of a department reportable incident form.~~

Tear gas, mace, pepper spray and related chemical agents for security [shall not may] be used by staff [not allowed on the premises except only] when the board has approved the use of a specific chemical agent in an individual facility based on a demonstrated compelling security need and the establishment of adequate safeguards in accordance with guidelines issued by the board.

6 VAC 35-140-670. Mechanical restraints.

~~A. Only restraints approved by the board shall be permitted in the facility.~~

~~B. Restraints shall be kept at a designated location.~~

~~C. When transporting or moving juveniles, the use of mechanical restraints shall be in accord with written procedures.~~

Written policy, procedure and practice shall govern the use of mechanical restraints in each secure custody facility. Such policies and procedures shall be approved by the regulatory authority and shall specify:

1. The conditions under which handcuffs, waist chains, leg irons, disposable plastic cuffs and leather restraints may and may not be used;
2. That the approval of the facility director or designee shall be obtained immediately upon using restraints in an emergency situation.
3. That restraints shall never be applied as punishment.

~~F. Juveniles~~ 4. That residents shall not be restrained to a fixed object or restrained in an unnatural position.

~~G. Mechanical restraints shall be used only to protect persons or property or prevent escapes after other efforts to control the situation have failed, and in accordance with law.~~

~~H. Mechanical restraints used shall be the least restrictive needed to control the behavior.~~

~~I. No juvenile shall be restrained for longer than necessary to regain control of his behavior.~~

J. 5. That each use of mechanical restraints, except when used to transport a juvenile resident, shall be recorded in the youth's resident's case file or in a central log book.

6 VAC 35-140-680. Training required to use mechanical restraints.

If a facility uses mechanical restraints, written policy, procedure and practice shall provide that all staff who are authorized to use restraints shall receive department-approved training in their use, including how to check the youth's resident's circulation and how to check for injuries; only properly trained staff shall use restraints.

6 VAC 35-140-690. Monitoring restrained juveniles residents.

Written policy, procedure and practice shall provide that when a youth resident is mechanically restrained, staff shall:

1. Provide for the youth's resident's reasonable comfort and ensure the youth's resident's access to water, meals and toilet, and ~~either;~~
4. 2. Make a direct personal check on the youth resident at least every 15 minutes; and more often if the youth's resident's behavior warrants; ~~or [; and]~~
- ~~2. [3. If the resident exhibits self-injurious behavior] [keep the youth under constant visual supervision along an uninterrupted line of sight, either directly, or through windows, or via video monitoring.]~~

6 VAC 35-140-700. Consultation with mental health professional.

A. Written policy [; and] procedure [developed in consultation with a mental health authority,] and [facility] practice shall provide that:

1. When a youth resident is restrained for more than two hours cumulatively in any 24-hour period, except when being transported, trained staff shall make and document a determination, arrived at in accordance with [those] policies and procedures, as to whether a mental health problem is indicated; and
- B. 2. If a mental health problem is indicated, staff shall immediately consult with and document that they have consulted with a licensed mental health professional or the local community services board.

Article 2.

Wilderness Work Camps.

6 VAC 35-140-710. Wilderness work camps.

The wilderness work camp shall have a written statement describing program description including:

1. Its intended juvenile offender population;
2. How youths' a resident's work assignment, education and vocational training and treatment program participation will be interrelated;
3. The length of the wilderness work camp program and the kind and duration of treatment and supervision that will be provided upon the juvenile's resident's release from the residential program; and
4. The program's incentives and sanctions.

Article 3.

Juvenile Correctional Centers.

6 VAC 35-140-720. Coordination with court service unit staff.

A. Treatment staff at the reception and diagnostic center ~~and at each juvenile correctional center~~ shall notify each youth's resident's probation or parole officer of the scheduled staffings and treatment team meetings to review the youth's progress staffing.

B. The facility's juvenile correctional center's treatment staff ~~and~~ shall notify the resident's probation or parole officer ~~taking part in~~ of the scheduled treatment team meeting ~~shall~~.

- ~~1. Review the youth's service plan and adjust as needed;~~
- ~~2. Sign the reviewed service plan; and~~
- ~~3. Send a copy to the reception and diagnostic center.~~

~~C. Treatment staff shall send the court service unit progress reports on each youth at least once every 60 days.~~

6 VAC 35-140-730. Isolation and segregation.

A. Residents placed in isolation shall be housed no more than one to a room.

B. Residents placed in personal control units or segregation units shall be housed no more than two to a room.

~~6 VAC 35-140-730. 6 VAC 35-140-740. Post orders or shift duties.~~

~~The superintendent or designee shall issue~~ For each security post in the facility, there shall be post orders or shift duties that provide details for carrying out daily operations. ~~The post orders or shift duties shall be submitted to the Chief of Operations for Juvenile Correctional Centers, or designee, prior to implementation.~~

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~~6 VAC 35-140-740.~~ **6 VAC 35-140-750. Population count.**

There shall be a system for each shift to count residents and notify appropriate designated staff of any changes in resident population. All housing moves, school and work assignments, admissions and releases shall be reflected on a daily master count sheet.

~~6 VAC 35-140-750.~~ **6 VAC 35-140-760. Institutional operating procedures.**

Institutional operating procedures shall be in place that are consistent with standard operating procedures that have been approved by the Chief of Operations for Juvenile Correctional Centers.

~~6 VAC 35-140-760.~~ **6 VAC 35-140-770. Transfer file.**

A. A separate transfer file shall be kept for each youth resident, documenting all treatment and significant events. All transfer files shall be kept current and in a uniform manner.

B. An exact copy of all material added to the transfer file shall be sent to the reception and diagnostic center for inclusion in the youth's resident's master file.

~~6 VAC 35-140-770.~~ **6 VAC 35-140-780. Privately operated juvenile correctional centers.**

In addition to the other requirements of juvenile correctional centers, privately operated juvenile correctional centers shall:

1. House only juveniles who have been committed to the department and who have been properly transferred to the facility by the department, unless otherwise specified by contract with the department; and
2. Follow the department's case management procedures and practices; and
- ~~3. Provide a written summary of a resident's behavior and other significant observations to the department upon request.~~

~~6 VAC 35-140-780.~~ **6 VAC 35-140-790. Junior ROTC program.**

Each Junior ROTC program shall have a written description of the program that states:

1. Criteria juveniles residents must meet to enter and remain in the program;
2. How military style discipline, including ~~summary punishments~~ immediate sanctions, will be applied; and
3. Criteria and procedures for terminating a juvenile's resident's participation in the program.

~~6 VAC 35-140-790.~~ **6 VAC 35-140-800. Agreements governing juvenile industries work programs.**

A. If the department enters into an agreement with a public or private entity for the operation of a work program pursuant to § 66-25.1 of the Code of Virginia, the agreement shall:

1. Comply with all applicable federal and state laws and regulations, including but not limited to the Fair Labor Standards Act (29 USC § 201 et seq.), child labor laws, workers' compensation insurance laws, and the Standards for the Interdepartmental Regulation of Residential Facilities for Children relating to work and employment;
 2. State the length of the agreement and the criteria by which it may be extended or terminated;
 3. Specify where juveniles residents will work and, if not at a juvenile correctional center, the security arrangements at the work site;
 4. Summarize the educational, vocational or job training benefits to youth residents.
- B. The agreement shall address how juveniles residents will be hired and supervised, including:
1. The application and selection process;
 2. The qualifications required of youth residents hired;
 3. A requirement that there be a job description for each juvenile's resident's position;
 4. Evaluation of each youth's resident's job related behaviors and attitudes, attendance and quality of work; and
 5. Whether and how either party may terminate a youth's resident's participation.
- C. The agreement shall address youth's resident's compensation including:
1. Whether juveniles residents are to be paid directly by the outside entity or through the department; and
 2. If applicable, whether any deductions shall be made from the juvenile's residents' compensation for subsistence payments, restitution to victims, etc.
- D. As applicable, the agreement shall specify:
1. That accurate records be kept of the work program's finances, materials inventories, and youths' residents' hours of work, and that such records be subject to inspection by either party and by an independent auditor;
 2. How the project's goods or services will be marketed;
 3. How proceeds from the project will be collected and distributed to the parties;
 4. Which party is responsible for providing:
 - a. The materials to be worked on;
 - b. The machinery to be used;
 - c. Technical training and supervision in the use of equipment or processes;
 - d. Utilities;

- e. Transportation of raw materials and finished goods; and
- f. Disposal of waste generated in the work project; and
- g. Safety and other special equipment and clothing required by juvenile workers.

DOCUMENT INCORPORATED BY REFERENCE

"Guidelines for Transporting Juveniles in Detention," Board of Youth and Family Services, June 13, 1991.

VA.R. Doc. No. R97-413; Filed December 3, 1997, 11:50 a.m.

TITLE 7. ECONOMIC DEVELOPMENT

VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

REGISTRAR'S NOTICE: The agency is claiming an exclusion from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4 (a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Virginia Small Business Financing Authority will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 7 VAC 15-10-10 et seq. Virginia Private Activity Bond Regulations (Repealed).

Statutory Authority: N/A

Effective Date: January 21, 1998.

Summary:

The Virginia Small Business Financing Authority (VSBFA) does not have statutory authority to promulgate regulations for the Virginia private activity bond program. Rather, § 15.2-5003 of the Code of Virginia provides that VSBFA shall establish guidelines which detail the specific administrative policies and procedures of the private activity bond program in Virginia. VSBFA has established new guidelines for the program which become effective on January 1, 1998. The "Virginia Private Activity Bond Allocation Guidelines - 1998" will be included in VSBFA's list of guidance documents filed with the Virginia Registrar, and copies of the guidelines may be obtained by contacting VSBFA. The Virginia Private Activity Bond Regulations are replaced by VSBFA's guidance document, "Virginia Private Activity Bond Allocation Guidelines - 1998."

Agency Contact: Questions concerning the repeal of this regulation may be directed to Cathleen M. Surface, Virginia

Small Business Financing Authority, 901 East Byrd Street, 19th Floor, Richmond, VA 23219, telephone (804) 371-8254.

VA.R. Doc. No. R98-139; Filed December 2, 1997, 2:17 p.m.

TITLE 11. GAMING

VIRGINIA RACING COMMISSION

Title of Regulation: 11 VAC 10-130-10 et seq. Virginia Breeders Fund (amending 11 VAC 10-130-10 through 11 VAC 10-130-40 and 11 VAC 10-130-60 through 11 VAC 10-130-80; adding 11 VAC 10-130-51, 11 VAC 10-130-75, 11 VAC 10-130-76 and 11 VAC 10-130-77; repealing 11 VAC 10-130-50).

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

Effective Date: January 22, 1998.

Summary:

The regulation establishes the operating procedures for the Virginia Breeders Fund, specifies the eligibility of horses and their owners for awards from the fund and the eligibility of horses for entry into races restricted to Virginia bred, and specifies the distribution of incentives from the fund.

Summary of Public Comments and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from William H. Anderson, Regulatory Coordinator, Virginia Racing Commission, 10700 Horsemen's Road, New Kent, VA 23124, telephone (804) 966-4200.

11 VAC 10-130-10. Definitions.

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

"Breeding season" means a period of time beginning on February 1 and ending on August 1 of each year. For Standardbreds, the breeding season means a period of time beginning February 15 and ending on July 15 of each year.

"Stallion owner" means an owner or lessee of record of a stallion that covered mares in the Commonwealth of Virginia during the breeding season in which it sired a Virginia-bred horse.

"Virginia-bred Arabian horse" means a registered Arabian horse foaled in the Commonwealth of Virginia.

"Virginia Arabian horse breeder" means the owner or lessee of record of the mare at the time of foaling of a Virginia-bred Arabian horse.

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"Virginia Arabian sire" means a registered Arabian stallion that covered mares only in the Commonwealth of Virginia during the breeding season in which it sired a Virginia-bred Arabian horse.

"Virginia-bred Quarter Horse" means a registered Quarter Horse foaled or conceived in the Commonwealth of Virginia.

"Virginia Quarter Horse breeder" means the owner or lessee of record of the mare at the time of conception of a Virginia-bred Quarter Horse.

"Virginia Quarter Horse sire" means a registered Quarter Horse stallion or registered Virginia Thoroughbred stallion that covered mares only in the Commonwealth of Virginia during the breeding season in which it sired a Virginia-bred Quarter Horse.

"Virginia-bred Standardbred horse" means a registered Standardbred horse foaled or conceived in the Commonwealth of Virginia. ~~After December 31 of the fifth calendar year following the year in which Standardbred racing first commences in the Commonwealth pursuant to an unlimited license issued by the commission, the horse must be, sired by a Virginia Standardbred sire, or purchased [or owned] by a Virginia resident and meeting the following requirements:~~

1. *During the first six calendar years of live pari-mutuel harness racing in the Commonwealth, a foal not meeting the requirements of the previous paragraph may still be registered as Virginia bred providing it is registered by a Virginia resident and owner with the commission by submitting documentation proving that the horse was purchased prior to April 1 of its two-year-old year and prior to making its first start in a nonqualifying race. For purposes of registration under this subdivision, neither the stallion owner of a sire standing outside the Commonwealth nor the breeder of a Standardbred foaled outside the Commonwealth shall be eligible for any award from the Virginia Breeders Fund;*

2. *For purposes of determining the eligibility for an owner to register a Virginia Standardbred, a Virginia resident and owner shall be defined as a person legally required to file a resident income tax return with the Commonwealth that year or a partnership, corporation, stable name or other entity which is solely owned by Virginia residents and owners legally required to file resident income tax returns with the Commonwealth that year; and*

3. *After December 31 of the fourth calendar year of live harness racing in the Commonwealth, foals of that year and each succeeding year must be sired by a Virginia Standardbred sire to qualify as Virginia-bred Standardbreds.*

"Virginia Standardbred horse breeder" means the owner or lessee of record of the mare at the time of conception of a Virginia-bred Standardbred horse.

"Virginia Standardbred sire" means a registered Standardbred stallion that ~~covered mares~~ stood only in the Commonwealth of Virginia during the breeding season in which it sired a Virginia-bred Standardbred horse. *Shipment of semen for the breeding of mares outside the Commonwealth shall be permitted so long as any resulting foals meet the requirements of this chapter in all other respects.*

"Virginia-bred Thoroughbred horse" means a registered Thoroughbred horse foaled in Virginia and, if foaled in the Commonwealth after December 31 of the second calendar year following the year in which Thoroughbred racing first commences in the Commonwealth pursuant to an unlimited license issued by the commission, shall also satisfy one of the following additional requirements:

1. The foal was sired by a Virginia Thoroughbred sire; or
2. If not so sired, the dam, if bred back that same breeding season, is bred to a Virginia Thoroughbred sire; or
3. If not so sired, or the dam is not bred back that same breeding season or is bred to a sire other than a Virginia Thoroughbred sire, the dam remains continuously in the Commonwealth from September 1 to date of foaling, or if barren to February 1 of the following year.

"Virginia Thoroughbred horse breeder" means the owner or lessee of record of the mare at the time of foaling a Virginia-bred Thoroughbred horse.

"Virginia Thoroughbred sire" means a registered Thoroughbred stallion that covers mares, other than test mares, only in the Commonwealth during the breeding season in which it sires a Virginia-bred Thoroughbred horse, or only during that part of the breeding season after entering the Commonwealth.

11 VAC 10-130-20. Generally.

The purpose of ~~these regulations~~ *this chapter* is to establish procedures for the administration of the Virginia Breeders Fund by the Virginia Racing Commission as provided for in § 59.1-372 of the Code of Virginia.

A. Certification. The commission shall certify that a racehorse is [a] Virginia bred for eligibility for entry into races restricted to Virginia-bred horses, *and to qualify its owner for purse supplements and to qualify*, the stallion owner, if applicable, and breeder for awards.

B. Determination of eligibility. The final determination of all questions, disputes or protests relating to the registration, eligibility for certification or breeding of a Virginia-bred horse and the final determination of eligibility of any horse to enter a race restricted to Virginia-bred horses shall rest solely with the commission.

C. Documentation. In making its determination, the commission, in its discretion, may require the submission of any certificate of foal registration, eligibility paper or any other registration document, affidavits or other substantive proof to

support or deny any claim concerning registration of a horse as [a] Virginia bred.

D. False statements. Any person who submits false or misleading information to a breed registry, to the commission or to any racing official, may be fined, have his permit suspended or revoked, be denied participation in the Virginia Breeders Fund for a period of time deemed appropriate by the commission, or any or all of the foregoing.

E. Forfeiture of awards and purse moneys. Any person who is denied participation in the Virginia Breeders Fund under the provisions of ~~the regulations~~ *this chapter* shall forfeit and restore to the commission any awards and purse moneys received based upon the submission of false or misleading information. Until the awards and purse moneys are restored, the commission may suspend the person's permit to participate in horse racing at licensed facilities.

F. Recognized registries. The commission shall recognize certificates of registration from the following breed registries:

1. Thoroughbred: The Jockey Club;
2. Standardbred: The United States Trotting Association;
3. Quarter horse: The American Quarter Horse Association; and
4. Arabian horse: The Arabian Horse Registry of America.

G. Payment of awards. All awards for *owners*, stallion owners and breeders ~~may~~ *shall* be distributed from the Virginia Breeders Fund ~~within 30 days of the end of the race meeting that generated the funds in a manner prescribed by the commission.~~ The following provisions shall apply to payment of *owner*, stallion owner and breeder awards ~~pursuant to an unlimited license issued by the commission:~~

1. Determination of individual distributions to a stallion owner shall be in the same ratio as the amount of [~~nonsupplement~~] first-place purse money won by the Virginia-bred horse at the race meeting, which qualifies the stallion owner for an award, to the total amount of [~~nonsupplemented~~] first-place purse money won by all Virginia-bred horses which qualify stallion owners for awards at the race meeting;
2. Determination of individual distributions to a breeder shall be in the same ratio as the amount of [~~nonsupplemented~~] first-place purse money won by the Virginia-bred horse at the race meeting, which qualifies the breeder for an award, to the total amount of [~~nonsupplemented~~] first-place purse money won by all Virginia-bred horses at the race meeting;
3. *Determination of individual distributions to an owner shall be in the same ratio as the amount of nonsupplemented first-place purse money won by the Virginia-bred horse at the race meeting which qualifies the owner for an award to the total amount of*

nonsupplemented first-place purse money won by all Virginia-bred horses at the race meeting;

~~3-~~ 4. To become eligible for an *owner*, a stallion owner or a breeder award from the Virginia Breeders Fund, the *owner*, stallion owner or breeder must be certified by the commission prior to receiving any award, unless his *racehorse*, stallion or broodmare has been previously registered with the commission;

~~4-~~ 5. A stallion owner or breeder will have 25 days after the closing of the race meeting, at which he becomes eligible for an award, to be certified by the commission unless his stallion or broodmare has been previously registered with the commission;

~~5-~~ 6. A stallion owner or breeder need only be certified once per racehorse; and

~~6-~~ 7. Any unclaimed awards from the Virginia Breeders Fund shall be ~~distributed proportionately among those stallion owners and breeders who have been certified as being entitled to an award from the race meeting which generated the funds remitted to the fund.~~

H. Distribution by breeds. The funds generated by the breed of horse through pari-mutuel wagering at a race meeting shall be distributed to that breed of horse through *owner awards*, stallion owner awards, breeder awards, *purses* and purse supplements.

I. Reimbursement of funds. The source of funding is 1.0% of all pari-mutuel pools which shall be paid to the commission within five days of the date that the funds were generated. Purse moneys shall be paid from the horsemen's account when approval is granted by the stewards. The commission shall reimburse the horsemen's account to the extent that funds are available from the Virginia Breeders Fund. ~~Any deficiencies in the horsemen's account shall be assumed by the licensee.~~

J. Restrictions. In disbursing the Virginia Breeders Fund, the following restrictions shall apply:

1. Supplements to purses from the Virginia Breeders Fund shall not be considered in determining [~~breeder or stallion owner~~] awards;

2. The amount of the purses for races restricted to Virginia-bred horses or any adjustments must be fair, equitable and appropriate to the quality of the horses competing for those purses;

3. *Purses from the Virginia Breeders Fund shall be considered for stallion owner and breeder awards.*

~~3-~~ 4. Funds allocated for ~~purse supplements~~ *purses* shall be credited to the owner's account by the horsemen's bookkeeper in accordance with procedures established elsewhere in [~~these regulations~~ *this chapter*]; and

~~4-~~ 5. Underpayment of moneys generated by each breed shall be remitted to the commission, ~~deposited in~~

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~~an interest bearing account and carried forward to be distributed as purse supplements or purse moneys for races restricted to the same breed of Virginia-bred horses, which generated the moneys, during the next succeeding race meeting at the same horse racing facility for the breed that generated the purse money Virginia Breeders Fund.~~

K. Reservation of funds. The commission may set aside funds for distribution in future years, if the commission, in its discretion, determines that there is an insufficient supply of Virginia-bred horses of a certain breed to warrant a distribution. In this event, the funds shall be deposited in an interest-bearing account for future distribution of awards and purse supplements to the breed that generated the funds so set aside.

L. Assignment of awards. Awards distributable to breeders and stallion owners are only assignable pursuant to a court order.

M. Advisory committee. To assist it in establishing this awards and incentive program to foster the industry of breeding racehorses in Virginia, the commission shall appoint an advisory committee composed of two members from each of the registered breed associations representing each breed of horse participating in the fund program, one member representing the owners and operators of racetracks and one member representing all the meets sanctioned by the National Steeplechase Hunt Association.

The commission, in its discretion, may establish and appoint the members of subcommittees of the advisory committee for each breed of horse participating in the fund program. Each subcommittee shall be composed of one commissioner, the executive secretary of the commission, two advisory committee members, a member representing an owner or operator of a horse racing facility, and an at-large member ~~from associated with~~ the breed of horse participating in the fund program. All appointments shall be approved by the commission.

11 VAC 10-130-30. Commencement of registration.

The commission shall establish a date when owners of Thoroughbred stallions shall commence registering their stallions and breeders of Virginia-bred Thoroughbred horses shall commence registering their ~~broodmares foals~~. ~~No fee shall be assessed for registering stallions or foals prior to the date for the commencement of registration.~~

11 VAC 10-130-40. Stallion registration.

A. Initial registration. For a stallion owner to be certified to receive stallion owner awards from the Virginia Breeders Fund, the stallion owner shall register his stallion with the commission by satisfying the following requirements:

1. Each year prior to the commencement of the breeding season, but no later than January 31, or within 30 days following the entry into stud in Virginia if entry is after the breeding season commences, the owner or authorized agent shall submit an application on a form prepared by

the commission, which shall set forth the name of the stallion, year of foaling, registration number, pedigree, including sire, dam and sire of the dam, where the stallion is standing at stud, the date of entry to stud if after the commencement of the breeding season, and the name(s) and address(es) of owner(s) and lessee(s);

2. The application shall be signed and dated by the owner or lessee, or the authorized agent;

3. A notarized copy of the stallion's Certificate of Foal Registration, clearly showing the front and transfer side of the document, shall accompany the application;

4. If the stallion is held under a lease or a syndicate agreement, a copy of the lease or agreement shall accompany the application, and the lease or agreement must include a statement that the lessee or syndicate manager is authorized to sign the service certificate and receive stallion awards; and

5. The owner or authorized agent shall submit to the commission a notarized copy of The Jockey Club's Report of Mares Bred at the conclusion of the breeding season but no later than August 1.

B. ~~Late Registration fees~~. A stallion may be registered with the commission for the breeding season after January 31 or 30 days following its entry into stud in Virginia. ~~A registration fee of \$100 shall accompany the application. A late registration fee of \$250 shall be assessed. A late registration of a stallion shall be accepted by the commission until August 1 for that breeding year.~~

C. Change of ownership. If there is a change in ownership, or the stallion is subsequently leased or syndicated, or the location of where the stallion is standing is changed, the new owner, lessee or syndicate manager shall submit to the commission a new application for stallion registration.

11 VAC 10-130-50. ~~Broodmare registration. (Repealed.)~~

~~A. For an owner or lessee of broodmare to be certified to receive breeder awards from the Virginia Breeders Fund, the owner or lessee shall register his broodmare with the commission by satisfying the following requirements:~~

~~1. Each year prior to the commencement of the breeding season but no later than January 31, or within 30 days after the mare enters the Commonwealth, if the entry is after the commencement of the breeding season, the breeder or his authorized agent must submit an application, on a form prepared by the commission, including the name of the broodmare, year of foaling, registration number, pedigree, including sire, dam and sire of the dam, the location in Virginia where the mare domiciled, and the name and address of the owner;~~

~~2. The application shall be signed and dated by the owner or authorized agent;~~

~~3. A notarized copy of the broodmare's Certificate of Foal Registration, clearly showing the front and transfer side of the document, shall accompany the application;~~

~~4. If the broodmare is held under a lease, a statement to that effect and a copy of the lease, which must include a statement that the lessee is authorized to register the foal, shall accompany the application;~~

~~5. If the broodmare was not bred to a Virginia Thoroughbred sire or is not bred back to a Virginia Thoroughbred sire, then the owner or authorized agent shall sign the affidavit stating that the broodmare has been domiciled in the Commonwealth of Virginia since September 1 of the preceding year; and~~

~~6. If there is a change of ownership, or if the broodmare is subsequently leased, or there is a change in the prior lease agreement, the new owner or lessee shall submit a new application to the commission.~~

~~B. Late registration. A broodmare may be registered with the commission for the breeding season after January 31 or 30 days following its entry into Virginia. A late registration fee of \$100 shall be assessed. A late registration of a broodmare shall be accepted by the commission until August 1 for that breeding year.~~

11 VAC 10-130-51. Foal registration.

A. Requirements. For an owner or lessee of a dam to be certified to receive breeder awards from the Virginia Breeders Fund, the owner or lessee must register his foal with the commission by satisfying the following requirements:

1. The owner, lessee or his authorized agent must submit an application on a form prepared by the commission, including the name of the stallion; the name of the dam; the sire of the dam; the sex; color; year of birth; the location of foaling; and name, address and telephone number of the owner, lessee or his authorized agent;

2. The application must be signed and dated by the owner, lessee, or his authorized agent;

3. If the dam is held under a lease, a statement to that effect and a copy of the lease which must include a statement that the lessee is authorized to register the foal must accompany the application;

4. If the dam of the foal was not bred to a Virginia Thoroughbred sire or is not bred back to a Virginia Thoroughbred sire, then the owner, lessee or his authorized agent must sign the affidavit stating that the dam has been domiciled in the Commonwealth of Virginia from September 1 of the preceding year to February 1; and

5. All Virginia-bred Thoroughbred horses must be registered with the commission prior to being entered in Virginia-bred races.

B. Registration fees. A foal may be registered by December 31 of its year of foaling by submitting a \$25 fee which must accompany the application for foal registration. A yearling may be registered by December 31 of its yearling year by submitting a \$50 fee which must accompany the application for foal registration. A two-year-old or older may be registered by submitting a \$200 fee which must accompany the application for foal registration.

11 VAC 10-130-60. Fund distribution; allocation of funds.

A. Allocation of funds. The funds generated by pari-mutuel wagering on Thoroughbred horse races for the Virginia Breeders Fund shall be allocated on the following schedule:

1. 25% 35% shall be set aside for payment to the breeders of Virginia-bred Thoroughbred horses that win races at horse racing facilities licensed a race meeting designated by the commission;

2. 15% shall be set aside for payment to owners or lessees of registered Virginia stallions which sire Virginia-bred Thoroughbred horses that win races at horse racing facilities licensed race meetings designated by the commission; and

3. 60% 50% shall be paid to supplement purses as determined by the commission under the following provisions:

a. A purse supplement An award may be paid to the owner or owners of a Virginia-bred Thoroughbred horse each time the horse wins a nonrestricted race at a horse racing facility licensed race meetings designated by the commission; and

b. Purse supplements Purses shall be paid for purses for races restricted to Virginia-bred Thoroughbred horses.

11 VAC 10-130-70. Restricted races.

The racing secretary at each unlimited race meeting licensed by the commission shall include in the condition book restricted races which equal not less than 5.0% of the total nonsubstitute races included in that book, and that those races shall be run if eight six separate betting interests are entered. If there is not a sufficient number of registered Virginia-bred horses entered to fill the race, then the racing secretary may substitute another race.

PART IV.
STANDARDBREDS.

11 VAC 10-130-75. Commencement of registration.

The commission shall establish a date when owners of Standardbred stallions shall commence registering their stallions and breeders of Virginia-bred Standardbred horses shall commence registering their foals.

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11 VAC 10-130-76. Stallion registration.

A. *Initial registration.* For a stallion owner to be certified to receive stallion owner awards from the Virginia Breeders Fund, the stallion owner must register his stallion with the commission by satisfying the following requirements:

1. Each year prior to the commencement of the breeding season, but no later than January 31, or within 30 days following the entry into stud in Virginia if entry is after the breeding season commences, the owner or authorized agent shall submit an application on a form prepared by the commission, which shall set forth the name of the stallion; year of foaling; registration number; pedigree; including sire, dam and sire of the dam; where the stallion is standing at stud; the date of entry to stud if after the commencement of the breeding season; and the names and addresses of owners and lessees;
2. The application must be signed and dated by the owner or lessee, or the authorized agent;
3. A notarized copy of the stallion's Certificate of Registration, clearly showing the front and transfer side of the document, must accompany the application;
4. If the stallion is held under a lease or a syndicate agreement, a copy of the lease or agreement must accompany the application, and the lease or agreement must include a statement that the lessee or syndicate manager is authorized to sign the Service Certificate and receive stallion awards; and
5. The owner or authorized agent must submit to the commission a notarized copy of The United States Trotting Association's Report of Mares Bred at the conclusion of the breeding season and no later than December 31 of the breeding year.

B. *Registration fees.* A stallion may be registered with the commission for the breeding season after January 31 or 30 days following its entry into stud in Virginia. A registration fee of \$100 shall accompany the application. A late registration fee of \$250 shall be assessed. A late registration of a stallion shall be accepted by the commission until August 1 for that breeding year.

C. *Change of ownership.* If there is a change in ownership, or the stallion is subsequently leased or syndicated, or the location of where the stallion is standing is changed, the new owner, lessee or syndicate manager must submit to the commission a new application for stallion registration.

11 VAC 10-130-77. Foal registration.

A. *Requirements.* For an owner or lessee of a dam to be certified to receive breeder awards from the Virginia Breeders Fund, the owner or lessee must register its foal with the commission by satisfying the following requirements:

1. The owner, lessee or his authorized agent must submit an application, on a form prepared by the commission, including the name of the stallion; the name

of the dam; the sire of the dam; sex; color; year of foaling; and name, address and telephone number of the owner, lessee or his authorized agent;

2. The application must be signed and dated by the owner, lessee or his authorized agent;

3. If the dam is held under a lease, a statement to that effect and a copy of the lease which must include a statement that the lessee is authorized to register the foal must accompany the application; and

4. All Virginia-bred Standardbred horses must be registered with the commission prior to being entered in races.

B. *Registration fees.* A foal may be registered by December 31 of its year of foaling by submitting a \$25 fee which must accompany the application for foal registration. A yearling must be registered by December 31 of its yearling year by submitting a \$125 fee which must accompany the application for foal registration. A two-year-old or older horse may be registered by submitting a \$250 fee which must accompany the application for foal registration. Any purchased horse must be registered within the required purchase period.

11 VAC 10-130-80. Allocation and restriction of funds.

A. *Allocation.* The funds generated by Standardbred harness racing through pari-mutuel wagering shall be allocated according to the following schedule:

1. 40% 15% shall be set aside for payment to the breeders of Virginia-bred Standardbred horses that win races at horse racing facilities licensed by the commission;

2. 5-0% 10% shall be set aside for payment to the owners or lessees of Virginia Standardbred stallions which sire Virginia-bred Standardbred horses that win races at horse racing facilities licensed by the commission; and

3. 85% 75% shall be paid to supplement purses according to the following provisions:

- a. Not less than 75% shall be set aside to develop a stakes program for two- and three-year-old Virginia-bred Standardbred horses; and

- b. Any remaining amounts shall be set aside and may be paid to the owner or owners of a Virginia-bred Standardbred horse each time the horse wins a nonrestricted race at a horse racing facility licensed by the commission.

B. *Restriction.* During the first two calendar years of live pari-mutuel harness racing in the Commonwealth, payment of stallion owner and breeder awards shall be limited to an amount not exceeding 20% of that horse's nonmaiden nonsupplemented first-place purse used in the calculation and 40% of that horse's maiden nonsupplemented first-place purse used in the calculation.

C. Restricted races. The racing secretary at each unlimited race meeting licensed by the commission shall include on the condition sheet at least one race each day restricted to Virginia-bred Standardbred horses and the race shall be run if six separate betting interests are entered. If there is not a sufficient number of registered Virginia-bred horses entered to fill the race, then the racing secretary may substitute another race.

FORMS:

~~Thoroughbred~~ Stallion Registration for the Year 19___, eff. 1/98.

~~Thoroughbred-Bloodmare~~ Foal Registration for the Year 19___, eff. 1/98.

VIRGINIA BREEDERS FUND
STALLION REGISTRATION FOR THE YEAR 19__

___ Thoroughbred ___ Standardbred

For a stallion owner to be eligible for awards from the Virginia Breeders Fund an application must be submitted to the Virginia Racing Commission prior to the commencement of the breeding season but no later than January 31, or within 30 days of following entry into stud in Virginia if entry is after the breeding season commences.

(Name of Stallion)

(Year of Foaling) (Registration Number)

(Sire) (Dam) (Sire of the Dam)

Where Stallion Is Standing:

Name and Address of Owner or Lessee:

1) A notarized copy of the stallion's Certificate of Foal Registration, clearly showing the front and transfer side of the document, must accompany the application.

2) If the stallion is held under a lease or syndicate agreement, a copy of the lease of agreement must accompany the application, and the lease or agreement must include a statement that the lessee or syndicate manager is authorized to sign the Service Certificate and receive stallion awards.

I HEREBY CERTIFY THAT THE STALLION NAMED ABOVE HAS COVERED MARES, OTHER THAN TEST MARES, ONLY IN THE COMMONWEALTH OF VIRGINIA DURING THE BREEDING SEASON IN WHICH IT SIRES VIRGINIA-BRED THOROUGHBRED HORSES OR ONLY DURING THAT PART OF THE BREEDING SEASON AFTER ENTERING THE COMMONWEALTH.

(Signature of Owner or Lessee) (Date)

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: State Plan for Medical Assistance Relating to Preauthorization of Inpatient Hospital Services.

12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care and Services (amending 12 VAC 30-50-95, 12 VAC 30-50-100 and 12 VAC 30-50-140; adding 12 VAC 30-50-105).

12 VAC 30-60-10 et seq. Standards Established and Methods Used to Assure High Quality Care (amending 12 VAC 30-60-20; adding 12 VAC 30-60-25; repealing 12 VAC 30-60-60).

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

Effective Date: January 21, 1998.

Summary:

The purpose of this action is to adopt regulatory changes to the State Plan for Medical Assistance which are substantially the same as the emergency regulations concerning prior authorization requirements for inpatient hospital services. This prior authorization requirement will ensure that only medically necessary inpatient hospital services are paid for by the agency's new diagnosis related grouping inpatient reimbursement methodology. This prior authorization process also establishes a process by which hospitals or attending physicians may request a reconsideration process if their initial request for approval of an inpatient admission is denied. As is true of all Medicaid covered services, Medicaid recipients' rights of appeal of denied services is reiterated.

DMAS is separating its policies for nonenrolled hospital providers, contained in the new section 12 VAC 30-50-105, from the new prior authorization policies to be applied to enrolled hospital providers, contained in 12 VAC 30-50-100. The content of 12 VAC 30-50-105 is not new regulatory language and is simply a result of the separation of policies for enrolled hospital providers from nonenrolled hospital providers. The policies contained in the new section 12 VAC 30-50-105 are merely a restatement of long-standing DMAS requirements and limits applicable to inpatient hospital services.

Summary of Public Comments and Agency Response: No comments were received by the promulgating agency.

Agency Contact: 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 30-50-95. Reimbursement of services; in general.

The provision of the following *medically necessary* services cannot be reimbursed except when they are ordered or prescribed, and directed or performed within the scope of the license of a practitioner of the healing arts: laboratory and x-ray services, family planning services, and home health services. Physical therapy services will be reimbursed only when prescribed by a physician. *Inpatient acute hospitalizations will be reimbursed only if the stay has been authorized.*

12 VAC 30-50-100. ~~Inpatient hospital services other than those provided in an institution for mental diseases provided at general acute care hospitals and freestanding psychiatric hospitals; enrolled providers.~~

A. ~~Medicaid inpatient hospital admissions (lengths of stay) are limited to the 75th percentile of RAS (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.)~~ Preauthorization of all inpatient hospital services will be performed. This applies to both general acute care hospitals and freestanding psychiatric hospitals. Nonauthorized inpatient services will not be covered or reimbursed by the Department of Medical Assistance Services (DMAS). Preauthorization shall be based on criteria specified by DMAS. In conjunction with preauthorization, an appropriate length of stay will be assigned using the HCIA, Inc., Length of Stay by Diagnosis and Operation, Southern Region, 1996, as guidelines.

1. Admission review.

a. *Planned/scheduled admissions. Review shall be done prior to admission to determine that inpatient hospitalization is medically justified. An initial length of stay shall be assigned at the time of this review. Adverse authorization decisions shall have available a reconsideration process as set out in subdivision 4 of this subsection.*

b. *Unplanned/urgent admissions. Review shall be performed within one working day to determine that inpatient hospitalization is medically justified. An initial length of stay shall be assigned for those admissions which have been determined to be appropriate. Adverse authorization decisions shall have available a reconsideration process as set out in subdivision 4 of this subsection.*

2. *Concurrent review shall end for [nonpsychiatric] claims with dates of admission and services on or after July 1, 1998, with the full implementation of the DRG reimbursement methodology. Concurrent review shall be done to determine that inpatient hospitalization*

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continues to be medically necessary. Prior to the expiration of the previously assigned initial length of stay, the provider shall be responsible for obtaining authorization for continued inpatient hospitalization. If continued inpatient hospitalization is determined necessary, an additional length of stay shall be assigned. Concurrent review shall continue in the same manner until the discharge of the patient from acute inpatient hospital care. Adverse authorization decisions shall have available a reconsideration process as set out in subdivision 4 of this subsection.

3. Retrospective review shall be performed when a provider is notified of a patient's retroactive eligibility for Medicaid coverage. It shall be the provider's responsibility to obtain authorization for covered days prior to billing DMAS for these services. Adverse authorization decisions shall have available a reconsideration process as set out in subdivision 4 of this subsection.

4. Reconsideration process.

a. Providers requesting reconsideration must do so [~~within 15 calendar days of receipt of initial upon~~] verbal notification of denial.

b. This process is available to providers when the nurse reviewers advise the providers by telephone that the medical information provided does not meet DMAS specified criteria. At this point, the provider must request by telephone a higher level of review if he disagrees with the nurse reviewer's findings. If higher level review is not requested, the case will be denied and a denial letter generated to both the provider and recipient identifying appeal rights.

c. If higher level review is requested, the authorization request will be held in suspense and referred to the Utilization Management Supervisor (UMS). [The UMS shall have one working day to render a decision.] If the UMS upholds the adverse decision, the provider may accept that decision and the case will be denied and a denial letter identifying appeal rights will be generated to both the provider and the recipient. If the provider continues to disagree with the UMS' adverse decision, he must request physician review by DMAS medical support. If higher level review is requested, the authorization request will be held in suspense and referred to DMAS medical support for the last step of reconsideration.

d. DMAS medical support will review all case specific medical information. [Medical support shall have two working days to render a decision.] If medical support upholds the adverse decision, the request for authorization will then be denied and a letter identifying appeal rights will be generated to both the provider and the recipient. The entire reconsideration process must be completed within three working days.

5. Appeals process.

a. Recipient appeals. Upon receipt of a denial letter, the recipient shall have the right to appeal the adverse decision [.] Under the Client Appeals regulations, Part I (12 VAC 30-110-10 et seq.) of 12 VAC 30-110 [, the recipient shall have 30 days from the date of the denial letter to file an appeal].

b. Provider appeals. If the reconsideration steps are exhausted and the provider continues to disagree, upon receipt of the denial letter, the provider shall have [~~the right~~ 30 days from the date of the denial letter] to file an appeal if the issue is whether DMAS will reimburse the provider for services already rendered. The appeal shall be held in accordance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

~~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.) Cosmetic surgical procedures shall not be covered unless performed for physiological reasons and require DMAS prior approval.~~

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. D. Coverage of inpatient hospitalization will shall 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 per admission in a 60-day period for the same or similar diagnosis or treatment plan. The 60-day period would begin on the first hospitalization (if there are multiple admissions) admission date. There may be multiple admissions during this 60-day period; however, when total days exceed 21, all subsequent claims will be reviewed. Claims which exceed 21 days per~~

admission within 60 days for the same or similar diagnosis or treatment plan will not be authorized for payment. Claims which exceed 21 days per admission within 60 days with a different diagnosis and medical justification will be paid or treatment plan will be considered for reimbursement if medically indicated. Except as previously noted, regardless of authorization for the hospitalization, the claims will be processed in accordance with the limit for 21 days in a 60-day period. Claims for stays exceeding 21 days in a 60-day period shall be suspended and processed manually by DMAS staff for appropriate reimbursement. The limit for coverage of 21 days for nonpsychiatric admissions shall cease with dates of service on or after July 1, 1998. ~~[Medically unjustified days in such admissions will be denied.] 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 general hospitals and freestanding psychiatric hospitals~~ 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 or psychological, as appropriate, 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.~~ The admission and length of stay must be medically justified and preauthorized via the admission and concurrent or retrospective review processes described in subsection A of this section. Medically unjustified days in such admissions ~~will be denied hospitalizations shall not be authorized for payment.~~

G. E. 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.~~ F. Coverage in freestanding psychiatric hospitals shall not be available for individuals aged 21 through 64. Medically necessary inpatient psychiatric care rendered in a psychiatric unit of a general acute care hospital shall be covered for all Medicaid eligible individuals, regardless of age, within the limits of coverage prescribed in this section and 12 VAC 30-50-105.

I. G. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Transplant services for kidneys and corneas shall be covered for all eligible persons. Transplant services for liver, heart, and bone

marrow transplantation and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be limited to children (under 21 years of age). Kidney, liver, heart, and bone marrow transplants and any other medically necessary transplantation procedures that are determined to not be experimental or investigational require preauthorization by DMAS medical support. Inpatient hospitalization related to kidney transplantation will require preauthorization at the time of admission and, concurrently, for length of stay. Cornea transplants do not require preauthorization of the procedure, but inpatient hospitalization related to such transplants will require preauthorization for admission and, concurrently, for length of stay. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. Reimbursement for covered liver, heart, and bone marrow transplant services and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be a fee based upon the greater of a prospectively determined, procedure-specific flat fee determined by the agency or a prospectively determined, procedure-specific percentage of usual and customary charges. The flat fee reimbursement will cover procurement costs; all hospital costs from admission to discharge for the transplant procedure; and total physician costs for all physicians providing services during the transplant hospital stay, including radiologists, pathologists, oncologists, surgeons, etc. The flat fee reimbursement does not include pre- and post-hospitalization for the transplant procedure or pretransplant evaluation. Reimbursement for approved transplant procedures that are performed out of state will be made in the same manner as reimbursement for transplant procedures performed in the Commonwealth. Reimbursement for covered kidney and cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services are in 12 VAC 30-50-540.

H. Coverage of observation beds. (Reserved.)

~~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. I. In compliance with federal regulations at 42 CFR 441.200, Subparts E and F, claims for hospitalization in which sterilization, hysterectomy or abortion procedures were performed, shall be subject to medical documentation requirements review. Hospitals must submit the required DMAS forms corresponding to the procedures. Regardless of authorization for the hospitalization during which these procedures were performed, the claims shall suspend for manual review by DMAS. If the forms are not properly~~

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completed or not attached to the bill, the claim will be denied or reduced according to DMAS policy.

~~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 [J. To determine that the DMAS enrolled hospital providers are in compliance with the regulations governing hospital utilization control found in 42 CFR 456.50 and the regulations governing mental hospital utilization control found in 42 CFR 456.150, an annual audit will be conducted of each enrolled hospital. This audit can be performed either on-site or as a desk audit. The hospital shall make all requested records available and shall provide an appropriate place for the auditors to conduct such review if done on-site. The audits shall consist of review of the following:~~

~~1.] The department shall conduct periodic on-site post-payment audits of qualifying hospitals using a statistically valid sampling of paid claims for the purpose of reviewing the medical necessity of inpatient stays [Copy of the general hospital's Utilization Management Plan to determine compliance with the regulations found in 42 CFR 456.100 through 456.145 and for freestanding psychiatric hospitals, as required in 42 CFR 456.200 through 456.245.~~

~~2.] The hospital shall make all medical records of which medical reviews will be necessary available upon request, and shall provide an appropriate place for the department's auditors to conduct such review [List of current Utilization Management Committee members and physician advisors to determine that the committee's composition is as proscribed in 42 CFR 456.105 and 456.106, and for freestanding psychiatric hospitals, as proscribed in 42 CFR 456.205 and 456.206.~~

~~3.] The qualifying hospital will immediately refund to the department in accordance with § 32.1-326.1 A and B of the Code of Virginia the full amount of any initial overpayment identified during such audit [Verification of Utilization Management Committee meetings since the last annual audit, including dates and lists of attendees, to determine that the committee is meeting according to its utilization management meeting requirements.~~

~~4.] The hospital may appeal adverse medical necessity and overpayment decisions pursuant to the current administrative process for appeals of post-payment review decisions [One completed Medical Care Evaluation Study to include objectives of the study, analysis of the results, and actions taken, or recommendations made to determine compliance with 42 CFR 456.141 through 456.145, and for freestanding~~

~~psychiatric hospitals, as required in the 42 CFR 456.241 through 456.245.~~

~~5.] The department may, at its option, depending on the utilization review performance determined by an audit based on criteria set forth in the hospital provider manual, remove a hospital from delegated review status and reapply certain or all prepayment utilization review documentation requirements [Topic of one on going Medical Care Evaluation Study to determine whether the hospital is in compliance with 42 CFR 456.145, and for freestanding psychiatric hospitals, as required in 42 CFR 456.245.~~

~~6.] From a list of randomly selected paid claims, the hospital must provide a copy of the physician admission certification and written plan of care for each selected stay to determine the hospital's compliance with 42 CFR 456.60 and 456.80. From a list of randomly selected paid claims, the freestanding psychiatric hospital must provide a copy of the certification for services, a copy of the physician admission certification, a copy of the required medical, psychiatric, and social evaluations, and the written plan of care for each selected stay to determine the hospital's compliance with the Psychiatric Inpatient Treatment of Minors Act (§ 16.1-335 et seq. of the Code of Virginia) and 42 CFR 441.152, 456.160, 456.170, 456.180, and 456.181.~~

~~K. The hospitals may appeal in accordance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) any adverse decision resulting from audits described in subsection J of this section which results in retraction of payment. The appeal must be requested within 30 days of the date of the letter notifying the hospital of the retraction.]~~

12 VAC 30-50-105. Inpatient hospital services provided at general acute care hospitals and freestanding psychiatric hospitals; nonenrolled providers (nonparticipating/out of state).

A. The full DRG inpatient reimbursement methodology shall become effective July 1, 1998, for general acute care hospitals and freestanding psychiatric hospitals which are nonenrolled providers (nonparticipating/out of state) and the same reviews, criteria, and requirements shall apply as are applied to enrolled, in-state, participating hospitals in 12 VAC 30-50-100.

B. Inpatient hospital services rendered by nonenrolled providers shall not require preauthorization with the exception of transplants as described in subsection K of this section. However, these inpatient hospital services claims will be suspended from payment and manually reviewed for medical necessity as described in subsections C through K of this section using criteria specified by DMAS.

C. 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 H of this section.)

D. Cosmetic surgical procedures shall not be covered unless performed for physiological reasons and require DMAS prior approval.

E. 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~~ was] carried to term.

F. Hospital claims with an admission date prior to the first surgical date, regardless of the number of days prior to surgery, must be medically justified. The hospital must write on or attach the justification to the billing invoice for consideration of reimbursement for all pre-operative days. Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital setting thereby warranting hospital admission. Medically unjustified days in such admissions will be denied.

G. 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 admission will be denied.

H. Coverage of inpatient hospitalization shall be limited to a total of 21 days per admission in a 60-day period for the same or similar diagnosis or treatment plan. The 60-day period would begin on the first hospitalization (if there are multiple admissions) admission date. There may be multiple admissions during this 60-day period. Claims which exceed 21 days per admission within 60 days for the same or similar diagnosis or treatment plan will not be reimbursed. Claims which exceed 21 days per admission within 60 days with a different diagnosis or treatment plan will be considered for reimbursement if medically justified. The admission and length of stay must be medically justified and preauthorized via the admission and concurrent review processes described in subsection A of 12 VAC 30-50-100. Claims for stays exceeding 21 days in a 60-day period shall be suspended and processed manually by DMAS staff for appropriate reimbursement. The limit for coverage of 21 days shall cease with dates of service on or after July 1, 1998. Medically unjustified days in such hospitalizations shall not be reimbursed by DMAS.

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 general hospitals and freestanding psychiatric facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical or psychological, as appropriate, examination.

I. Coverage for a normal, uncomplicated vaginal delivery shall be limited to the day of delivery plus an additional two days unless additional days are medically justified. Coverage for cesarean births shall be limited to the day of delivery plus an additional four days unless additional days are medically necessary.

J. Reimbursement will not be provided for inpatient hospitalization for those surgical and diagnostic procedures listed on the DMAS outpatient surgery list unless the inpatient stay is medically justified or meets one of the exceptions.

K. For purposes of organ transplantation, all similarly situated individuals will be treated alike. Transplant services for kidneys and corneas shall be covered for all eligible persons. Transplant services for liver, heart, and bone marrow transplantation and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be limited to children (under 21 years of age). Kidney, liver, heart, and bone marrow transplants and any other medically necessary transplantation procedures that are determined to not be experimental or investigational require preauthorization by DMAS. 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; total physician costs for all physicians providing services during the transplant hospital stay, including radiologists, pathologists, oncologists, surgeons, etc. The flat fee does not include pre- and post-hospitalization for the transplant procedure or pretransplant evaluation. Reimbursement for approved transplant procedures that are performed out of state will be made in the same manner as reimbursement for transplant procedures performed in the Commonwealth. Reimbursement for covered kidney and cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services are in 12 VAC 30-50-540.

L. Coverage of observation beds. (Reserved.)

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M. In compliance with 42 CFR 441.200, Subparts E and F, claims for hospitalization in which sterilization, hysterectomy or abortion procedures were performed shall be subject to review of the required DMAS forms corresponding to the procedures. The claims shall suspend for manual review by DMAS. If the forms are not properly completed or not attached to the bill, the claim will be denied or reduced according to DMAS policy.

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. *Outpatient* psychiatric services.

1. Psychiatric services are limited to an initial availability of 26 sessions, with one possible extension (subject to the DMAS' 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~~ DMAS. Psychiatric services are further restricted to no more than three sessions in any given seven-day period. *Consistent with § 6403 of the Omnibus Budget Reconciliation Act of 1989, medically necessary psychiatric services shall be covered when prior authorized by DMAS for individuals younger than 21 years of age when the need for such services has been identified in an EPSDT screening.*

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 *over the age of 21* are limited to a maximum of 21 days per admission within 60 days for the same or similar diagnoses or *treatment plan* and is further restricted to medically necessary *authorized (for enrolled providers)/approved (for nonenrolled providers)* 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 general hospitals and freestanding psychiatric facilities~~ in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Payments for physician visits for inpatient days ~~determined to be medically unjustified will be adjusted~~ shall be limited to medically necessary inpatient hospital days.

H. [~~Repealed~~ (Reserved)].

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. (Reserved.)~~

K. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Transplant services for kidneys and corneas shall be covered for all eligible persons. Transplant services for liver, heart, and bone marrow and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be limited to children (under 21 years of age). Kidney, liver, heart, and bone marrow transplants and any other medically necessary transplantation procedures that are determined to not be experimental or investigational require preauthorization by DMAS. 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. 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.

DOCUMENT INCORPORATED BY REFERENCE

Length of Stay by Diagnosis and Operation, Southern Region, 1996, HCIA, Inc.

12 VAC 30-60-20. Utilization control: general acute care hospitals; enrolled providers.

A. ~~The Commonwealth of Virginia is required by state law to take affirmative action on all hospital stays that approach 15 days. It is a requirement that the hospitals submit to the Department of Medical Assistance Services complete information on all hospital stays where there is a need to exceed 15 days. The various documents which are submitted are reviewed by professional program staff, including a physician who determines if additional hospitalization is indicated. This review not only serves as a mechanism for approving additional days, but allows physicians on the Department of Medical Assistance~~

~~Services' staff to evaluate patient documents and give the Program an insight into the quality of care by individual patient. In addition, hospital representatives of the Medical Assistance Program visit hospitals, review the minutes of the Utilization Review Committee, discuss patient care, and discharge planning. The Department of Medical Assistance Services (DMAS) shall not reimburse for services which are not authorized as follows:~~

1. ~~DMAS shall monitor, consistent with state law, the utilization of all inpatient hospital services. All inpatient hospital stays shall be preauthorized prior to admission. Services rendered without such prior authorization shall not be covered, except as stated in subdivisions 2 and 3 of this subsection.~~

2. ~~If a provider has rendered inpatient services to an individual who later is determined to be Medicaid eligible, the provider shall be responsible for obtaining the required authorization prior to billing DMAS for these services.~~

3. ~~If a Medicaid eligible individual is admitted to inpatient hospital care on a Saturday, Sunday, holiday, or after normal working hours, the provider shall be responsible for obtaining the required authorization on the next work day following such admission.~~

4. ~~Regardless of preauthorization, in the following cases hospital inpatient claims shall continue to [suspend be suspended] for DMAS review before reimbursement is approved. DMAS shall review all claims for individuals over the age of 21 which [pend are suspended] for exceeding the 21-day limit per admission in a 60-day period for the same or similar diagnoses prior to reimbursement for the stay. This [pending-action suspension] shall cease for nonpsychiatric hospitalizations with dates of service on or after July 1, 1998. DMAS shall review all claims which are [pending suspended] for sterilization, hysterectomy, or abortion procedures for the presence of the required federal and state forms prior to reimbursement. If the forms are not attached to the bill and not properly completed, reimbursement for the services rendered will be denied or reduced according to DMAS policy.~~

~~[5. In addition, an annual audit will be performed to evaluate a hospital's compliance with the requirements for control of utilization of inpatient services found in 42 CFR 456.50 through 456.145.]~~

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

~~1. A physician must certify at the time of admission, or] if later, the time the individual applies for medical assistance under the State Plan that the individual requires inpatient hospital or mental hospital care [at the time the hospital is notified of an individual's retroactive eligibility status, that the individual requires or required inpatient hospital care.~~

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

~~3.] Such services were furnished under a plan established and periodically reviewed and evaluated by a physician for inpatient hospital or mental hospital services. [The physician must have a written plan of care for each individual receiving inpatient hospital care and periodically review and evaluate the need for revision to the plan.]~~

[To determine that the DMAS enrolled hospital providers are in compliance with the regulations governing hospital utilization control found in 42 CFR 456.50 through 456.145, an annual audit will be conducted of each enrolled hospital. This audit can be performed either on site or as a desk audit. The hospital shall make all requested records available and shall provide an appropriate place for the auditors to conduct such review if done on site. The audits shall consist of review of the following:

1. Copy of the general hospital's Utilization Management Plan to determine compliance with the regulations found in 42 CFR 456.100 through 456.145.
2. List of current Utilization Management Committee members and physician advisors to determine that the committee's composition is as prescribed in the 42 CFR 456.105 through 456.106.
3. Verification of Utilization Management Committee meetings since the last annual audit, including dates and lists of attendees to determine that the committee is meeting according to their utilization management meeting requirements.
4. One completed Medical Care Evaluation Study to include objectives of the study, analysis of the results, and actions taken, or recommendations made to determine compliance with the 42 CFR 456.141 through 456.145.
5. Topic of one ongoing Medical Care Evaluation Study to determine the hospital is in compliance with the 42 CFR 456.145.
6. From a list of randomly selected paid claims, the hospital must provide a copy of the physician admission certification and written plan of care for each selected stay to determine the hospital's compliance with the 42 CFR 456.60 and 456.80. If any of the required documentation does not meet the requirements found in the 42 CFR 456.60 through 456.80, reimbursement may be retracted.
7. The hospitals may appeal in accordance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) any adverse decision resulting from such audits which results in retraction of payment. The appeal must be requested within 30 days of the date of the letter notifying the hospital of the retraction.]

12 VAC 30-60-25. Utilization control: freestanding psychiatric hospitals.

A. Psychiatric services in freestanding psychiatric hospitals shall only be covered for eligible persons younger than 21 years of age and older than 64 years of age.

B. Prior authorization required. DMAS shall monitor, consistent with state law, the utilization of all inpatient freestanding psychiatric hospital services. All inpatient hospital stays shall be preauthorized prior to reimbursement for these services. Services rendered without such prior authorization shall not be covered.

[~~In addition, an annual audit will be performed to evaluate a freestanding psychiatric hospital's compliance with the requirements for control of utilization of inpatient services found in 42 CFR 456.150 through 456.245.]~~

C. In each case for which payment for freestanding psychiatric hospital services is made under the State Plan:

1. A physician must certify at the time of admission, or at the time the hospital is notified of an individual's retroactive eligibility status, that the individual requires or required inpatient services in a freestanding psychiatric hospital consistent with 42 CFR 456.160.
2. The physician, physician assistant, or nurse practitioner acting within the scope of practice as defined by state law and under the supervision of a physician, must recertify at least every 60 days that the individual continues to require inpatient services in a psychiatric hospital.
3. Before admission to a freestanding psychiatric hospital or before authorization for payment, the attending physician or staff physician must perform a medical evaluation of the individual and appropriate professional personnel must make a psychiatric and social evaluation as cited in 42 CFR 456.170.
4. Before admission to a freestanding psychiatric hospital or before authorization for payment, the attending physician or staff physician must establish a written plan of care for each recipient patient as cited in 42 CFR 441.155 and 456.180.

[D. If the eligible individual is 21 years of age or older, then, in order to qualify for Medicaid payment for this service, he must be at least 65 years of age.]

[~~D. E.] If younger than 21 years of age, it shall be documented that the individual requiring admission to a freestanding psychiatric hospital is under 21 years of age, that treatment is medically necessary, and that the necessity was identified as a result of an early and periodic screening, diagnosis, and treatment (EPSDT) screening. Required patient documentation shall include, but not be limited to, the following:~~

1. An EPSDT physician's screening report showing the identification of the need for further psychiatric evaluation and possible treatment.

2. A diagnostic evaluation documenting a current (active) psychiatric disorder included in the DSM-III-R that supports the treatment recommended. The diagnostic evaluation must be completed prior to admission.

3. For admission to a freestanding psychiatric hospital for psychiatric services resulting from an EPSDT screening, a certification of the need for services as defined in 42 CFR 441.152 by an interdisciplinary team meeting the requirements of 42 CFR 441.153 or 441.156 and the Psychiatric Inpatient Treatment of Minors Act (§ 16.1-335 et seq. of the Code of Virginia).

~~[The absence of any of the required documentation in subdivisions 1 through 3 of this subsection shall result in DMAS' denial of the requested preauthorization and coverage of subsequent hospitalization.]~~

If a Medicaid eligible individual is admitted in an emergency to a freestanding psychiatric hospital on a Saturday, Sunday, holiday, or after normal working hours, ~~[the provider shall be responsible for obtaining it shall be the provider's responsibility to obtain]~~ the required authorization on the next work day following such an admission.

~~[The absence of any of the required documentation described in this subsection shall result in DMAS' denial of the requested preauthorization and coverage of subsequent hospitalization.]~~

F. To determine that the DMAS enrolled mental hospital providers are in compliance with the regulations governing mental hospital utilization control found in the 42 CFR 456.150, an annual audit will be conducted of each enrolled hospital. This audit may be performed either on site or as a desk audit. The hospital shall make all requested records available and shall provide an appropriate place for the auditors to conduct such review if done on site. The audits shall consist of review of the following:

1. Copy of the mental hospital's Utilization Management Plan to determine compliance with the regulations found in the 42 CFR 456.200 through 456.245.
2. List of current Utilization Management Committee members and physician advisors to determine that the committee's composition is as prescribed in the 42 CFR 456.205 and 456.206.
3. Verification of Utilization Management Committee meetings, including dates and list of attendees to determine that the committee is meeting according to their utilization management meeting requirements.
4. One completed Medical Care Evaluation Study to include objectives of the study, analysis of the results, and actions taken, or recommendations made to determine compliance with 42 CFR 456.241 through 456.245.

5. Topic of one ongoing Medical Care Evaluation Study to determine the hospital is in compliance with 42 CFR 456.245.

6. From a list of randomly selected paid claims, the freestanding psychiatric hospital must provide a copy of the certification for services, a copy of the physician admission certification, a copy of the required medical, psychiatric, and social evaluations, and the written plan of care for each selected stay to determine the hospital's compliance with §§ 16.1-335 through 16.1-348 of the Code of Virginia and 42 CFR 441.152, 456.160, 456.170, 456.180 and 456.181. If any of the required documentation does not support the admission and continued stay, reimbursement may be retracted.

The hospitals may appeal in accordance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) any adverse decision resulting from such audits which results in retraction of payment. The appeal must be requested within 30 days of the date of the letter notifying the hospital of the retraction.]

12 VAC 30-60-60. Utilization control: Psychiatric services resulting from an EPSDT screening. (Repealed.)

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

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

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

~~"CFR" means the Code of Federal Regulations.~~

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

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

~~"DMAS" means the Department of Medical Assistance Services.~~

~~"JCAHO" means Joint Commission on Accreditation of Hospitals.~~

~~"Medical necessity" means that the use of the hospital setting under the direction of a physician has been~~

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~~demonstrated to be necessary to provide such services in lieu of other treatment settings and the services can reasonably be expected to improve the recipient's condition or to prevent further regression so that the services will no longer be needed.~~

~~"VDH" means the Virginia Department of Health.~~

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

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

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

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

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

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

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

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

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

~~a. Be a psychiatric hospital accredited by JCAHO;~~

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

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

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

VA.R. Doc. No. R97-656; Filed November 21, 1997, 2:45 p.m.

Title of Regulations: Community Mental Retardation Services.

12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care and Services (amending 12 VAC 30-50-220; adding 12 VAC 30-50-227).

12 VAC 30-60-10 et seq. Standards Established and Methods Used to Assure High Quality Care (amending 12 VAC 30-60-140; adding 12 VAC 30-60-145).

12 VAC 30-120-10 et seq. Waivered Services (amending 12 VAC 30-120-210 through 12 VAC 30-120-250).

12 VAC 30-130-10 et seq. Amount, Duration and Scope of Selected Services (amending 12 VAC 30-130-540 and 12 VAC 30-130-570; repealing 12 VAC 30-130-560).

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

Effective Date: January 22, 1998.

Summary:

The purpose of this regulatory action is to expand Medicaid-covered services to persons with mental retardation and to recommend changes to the permanent regulations controlling rehabilitation services, specifically community mental health and mental retardation services. The replacement of the 1990 and 1997 State Plan option mental retardation services with new language in the home and community based care services waiver for persons with mental retardation and related conditions has been adopted in order to better serve the health and welfare needs of this population of Medicaid eligible individuals.

Crisis stabilization services have been added to the home and community based care services for persons with mental retardation to provide direct interventions to persons with mental retardation and related conditions who are experiencing serious psychiatric or behavioral problems that jeopardize their current community living situations by providing temporary intensive services and supports that avert emergency psychiatric hospitalization or institutional admission or prevent other out-of-home placement.

The department, with the concurrence of the Department of Mental Health, Mental Retardation and Substance Abuse Services, has made adjustments to the originally covered 1990 residential support service to absorb the newly proposed supported living service (thereby not finalizing this proposed service). In the interest of administrative simplicity, the residential support service definition was expanded to include individuals who would have been covered by the separate but nearly identical supported living service.

Additionally, the Balanced Budget Act of 1997 (Public Law 105-33) eliminated the long-standing statutory restriction on the provision of prevocational, educational and supported employment services to only those individuals who previously resided in a nursing facility or

an intermediate care facility for the mentally retarded (ICF/MR). Therefore, this prior test for the receipt of supported employment and prevocational services has been eliminated (shown as stricken through in this final regulation), as the agency is not permitted any discretion by this section of P.L. 105-33.

Summary of Public Comments and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

12 VAC 30-50-220. Other diagnostic, screening, preventive, and rehabilitative services, i.e., other than those provided elsewhere in this plan.

A. Diagnostic services are not provided.

B. Screening services. Screening mammograms for the female recipient population aged 35 and over shall be covered, consistent with the guidelines published by the American Cancer Society.

C. Maternity length of stay and early discharge.

1. If the mother and newborn, or the newborn alone, are discharged earlier than 48 hours after the day of delivery, DMAS will cover one early discharge follow-up visit as recommended by the physicians in accordance with and as indicated by the "Guidelines for Perinatal Care" as developed by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists (1992). The mother and newborn, or the newborn alone if the mother has not been discharged, must meet the criteria for early discharge to be eligible for the early discharge follow-up visit. This early discharge follow-up visit does not affect or apply to any usual postpartum or well-baby care or any other covered care to which the mother or newborn is entitled; it is tied directly to an early discharge. The criteria for an early discharge are as follows:

a. Discharge criteria for early discharge of mother.

(1) Uncomplicated vaginal, full-term delivery following a normal antepartum course;

(2) Postpartum observation has sufficiently documented a stable course, including the following observations:

(a) Vital signs are stable;

(b) Uterine fundus is firm, bleeding (lochia) is controlled, of normal amount and color;

(c) Hemoglobin is greater than eight, hematocrit is greater than or equal to 24 and estimated blood loss is not greater than 500 cc or blood loss does

not result in the patient being symptomatic for anemia, i.e., lightheadedness, syncope, tachycardia, or shortness of breath;

(d) Episiotomy/repai red laceration is not inflamed and there is no evidence of infection or hematoma;

(e) Tolerating prescribed diet post delivery;

(f) Voiding without difficulty and passing flatus. Bowel sounds present; and

(g) If not previously obtained, ABO and Rh typing must be done and, if indicated, the appropriate amount of Rho(D) immunoglobulin must be administered.

b. Discharge criteria for early discharge of infant. The newborn must be deemed normal by physical examination and stable meeting the following criteria:

(1) Term delivery and weight is considered normal;

(2) Infant is able to maintain a stable body temperature under normal conditions;

(3) Infant is able to take and tolerate feedings by mouth and demonstrates normal sucking and swallowing reflexes;

(4) Laboratory data must be reviewed to include:

(a) Maternal testing for syphilis and hepatitis B surface antigen;

(b) Cord or infant blood type and direct Coombs test (if the mother is Rho(D) negative, or is type O, or if screening has not been performed for maternal antibodies);

(c) Hemoglobin or hematocrit and blood glucose determinations, as clinically indicated; and

(d) Any screening tests required by law.

(5) Initial hepatitis B vaccine must be administered in accordance with the time requirements in the current Recommended Childhood Immunization Schedule developed by the Advisory Committee on Immunization Practices under the requirements of § 1905(r)(1) of the Social Security Act (42 USC § 1396 d).

c. Discharge criteria for early discharge of mother and infant.

(1) Family members or other support persons must be available to the mother for the first few days following discharge;

(2) The mother or caretaker has demonstrated the ability to care for her infant, including feeding, bathing, cord care, diapering, body temperature assessment, and measurement with a thermometer;

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(3) The mother or caretaker has been taught basic assessment skills, including neonatal well-being and recognition of illness. She verbalizes understanding of possible complications and has been instructed to notify the appropriate practitioner as necessary; and

(4) A physician-directed source of continuing medical care for both mother and baby must be identified and arrangements made for the baby to be examined within 48 hours of discharge.

2. The early discharge follow-up visit must be provided as directed by a physician. The physician may coordinate with the provider of his choice to provide the early discharge follow-up visit, within the following limitations. Qualified providers are those hospitals, physicians, nurse midwives, nurse practitioners, federally qualified health clinics, rural health clinics, and health departments clinics that are enrolled as Medicaid providers and are qualified by the appropriate state authority for delivery of the service. The staff providing the follow-up visit, at a minimum, must be a registered nurse having training and experience in maternal and child health. The visit must be provided within 48 hours of discharge.

3. The visit must include, at a minimum, the following:

a. Maternal assessment must include, but is not limited to:

- (1) Vital signs;
- (2) Assessment of lochia, height and firmness of the uterus;
- (3) Assessment of the episiotomy, if applicable;
- (4) Assessment for and of hemorrhoids;
- (5) Assessment of bowel and bladder function;
- (6) Assessment of the breasts, especially the nipples if the mother is breast feeding. Assessment of the mother's understanding of breast/nipple care and understanding of proper care;
- (7) Assessment of eating habits for nutritional balance, stressing good nutrition especially in the breast feeding mother;
- (8) Assessment for signs and symptoms of anemia and, if present, notification of the responsible physician for further instructions;
- (9) Confirmation that the mother has an appointment for a six-week postpartum check-up; and
- (10) Identification of the need for and make referrals to the appropriate resources for identified medical, social, and nutritional concerns and needs.

b. Newborn assessment must include, but is not limited to:

- (1) Vital signs;

(2) Weight;

(3) Examination of the umbilical cord and circumcision, if applicable;

(4) Assessment of hydration status;

(5) Evaluation of acceptance and tolerance of feedings, including the frequency of feeds and the amount taken each feed. If possible, observation of the mother or caretaker feeding the infant for technique assessment;

(6) Assessment of bowel and bladder function;

(7) Assessment of skin coloration; if the infant demonstrates any degree of jaundice, notification of the physician for further instruction. If infant is pale, mottled, lethargic, or with poor muscle tone, immediate notification of the physician for further instruction;

(8) Assessment of infant behavior, sleep/wake patterns;

(9) Assessment of the quality of mother/infant interaction, bonding;

(10) Blood samples for lab work, or a urine sample as directed by state law, physician, or clinical judgment;

(11) Confirmation that the infant has an appointment for routine two-week check up;

(12) Discussion with the mother or caretaker planning for health maintenance, including preventive care, periodic evaluations, immunizations, signs and symptoms of physical change requiring immediate attention, and emergency services available; and

(13) Identification of the need for and make referrals to any other existing appropriate resources for identified medical, social and nutritional concerns and needs.

D. Rehabilitative services.

1. Intensive physical rehabilitation.

a. Medicaid covers intensive inpatient rehabilitation services as defined in subdivision 1 d of this subsection in facilities certified as rehabilitation hospitals or rehabilitation units in acute care hospitals which have been certified by the Department of Health to meet the requirements to be excluded from the Medicare Prospective Payment System.

b. Medicaid covers intensive outpatient physical rehabilitation services as defined in subdivision 1 d of this subsection in facilities which are certified as Comprehensive Outpatient Rehabilitation Facilities (CORFs).

c. These facilities are excluded from the 21-day limit otherwise applicable to inpatient hospital services. Cost reimbursement principles are defined in 12 VAC 30-70-10 through 12 VAC 30-70-130.

d. An intensive rehabilitation program provides intensive skilled rehabilitation nursing, physical therapy, occupational therapy, and, if needed, speech-language pathology, cognitive rehabilitation, prosthetic-orthotic services, psychology, social work, and therapeutic recreation. The nursing staff must support the other disciplines in carrying out the activities of daily living, utilizing correctly the training received in therapy and furnishing other needed nursing services. The day-to-day activities must be carried out under the continuing direct supervision of a physician with special training or experience in the field of physical medicine and rehabilitation.

e. Nothing in this regulation is intended to preclude DMAS from negotiating individual contracts with in-state intensive physical rehabilitation facilities for those individuals with special intensive rehabilitation needs.

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

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

- (1) No further potential for improvement is demonstrated. The patient has reached his maximum progress and a safe and effective maintenance program has been developed.
- (2) There is limited motivation on the part of the individual or caregiver.
- (3) The individual has an unstable condition that affects his ability to participate in a rehabilitative plan.
- (4) Progress toward an established goal or goals cannot be achieved within a reasonable period of time.
- (5) The established goal serves no purpose to increase meaningful functional or cognitive capabilities.
- (6) The service can be provided by someone other than a skilled rehabilitation professional.

2. Community mental health services. Definitions. The following words and terms, when used in these regulations, shall have the following meanings unless the context clearly indicates otherwise:

"Code" means the Code of Virginia.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"DMHMRSAS" means Department of Mental Health, Mental Retardation and Substance Abuse Services consistent with Chapter 1 (§ 37.1-39 et seq.) of Title 37.1 of the Code of Virginia.

[a-] Mental health services. The following services, with their definitions, shall be covered:

[~~(4)~~ a.] Intensive in-home services for children and adolescents under age 21 shall be time-limited interventions provided typically but not solely in the residence of an individual who is at risk of being moved into an out-of-home placement or who is being transitioned to home from out-of-home placement due to a disorder diagnosable under the Diagnostic and Statistical Manual of Mental Disorders-III-R (DSM-III-R). These services provide crisis treatment; individual and family counseling; life (e.g., counseling to assist parents to understand and practice proper child nutrition, child health care, personal hygiene, and financial management, etc.), parenting (e.g., counseling to assist parents to understand and practice proper nurturing and discipline, and behavior management, etc.), and communication skills (e.g., counseling to assist parents to understand and practice appropriate problem-solving, anger management, and interpersonal interaction, etc.); case management activities and coordination with other required services; and 24-hour emergency response. These services shall be limited annually to 26 weeks.

[~~(2)~~ b.] Therapeutic day treatment for children and adolescents shall be provided in sessions of two or more hours per day, to groups of seriously emotionally disturbed children and adolescents or children at risk of serious emotional disturbance in order to provide therapeutic interventions. Day treatment programs, limited annually to 780 units, provide evaluation, medication education and management, opportunities to learn and use daily living skills and to enhance social and interpersonal skills (e.g., problem solving, anger management, community responsibility, increased impulse control and appropriate peer relations, etc.), and individual, group and family counseling.

[~~(3)~~ c.] Day treatment/partial hospitalization services for adults shall be provided in sessions of two or more consecutive hours per day, which may be scheduled multiple times per week, to groups of individuals in a nonresidential setting. These services, limited annually to 780 units, include the major diagnostic, medical, psychiatric, psychosocial and psychoeducational treatment modalities designed for individuals with serious mental disorders who require

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coordinated, intensive, comprehensive, and multidisciplinary treatment.

[~~(4)~~ d.] Psychosocial rehabilitation for adults shall be provided in sessions of two or more consecutive hours per day to groups of individuals in a nonresidential setting. These services, limited annually to 936 units, include assessment, medication education, psychoeducation, opportunities to learn and use independent living skills and to enhance social and interpersonal skills, family support, and education within a supportive and normalizing program structure and environment.

[~~(5)~~ e.] Crisis intervention shall provide immediate mental health care, available 24 hours a day, seven days per week, to assist individuals who are experiencing acute mental dysfunction requiring immediate clinical attention. This service's objectives shall be to prevent exacerbation of a condition, to prevent injury to the client or others, and to provide treatment in the context of the least restrictive setting. Crisis intervention activities, limited annually to 180 hours, shall include assessing the crisis situation, providing short-term counseling designed to stabilize the individual or the family unit or both, providing access to further immediate assessment and follow-up, and linking the individual and family with ongoing care to prevent future crises. Crisis intervention services may include, but are not limited to, office visits, home visits, preadmission screenings, telephone contacts, and other client-related activities for the prevention of institutionalization.

~~b. Mental retardation services/related conditions. Day health and rehabilitation services shall be covered for persons with MR or related conditions and the following definitions shall apply:~~

~~Day health and rehabilitation services (limited to 780 units per year) shall provide individualized activities, supports, training, supervision, and transportation based on a written physician's order/plan of care to eligible persons for two or more hours per day scheduled multiple times per week. These services are intended to improve the recipient's condition or to maintain an optimal level of functioning, as well as to ameliorate the recipient's disabilities or deficits by reducing the degree of impairment or dependency. Therapeutic consultation to service providers, family, and friends of the client around implementation of the physician's order/plan of care may be included as part of the services provided by the day health and rehabilitation program. The provider shall be licensed by DMHMRSAS as a Day Support Program. Specific components of day health and rehabilitation services include the following as needed:~~

~~(1) Self care and hygiene skills;~~

~~(2) Eating and toilet training skills;~~

~~(3) Task learning skills;~~

~~(4) Community resource utilization skills (e.g., training in time, telephone, basic computations with money, warning sign recognition, and personal identifications, etc.);~~

~~(5) Environmental and behavior skills (e.g., training in punctuality, self discipline, care of personal belongings and respect for property and in wearing proper clothing for the weather, etc.);~~

~~(6) Medication management;~~

~~(7) Travel and related training to and from the training sites and service and support activities;~~

~~(8) Skills related to the above areas, as appropriate that will enhance or retain the recipient's functioning.~~

12 VAC 30-50-227. Lead contamination.

3. Coverage shall be provided for investigations by local health departments to determine the source of lead contamination in the home as part of the management and treatment of Medicaid-eligible children who have been diagnosed with elevated blood lead levels. Only costs that are eligible for federal funding participation in accordance with current federal regulations shall be covered. Payments for environmental investigations under this section shall be limited to no more than two visits per residence.

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

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

B. The DMHMRSAS review shall include the following items:

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

C. Mental health services utilization criteria. Utilization reviews shall include determinations that providers meet all the requirements of Virginia state regulations found in 12 VAC 30-50-400 95 through 12 VAC 30-50-310.

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

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

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

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

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

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

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

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

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

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

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

2. Therapeutic day treatment for children and adolescents.

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

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

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

(a) This programming during the school day; or

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

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

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

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

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

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

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

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

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

3. Day treatment/partial hospitalization services shall be provided to adults with serious mental illness following diagnostic assessment when authorized by the physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, or certified psychiatric nurse, and in accordance with an ISP which shall be fully completed within 30 days of service initiation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Case management.

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

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

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

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

e. The ISP shall be updated at least annually.

D. 12 VAC 30-60-145. Mental retardation utilization criteria.

Utilization reviews shall include determinations that providers meet all the requirements of Virginia state regulations found in 12 VAC 30-50-400 95 through 12 VAC 30-50-310.

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

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

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

~~(1) Managing personal care needs,~~

~~(2) Understanding verbal commands and communicating needs and wants,~~

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

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

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

~~(6) Making decisions which require informed consent,~~

~~(7) Caring for other needs without the assistance of personnel trained to teach functional skills,~~

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

~~e. Services for the individual shall be preauthorized annually by DMHMRSAS.~~

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

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

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

~~g. The program shall operate a minimum of two continuous hours in a 24 hour period. One unit of~~

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

~~h. The provider shall be licensed by DMHMRSAS.~~

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

a- 1. The individual must require case management as documented on the consumer service plan of care which is developed based on appropriate assessment and supporting data. Authorization for case management services shall be obtained from DMHMRSAS [~~Care Coordination Unit staff~~] annually.

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

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

(1) a. The plan of care shall be reviewed by the case manager every three months to ensure the identified needs are met and the required services are provided. The review will be due by the last day of the third month following the month in which the last review was completed. A grace period will be given up to the last day of the fourth month following the month of the prior review. When the review was completed in a grace period, the next subsequent review shall be scheduled three months from the month the review was due and not the date of the actual review.

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

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

12 VAC 30-120-210. Definitions.

The following words and terms as used in this part shall have the following meanings unless the context indicates otherwise:

"Assistive technology" means specialized medical equipment and supplies including those devices, controls, or appliances specified in the plan of care but not available under the State Plan for Medical Assistance, which enable individuals to increase their abilities to perform activities of daily living, or to perceive, control or communicate with the environment in which they live or which are necessary to the proper functioning of such items.

~~"Care coordinators" means community resource consultants employed by the Department of Mental Health, Mental Retardation and Substance Abuse Services to perform utilization review, recommendation of preauthorization for service type and intensity, and review of individual level of care criteria.~~

"Case management" means the assessment, planning, linking and monitoring for individuals referred for mental retardation community-based care waiver services. Case management (i) ensures the development, coordination, implementation, monitoring, and modification of the individual service plan; (ii) links the individual with appropriate community resources and supports; (iii) coordinates service providers; and (iii) monitors quality of care.

"Case managers" means individuals possessing a combination of mental retardation work experience and relevant education which indicates that the individual possesses the knowledge, skills and abilities, as established by DMHMRSAS, necessary to perform case management services.

"Community based care waiver services" or "waiver services" means the range of community support services approved by the Health Care Financing Administration pursuant to § 1915(c) of the Social Security Act to be offered to mentally retarded and developmentally disabled individuals who would otherwise require the level of care provided in [a ~~nursing an immediate care~~] facility for the mentally retarded.

"Community services board" or "CSB" means the public organization authorized by the Code of Virginia to provide services to individuals with mental illness or retardation, operating autonomously but in partnership with the DMHMRSAS.

"Consumer Service Plan" or "CSP" means that document addressing the needs of the recipient of home and community-based care mental retardation services, in all life areas. The Individual Service Plans developed by service providers are to be incorporated in the CSP by the case manager. Factors to be considered when this plan is developed may include, but are not limited to, the recipient's age, primary disability, and level of functioning.

"Crisis stabilization" means direct intervention to persons with mental retardation who are experiencing serious

psychiatric or behavioral problems, or both, which jeopardize their current community living situation by providing temporary intensive services and supports that avert emergency psychiatric hospitalization or institutional admission or prevent other out of home placement. This service [~~must~~ shall be designed to] stabilize the individual and strengthen the current living situation so that the individual can be maintained in the community during and beyond the crisis period. Services will include, as appropriate, psychiatric, neuropsychiatric, and psychological assessment and other functional assessments and stabilization techniques; medication management and monitoring; behavior assessment and positive behavioral support; intensive care coordination with other agencies and providers to assist planning and delivery of services and supports to maintain community placement of the recipient; training of family members, other care givers, and service providers in positive behavioral supports to maintain the individual in the community; and temporary crisis supervision to ensure the safety of the individual and others.

"DMAS" means the Department of Medical Assistance Services.

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

"DMHMRSAS staff" means [~~community—resource consultants individuals~~] employed by the Department of Mental Health, Mental Retardation and Substance Abuse Services to perform utilization review, recommendation of preauthorization for service type and intensity, and review of individual level of care criteria.

"DRS" means the Department of Rehabilitative Services.

"DSS" means the Department of Social Services.

"Day support" means training in intellectual, sensory, motor, and affective social development including awareness skills, sensory stimulation, use of appropriate behaviors and social skills, learning and problem solving, communication and self-care, physical development, transportation to and from training sites, services and support activities, and prevocational services aimed at preparing an individual for paid or unpaid employment.

"Developmental risk" means the presence before, during or after an individual's birth of conditions typically identified as related to the occurrence of a developmental disability and for which no specific developmental disability is identifiable through diagnostic and evaluative criteria.

"Environmental modifications" means physical adaptations to a house, place of residence [, vehicle,] or work site, when the modification exceeds reasonable accommodation requirements of the Americans with Disabilities Act, necessary to ensure the individual's health and safety or enable functioning with greater independence when the adaptation is not being used to bring a substandard dwelling up to minimum habitation standards and is of direct medical or remedial benefit to the individual.

"EPSDT" means the Early Periodic Screening, Diagnosis and Treatment program administered by the Department of Medical Assistance Services for children under the age of 21 according to federal guidelines which prescribe specific preventive and treatment services for Medicaid-eligible children.

"HCFA" means the Health Care Financing Administration as that unit of the federal Department of Health and Human Services which administers the Medicare and Medicaid programs.

"Individual Service Plan" or "ISP" means the service plan developed by the individual service provider related solely to the specific tasks required of that service provider. ISPs help to comprise the overall Consumer Service Plan of care for the individual. The ISP is defined in DMHMRSAS licensing regulations 12 VAC 35-102-10 et seq.

"Mental retardation" means the diagnostic classification of substantial subaverage general intellectual functioning which originates during the [~~development developmental~~] period and is associated with impairment in adaptive behavior.

"Nursing services" means skilled nursing services listed in the plan of care which are ordered by a physician and required to prevent institutionalization, not available under the State Plan for Medical Assistance, are within the scope of the state's Nurse Practice Act and are provided by a registered professional nurse, or licensed practical nurse under the supervision of a registered nurse, licensed to practice in the state.

"Personal assistance" means assistance with activities of daily living, medication and/or other medical needs and monitoring health status and physical condition for individuals who do not receive residential support [*or supportive living*] services and for whom training and skills development are not primary objectives or are provided through another program or service.

[*"Persons with related conditions served by this waiver"* means persons residing in nursing facilities who have been determined through annual resident review to require specialized services and who, consistent with 42 CFR 435.1009, are individuals who have severe, chronic disabilities that meet all of the following conditions:

1. It is attributable to:
 - a. Cerebral palsy or epilepsy; or
 - b. Any other condition other than mental illness found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons and requires treatment or services similar to those required for these persons.
2. It is manifested before the person reaches age 22.
3. It is likely to continue indefinitely.

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4. It results in substantial functional limitations in three or more of the following areas of major life activity:

- a. Self-care.
- b. Understanding and use of language.
- c. Learning.
- d. Mobility.
- e. Self-direction.
- f. Capacity for independent living.]

"Prevocational services" means services aimed at preparing an individual for paid or unpaid employment. The services do not include activities that are specifically job or task oriented but focus on goals such as attention span and motor skills. Compensation, if provided, would be for persons whose productivity is less than 50% of the minimum wage.

["Qualified mental retardation professional" means individuals possessing (i) at least one year of documented experience working directly with individuals who have mental retardation or developmental disabilities; (ii) a bachelor's degree in a human services field including, but not limited to, sociology, social work, special education, rehabilitation counseling, and psychology; and (iii) the required Virginia or national license, registration or certification in accordance with his profession.]

["~~Related conditions~~" as defined for persons residing in nursing facilities who have been determined through Annual Resident Review to require specialized services, means a severe, chronic disability that (i) is attributable to a mental or physical impairment (attributable to mental retardation, cerebral palsy, epilepsy, autism, or neurological impairment or related conditions) or combination of mental and physical impairments; (ii) is manifested before that person attains the age of 22; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following major areas: self care, language, learning, mobility, self direction, capacity for independent living and economic self-sufficiency, and (v) results in the person's need for special care, treatment or services that are individually planned and coordinated and that are of lifelong or extended duration.]

"Residential support services" means support provided in [~~the mentally retarded a licensed or certified residence or in the~~] individual's home [~~or in a licensed residence. This service is one in~~] which [~~support and supervision is routinely provided. Support~~] includes training, assistance, and supervision in enabling [~~the individual individuals~~] to maintain or improve [~~his their~~] health, [~~assistance in performing individual care tasks, training to develop skills~~] in activities of daily living, [~~training~~] and [~~safety in the~~] use of community resources, and adapting [~~their~~] behavior to community and home-like environments. Reimbursement for residential support shall not include the cost of room [~~and,~~] board [~~,~~ and general supervision] .

"Respite care" means services given to individuals unable to care for themselves provided on a short-term basis because of the absence or need for relief of those persons normally providing the care.

"State Plan for Medical Assistance" or "Plan" means the regulations identifying the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"Supported employment" means training in specific skills related to paid employment and provision of ongoing or intermittent assistance or specialized supervision to enable a consumer to maintain paid employment provided to mentally retarded individuals [~~who have been discharged from a Medicaid certified nursing facility or nursing facility for the mentally retarded~~] .

["~~Supported living~~" means training and supports to enable adults and children with mental retardation and functional limitations to be maintained in natural living arrangements in the community. This may include individuals who live with parents, other adults, or other family members or others (e.g., helping roommates). Training and assistance shall be provided to eligible individuals as appropriate for those services: (i) functional skills and appropriate behavior related to an individual's health and safety, home management and living skill, and use of community resources; (ii) medication management and monitoring health, nutrition and physical condition; and (iii) personal care and daily living, and use of community resources.]

"Therapeutic consultation" means consultation provided by members of psychology, social work, behavioral analysis, speech therapy, occupational therapy, *therapeutic recreation*, or physical therapy disciplines [~~, and behavior consultation~~] to assist the individual, parents/family members, [*Part H*] *early intervention providers*, residential support and, day support and any other providers of support services in implementing an individual service plan.

12 VAC 30-120-220. General coverage and requirements for home and community-based care services.

A. Waiver service populations. Home and community-based services shall be available through a § 1915(c) waiver. Coverage shall be provided under the waiver for the following individuals who have been determined to require the level of care provided in an intermediate care facility for the mentally retarded:

1. Individuals with mental retardation.
2. Individuals with related conditions currently residing in nursing facilities [*but who are being discharged to the community*] and determined to require specialized services.
3. Individuals under the age of six at developmental risk [~~who have been determined to require the level of care provided in an intermediate care facility for the mentally retarded~~] . At age six, these individuals must be

determined to be mentally retarded to continue to receive home and community-based care services.

B. Covered services.

1. Covered services shall include: residential support, day support, supported employment, personal assistance, respite care, assistive technology, environmental modifications, nursing services ~~and~~, therapeutic consultation, [*and*] *crisis stabilization* [~~and supported living services~~] .

2. These services shall be clinically appropriate and necessary to maintain these individuals in the community. Federal waiver requirements provide that the average per capita fiscal year expenditure under the waiver must not exceed the average per capita expenditures for the level of care provided in an intermediate care facility for the mentally retarded under the State Plan that would have been made had the waiver not been granted.

C. Patient eligibility requirements.

1. Virginia shall apply the financial eligibility criteria contained in the State Plan for the categorically needy [~~and the medically needy~~] . Virginia has elected to cover the optional categorically needy group under 42 CFR 435.211, [~~435.231 and~~] 435.217 [*and 435.230*] . The income level used for 435.211, [~~435.231 and~~] 435.217 [*and 435.230*] is 300% of the current Supplemental Security Income payment standard for one person.

2. Under this waiver, the coverage groups authorized under § 1902(a)(10)(A)(ii)(VI) of the Social Security Act will be considered as if they were institutionalized for the purpose of applying institutional deeming rules. All recipients under the waiver must meet the financial and nonfinancial Medicaid eligibility criteria and be Medicaid eligible in an institution. The deeming rules are applied to waiver eligible individuals as if the individual were residing in an institution or would require that level of care.

3. Virginia shall reduce its payment for home and community-based services provided to an individual who is eligible for Medicaid services under 42 CFR 435.217 by that amount of the individual's total income (including amounts disregarded in determining eligibility) that remains after allowable deductions for personal maintenance needs, deductions for other dependents, and medical needs have been made, according to the guidelines in 42 CFR 435.735 and § 1915(c)(3) of the Social Security Act as amended by the Consolidated Omnibus Budget Reconciliation Act of 1986. DMAS will reduce its payment for home and community-based waiver services by the amount that remains after deducting the following amounts in the following order from the individual's income:

a. For individuals to whom § 1924(d) applies, Virginia intends to waive the requirement for comparability pursuant to § 1902(a)(10)(B) to allow for the following:

(1) An amount for the maintenance needs of the individual which is equal to the categorically needy income standard for a noninstitutionalized individual unless the individual is a working patient. Those individuals involved in a planned habilitation program carried out as a supported employment or prevocational or vocational training shall be allowed to retain an additional amount not to exceed the first \$75 of gross earnings each month and up to 50% of any additional gross earnings up to a maximum personal needs allowance of \$575 per month (149% of the SSI payment level for a family of one with no income).

(2) For an individual with only a spouse at home, the community spousal income allowance determined in accordance with § 1924(d) of the Social Security Act, the same as that applied for the institutionalized patient.

(3) For an individual with a family at home, an additional amount for the maintenance needs of the family determined in accordance with § 1924(d) of the Social Security Act, the same as that applied for the institutionalized patient.

(4) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but covered under the Plan.

b. For all other individuals:

(1) An amount for the maintenance needs of the individual which is equal to the categorically needy income standard for a noninstitutionalized individual unless the individual is a working patient. Those individuals involved in a planned habilitation program carried out as a supported employment or prevocational or vocational training will be allowed to retain an additional amount not to exceed the first \$75 of gross earnings each month and up to 50% of any additional gross earnings up to a maximum personal needs allowance of \$575 per month (149% of the SSI payment level for a family of one with no income).

(2) For an individual with a family at home, an additional amount for the maintenance needs of the family which shall be equal to the medically needy income standard for a family of the same size.

(3) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance

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charges and necessary medical or remedial care recognized under state law but covered under the state Medical Assistance Plan.

4. The following [~~three~~ four] criteria shall apply to all mental retardation waiver services:

a. Individuals qualifying for mental retardation waiver services must have a demonstrated clinical need for the service [~~arising from their diagnosed condition of mental retardation~~] resulting in significant functional limitations in major life activities [~~]. The need for the service must arise from (i) a diagnosed condition of mental retardation; (ii) a child younger than six years of age who is at developmental risk of significant functional limitations in major life activities; or (iii) a person with a related condition as defined in these regulations~~];

b. The Plan of Care and services which are delivered must be consistent with the Medicaid definition of each service; and

c. Services must be [~~authorized~~ approved] by the case manager based on a current functional assessment using the Inventory for Client and Agency Planning (ICAP) or other [~~appropriate~~ DMHMRSAS approved] assessment and demonstrated need for each specific service.

[~~d. Individuals qualifying for mental retardation waiver services must meet the ICF/MR level of care criteria.~~]

D. Assessment and authorization of home and community-based care services.

1. The individual's need for home and community-based care services shall be determined by the CSB case manager after completion of a comprehensive assessment of the individual's needs and available support. The case manager shall complete the assessment, determine whether the individual meets the intermediate care facility for the mentally retarded (ICF/MR) criteria and develop the Consumer Service Plan (CSP) with input from the recipient, family members, service providers and any other individuals involved in the individual's maintenance in the community.

2. An essential part of the case manager's assessment process shall be determining the level of care required by applying the existing DMAS ICF/MR criteria (12 VAC 30-130-430 et seq.).

3. The case manager shall gather relevant medical, social, and psychological data and identify all services received by the individual. Medical examinations shall be current, completed prior to the individual's entry to the waiver, no earlier than 12 months prior to beginning waiver services. Social assessments must have been completed within [~~one year~~ of 12 months prior to] beginning waiver services. Psychological evaluations or [~~reviews~~ standardized developmental evaluations for

~~children under the age of six years] must be completed within a year prior to the start of waiver services. In no case shall a psychological review be based on a full psychological evaluation that precedes admission to waiver services by more than three years reflect the current psychological status [and cognitive abilities of the recipients (diagnosis), current cognitive abilities, and current adaptive level of functioning of the individuals].~~

4. The case manager shall explore alternative settings to provide the care needed by the individual. Based on the individual's preference, preference of parents or guardian for minors, or preference of guardian or authorized representative for adults, and the assessment of needs, a plan of care shall be developed for the individual. For the case manager to make a recommendation for waiver services, community-based care services must be determined to be an appropriate service alternative to delay, avoid [~~placement in an ICF/MR~~], or [~~exit~~ promote exiting] from [~~either an ICF/MR placement or inappropriate~~] nursing facility placement.

5. Community-based care waiver services may be recommended by the case manager only if:

a. The individual is Medicaid eligible as determined by the local office of the Department of Social Services,

b. The individual is either mentally retarded as defined in § 37.1-1 of the Code of Virginia, [~~has a related condition, and is currently residing in a nursing facility and been determined to require specialized services, or~~] is a child under the age of six at developmental risk [~~], or is a person with a related condition~~] who would, in the absence of waiver services, require the level of care provided in an ICF/MR facility, the cost of which would be reimbursed under the Plan,

c. The individual requesting waiver services shall not receive such services while an inpatient of a nursing facility or hospital.

6. The case manager must submit the results of the comprehensive assessment and a recommendation to the ~~care coordinator~~ DMHMRSAS staff for final determination of ICF/MR level of care and authorization for community-based care services. DMHMRSAS authorization must be obtained prior to referral for service initiation and Medicaid reimbursement for waiver services. DMHMRSAS will communicate in writing to the case manager whether the recommended service plan has been approved or denied and, if approved, the amounts and type of services authorized.

7. All Consumer Service Plans are subject to approval by DMAS. DMAS is the single state authority responsible for the supervision of the administration of the community-based care waiver. DMAS has contracted with DMHMRSAS for recommendation of preauthorization of waiver services and utilization review of those services.

12 VAC 30-120-230. General conditions and requirements for all home and community-based care participating providers.

A. General requirements. Providers approved for participation shall, at a minimum, perform the following:

1. Immediately notify DMAS in writing of any change in the information which the provider previously submitted to DMAS.
2. Assure freedom of choice to recipients in seeking medical care from any institution, pharmacy, practitioner, or other provider qualified to perform the services required and participating in the Medicaid Program at the time the service was performed.
3. Assure the recipient's freedom to refuse medical care and treatment.
4. Accept referrals for services only when staff is available to initiate services.
5. Provide services and supplies to recipients in full compliance with Title VI of the Civil Rights Act of 1964 which prohibits discrimination on the grounds of race, color, religion, or national origin and of Section 504 of the Rehabilitation Act of 1973 which prohibits discrimination on the basis of a handicap and both the Virginians with Disabilities Act and the Americans with Disabilities Act.
6. Provide services and supplies to recipients in the same quality and mode of delivery as provided to the general public.
7. Charge DMAS for the provision of services and supplies to recipients in amounts not to exceed the provider's usual and customary charges to the general public.
8. Accept Medicaid payment from the first day of the recipient's eligibility.
9. Accept as payment in full the amount established by DMAS.
10. Use program-designated billing forms for submission of charges.
11. Maintain and retain business and professional records sufficient to document fully and accurately the nature, scope, and details of the [health care services] provided.
 - a. Such records shall be retained for at least five years from the last date of service or as provided by applicable state laws, whichever period is longer. If an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every exception resolved. Records of minors shall be kept for at least five years after such minor has reached the age of 18 years.

b. Policies regarding retention of records shall apply even if the agency discontinues operation. DMAS shall be notified in writing of the storage location and procedures for obtaining records for review should the need arise. The location, agent, or trustee shall be within the Commonwealth of Virginia.

12. Furnish to authorized state and federal personnel, in the form and manner requested, access to records and facilities.
13. Disclose, as requested by DMAS, all financial, beneficial, ownership, equity, surety, or other interests in any and all firms, corporations, partnerships, associations, business enterprises, joint ventures, agencies, institutions, or other legal entities providing any form of health care services to recipients of Medicaid.
14. Hold confidential and use for authorized DMAS or DMHMRSAS purposes only all medical assistance information regarding recipients.
15. When ownership of the provider agency changes, DMAS shall be notified within 15 calendar days of such change.

B. Requests for participation. DMAS will screen requests to determine whether the provider applicant meets the following basic requirements for participation.

C. Provider participation standards. For DMAS to approve contracts with home and community-based care providers the following standards shall be met:

1. The provider must have the ability to serve [all] individuals in need of waiver services regardless of the individual's ability to pay or eligibility for Medicaid reimbursement.
2. The provider must have the administrative and financial management capacity to meet state and federal requirements.
3. The provider must have the ability to document and maintain individual case records in accordance with state and federal requirements.
4. The provider of residential and day support services must [~~meet the licensing requirements of~~ *be licensed by*] DMHMRSAS [~~that as a provider of residential services or supportive residential services. These licensing requirements~~] address standards for personnel, residential and day program environments, and program and service content. [*They must also have training in the characteristics of mental retardation and appropriate interventions, training strategies, and support methods for persons with mental retardation and functional limitations.*] Residential support services may also be provided in programs licensed by DSS ([~~homes for adults~~ *adult care residences*]) or in adult foster care homes approved by local DSS offices pursuant to state DSS regulations. In addition to licensing requirements,

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persons providing residential support services are required to pass an objective, standardized test of skills, knowledge and abilities developed by DMHMRSAS and administered according to DMHMRSAS policies.

5. Supported employment or prevocational training services shall be provided by agencies that are either licensed by DMHMRSAS [*as a day support service*] or are vendors of [~~prevocational, vocational or supported extended employment services, long-term employment support services or supportive~~] employment services for DRS.

6. Services provided by members of professional disciplines shall meet all applicable state licensure or certification requirements. Persons providing [*behavior*] consultation [~~in behavioral analysis~~] shall be certified by DMHMRSAS based on the individual's work experience, education and demonstrated knowledge, skills, and abilities. Persons providing rehabilitation engineering shall be contracted with DRS.

7. All facilities covered by § 1616(e) of the Social Security Act in which home and community-based care services will be provided shall be in compliance with applicable standards that meet the requirements of 45 CFR 1397 for board and care facilities. Health and safety standards shall be monitored through the DMHMRSAS's licensure standards, 12 VAC 35-102-10 et seq. or through DSS licensure standards 22 VAC 40-70-10 et seq. [~~and 22 VAC 40-770-10 et seq.~~]

8. Personal assistance services shall be provided by a DMAS certified personal care provider [~~; whose staff has passed the DMHMRSAS objective standardized test for residential support services, or by~~] a DMHMRSAS residential support provider [~~or, for individuals with related conditions who are capable of directing this service, the provider may be an individual registered with DRS~~] .

9. Respite care services shall be provided by a DMAS certified personal care provider [~~;~~] a DMHMRSAS [~~residential support provider, licensed supportive residential provider, respite care services provider (center based or out-of-home) or in-home respite care provider; an~~] approved [~~by~~] DSS [~~as a~~] foster care home for children or adult foster home [*provider;*] or be registered with the CSB as an individual provider of respite care [*as defined in 12 VAC 35-102-10*] .

10. Nursing services shall be provided by a DMAS certified private duty nursing or home health provider or by [~~a licensed registered nurse or practical nurse contracted or employed by the CSB employees of CSBs who are licensed registered nurses or licensed practical nurses~~] .

11. Environmental modifications shall be provided in accordance with all applicable state or local building codes by contractors of the CSB or DRS who shall be reimbursed for the amount charged by said contractors.

12. Assistive technology shall be provided by agencies under contract with DMAS as a durable medical equipment and supply provider. [*Any equipment/supplies/technology not available through a durable medical equipment provider may be purchased and billed to DMAS for Medicaid reimbursement as documented in the Plan of Care, approved by the case manager, and monitored by DMHMRSAS.*]

13. Crisis stabilization services shall be provided by agencies licensed by DMHMRSAS as a provider of outpatient services or residential or supportive residential services [*or day support services*] . To provide the crisis supervision component, agencies must be licensed by DMHMRSAS as providers of residential services or supportive residential services. The provider agency must employ or utilize qualified mental retardation professionals, licensed mental health professionals or other qualified personnel competent to provide crisis stabilization and related activities to individuals with mental retardation who are experiencing serious psychiatric or behavioral problems. [*The qualified mental retardation professional shall have (i) at least one year of documented experience working directly with individuals who have mental retardation or developmental disabilities; (ii) a bachelor's degree in a human services field including, but not limited to, sociology, social work, special education, rehabilitation counseling, or psychology; and (iii) the required Virginia or national license, registration, or certification in accordance with his profession.*]

[~~14. Supported living services shall be provided by agencies licensed by DMHMRSAS as a provider of residential services or supportive residential services. Individuals employed or contracted by the provider agency to implement supported living services must have training in the characteristics of mental retardation and appropriate interventions, training strategies, and support methods for persons with mental retardation and functional limitations. Persons providing supported living services are required to pass an objective, standardized test of skills, knowledge, and abilities developed by DMHMRSAS and administered according to DMHMRSAS policies.~~]

D. Adherence to provider contract and DMAS provider service manual. In addition to compliance with the general conditions and requirements, all providers enrolled by DMAS shall adhere to the conditions of participation outlined in their individual provider contracts and in the DMAS provider service manual.

E. Recipient choice of provider agencies. The waiver recipient shall be informed of all available providers in the community and shall have the option of selecting the provider agency of his choice from among those agencies which can appropriately meet the individual's needs.

F. Termination of provider participation. DMAS may administratively terminate a provider from participation upon

60 days' written notification. DMAS may also cancel a contract immediately or may give such notification in the event of a breach of the contract by the provider as specified in the DMAS contract. Such action precludes further payment by DMAS for services provided recipients subsequent to the date specified in the termination notice.

G. Reconsideration of adverse actions. Adverse actions may include, but are not limited to, disallowed payment of claims for services rendered which are not in accordance with DMAS policies and procedures, contract limitation or termination. The following procedures shall be available to all providers when DMAS takes adverse action which includes termination or suspension of the provider agreement.

1. The reconsideration process shall consist of three phases:
 - a. A written response and reconsideration of the preliminary findings.
 - b. The informal conference.
 - c. The formal evidentiary hearing.
2. The provider shall have 30 days to submit information for written reconsideration, 15 days from the date of the notice to request the informal conference, and 15 days from the date of the notice to request the formal evidentiary hearing.
3. An appeal of adverse actions shall be heard in accordance with the Administrative Process Act (s 9-6.14:1 et seq. of the Code of Virginia) and the State Plan for Medical Assistance provided for in § 32.1-325 of the Code of Virginia. Court review of the final agency determination shall be made in accordance with the Administrative Process Act.

H. Responsibility for sharing recipient information. It shall be the responsibility of the case management provider to notify DMAS and DSS, in writing, when any of the following circumstances occur:

1. Home and community-based care services are implemented.
2. A recipient dies.
3. A recipient is discharged or terminated from services.
4. Any other circumstances (including hospitalization) which cause home and community-based care services to cease or be interrupted for more than 30 days.

I. Changes or termination of care. It is the ~~care coordinator's~~ DMHMRSAS staff's responsibility to authorize any changes to a recipient's CSP based on the recommendation of the case management provider.

1. Agencies providing direct service are responsible for modifying their individual service plan and submitting it to the case manager any time there is a change in the recipient's condition or circumstances which may warrant a change in the amount or type of service rendered.

2. The case manager will review the need for a change and may recommend a change to the plan of care to the ~~care coordinator~~ DMHMRSAS staff.

3. The ~~care coordinator~~ DMHMRSAS staff will approve or deny the requested change to the recipient's plan of care and communicate this authorization to the case manager within [~~72 hours~~ 10 days] of receipt of the request for change [or in the case of an emergency, within 72 hours of receipt of the request for change].

4. The case manager will communicate in writing the authorized change in the recipient's plan of care to the individual service provider and the recipient, in writing, providing the recipient with the right to appeal the decision pursuant to DMAS Client Appeals Regulations (12 VAC 30-110-10 et seq.).

5. Nonemergency termination of home and community-based care services by the individual service provider. The individual service provider shall give the recipient and/or family and case manager 10 days' written notification of the intent to terminate services. The letter shall provide the reasons for and effective date of the termination. The effective date of services termination shall be at least 10 days from the date of the termination notification letter.

6. Emergency termination of home and community-based care services by the individual services provider. In an emergency situation when the health and safety of the recipient or provider agency personnel is endangered, the case manager and ~~care coordinator~~ DMHMRSAS staff must be notified prior to termination. The 10-day written notification [~~period to the individual~~] shall not be required.

7. Termination of home and community-based care services for a recipient by the ~~care coordinator~~ DMHMRSAS staff. The effective date of termination shall be at least 10 days from the date of the termination notification letter. The case manager has the responsibility to identify those recipients who no longer meet the criteria for care or for whom home and community-based services are no longer an appropriate alternative. The ~~care coordinator~~ DMHMRSAS staff has the authority to terminate home and community-based care services.

J. Suspected abuse or neglect. Pursuant to § 63.1-55.3 of the Code of Virginia, if a participating provider agency knows or suspects that a home and community-based care recipient is being abused, neglected, or exploited, the party having knowledge or suspicion of the abuse/neglect/exploitation shall report this to the local DSS.

K. DMAS monitoring. DMAS is responsible for assuring continued adherence to provider participation standards. DMAS shall conduct ongoing monitoring of compliance with provider participation standards and DMAS policies and periodically recertify each provider for contract renewal with DMAS to provide home and community-based services. A

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provider's noncompliance with DMAS policies and procedures, as required in the provider's contract, may result in a written request from DMAS for a corrective action plan which details the steps the provider will take and the length of time required to achieve full compliance with deficiencies which have been cited.

12 VAC 30-120-240. Covered services and limitations.

A. Residential support services shall be provided in the recipient's home [~~or (including the home of a relative or other person, a foster home or an adult family care home),~~] in a licensed [~~adult care~~] residence [~~in the amount and type dictated by the training, supervision, and personal care available from the recipient's place of residence or licensed group home~~]. [~~The service shall be designed to enable individuals qualifying for the mental retardation waiver to be maintained in living arrangements in the community and shall include: (i) training in or reinforcement of functional skills and appropriate behavior related to a recipient's health and safety, personal care, activities of daily living and use of community resources; (ii) assistance with medication management and monitoring health, nutrition and physical condition; and (iii) assistance with personal care activities of daily living and use of community resources.~~] Service providers [~~are shall be~~] reimbursed only for the amount and type of residential support services included in the individual's approved plan of care. Residential support services shall not be authorized in the plan of care unless the individual requires these services and [~~they these services~~] exceed the care included in the individual's room and board arrangement [~~for individuals residing in an adult care residence or group home, or, for other individuals, these services exceed services provided by the family or other caregiver~~]. In order to qualify for this service [~~in an adult care residence or a group home~~], the individual shall have a demonstrated need for [~~24-hour support services provided by the mental retardation waiver (e.g., ICAP service level of six or under, homelessness, a need for a group home, a need for an out-of-home placement), continuous training, assistance, and supervision for up to 24 hours in a residential setting provided by paid staff. For other individuals, services will not routinely be provided across a continuous 24-hour period.~~

1. All individuals must meet the following criteria in order for Medicaid to reimburse for mental retardation residential support services. The individual must meet the eligibility requirements for this waiver service as herein defined. The individual shall have a demonstrated need for supports to be provided by paid staff by the residential support provider.

2. An individual's case manager shall not be the direct service staff person or the immediate supervisor of a staff person who provides supported living services to the individual.

3. This service must be provided one-on-one to the individual.

4. This service may not be provided to any individual who receives personal assistance services under the mental retardation community waiver or other residential program that provides a comparable level of care.

5. Room and board and general supervision shall not be components of this service.

6. This service shall not be used solely to provide routine or emergency respite care for parent or other care givers with whom the individual lives.]

B. Day support services include a variety of training, support, and supervision offered in a setting which allows peer interactions and community integration. If prevocational services are offered, the plan of care must contain documentation regarding whether prevocational services are available in vocational rehabilitation agencies through § 110 of the Rehabilitation Act of 1973 or in special education services through § 602(16) and (17) of the Individuals with Disabilities Education Act. When services are provided through these sources, the plan of care shall not authorize them as a waiver funded expenditure. Compensation for prevocational services can only be made when the individual's productivity is less than 50% of the minimum wage. Service providers are reimbursed only for the amount and type of day support services included in the individual's approved plan of care based on the setting, intensity and duration of the service to be delivered. In order to qualify for [~~this prevocational~~] service, the individual shall have a demonstrated need for support in skills which are aimed towards preparation of paid employment which may be offered in a variety of community settings. [~~Individuals must have previously resided in a Medicaid certified facility to qualify for prevocational day support services. For day support services,~~] individuals shall have demonstrated the need for functional training, assistance and specialized supervision offered in settings [, other than the individual's own residence,] which allow an opportunity for being [~~a~~] productive and contributing [~~member members~~] of their communities.

C. Supported employment services shall include training in specific skills related to paid employment and provision of ongoing or intermittent assistance [~~and~~] or specialized supervision to enable a consumer to maintain paid employment [~~provided to mentally retarded individuals who have been discharged from a Medicaid certified nursing facility or nursing facility for the mentally retarded~~]. Each plan of care must contain documentation regarding whether supported employment services are available in vocational rehabilitation agencies through § 110 of the Rehabilitation Act of 1973 or in special education services through § 602(16) and (17) of the Individuals with Disabilities Education Act. When services are provided through these sources, the plan of care shall not authorize them as a waiver funded expenditure. Service providers are reimbursed only for the amount and type of habilitation services included in the individual's approved plan of care based on the intensity and duration of the service delivered. Reimbursement shall be limited to actual interventions by the provider of supported

employment, not for the amount of time the individual is in the supported employment environment. *In order to qualify for these services, the individual shall have a demonstrated need for training, specialized supervision, or assistance in paid employment and for whom competitive employment at or above the minimum wage is unlikely [without this support] and who, because of the disability, needs ongoing support, including supervision, training and transportation to perform in a work setting. [Such qualifying individuals must have previously resided in a Medicaid-certified facility.]*

D. Therapeutic consultation is available under the waiver for Virginia licensed or certified practitioners in psychology, social work, occupational therapy, physical therapy, therapeutic recreation, rehabilitation engineering [,] and speech therapy. [~~Behavioral analysis~~ *Behavior consultation*] performed by persons certified by DMHMRSAS based on the individual's work experience, education and demonstrated knowledge, skills, and abilities may also be a covered waiver service. These services may be provided, based on the individual plan of care, for those individuals for whom specialized consultation is clinically necessary to enable their utilization of waiver services. Therapeutic consultation services, other than [~~behavioral analysis~~ *behavior consultation*], may be provided in residential or day support settings or in office settings in conjunction with another waiver service. [~~Behavioral analysis~~ *Behavior consultation*] may be offered in the absence of any other waiver service when the consultation provided to informal caregivers is determined to be necessary to prevent institutionalization. Service providers are reimbursed according to the amount and type of service authorized in the plan of care based on an hourly fee for service. *In order to qualify for these services, the individual shall have a demonstrated need for [referral for] consultation in any of these services. Documented need indicates that the Plan of Care could not be implemented effectively and efficiently without such consultation from this service.*

E. Environmental modifications shall be available to individuals who are receiving at least one other waiver service. It is provided primarily in the individual's home or other community residence in accordance with all applicable state or local building codes. A maximum limit of \$5,000 may be reimbursed in a year. *In order to qualify for these services, the individual shall have a demonstrated need for [equipment or modifications of a] remedial or medical benefit [offered] primarily in a consumer's home, vehicle, community activity setting, or day program to specifically serve to improve the individual's personal functioning. [This service shall encompass those items not otherwise covered in the State Plan for Medical Assistance.]*

F. Personal assistance is available only for individuals who do not receive residential [~~support~~] services [*or live in adult care residences*] and for whom training and skills development are not [~~primary~~] objectives or are provided through another program or service. *In order to qualify for these services, the individual shall have [a] demonstrated [a] need [with for] personal [care, assistance in] activities*

of daily living, medication or other medical needs or monitoring health status or physical condition. [Training and skills development shall not be primary objectives of this service or are received in another program.]

G. Respite care services are limited to a maximum of 30 days or 720 hours per year. *In order to qualify for these services, the individual shall have a demonstrated need for substitute care/temporary care which is normally provided by a primary care giver to provide relief for the family or surrogate family/care giver. [This care shall not be provided to relieve group home or adult care residence staff where residential care is provided in paid shifts.]*

H. Nursing services are for individuals with serious medical conditions and complex health care needs which require specific skilled nursing services which cannot be provided by non-nursing personnel. Skilled nursing is provided in the individual's home and/or other community setting on a regularly scheduled or intermittent need basis. The plan of care must indicate that the service is necessary to prevent institutionalization and is not available under the State Plan for Medical Assistance. *In order to qualify for these services, the individual shall have demonstrated complex health care needs which require specific skilled nursing services which are ordered by a physician and which cannot be otherwise accessed under the Title XIX State Plan.*

I. Assistive technology is available to individuals who are receiving at least one other waiver service and may be provided in a residential or nonresidential setting. A maximum limit of \$5,000 may be reimbursed in a year. *In order to qualify for these services, the individual shall have [a] demonstrated need for [equipment or modification for] remedial or medical benefit primarily in a consumer's home, vehicle, community activity setting, or day program to specifically serve to improve the individual's personal functioning. [This shall encompass those items not otherwise covered under the State Plan.]*

J. *Crisis stabilization services shall provide, as appropriate, neuropsychological, psychiatric, psychological and other assessments and stabilization, functional assessments, medication management and behavior assessment, behavior [management support], intensive care coordination with other agencies and providers to assist planning and delivery of services and supports to maintain community placement of the recipient; training of family members and other care givers and service providers in positive behavioral supports to maintain the recipient in the community; and temporary [specialized crisis] supervision to ensure the safety of the recipient and others. The unit for each component of the service shall equal one hour. This service may be authorized for provision [for of] a maximum period of 15 days and during [no] more than 60 days in a calendar year. The actual service units per episode shall be based on the documented clinical needs of the [recipients individuals] being served.*

1. *These services shall be available to individuals who meet at least one of the following criteria:*

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- a. Individual is experiencing a marked reduction in psychiatric, adaptive, or behavioral functioning;
- b. Individual is experiencing extreme increase in emotional distress;
- c. Individual needs continuous intervention to maintain stability; or
- d. Individual is causing harm to himself or others.

2. This service [~~must~~ shall be designed to] stabilize the recipient and strengthen the current semi-independent living situation, or situation with family or other primary care givers so the recipient can be maintained during and beyond the crisis period. These services may be provided directly in, but not limited to, the following settings:

- a. The home of an individual who lives with family, friends, or other primary care giver or givers;
- b. The home of an individual who lives independently/semi-independently to augment any current services and supports;
- c. A community-based residential program to augment current services and supports;
- d. A day program or setting to augment current services and supports; or
- e. A respite care setting [to augment current services and supports] .

3. These services may be initiated following a documented face-to-face assessment by a qualified mental retardation professional. If appropriate, the assessment shall be conducted jointly with a licensed mental health professional or other appropriate professional or professionals. [~~Crisis stabilization services shall be billed in hourly service units and may be authorized for provision during a maximum period of 15 days and for no more than 60 days in a calendar year.~~] Crisis supervision, if provided as part of this service, shall be separately billed in hourly service units. The need for this service or an extension of the authorization for this service must be clearly documented following a documented face-to-face reassessment conducted by a qualified mental retardation professional. If appropriate, the reassessment will be conducted jointly with a licensed mental health professional or other appropriate professional or professionals.

4. An Individualized Service Plan (ISP) must be developed or revised within 72 hours of assessment or reassessment. Crisis supervision may be provided as a component of this service only if clinical/behavioral intervention allowable under this service also is provided during authorized period. Crisis supervision must be provided [one-to-one and] face-to-face with the recipient.

5. This service shall not be used for continuous long-term care beyond the service limits. Room and board and general supervision shall not be components of this service and shall not be included in reimbursement.

[~~K. Supported living services shall be defined as training and supports to enable high risk individuals with mental retardation and functional limitations to be maintained in independent or semi independent living arrangements in the community. This may include individuals who live with parents, others (e.g., helping roommates, friends) or other family members. The maximum amount of services covered for a recipient shall be set by the community services board based on documented needs of the recipient but shall not exceed 62 units per month with one unit being defined as 1-2.99 hours per day. No more than three units shall be covered in a 24 hour period.~~

~~1. Each recipient who receives this service must also receive case management services. This service shall provide the following to eligible recipients as appropriate in order to be reimbursed by Medicaid:~~

- ~~a. Training in or reinforcement of functional skills and appropriate behavior related to a recipient's health and safety, personal care, activities of daily living, and use of community resources;~~
- ~~b. Assistance with medication management and monitoring health, nutrition and physical condition; and~~
- ~~c. Assistance with personal care, activities of daily living, and use of community resources.~~

~~2. This service may not be provided to any individual who receives residential support or personal assistance services under the mental retardation community waiver.~~

~~3. All individuals must meet the following criteria in order for Medicaid to reimburse for mental retardation supported living services: the recipient meets the eligibility requirements for this waiver service as herein defined; the recipient shall not have a demonstrated need for 24 hour support services provided by the mental retardation waiver (e.g., currently with family, self, or others with a goal of maintaining at home placement, ICAP service level of five or over for adults in semi-independent or independent living situations.~~

~~4. This service shall be limited to the amount of units which are based upon documented individual needs. The maximum limit shall be 62 units per month.~~

~~5. An individual's case manager shall not also be the direct service staff person, or the immediate supervisor of a staff person, who provides supported living services to that recipient.~~

~~6. This service must be provided one on one to the recipient.~~

~~7. This service may not be provided to any individual who receives residential support or personal assistance services under the mental retardation community waiver~~

~~or some other residential program where a comparable level of care is available.~~

~~8. Room and board and general supervision shall not be components of this service. This service shall not be used solely to provide routine or emergency respite care for parent or other care givers with whom the recipient lives.~~

~~9. Utilization review.~~

~~a. This service must be authorized by the case manager based upon a current functional assessment using the ICAP or other appropriate instrument or instruments approved by DMHMRSAS.~~

~~b. An ISP must be developed which identifies specific goals and objectives to be accomplished by provision of supported living services.~~

~~c. Receipt of this service by the recipient must be recorded with adequate documentation which addresses plan of care goals; there must be quarterly documentation of status/progress and significant events.~~

~~d. The ISP must be reviewed at least quarterly and modified as appropriate. The ISP must be updated at least annually.~~

~~e. The consumer's eligibility and need for the continuation of services must be reviewed and approved by the case manager annually.~~

12 VAC 30-120-250. Reevaluation of service need and utilization review.

A. The Consumer Service Plan.

1. The Consumer Service Plan shall be developed by the case manager mutually with other service providers, the [recipient individual], consultants, and other interested parties based on relevant, current assessment data. The plan of care process determines the services to be rendered to [recipients individuals], the frequency of services, the type of service provider, and a description of the services to be offered. Only services authorized on the CSP by DMHMRSAS according to DMAS policies will be reimbursed by DMAS.

2. The case manager is responsible for continuous monitoring of the appropriateness of the [recipient's individual's] plan of care and revisions to the CSP as indicated by the changing needs of the recipient. At a minimum, the case manager shall review the plan of care every three months to determine whether service goals and objectives are being met and whether any modifications to the CSP are necessary.

3. [The] care coordinator DMHMRSAS staff shall review the plan of care every [six 12] months or more frequently as required to assure proper utilization of services. Any modification to the amount or type of services in the CSP must be authorized by [the] care

coordinator DMHMRSAS staff [, another employee of DMHMRSAS] or DMAS.

B. Review of level of care.

~~1. The care coordinator shall review the recipient's level of care and continued need for waiver services every six months or more frequently as required to assure proper utilization of services.~~

~~2. 1. The case manager shall coordinate [a an annual] comprehensive reassessment, [including, if indicated, and, if warranted,] a medical examination and a psychological evaluation for every waiver recipient [at least once a year]. This reassessment shall include an update of the assessment instrument and any other appropriate assessment data based on the recipient's characteristics.~~

~~3. 2. A medical examination shall be completed for adults based on need identified by the provider, consumer, case manager, or care coordinator DMHMRSAS staff. Medical examinations for children shall be completed according to the recommended frequency and periodicity of the EPSDT program.~~

~~4. 3. A new psychological evaluation [or standardized developmental assessment for children under six years of age] is required every three years must reflect [the] current psychological status [diagnosis], adaptive level of functioning,] and cognitive abilities. [A new psychological evaluation shall be required whenever the individual's functioning has undergone significant change and is no longer reflective of the past psychological evaluation.]~~

C. Documentation required.

1. The case management agency must maintain the following documentation for review by the DMHMRSAS care coordinator staff and DMAS utilization review staff for each waiver recipient:

a. All assessment summaries and CSP's completed for the recipient maintained for a period not less than five years from the recipient's start of care.

b. All ISP's from any provider rendering waiver services to the recipient.

c. All supporting documentation related to any change in the plan of care.

d. All related communication with the providers, recipient, consultants, DMHMRSAS, DMAS, DSS, DRS or other related parties.

e. An ongoing log which documents all contacts made by the case manager related to the waiver recipient.

2. The individual service providers must maintain the following documentation for review by the DMHMRSAS care coordinator staff and DMAS utilization review staff for each waiver recipient:

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- a. All ISP's developed for that recipient maintained for a period not less than five years from the date of the recipient's entry to waiver services.
- b. An attendance log which documents the date services were rendered and the amount and type of service rendered.
- c. Appropriate progress notes reflecting recipient's status and, as appropriate, progress toward the goals on the ISP.

12 VAC 30-130-540. Definitions.

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

"Board" or "BMAS" means the Board of Medical Assistance Services.

"Code" means the Code of Virginia.

"Consumer service plan" means that document addressing the needs of the ~~client~~ recipient of mental retardation case management services, in all life areas. Factors to be considered when this plan is developed are, but not limited to, the ~~client's~~ recipient's age, primary disability, level of functioning and other relevant factors.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"DMHMRSAS" means the Department of Mental Health, Mental Retardation and Substance Abuse Services consistent with Chapter 1 (§ 37.1-39 et seq.) of Title ~~37~~ 37.1 of the Code of Virginia.

"DRS" means the Department of Rehabilitative Services consistent with Chapter 3 (§ 51.5-8 et seq.) of Title 51.5 of the Code of Virginia.

"HCFA" means the Health Care Financing Administration as that unit of the federal Department of Health and Human Services which administers the Medicare and Medicaid programs.

"Individual Service Plan" or "ISP" means ~~that which is defined in DMHMRSAS licensing regulations VR 470-02-00 [12 VAC 35-80-10 et seq. Repealed]~~ a comprehensive and regularly updated statement specific to the individual being treated containing, but not necessarily limited to, his treatment or training needs, his goals and measurable objectives to meet the identified needs, services to be provided with the recommended frequency to accomplish the measurable goals and objectives, and estimated timetable for achieving the goals and objectives. Such ISP shall be maintained up to date as the needs and progress of the individual changes.

"Medical or clinical necessity" means an item or service that must be consistent with the diagnosis or treatment of the individual's condition. It must be in accordance with the community standards of medical or clinical practice.

"Mental retardation" means the diagnostic classification of substantial subaverage general intellectual functioning which originates during the [~~development~~ developmental] period and is associated with impairment in adaptive behavior.

"Preauthorization" means the approval by the [~~care coordinator~~ DMHMRSAS staff] of the plan of care which specifies recipient and provider. Preauthorization is required before reimbursement can be made.

"Qualified case managers for mental health case management services" means individuals possessing a combination of mental health work experience or relevant education which indicates that the individual possesses the knowledge, skills, and abilities, as established by DMHMRSAS, necessary to perform case management services.

"Qualified case managers for mental retardation case management services" means individuals possessing a combination of mental retardation work experience and relevant education which indicates that the individual possesses the knowledge, skills, and abilities, as established by DMHMRSAS, necessary to perform case management services.

"Related conditions," as defined for persons residing in nursing facilities who have been determined through Annual Resident Review to require specialized services, means a severe, chronic disability that (i) is attributable to a mental or physical impairment (attributable to mental retardation, cerebral palsy, epilepsy, autism, or neurological impairment or related conditions) or combination of mental and physical impairments; (ii) is manifested before that person attains the age of 22; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following major areas: self-care, language, learning, mobility, self-direction, capacity for independent living and economic self-sufficiency; and (v) results in the person's need for special care, treatment or services that are individually planned and coordinated and that are of lifelong or extended duration.

"Serious emotional disturbance" means that mental health problem as defined by the Board of Mental Health, Mental Retardation, and Substance Abuse Services in Policy 1029, Definitions of Priority Mental Health Populations, effective June 27, 1990.

"Serious mental illness" means that mental health problem as defined by the Board of Mental Health, Mental Retardation, and Substance Abuse Services in Policy 1029, Definitions of Priority Mental Health Populations, effective June 27, 1990.

"Significant others" means persons related to or interested in the individual's health, well-being, and care. Significant others may be, but are not limited, to a spouse, friend, relative, guardian, priest, minister, rabbi, physician, neighbor.

"Substance abuse" means the use, without compelling medical reason, of any substance which results in psychological or physiological dependency as a function of

continued use in such a manner as to induce mental, emotional or physical impairment and cause socially dysfunctional or socially disordering behavior.

"State Plan for Medical Assistance" or "Plan" means the document listing the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

12 VAC 30-130-560. Mental retardation/related conditions services. (Repealed.)

~~Day health and rehabilitation services shall be covered for persons with mental retardation or related conditions and the following definitions shall apply:~~

~~Day health and rehabilitation services (limited to 780 units per year) shall provide individualized activities, supports, training, supervision, and transportation based on a written plan of care to eligible persons for two or more hours per day scheduled multiple times per week. These services are intended to improve the recipient's condition or to maintain an optimal level of functioning, as well as to ameliorate the recipient's disabilities or deficits by reducing the degree of impairment or dependency. Therapeutic consultation to service providers, family, and friends of the client around implementation of the plan of care may be included as part of the services provided by the day health and rehabilitation program. The provider shall be licensed by DMHMRSAS as a Day Support Program. Specific components of day health and rehabilitation services include the following as needed:~~

- ~~1. Self care and hygiene skills: training in personal appearance and cleanliness, clothing selection/use, personal dental hygiene;~~
- ~~2. Eating skills: training in sitting at table, using utensils, and eating in a reasonable manner; using restaurants;~~
- ~~3. Toilet training skills: training in all steps of toilet process, practice of skills in a variety of public/private environments;~~
- ~~4. Task learning skills: training in eye/hand coordination tasks with varying levels of assistance by supervisors, developing alternative training strategies, providing training and reinforcement in appropriate community settings where such tasks occur;~~
- ~~5. Community resource utilization skills: training in time, telephone, basic computations, money, warning sign recognition, and personal identification such as personal address and telephone number; use of community services, resources and cultural opportunities;~~
- ~~6. Environmental skills: training in punctuality, self discipline, care of personal belongings, respect for property, remaining on task and adequate attendance; training at actual sites where the skills will be performed;~~
- ~~7. Behavior skills: training in appropriate interaction with supervisors and other trainees, self control of disruptive behaviors, attention to program rules and coping skills,~~

~~developing/enhancing social skills in relating to the general population, peer groups;~~

~~8. Medication management: awareness of importance of prescribed medications, identification of medications, the role of proper dosage and schedules, providing assistance in medication administration, and signs of adverse effects;~~

~~9. Travel and related training to and from the training sites and service and support activities;~~

~~10. Skills related to the above areas, as appropriate that will enhance or retain the recipient's functioning: training in appropriate manners, language, home care, clothing care, physical awareness and community awareness; opportunities to practice skills in community settings among the general population.~~

~~11. Transportation time to and from the program site may be included as part of the reimbursable unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be covered. These restrictions apply only to transportation to and from the program site. Other program related transportation may be included in the program day as indicated by scheduled program activities.~~

12 VAC 30-130-570. Provider qualification requirements.

To qualify as a provider of services through DMAS for rehabilitative mental health ~~or services~~, mental retardation services, and substance abuse treatment services the provider of the services must meet certain criteria. These criteria shall be:

1. The provider shall guarantee that clients recipients have access to emergency services on a 24-hour basis;
2. The provider shall demonstrate the ability to serve individuals in need of comprehensive services regardless of the individual's ability to pay or eligibility for Medicaid reimbursement;
3. The provider shall have the administrative and financial management capacity to meet state and federal requirements;
4. The provider shall have the ability to document and maintain individual case records in accordance with state and federal requirements;
5. The services shall be in accordance with the Virginia Comprehensive State Plan for Mental Health, Mental Retardation and Substance Abuse Services; and
6. In addition to those requirements stated above, a provider shall meet the following requirements specific to each disability area:
 - a. Mental health.
 - (1) Intensive in-home: licensure by DMHMRSAS as an outpatient program.

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(2) Therapeutic day treatment for children/adolescents: licensure by DMHMRSAS as a day support program.

(3) Day treatment/partial hospitalization: licensure by DMHMRSAS as a day support program.

(4) Psychosocial rehabilitation: licensure by DMHMRSAS as a day support program.

(5) Crisis intervention: licensure by DMHMRSAS as an Outpatient Program.

(6) Case management: certified by DMHMRSAS.

(7) *Intensive community treatment [for adults]: Licensure by DMHMRSAS to provide outpatient services.*

(8) *Crisis stabilization services [for adults]: Licensure by DMHMRSAS to provide outpatient services.*

(9) *Mental health support services [for adults]: Licensure by DMHMRSAS as a provider of supported living residential services or supportive residential services. Individuals employed or contracted by the provider agency to implement mental health support services must have training in the characteristics of mental illness and appropriate interventions, training strategies, and support methods for persons with mental illness and functional limitations.*

b. Mental retardation.

~~[(1) Day Health and Rehabilitation Services: licensure by DMHMRSAS as a day support program]~~

~~[(2) (1)]~~ Case management: certified by DMHMRSAS.

~~[(3) (2)]~~ *Mental retardation crisis stabilization community services. The provider agency must be licensed by DMHMRSAS as a provider of outpatient services [and or] of [supported living supportive] residential services or [supportive] residential services. The provider agency must employ or utilize qualified mental retardation professionals, licensed mental health professionals or other qualified personnel competent to provide crisis stabilization and related activities to recipients with mental retardation who are experiencing serious psychiatric/behavioral problems.*

~~[(4) Mental retardation supported living and habilitation services. The provider agency must be licensed by DMHMRSAS as a provider of supported living residential services or supportive residential services. Individuals employed or contracted by the provider agency to implement supported living and habilitation services must have training in the characteristics of mental retardation and appropriate~~

~~interventions, training strategies, and support methods for persons with mental retardation and functional limitations.~~

~~e. Related conditions. Day health and rehabilitation services: licensure by DMHMRSAS as a day support program or contracted with DRS as habilitation services providers.]~~

DOCUMENT INCORPORATED BY REFERENCE

Policy 1029(SYS)90-2, Definitions of Priority Mental Health Populations; Department of Mental Health, Mental Retardation and Substance Abuse Services; eff. June 27, 1990.

NOTICE: Due to its length, the form filed by the Department of Medical Assistance Services for use in administering the Community Mental Retardation Services regulations is not being published; however, the name of the form is listed below. The form is available for public inspection at the Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

Inventory for Client and Agency Planning (ICAP) Response Booklet, D9200/D9210, 1986.

VA.R. Doc. No. R97-657; Filed December 3, 1997, 11:54 a.m.

Title of Regulations: Community Mental Health Services.
12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care and Services (amending 12 VAC 30-50-130 and 12 VAC 30-50-220; adding 12 VAC 30-50-225 and 12 VAC 30-50-226).
12 VAC 30-60-10 et seq. Standards Established and Methods Used to Assure High Quality Care (amending 12 VAC 30-60-140; adding 12 VAC 30-60-61 and 12 VAC 30-60-143).
12 VAC 30-130-10 et seq. Amount, Duration and Scope of Selected Services (amending 12 VAC 30-130-540, 12 VAC 30-130-550 and 12 VAC 30-130-570).

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

Effective Date: January 22, 1998.

Summary:

The purpose of this regulatory action is to recommend changes to the permanent regulations controlling rehabilitation services, specifically, community mental health and mental retardation services. The expansion of these services creates a payment source for the local community services boards which draws on federal funding thereby reducing the demand for general fund and local dollars. This package does not contain one service contained in the previous emergency regulation:

therapeutic behavioral services to children, as that service duplicates components already covered under intensive in-home services. A description of the expansion services follows:

1. *Mental Health Intensive Community Treatment Services provide outpatient mental health services outside the traditional clinic setting. It is designed to bring services to individuals who will not or cannot be served in the clinic setting.*

2. *Mental Health Crisis Stabilization Services provides direct mental health care to individuals experiencing acute crisis of a psychiatric nature that may jeopardize their current community living situation. It will provide less medical mental health services independently of or in conjunction with Intensive Community Treatment.*

3. *Mental Health Support Services provide training and supports to enable individuals to achieve and maintain community stability and independence in the most appropriate, least restrictive environment.*

Used singly or as a package, these services will provide comprehensive treatment and support services to persons with serious and persistent mental illness.

Summary of Public Comments and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

12 VAC 30-50-130. Skilled nursing facility services, EPSDT, community mental health services and family planning.

A. Skilled nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older.

Service must be ordered or prescribed and directed or performed within the scope of a license of the practitioner of the healing arts.

B. Early and periodic screening and diagnosis of individuals under 21 years of age, and treatment of conditions found.

1. Payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities, and the accompanying attendant physician care, in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination.

2. Routine physicals and immunizations (except as provided through EPSDT) are not covered except that well-child examinations in a private physician's office are covered for foster children of the local social services departments on specific referral from those departments.

3. Orthoptics services shall only be reimbursed if medically necessary to correct a visual defect identified by an EPSDT examination or evaluation. The department shall place appropriate utilization controls upon this service.

4. Consistent with the Omnibus Budget Reconciliation Act of 1989 § 6403, early and periodic screening, diagnostic, and treatment services means the following services: screening services, vision services, dental services, hearing services, and such other necessary health care, diagnostic services, treatment, and other measures described in Social Security Act § 1905(a) to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services and which are medically necessary, whether or not such services are covered under the State Plan and notwithstanding the limitations, applicable to recipients ages 21 and over, provided for by the Act § 1905(a).

C. *Community mental health services. Intensive in-home services to children and adolescents under age 21 shall be time-limited interventions provided typically but not solely in the residence of a child who is at risk of being moved into an out-of-home placement or who is being transitioned to home from out-of-home placement due to a documented medical need of the child. These services provide crisis treatment; individual and family counseling; and communication skills (e.g., counseling to assist the child and his parents to understand and practice appropriate problem-solving, anger management, and interpersonal interaction, etc.); case management activities and coordination with other required services; and 24-hour emergency response. These services shall be limited annually to 26 weeks.*

Therapeutic day treatment shall be provided in sessions of two or more hours per day in order to provide therapeutic interventions. Day treatment programs, limited annually to 780 units, provide evaluation; medication [;] education and management; opportunities to learn and use daily living skills and to enhance social and interpersonal skills (e.g., problem-solving, anger management, community responsibility, increased impulse control, and appropriate peer relations, etc.); and individual, group and family psychotherapy.

D. Family planning services and supplies for individuals of child-bearing age.

1. Service must be ordered or prescribed and directed or performed within the scope of the license of a practitioner of the healing arts.

2. Family planning services shall be defined as those services which delay or prevent pregnancy. Coverage of

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such services shall not include services to treat infertility nor services to promote fertility.

12 VAC 30-50-220. Other diagnostic, screening, preventive, and rehabilitative services, i.e., other than those provided elsewhere in this plan.

A. Diagnostic services are not provided.

B. Screening services. Screening mammograms for the female recipient population aged 35 and over shall be covered, consistent with the guidelines published by the American Cancer Society.

C. Maternity length of stay and early discharge.

1. If the mother and newborn, or the newborn alone, are discharged earlier than 48 hours after the day of delivery, DMAS will cover one early discharge follow-up visit as recommended by the physicians in accordance with and as indicated by the "Guidelines for Perinatal Care" as developed by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists (1992). The mother and newborn, or the newborn alone if the mother has not been discharged, must meet the criteria for early discharge to be eligible for the early discharge follow-up visit. This early discharge follow-up visit does not affect or apply to any usual postpartum or well-baby care or any other covered care to which the mother or newborn is entitled; it is tied directly to an early discharge. The criteria for an early discharge are as follows:

a. Discharge criteria for early discharge of mother.

(1) Uncomplicated vaginal, full-term delivery following a normal antepartum course;

(2) Postpartum observation has sufficiently documented a stable course, including the following observations:

(a) Vital signs are stable;

(b) Uterine fundus is firm, bleeding (lochia) is controlled, of normal amount and color;

(c) Hemoglobin is greater than eight, hematocrit is greater than or equal to 24 and estimated blood loss is not greater than 500 cc or blood loss does not result in the patient being symptomatic for anemia, i.e., lightheadedness, syncope, tachycardia, or shortness of breath;

(d) Episiotomy/repai red laceration is not inflamed and there is no evidence of infection or hematoma;

(e) Tolerating prescribed diet post delivery;

(f) Voiding without difficulty and passing flatus. Bowel sounds present; and

(g) If not previously obtained, ABO and Rh typing must be done and, if indicated, the appropriate

amount of Rho(D) immunoglobulin must be administered.

b. Discharge criteria for early discharge of infant. The newborn must be deemed normal by physical examination and stable meeting the following criteria:

(1) Term delivery and weight is considered normal;

(2) Infant is able to maintain a stable body temperature under normal conditions;

(3) Infant is able to take and tolerate feedings by mouth and demonstrates normal sucking and swallowing reflexes;

(4) Laboratory data must be reviewed to include:

(a) Maternal testing for syphilis and hepatitis B surface antigen;

(b) Cord or infant blood type and direct Coombs test (if the mother is Rho(D) negative, or is type O, or if screening has not been performed for maternal antibodies);

(c) Hemoglobin or hematocrit and blood glucose determinations, as clinically indicated; and

(d) Any screening tests required by law.

(5) Initial hepatitis B vaccine must be administered in accordance with the time requirements in the current Recommended Childhood Immunization Schedule developed by the Advisory Committee on Immunization Practices under the requirements of § 1905(r)(1) of the Social Security Act (42 USC § 1396 d).

c. Discharge criteria for early discharge of mother and infant.

(1) Family members or other support persons must be available to the mother for the first few days following discharge;

(2) The mother or caretaker has demonstrated the ability to care for her infant, including feeding, bathing, cord care, diapering, body temperature assessment, and measurement with a thermometer;

(3) The mother or caretaker has been taught basic assessment skills, including neonatal well-being and recognition of illness. She verbalizes understanding of possible complications and has been instructed to notify the appropriate practitioner as necessary; and

(4) A physician-directed source of continuing medical care for both mother and baby must be identified and arrangements made for the baby to be examined within 48 hours of discharge.

2. The early discharge follow-up visit must be provided as directed by a physician. The physician may coordinate with the provider of his choice to provide the early discharge follow-up visit, within the following

limitations. Qualified providers are those hospitals, physicians, nurse midwives, nurse practitioners, federally qualified health clinics, rural health clinics, and health departments clinics that are enrolled as Medicaid providers and are qualified by the appropriate state authority for delivery of the service. The staff providing the follow-up visit, at a minimum, must be a registered nurse having training and experience in maternal and child health. The visit must be provided within 48 hours of discharge.

3. The visit must include, at a minimum, the following:

a. Maternal assessment must include, but is not limited to:

- (1) Vital signs;
- (2) Assessment of lochia, height and firmness of the uterus;
- (3) Assessment of the episiotomy, if applicable;
- (4) Assessment for and of hemorrhoids;
- (5) Assessment of bowel and bladder function;
- (6) Assessment of the breasts, especially the nipples if the mother is breast feeding. Assessment of the mother's understanding of breast/nipple care and understanding of proper care;
- (7) Assessment of eating habits for nutritional balance, stressing good nutrition especially in the breast feeding mother;
- (8) Assessment for signs and symptoms of anemia and, if present, notification of the responsible physician for further instructions;
- (9) Confirmation that the mother has an appointment for a six-week postpartum check-up; and
- (10) Identification of the need for and make referrals to the appropriate resources for identified medical, social, and nutritional concerns and needs.

b. Newborn assessment must include, but is not limited to:

- (1) Vital signs;
- (2) Weight;
- (3) Examination of the umbilical cord and circumcision, if applicable;
- (4) Assessment of hydration status;
- (5) Evaluation of acceptance and tolerance of feedings, including the frequency of feeds and the amount taken each feed. If possible, observation of the mother or caretaker feeding the infant for technique assessment;
- (6) Assessment of bowel and bladder function;

(7) Assessment of skin coloration; if the infant demonstrates any degree of jaundice, notification of the physician for further instruction. If infant is pale, mottled, lethargic, or with poor muscle tone, immediate notification of the physician for further instruction;

(8) Assessment of infant behavior, sleep/wake patterns;

(9) Assessment of the quality of mother/infant interaction, bonding;

(10) Blood samples for lab work, or a urine sample as directed by state law, physician, or clinical judgment;

(11) Confirmation that the infant has an appointment for routine two-week check up;

(12) Discussion with the mother or caretaker planning for health maintenance, including preventive care, periodic evaluations, immunizations, signs and symptoms of physical change requiring immediate attention, and emergency services available; and

(13) Identification of the need for and make referrals to any other existing appropriate resources for identified medical, social and nutritional concerns and needs.

~~D.~~ 12 VAC 30-50-225. Rehabilitative services; intensive physical rehabilitation.

~~1. Intensive physical rehabilitation.~~

~~a.~~ A. Medicaid covers intensive inpatient rehabilitation services as defined in ~~subdivision 1 d of this subsection~~ *subsection D of this section* in facilities certified as rehabilitation hospitals or rehabilitation units in acute care hospitals which have been certified by the Department of Health to meet the requirements to be excluded from the Medicare Prospective Payment System.

~~b.~~ B. Medicaid covers intensive outpatient physical rehabilitation services as defined in ~~subdivision 1 d of this subsection~~ *subsection D of this section* in facilities which are certified as Comprehensive Outpatient Rehabilitation Facilities (CORFs).

~~c.~~ C. These facilities are excluded from the 21-day limit otherwise applicable to inpatient hospital services. Cost reimbursement principles are defined in 12 VAC 30-70-10 through 12 VAC 30-70-130.

~~d.~~ D. An intensive rehabilitation program provides intensive skilled rehabilitation nursing, physical therapy, occupational therapy, and, if needed, speech-language pathology, cognitive rehabilitation, prosthetic-orthotic services, psychology, social work, and therapeutic recreation. The nursing staff must support the other disciplines in carrying out the activities of daily living, utilizing correctly the training received in therapy and furnishing other needed nursing

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services. The day-to-day activities must be carried out under the continuing direct supervision of a physician with special training or experience in the field of physical medicine and rehabilitation.

~~e.~~ E. Nothing in this regulation is intended to preclude DMAS from negotiating individual contracts with in-state intensive physical rehabilitation facilities for those individuals with special intensive rehabilitation needs.

~~f.~~ F. To receive continued intensive rehabilitation services, the patient must demonstrate an ability to actively participate in goal-related therapeutic interventions developed by the interdisciplinary team. This shall be evidenced by regular attendance in planned activities and demonstrated progress toward the established goals.

~~g.~~ G. Intensive rehabilitation services shall be considered for termination regardless of the preauthorized length of stay when any of the following conditions are met:

- (1) 1. No further potential for improvement is demonstrated. The patient has reached his maximum progress and a safe and effective maintenance program has been developed.
- (2) 2. There is limited motivation on the part of the individual or caregiver.
- (3) 3. The individual has an unstable condition that affects his ability to participate in a rehabilitative plan.
- (4) 4. Progress toward an established goal or goals cannot be achieved within a reasonable period of time.
- (5) 5. The established goal serves no purpose to increase meaningful functional or cognitive capabilities.
- (6) 6. The service can be provided by someone other than a skilled rehabilitation professional.

2- 12 VAC 30-50-226. Community mental health services.

A. Definitions. The following words and terms, when used in these regulations, shall have the following meanings unless the context clearly indicates otherwise:

"Code" means the Code of Virginia.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"DMHMRASAS" means Department of Mental Health, Mental Retardation and Substance Abuse Services consistent with Chapter 1 (§ 37.1-39 et seq.) of Title 37.1 of the Code of Virginia.

"Individual" means the patient, client, or recipient of services set out herein.

"Individual service plan" or "ISP" means a comprehensive and regularly updated statement specific to the individual being treated containing, but not necessarily limited to, his treatment or training needs, his goals and measurable objectives to meet the identified needs, services to be

provided with the recommended frequency to accomplish the measurable goals and objectives, and estimated timetable for achieving the goals and objectives. Such ISP shall be maintained up to date as the needs and progress of the individual changes.

~~a.~~ B. Mental health services. The following services, with their definitions, shall be covered:

~~(1) Intensive in-home services for children and adolescents under age 21 shall be time-limited interventions provided typically but not solely in the residence of an individual who is at risk of being moved into an out-of-home placement or who is being transitioned to home from out-of-home placement due to a disorder diagnosable under the Diagnostic and Statistical Manual of Mental Disorders III-R (DSM III R). These services provide crisis treatment; individual and family counseling; life (e.g., counseling to assist parents to understand and practice proper child nutrition, child health care, personal hygiene, and financial management, etc.); parenting (e.g., counseling to assist parents to understand and practice proper nurturing and discipline, and behavior management, etc.); and communication skills (e.g., counseling to assist parents to understand and practice appropriate problem solving, anger management, and interpersonal interaction, etc.); case management activities and coordination with other required services; and 24-hour emergency response. These services shall be limited annually to 26 weeks.~~

~~(2) Therapeutic day treatment for children and adolescents shall be provided in sessions of two or more hours per day, to groups of seriously emotionally disturbed children and adolescents or children at risk of serious emotional disturbance in order to provide therapeutic interventions. Day treatment programs, limited annually to 780 units, provide evaluation, medication education and management, opportunities to learn and use daily living skills and to enhance social and interpersonal skills (e.g., problem solving, anger management, community responsibility, increased impulse control and appropriate peer relations, etc.), and individual, group and family counseling.~~

~~(3) 1. Day treatment/partial hospitalization services for adults shall be provided in sessions of two or more consecutive hours per day, which may be scheduled multiple times per week, to groups of individuals in a nonresidential setting. These services, limited annually to 780 units, include the major diagnostic, medical, psychiatric, psychosocial and psychoeducational treatment modalities designed for individuals with serious mental disorders who require coordinated, intensive, comprehensive, and multidisciplinary treatment but who do not require inpatient treatment.~~

(4) 2. Psychosocial rehabilitation for adults shall be provided in sessions of two or more consecutive hours per day to groups of individuals in a nonresidential setting. These services, limited annually to 936 units, include assessment, medication education, ~~psychoeducation~~ to teach the patient about his mental illness and appropriate medications to avoid complication and relapse, opportunities to learn and use independent living skills and to enhance social and interpersonal skills, ~~family support, and education~~ within a supportive and normalizing program structure and environment.

(5) 3. Crisis intervention shall provide immediate mental health care, available 24 hours a day, seven days per week, to assist individuals who are experiencing acute mental dysfunction requiring immediate clinical attention. This service's objectives shall be to prevent exacerbation of a condition, to prevent injury to the client or others, and to provide treatment in the context of the least restrictive setting. Crisis intervention activities, limited annually to 180 hours, shall include assessing the crisis situation, providing short-term counseling designed to stabilize the individual ~~or the family unit or both~~, providing access to further immediate assessment and follow-up, and linking the individual and family with ongoing care to prevent future crises. Crisis intervention services may include, ~~but are not limited to~~, office visits, home visits, preadmission screenings, telephone contacts, and other client-related activities for the prevention of institutionalization.

4. Intensive community treatment (ICT), initially covered for a maximum of 26 [~~sessions~~ weeks] based on an initial assessment with continuation reauthorized for an additional 26 [~~sessions~~ weeks] annually based on written assessment and certification of need by a qualified mental health provider (QMHP), shall be defined as medical psychotherapy, psychiatric assessment, and medication management offered to outpatients outside the clinic, hospital, or office setting [for individuals who will not or cannot be served in the clinic setting].

5. Crisis stabilization services for nonhospitalized individuals shall provide direct mental health care to individuals experiencing an acute psychiatric crisis which may jeopardize their current community living situation. Authorization may be for up to a 15-day period per crisis episode following a documented face-to-face assessment by a QMHP which is reviewed and approved by a licensed physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, or a certified psychiatric registered nurse within 72 hours. The maximum limit on this service is up to eight hours (with a unit being one hour) per day up to 60 days annually. The goals of crisis stabilization programs shall be to avert hospitalization or rehospitalization, provide normative environments with a high assurance of safety and security for crisis intervention, stabilize

individuals in psychiatric crisis, and mobilize the resources of the community support system and family members and others for on-going maintenance and rehabilitation. The services must be documented in the individual's records as having been provided consistent with the ISP in order to receive Medicaid reimbursement. The crisis stabilization program shall provide to recipients, as appropriate, [psychiatric assessment including medication evaluation,] treatment planning, symptom and behavior management, and individual and group counseling. This service may be provided in any of the following settings, but shall not be limited to: (i) the home of a recipient who lives with family or other primary caregiver; (ii) the home of a recipient who lives independently; or (iii) community-based programs licensed by DMHMRSAS to provide residential services but which are not institutions for mental disease (IMDs).

6. Mental health support services shall be defined as training and supports to enable individuals to achieve and maintain community stability and independence in the most appropriate, least restrictive environment. [These services may be authorized for six consecutive months. Continuation of services may be authorized at six-month intervals or following any break in service by a QMHP based on a documented assessment and documentation of continuing need. The monthly limit on services shall be 31 units.] This program shall provide the following services in order to be reimbursed by Medicaid: training in or reinforcement of functional skills and appropriate behavior related to the individual's health and safety, activities of daily living, and use of community resources; assistance with medication management; and monitoring health, nutrition, and physical condition.

b. C. Mental retardation services/related conditions. Day health and rehabilitation services shall be covered for persons with MR or related conditions and the following definitions shall apply:

Day health and rehabilitation services (limited to 780 units per year) shall provide individualized activities, supports, training, supervision, and transportation based on a written physician's order/plan of care to eligible persons for two or more hours per day scheduled multiple times per week. These services are intended to improve the recipient's condition or to maintain an optimal level of functioning, as well as to ameliorate the recipient's disabilities or deficits by reducing the degree of impairment or dependency. Therapeutic consultation to service providers, family, and friends of the client around implementation of the physician's order/plan of care may be included as part of the services provided by the day health and rehabilitation program. The provider shall be licensed by DMHMRSAS as a Day Support Program. Specific components of day health and rehabilitation services include the following as needed:

(4) 1. Self-care and hygiene skills;

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- (2) 2. Eating and toilet training skills;
- (3) 3. Task learning skills;
- (4) 4. Community resource utilization skills (e.g., training in time, telephone, basic computations with money, warning sign recognition, and personal identifications, etc.);
- (5) 5. Environmental and behavior skills (e.g., training in punctuality, self-discipline, care of personal belongings and respect for property and in wearing proper clothing for the weather, etc.);
- (6) 6. Medication management;
- (7) 7. Travel and related training to and from the training sites and service and support activities;
- (8) 8. Skills related to the above areas, as appropriate that will enhance or retain the recipient's functioning.

3. D. Coverage shall be provided for investigations by local health departments to determine the source of lead contamination in the home as part of the management and treatment of Medicaid-eligible children who have been diagnosed with elevated blood lead levels. Only costs that are eligible for federal funding participation in accordance with current federal regulations shall be covered. Payments for environmental investigations under this section shall be limited to no more than two visits per residence.

12 VAC 30-60-61. Services related to the Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT); community mental health services for children.

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

- 1. Individuals qualifying for this service must demonstrate a [~~medical clinical~~] necessity for the service arising from a condition due to mental, behavioral or emotional illness which results in significant functional impairments in major life activities. Individuals must meet at least two of the following criteria on a continuing or intermittent basis:
 - a. Have difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they are at risk of hospitalization or out-of-home placement because of conflicts with family or community.
 - b. Exhibit such inappropriate behavior that repeated interventions by the mental health, social services or judicial system are necessary.
 - c. Exhibit difficulty in cognitive ability such that they are unable to recognize personal danger or recognize significantly inappropriate social behavior.
- 2. At admission, an appropriate assessment is made and documented that service needs can best be met through intervention provided typically but not solely in the client's residence; service must be recommended in the

Individual Service Plan (ISP) which must be fully completed within 30 days of initiation of services.

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

4. Services shall be used when out-of-home placement [due to the clinical needs of the child] is a risk and [~~when either~~:

a.] Services that are far more intensive than outpatient clinic care are required to stabilize the [child in the] family situation, [~~and or~~

b.] When the [~~client's~~ child's] residence as the setting for services is more likely to be successful than a clinic.

5. Services are not appropriate for a family [~~in which a child has run away or a family for which the goal is to keep the family together only until an out-of-home placement can be arranged while the child is absent from the home~~] .

6. Services shall also be used to facilitate the transition to home from an out-of-home placement when services more intensive than outpatient clinic care are required for the transition to be successful. [The child and responsible parent/guardian must be available and in agreement to participate in the transition.]

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

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

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

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

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

B. Therapeutic day treatment for children and adolescents.

1. Therapeutic day treatment is appropriate for children and adolescents who meet one of the following:

a. Children and adolescents who require year-round treatment in order to sustain behavior or emotional gains.

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

(1) This programming during the school day; or

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

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

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

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

2. Individuals qualifying for this service must demonstrate a [medical clinical] necessity for the service arising from a condition due to mental, behavioral or emotional illness which results in significant functional impairments in major life activities. Individuals must meet at least two of the following criteria on a continuing or intermittent basis:

a. Have difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they

are at risk of hospitalization or out-of-home placement because of conflicts with family or community.

b. Exhibit such inappropriate behavior that repeated interventions by the mental health, social services or judicial system are necessary.

c. Exhibit difficulty in cognitive ability such that they are unable to recognize personal danger or recognize significantly inappropriate social behavior.

3. The provider of therapeutic day treatment for child and adolescents services must be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

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

5. The program must operate a minimum of two hours per day and may offer flexible program hours (i.e., before and/or after school and/or during the summer). One unit of service is defined as a minimum of two hours but less than three hours in a given day. Two units of service shall be defined as a minimum of three but less than five hours in a given day. Three units of service shall be defined as five or more hours of service in a given day.

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

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

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

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

B. The DMHMRSAS review shall include the following items:

1. Medical or clinical necessity of the delivered service;
2. The admission to service and level of care was appropriate;
3. The services were provided by appropriately qualified individuals as defined in the Amount, Duration, and Scope of Services found in 12 VAC 30-50-220; and

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4. Delivered services as documented are consistent with recipients' Individual Service Plans, invoices submitted, and specified service limitations.

G- 12 VAC 30-60-143. Mental health services utilization criteria.

A. Utilization reviews shall include determinations that providers meet all the requirements of Virginia state regulations found in 12 VAC 30-50-100 through 12 VAC 30-50-310.

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

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

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

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

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

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

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

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

~~h. The billing unit for intensive in-home service is one hour. Although the pattern of service delivery may vary, in-home service is an intensive service provided to individuals for whom there is a plan of care in effect which demonstrates the need for a minimum of five hours a week of intensive in-home service, and includes a plan for service provision of a minimum of five hours of service delivery per client/family per week in the initial phase of treatment. It is expected that the pattern of service provision may show more intensive~~

~~services and more frequent contact with the client and family initially with a lessening or tapering off of intensity toward the latter weeks of service. Intensive in-home services below the five-hour-a-week minimum may be covered. However, variations in this pattern must be consistent with the individual service plan. Service plans must incorporate a discharge plan which identifies transition from intensive in-home to less intensive or nonhome-based services.~~

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

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

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

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

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

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

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

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

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

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

~~(5) Children in preschool enrichment and early intervention programs when the children's emotional/behavioral problems are so severe that~~

~~they cannot function in these programs without additional services.~~

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

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

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

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

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

3. B. Day treatment/partial hospitalization services shall be provided to adults with serious mental illness following [a] diagnostic assessment when authorized by the physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, or certified psychiatric nurse, and in accordance with an ISP which shall be fully completed within 30 days of service initiation.

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

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

~~covered. These restrictions shall apply only to transportation to and from the program site. Other program related transportation may be included in the program day as indicated by scheduled program activities.~~

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

4. Individuals qualifying for this service must demonstrate a [*medical clinical*] necessity for the service arising from a condition due to mental, behavioral or emotional illness which results in significant functional impairments in major life activities. Individuals must meet at least two of the following criteria on a continuing or intermittent basis:

a. Have difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they are at risk of hospitalization or homelessness because of conflicts with family or community.

b. Require help in basic living skills such as maintaining personal hygiene, preparing food and maintaining adequate nutrition or managing finances to such a degree that health or safety is jeopardized.

c. Exhibit such inappropriate behavior that repeated interventions by the mental health, social services, or judicial system are necessary.

d. Exhibit difficulty in cognitive ability such that they are unable to recognize personal danger or recognize significantly inappropriate social behavior.

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

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

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

e. 3. The program shall operate a minimum of two continuous hours in a 24-hour period. One unit of service is defined as a minimum of two but less than four hours on a given day. Two units are defined as at least

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four but less than seven hours in a given day. Three units of service shall be defined as seven or more hours in a given day. ~~Transportation time to and from the program site may be included as part of the reimbursement unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be covered. These restrictions apply only to transportation to and from the program site. Other program related transportation may be included in the program day as indicated by scheduled program activities.~~

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

5. *Individuals qualifying for this service must demonstrate a [medical clinical] necessity for the service arising from a condition due to mental, behavioral or emotional illness which results in significant functional impairments in major life activities. Individuals must meet at least two of the following criteria on a continuing or intermittent basis:*

a. *Have difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they are at risk of hospitalization or homelessness because of conflicts with family or community.*

b. *Require help in basic living skills such as maintaining personal hygiene, preparing food and maintaining adequate nutrition or managing finances to such a degree that health or safety is jeopardized.*

c. *Exhibit such inappropriate behavior that repeated interventions by the mental health, social services or judicial system are necessary.*

d. *Exhibit difficulty in cognitive ability such that they are unable to recognize personal danger or recognize significantly inappropriate social behavior.*

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

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

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

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

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

short-term counseling goals by the fourth face-to-face contact.

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

f- 6. Crisis intervention services may be provided to eligible individuals outside of the clinic and billed, provided the provision of out-of-clinic services is clinically/programmatically appropriate. [~~When~~] Travel [~~is required by staff~~] to provide out-of-clinic services [~~at such time~~] is [~~not~~] reimbursable. Crisis intervention may involve *contacts with* the family or significant others.

6- E. Case management.

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

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

e- 3. There shall be no maximum service limits for case management services.

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

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

F. *Intensive community treatment (ICT) for adults.*

1. *An assessment which documents eligibility and need for this service shall be completed prior to the initiation of services. This assessment must be maintained in the individual's records.*

~~[2. A comprehensive psychosocial evaluation shall begin at the time of admission and must be completed within 30 days of the initiation of services to the individual.~~

~~3. 2.] A service plan must be initiated at the time of admission and must be fully developed within 30 days of the initiation of services.~~

G. Crisis stabilization services.

1. This service must be authorized following a face-to-face assessment by a QMHP. This assessment must be reviewed and approved by a licensed mental health professional within 72 hours.

2. The assessment documents the need for service and anticipated duration of need.

3. The Individual Service Plan (ISP) is developed or revised within 24 hours of assessment or reassessment.

4. Room and board, custodial care, and general supervision are not components of this service.

5. Clinic option services are not billable at the same time as crisis stabilization services.

6. Individuals qualifying for this service must demonstrate a [medical clinical] necessity for the service arising from a condition due to an acute crisis of a psychiatric nature which puts the individual at risk of psychiatric hospitalization. Individuals must meet at least two of the following criteria at the time of admission to the service:

a. Experiencing difficulty in maintaining normal interpersonal relationships to such a degree that they are at risk of hospitalization or homelessness because of conflicts with family or community;

b. Experiencing [difficulty] in activities of daily living such as maintaining personal hygiene, preparing food and maintaining adequate nutrition or managing finances to such a degree that health or safety is jeopardized;

c. Exhibiting such inappropriate behavior that immediate interventions by mental health and other agencies are necessary; or

d. Exhibiting difficulty in cognitive ability such that the individual is unable to recognize personal danger or recognize significantly inappropriate social behavior.

H. Mental health support services.

1. The individual receiving mental health support services must have an active case management plan in effect which includes monitoring and assessment of the provision of mental health support services. The individual responsible for the case management plan and for the provision of case management services shall not be the provider of mental health support services nor the

immediate supervisor of the staff person providing mental health support services.

2. There shall be a documented assessment/evaluation prior to the initiation or reauthorization of services. The assessment/evaluation must have been completed by a QMHP no more than 30 days prior to the initiation or reauthorization of services.

3. The ISP must be developed within 30 days of the initiation of services and must indicate the specific supports and services to be provided and the goals and objectives to be accomplished.

4. The ISP must be reviewed every three months, modified as appropriate, and must be updated and rewritten at least annually.

5. Only direct face-to-face contacts and services to individuals shall be reimbursable.

6. Any services provided to the client which are strictly academic in nature shall not be reimbursable. These include, but are not limited to, such basic educational programs as instruction in reading, science, mathematics, or GED.

7. Any services provided to clients which are strictly vocational in nature shall not be reimbursable. However, support activities and activities directly related to assisting a client to cope with a mental illness to the degree necessary to develop appropriate behaviors for operating in an overall work environment shall be reimbursable.

8. Room and board, custodial care, and general supervision are not components of this service.

9. This service is not reimbursable for individuals who reside in any domiciliary care facilities such as ACRs or group homes or nursing facilities where staff are expected to provide such services.

10. Individuals qualifying for this service must demonstrate a [medical clinical] necessity for the service arising from a condition due to mental, behavioral or emotional illness which results in significant functional impairments in major life activities. Individuals must meet at least two of the following criteria on a continuing or intermittent basis:

a. Have difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they are at risk of hospitalization or homelessness because of conflicts with family or community.

b. Require help in basic living skills such as maintaining personal hygiene, preparing food and maintaining adequate nutrition or managing finances to such a degree that health or safety is jeopardized.

c. Exhibit such inappropriate behavior that repeated interventions by the mental health, social services or judicial system are necessary.

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d. Exhibit difficulty in cognitive ability such that they are unable to recognize personal danger or recognize significantly inappropriate social behavior.

D- 1. Mental retardation utilization criteria. Utilization reviews shall include determinations that providers meet all the requirements of Virginia state regulations found in 12 VAC 30-50-400 95 through 12 VAC 30-50-310.

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

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

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

- (1) Managing personal care needs,
- (2) Understanding verbal commands and communicating needs and wants,
- (3) Earning wages without intensive, frequent and ongoing supervision or support,
- (4) Learning new skills without planned and consistent or specialized training and applying skills learned in a training situation to other environments,
- (5) Exhibiting behavior appropriate to time, place and situation that is not threatening or harmful to the health or safety of self or others without direct supervision,
- (6) Making decisions which require informed consent,
- (7) Caring for other needs without the assistance or personnel trained to teach functional skills,
- (8) Functioning in community and integrated environments without structured, intensive and frequent assistance, supervision or support.

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

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

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

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

g. The program shall operate a minimum of two continuous hours in a 24-hour period. One unit of service shall be defined as a minimum of two but less

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

h. The provider shall be licensed by DMHMRSAS.

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

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

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

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

(1) The plan of care shall be reviewed by the case manager every three months to ensure the identified needs are met and the required services are provided. The review will be due by the last day of the third month following the month in which the last review was completed. A grace period will be given up to the last day of the fourth month following the month of the prior review. When the review was completed in a grace period, the next subsequent review shall be scheduled three months from the month the review was due and not the date of the actual review.

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

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

12 VAC 30-130-540. Definitions.

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

"Board" or "BMAS" means the Board of Medical Assistance Services.

"Code" means the Code of Virginia.

"Consumer service plan" means that document addressing the needs of the ~~client~~ recipient of mental retardation case management services, in all life areas. Factors to be considered when this plan is developed are, but not limited to, the ~~client's~~ recipient's age, primary disability, level of functioning and other relevant factors.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"DMHMRSAS" means the Department of Mental Health, Mental Retardation and Substance Abuse Services consistent with Chapter 1 (§ 37.1-39 et seq.) of Title 37 of the Code of Virginia.

"DRS" means the Department of Rehabilitative Services consistent with Chapter 3 (§ 51.5-8 et seq.) of Title 51.5 of the Code of Virginia.

"HCFA" means the Health Care Financing Administration as that unit of the federal Department of Health and Human Services which administers the Medicare and Medicaid programs.

"Individual Service Plan" or "ISP" means ~~that which is defined in DMHMRSAS licensing regulations VR 470-02-09 [12 VAC 35-80-10 et seq. Repealed]~~ a comprehensive and regularly updated statement specific to the individual being treated containing, but not necessarily limited to, his treatment or training needs, his goals and measurable objectives to meet the identified needs, services to be provided with the recommended frequency to accomplish the measurable goals and objectives, and estimated timetable for achieving the goals and objectives. Such ISP shall be maintained up to date as the needs and progress of the individual changes.

"Medical or clinical necessity" means an item or service that must be consistent with the diagnosis or treatment of the individual's condition. It must be in accordance with the community standards of medical or clinical practice.

"Mental retardation" means the diagnostic classification of substantial subaverage general intellectual functioning which originates during the development period and is associated with impairment in adaptive behavior.

"Preauthorization" means the approval by the care coordinator of the plan of care which specifies recipient and provider. Preauthorization is required before reimbursement can be made.

"Qualified case managers for mental health case management services" means individuals possessing a combination of mental health work experience or relevant education which indicates that the individual possesses the knowledge, skills, and abilities, as established by DMHMRSAS, necessary to perform case management services.

"Qualified case managers for mental retardation case management services" means individuals possessing a combination of mental retardation work experience and relevant education which indicates that the individual possesses the knowledge, skills, and abilities, as established by DMHMRSAS, necessary to perform case management services.

"Related conditions," as defined for persons residing in nursing facilities who have been determined through Annual Resident Review to require specialized services, means a severe, chronic disability that (i) is attributable to a mental or physical impairment (attributable to mental retardation, cerebral palsy, epilepsy, autism, or neurological impairment or related conditions) or combination of mental and physical impairments; (ii) is manifested before that person attains the age of 22; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following major areas: self-care, language, learning, mobility, self-direction, capacity for independent living and economic self-sufficiency; and (v) results in the person's need for special care, treatment or services that are individually planned and coordinated and that are of lifelong or extended duration.

"Serious emotional disturbance" means that mental health problem as defined by the Board of Mental Health, Mental Retardation, and Substance Abuse Services in Policy 1029, Definitions of Priority Mental Health Populations, June 27, 1990.

"Serious mental illness" means that mental health problem as defined by the Board of Mental Health, Mental Retardation, and Substance Abuse Services in Policy 1029 Definitions, of Priority Mental Health Populations, June 27, 1990.

"Significant others" means persons related to or interested in the individual's health, well-being, and care. Significant others may be, but are not limited [] to [,] a spouse, friend, relative, guardian, priest, minister, rabbi, physician, neighbor.

"State Plan for Medical Assistance" or "Plan" means the document listing the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

12 VAC 30-130-550. Mental health services.

A. The following services shall be covered: intensive in-home services, therapeutic day treatment ~~for children and adolescents~~, day treatment/partial hospitalization, psychosocial rehabilitation, and crisis intervention, *intensive community treatment, crisis stabilization, and support services*. These covered services are further defined below:

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For purposes of this part, staff travel time shall not be included in billable time for reimbursement.

A. B. Intensive in-home services for children and adolescents under age 21 shall be time-limited interventions provided typically but not solely in the residence of an ~~individual~~ a child who is at risk of being moved into an out-of-home placement or who is being transitioned to home from out-of-home placement due to a ~~disorder diagnosable under the Diagnostic and Statistical Manual of Mental Disorders III-R (DSM III-R)~~ documented medical need of the child. These services rendered solely to an eligible child provide crisis treatment; , individual and family counseling; , ~~life, parenting, and~~ communication skills; , case management activities and coordination with other required services; , and 24-hour emergency response. These services shall be limited annually to 26 weeks. General program requirements shall be as follows:

1. The provider of intensive in-home services shall be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.
2. An appropriate assessment is made and documented that service needs can best be met through intensive in-home services; service shall be recommended on an Individual Service Plan (ISP).
3. Intensive in-home services shall be used when out-of-home placement is a risk, when services that are far more intensive than outpatient clinic care are required to stabilize the family situation, and when the ~~client's~~ recipient's residence as the setting for services is more likely to be successful than a clinic.
4. Intensive in-home services shall also be used to facilitate the return from an out-of-home placement when services more intensive than outpatient clinic care are required for the transition to be successful.
5. At least one parent or responsible adult with whom the child is living must be willing to participate in in-home services.
6. Since case management services are an integral and inseparable part of this service, case management services will not be reimbursed separately for periods of time when intensive in-home services are being reimbursed.

B. C. Therapeutic day treatment for children and adolescents shall be provided in sessions of two or more hours per day, ~~to groups of seriously emotionally disturbed children and adolescents or children at risk of serious emotional disturbance~~ children and adolescents who have diagnosed developmental and social functioning levels which are significantly disabling. This determination of significant disability should be based upon consideration of the social functioning of most children their age and which has become more disabling over time and requires significant intervention through services that are supportive and intensive offered over a protracted period of time in order to provide therapeutic interventions. Day treatment programs, limited

annually to 780 units, provide evaluation; , individual, group and family counseling; medication education and management; and opportunities to learn and use daily living skills and to enhance social and interpersonal skills; ~~and individual, group and family counseling~~. General program requirements shall be as follows:

1. The provider of therapeutic day treatment for child and adolescent services shall be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.
2. The minimum staff-to-youth ratio shall ensure that adequate staff is available to meet the needs of the youth identified on the ISP.
3. The program shall operate a minimum of two hours per day and may offer flexible program hours (i.e., before or after school or during the summer). One unit of service is defined as a minimum of two hours but less than three hours in a given day. Two units of service are defined as a minimum of three but less than five hours in a given day, and three units of service ~~equals~~ shall be defined as five or more hours of service in a given day. ~~Transportation time to and from the program site may be included as part of the reimbursable unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be billable. These restrictions apply only to transportation to and from the program site. Other program related transportation may be included in the program day as indicated by scheduled activities.~~
4. When day treatment occurs during the school day, time solely for academic instruction (i.e., when no treatment activity is going on) cannot be included in the billing unit.

~~E.~~ D. Day treatment/partial hospitalization services [for ~~adults~~] shall be provided in sessions of two or more consecutive hours per day, which may be scheduled multiple times per week, to groups of individuals in a nonresidential setting. These services, limited annually to 780 units, include the major diagnostic, medical, psychiatric, psychosocial and psychoeducational treatment modalities designed for individuals with serious mental disorders who require coordinated, intensive, comprehensive, and multidisciplinary treatment. General program requirements shall be as follows:

1. The provider of day treatment/partial hospitalization shall be licensed by DMHMRSAS.
2. The program shall operate a minimum of two continuous hours in a 24-hour period. One unit of service shall be defined as a minimum of two but less than four hours on a given day. Two units of service shall be defined as at least four but less than seven hours in a given day. Three units of service shall be defined as seven or more hours in a given day. ~~Transportation time to and from the program site may be included as part of the reimburseable unit. However,~~

~~transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be covered. These restrictions shall apply only to transportation to and from the program site. Other program related transportation may be included in the program day as indicated by scheduled program activities.~~

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

~~D. E. Psychosocial rehabilitation for adults shall be provided in sessions of two or more consecutive hours per day to groups of individuals in a nonresidential setting. These services, limited annually to 936 units, include assessment, medication education about mental illness and appropriate medication to avoid complications and relapse, psychoeducation, opportunities to learn and use independent living skills and to enhance social and interpersonal skills, family support, or education within a supportive and normalizing program structure and environment.~~

1. The provider of psychosocial rehabilitation shall be licensed by DMHMRSAS.

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

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

~~E. F. Crisis intervention shall provide immediate mental health care, available 24 hours a day, seven days per week, to assist individuals who are experiencing acute mental dysfunction requiring immediate clinical attention. This service's objectives shall be to prevent exacerbation of a condition, to prevent injury to the client recipient or others, and to provide treatment in the context of the least restrictive setting. Crisis intervention activities, limited annually to 180 hours, shall include assessing the crisis situation, providing short-term counseling designed to stabilize the individual or~~

the family unit, providing access to further immediate assessment and follow up, and linking the individual and family with ongoing care to prevent future crises. Crisis intervention services may include, but are not limited to, office visits, home visits, preadmission screenings, telephone contacts, and other ~~client~~ recipient-related activities for the prevention of institutionalization. General program requirements are as follows:

1. The provider of crisis intervention services shall be licensed by DMHMRSAS.

2. ~~Client~~ Recipient-related activities provided in association with a face-to-face contact shall be reimbursable.

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

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

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

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

G. Intensive community treatment (ICT) shall be provided consistent with the criteria and requirements of 12 VAC 30-50-95 through [~~42 VAC 30-50-310~~ 12 VAC 30-50-540].

1. *The individual shall meet [~~a#~~ two or more] of the following criteria, as documented by the individual's record, in order to be eligible for Medicaid coverage of this service:*

[~~a. The individual must meet the criteria and must be experiencing extreme or prolonged functional deficits due to psychiatric symptoms. This may include individuals who also have mental retardation or substance abuse problems. Individuals qualifying for this service must demonstrate a medical necessity for the service arising from a condition due to mental, behavioral or emotional illness which results in functional impairments in major life activities.~~

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~~Individuals must meet at least two of the following criteria on a continuing or intermittent basis:~~

~~(1) Have difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they are at risk of hospitalization or homelessness because of conflicts with family or community.~~

~~(2) Require help in basic living skills such as maintaining personal hygiene, preparing food and maintaining adequate nutrition or managing finances to such a degree that health or safety is jeopardized.~~

~~(3) Exhibit such inappropriate behavior that repeated interventions by the mental health, social services or judicial system are necessary.~~

~~(4) Exhibit difficulty in cognitive ability such that they are unable to recognize personal danger or recognize significantly inappropriate social behavior.~~

a. The individual cannot or will not be served in the clinic setting.]

b. The individual is at high risk for psychiatric hospitalization or for becoming or remaining homeless, or requires intervention by the mental health or criminal justice system due to inappropriate social behavior.

c. The individual has a history (three months or more) of a need for intensive mental health treatment or treatment for serious mental illness and chemical addiction (MICA) and demonstrates a resistance to seek out and utilize appropriate treatment options.

[~~2.] The recipient is certified by a [~~qualified licensed~~] mental health professional [~~(QMHP), as defined by DMHMRSAS, who is a part of the ICT team,~~] as being in need of the services as defined by the Individual Service Plan.~~

[~~2. 3.] The provider shall be licensed by the DMHMRSAS to provide outpatient services in order to be reimbursed for the provision of these services. In order to qualify for a provider agreement, [~~a therapist emergency services~~] must be available and provide services 24 hours per day, seven days per week, 365 days per year, either directly or on call.~~

[~~3. 4.] ICT may be provided [~~for a maximum of 26 weeks~~] based on an initial assessment. [This service may be provided for a maximum of 26 weeks with a limit of 130 units available. A unit shall equal one hour.] Continuation of service may be reauthorized at 26-week intervals based on written assessment and certification of need by a qualified mental health professional (QMHP). [~~The only other service which may be billed simultaneously is psychosocial rehabilitation.~~]~~

[4. 5.] Services must be documented through a daily log of time spent in the delivery of services and a description of the activities/services provided. There must also be at

least a weekly note documenting progress or lack of progress toward goals and objectives as outlined on the ISP.

H. Crisis stabilization services shall be provided consistent with the criteria and requirements of 12 VAC 30-50-95 through [~~12 VAC 30-50-340~~ 12 VAC 30-50-540]. These services must be documented in the individual's records as having been provided consistent with the ISP in order to receive Medicaid reimbursement.

1. Individuals qualifying for this service must demonstrate a [~~medical clinical~~] necessity for the service arising from a condition due to an acute crisis of a psychiatric nature which puts the individual at risk of psychiatric hospitalization. Individuals must meet at least two of the following criteria at the time of admission to the service:

a. Experiencing difficulty in maintaining normal interpersonal relationships to such a degree that they are at risk of hospitalization or homelessness because of conflicts with family or community.

b. Experiencing [~~difficulty~~] in activities of daily living such as maintaining personal hygiene, preparing food and maintaining adequate nutrition or managing finances to such a degree that health or safety is jeopardized.

c. Exhibiting such inappropriate behavior that immediate interventions by mental health and other agencies are necessary.

d. Exhibiting difficulty in cognitive ability such that the individual is unable to recognize personal danger or recognize significantly inappropriate social behavior.

2. This service shall not be appropriate nor reimbursed for (i) recipients with medical conditions which require hospital care; (ii) recipients with primary diagnosis of substance abuse; or (iii) recipients with psychiatric conditions which cannot be managed in the community, i.e., recipients who are of imminent danger to themselves or others.

3. Mental health crisis stabilization services is limited to nonhospitalized individuals and may be provided in any of the following settings, but shall not be limited to: (i) the home of a recipient who lives with family or other primary caregiver; (ii) the home of a recipient who lives independently; or (iii) community based programs licensed by DMHMRSAS to provide residential services.

4. In order to be reimbursed for this service by Medicaid, providers shall be licensed by DMHMRSAS to provide outpatient services. If any of these services are subcontracted by the CSB, the subcontractor shall be appropriately licensed [~~by DMHMRSAS~~] to provide the subcontracted services.

5. Services must be documented through daily notes and a daily log of times spent in the delivery of services.

1. Mental health support services [~~These services~~] shall be provided consistent with the criteria and requirements of 12 VAC 30-50-95 through [~~12 VAC 30-50-340 12 VAC 30-50-540~~].

1. [~~Each of the following conditions must be met and be documented in the individual's record~~] In order for Medicaid reimbursement to occur:

a. The individual [~~meets the medical necessity criteria, as defined herein, and has~~ must have] a history of psychiatric hospitalization.

[~~b. The individual must demonstrate functional impairments in major life activities.~~] This may include individuals with a dual diagnosis of either mental illness and mental retardation, or mental illness and substance abuse disorder. [~~Individuals qualifying for this service must demonstrate a medical necessity for the service arising from a condition due to mental, behavioral or emotional illness which results in functional impairments in major life activities.~~]

[~~c.~~] Individuals must meet at least two of the following criteria on a continuing or intermittent basis:

(1) Have difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they are at risk of hospitalization or homelessness because of conflicts with family or community.

(2) Require help in basic living skills such as maintaining personal hygiene, preparing food and maintaining adequate nutrition or managing finances to such a degree that health or safety is jeopardized.

(3) Exhibit such inappropriate behavior that repeated interventions by the mental health, social services or judicial system are necessary.

(4) Exhibit difficulty in cognitive ability such that they are unable to recognize personal danger or recognize significantly inappropriate social behavior.

[~~b. The individual meets at least two of the following criteria:~~

(1) ~~Requires intermittent or on-going medication for management of psychiatric conditions;~~

(2) ~~Has received crisis intervention or crisis stabilization services within the previous 12 months; and~~

(3) ~~The individual needs supports in three or more of the following functional areas: (i) caring for his own needs related to health maintenance, personal hygiene, and activities of daily living; (ii) learning new skills and applying skills in natural environments; (iii) demonstrating behavior appropriate to time, place, and situation that is not threatening or harmful to the health or safety of~~

~~himself or others; or (iv) functioning successfully in the community and integrated environments.~~

~~c. The individual is experiencing or is at risk of one of the following:~~

(1) ~~Deterioration of functional skills or health status; or~~

(2) ~~Disruption of community living situation.~~]

2. Provider qualifications. The provider agency must be licensed by DMHMRSAS as a provider of supported living residential services or supportive residential services. Individuals employed or contracted by the provider agency to provide mental health support services must have training in the characteristics of mental illness and appropriate interventions, training strategies, and support methods for persons with mental illness and functional limitations.

3. Mental health support services may be authorized for six consecutive months. Continuation of services may be authorized at six month intervals or following any break in service by a QMHP based on a documented assessment and documentation of continuing need. The monthly limit on services shall be 31 units.

4. Services must be documented through a daily log of time involved in the delivery of services and a minimum of a weekly summary note of services provided.

12 VAC 30-130-570. Provider qualification requirements for mental health services.

To qualify as a provider of services through DMAS for rehabilitative mental health or ~~mental retardation~~ services, the provider of the services must meet certain criteria. These criteria shall be:

1. The provider shall guarantee that ~~clients~~ recipients have access to emergency services on a 24-hour basis;

2. The provider shall demonstrate the ability to serve individuals in need of comprehensive services regardless of the individual's ability to pay or eligibility for Medicaid reimbursement;

3. The provider shall have the administrative and financial management capacity to meet state and federal requirements;

4. The provider shall have the ability to document and maintain individual case records in accordance with state and federal requirements;

5. The services shall be in accordance with the Virginia Comprehensive State Plan for Mental Health, Mental Retardation and Substance Abuse Services; and

6. In addition to those requirements stated above, a provider shall meet the following requirements specific to each disability area:

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a. Mental health.

- (1) Intensive in-home: licensure by DMHMRSAS as an [~~outpatient intensive in-home services~~] program.
- (2) Therapeutic day treatment for children/adolescents: licensure by DMHMRSAS as a day support program.
- (3) Day treatment/partial hospitalization: licensure by DMHMRSAS as a day support program.
- (4) Psychosocial rehabilitation: licensure by DMHMRSAS as a day support program.
- (5) Crisis intervention: licensure by DMHMRSAS as an Outpatient Program.
- (6) Case management: certified by DMHMRSAS.
- (7) *Intensive community treatment [~~for adults~~]: Licensure by DMHMRSAS to provide outpatient services.*
- (8) *Crisis stabilization services [~~for adults~~]: Licensure by DMHMRSAS to provide outpatient services.*
- (9) *Mental health support services [~~for adults~~]: Licensure by DMHMRSAS as a provider of Supported Living Residential Services or Supportive Residential Services. Individuals employed or contracted by the provider agency to implement MH support services must have training in the characteristics of mental illness and appropriate interventions, training strategies, and support methods for persons with mental illness and functional limitations.*

b. Mental retardation.

- (1) Day Health and Rehabilitation Services: licensure by DMHMRSAS as a day support program
- (2) Case Management: Certified by DMHMRSAS

c. Related conditions. Day health and rehabilitation services: licensure by DMHMRSAS as a day support program or contracted with DRS as habilitation services providers.

DOCUMENT INCORPORATED BY REFERENCE

Policy 1029(SYS)90-2, Definitions of Priority Mental Health Populations; Department of Mental Health, Mental Retardation and Substance Abuse Services; eff. June 27, 1990.

VA.R. Doc. No. R97-659; Filed December 3, 1997, 11:56 a.m.

Title of Regulations: Community Substance Abuse Treatment Services for Pregnant and Postpartum Women.

12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care and Services (amending 12 VAC 30-50-510; adding part headings).

12 VAC 30-60-10 et seq. Standards Established and Methods Used to Assure High Quality Care (adding 12 VAC 30-60-147).

12 VAC 30-130-10 et seq. Amount, Duration and Scope of Selected Services (amending 12 VAC 30-130-540 and 12 VAC 30-130-570; adding 12 VAC 30-130-565).

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

Effective Date: January 22, 1998.

Summary:

The purpose of this regulatory action is to expand Medicaid-covered services for pregnant women with substance abuse disorders and to recommend changes to the permanent regulations controlling expanded prenatal services. The expansion of these services creates a payment source for the local community services boards in the provision of these services to Medicaid eligible persons, which draws on federal funding thereby reducing the demand for general fund and local dollars. This action establishes the two new services of Substance Abuse Residential Treatment Services for Pregnant and Postpartum Women and Substance Abuse Day Treatment Services for Pregnant and Postpartum Women.

1. *Substance Abuse Residential Treatment Services for Pregnant and Postpartum Women provides intensive intervention services in residential facilities, other than inpatient facilities, to pregnant and postpartum women with serious substance abuse for the purposes of improving pregnancy outcome, treating the substance abuse disorder, strengthening the maternal relationship with existing children and the infant, and achieving and maintaining a sober and drug-free lifestyle.*

2. *Substance Abuse Day Treatment Services for Pregnant and Postpartum Women provides intensive intervention services in a central location lasting two or more consecutive hours per day, which may be scheduled multiple times per week, to pregnant and postpartum women with serious substance abuse for the purposes of improving pregnancy outcome, treating the substance abuse disorder, strengthening the maternal relationship with existing children and the infant, and achieving and maintaining a sober and drug-free lifestyle.*

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

PART I.
CATEGORICALLY NEEDY.

(Begins with 12 VAC 30-50-10)

PART II.
AMBULATORY SERVICES; MEDICALLY NEEDY.

(Begins with 12 VAC 30-50-40)

PART III.
AMOUNT, DURATION AND SCOPE OF SERVICES.

(Begins with 12 VAC 30-50-100)

PART IV.
CASE MANAGEMENT SERVICES.

(Begins with 12 VAC 30-50-410)

PART V.
EXPANDED PRENATAL CARE SERVICES.

12 VAC 30-50-510. Requirements and limits applicable to specific services: expanded prenatal care services.

~~Provision of coverage and reimbursement of additional prenatal care services:~~

A. Comparability of services: Services are not comparable in amount, duration and scope. Authority of § 9501(b) of COBRA 1985 allows an exception to provide service to pregnant women without regard to the requirements of § 1902(a)(10)(B).

B. Definition of services: Expanded prenatal care services will offer a more comprehensive prenatal care services package to improve pregnancy outcome. The expanded prenatal care services provider may perform the following services:

1. Patient education. Includes six classes of education for pregnant women in a planned, organized teaching environment including but not limited to topics such as body changes, danger signals, substance abuse, labor and delivery information, and courses such as planned parenthood, Lamaze, smoking cessation, and child rearing. Instruction must be rendered by Medicaid certified providers who have appropriate education, license, or certification.
2. Homemaker. Includes those services necessary to maintain household routine for pregnant women, primarily in third trimester, who need bed rest. Services include, but are not limited to, light housekeeping, child care, laundry, shopping, and meal preparation. Must be rendered by Medicaid certified providers.
3. Nutrition. Includes nutritional assessment of dietary habits, and nutritional counseling and counseling follow-up. All pregnant women are expected to receive basic nutrition information from their medical care providers or the WIC Program. Must be provided by a Registered Dietitian (R.D.) or a person with a master's degree in nutrition, maternal and child health, or clinical

dietetics with experience in public health, maternal and child nutrition, or clinical dietetics.

4. Blood glucose meters. Effective on and after July 1, 1993, blood glucose test products shall be provided when they are determined by the physician to be medically necessary for pregnant women suffering from a condition of diabetes which is likely to negatively affect their pregnancy outcomes. The women authorized to receive a blood glucose meter must also be referred for nutritional counseling. Such products shall be provided by Medicaid enrolled durable medical equipment providers.

5. Residential substance abuse treatment [services] for pregnant [and postpartum] women. Includes comprehensive, intensive residential treatment for pregnant and postpartum women to improve pregnancy outcomes by eliminating the substance abuse problem. Must be provided consistent with standards established to assure high quality of care in 12 VAC 30-60-10 et seq.

Residential substance abuse treatment [services] for pregnant [and postpartum] women shall provide intensive intervention services in residential facilities other than inpatient facilities and shall be provided to pregnant and postpartum women (up to 60 days postpartum) with serious substance abuse disorders, for the purposes of improving the pregnancy outcome, treating the substance abuse disorder, strengthening the maternal relationship with existing children and the infant, and achieving and maintaining a sober and drug-free lifestyle. The [pregnant] woman may keep her infant and other dependent children with her at the treatment center. The daily rate is inclusive of all services which are provided to the pregnant woman in the program. A unit of service shall be one day. The maximum number of units to be covered for one adult in her lifetime is 330 days of continuous service, not to exceed 60 days postpartum. [The lifetime limit may only be provided during one course of treatment.] These services must be reauthorized every 90 days and after any absence of less than 72 hours which was not first authorized by the program director. The program director must document the reason for granting permission for any absences in the clinical record of the recipient. An unauthorized absence of more than 72 hours shall terminate Medicaid reimbursement for this service. Unauthorized hours absent from treatment shall be included in this lifetime service limit. This type of treatment shall provide the following types of services or activities in order to be eligible to receive reimbursement by Medicaid:

- a. Substance abuse rehabilitation, counseling and treatment [shall be provided to the participant women to must] include, but [is] not necessarily [be] limited to, education about the impact of alcohol and other drugs on the fetus and on the maternal relationship; smoking cessation classes if needed; education about relapse prevention to recognize personal and

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environmental cues which may trigger a return to the use of alcohol or other drugs; and the integration of urine toxicology screens and other toxicology screens, as appropriate, to monitor intake of illicit drugs and alcohol and provide information for counseling.

b. Training about pregnancy and fetal development shall be provided at a level and in a manner comprehensible by the participating women [~~Such training shall to~~] include, but [~~shall is~~] not [~~be necessarily~~] limited to, the impact of alcohol and other drugs on fetal development, normal physical changes associated with pregnancy as well as training in normal gynecological functions, personal nutrition, delivery expectations, [~~and~~] and infant nutrition.

c. Initial and ongoing assessments shall be provided specifically for substance abuse, including, but not limited to, psychiatric and psychological assessments.

[~~d. Service coordination with EPSDT shall be provided to address the needs of the existing children in the program.~~]

[~~e. d.~~] Symptom and behavior management as appropriate for co-existing mental illness shall be provided, including medication management and ongoing psychological treatment.

[~~f. e.~~] Personal health care training and assistance shall be provided. Such training shall include:

(1) Educational services and referral services for testing, counseling, and management of HIV, provided as described in 42 USC § 300x-24(b)(6)(A) and (B), including early intervention services as defined in 42 USC § 300x-24(b)(7) and in coordination with the programs identified in 45 CFR 96.128;

(2) Educational services and referral services for testing, counseling, and management of tuberculosis, including tuberculosis services as described in 42 USC § 300x-24(a)(2) (1992) and in coordination with the programs identified in 45 CFR 96.127; and

(3) Education services and referral services for testing, counseling, and management of hepatitis.

[~~g. f.~~] Case coordination with providers of primary medical care shall be provided, including obstetrical/gynecological services for the recipient.

[~~h. g.~~] Training in decision-making, anger management and conflict resolution shall be provided.

[~~i. h.~~] Extensive discharge planning shall be provided in collaboration with the recipient, any appropriate significant others, and representatives of appropriate service agencies.

6. Day substance abuse treatment for pregnant [and postpartum] women. Includes comprehensive, intensive

day treatment for pregnant and postpartum women to improve pregnancy outcomes by eliminating the substance abuse problem. Must be provided consistent with the standards established to assure high quality of care in 12 VAC 30-60-10 et seq.

Substance abuse day treatment services for pregnant [and postpartum] women shall provide intensive intervention services at a central location lasting two or more consecutive hours per day, which may be scheduled multiple times per week, to pregnant and postpartum women (up to 60 days postpartum) with serious substance abuse problems for the purposes of improving the pregnancy outcome, treating the substance abuse disorder, and achieving and maintaining a sober and drug-free lifestyle. The pregnant woman may keep her infant and other dependent children with her at the treatment center. One unit of service shall equal two but no more than 3.99 hours on a given day. Two units of service shall equal at least four but no more than 6.99 hours on a given day. Three units of service shall equal seven or more hours on a given day. The lifetime limit on this service shall be 440 units in a 12-month period. The lifetime limit may only be provided during one course of treatment. Services must be reauthorized every 90 days and after any absence of five consecutive days from scheduled treatment without staff permission. More than two episodes of five-day absences from scheduled treatment without prior permission from the program director or one absence exceeding seven days of scheduled treatment without prior permission from the program director shall terminate Medicaid funding for this service. The program director must document the reason for granting permission for any absences in the clinical record of the recipient. Unauthorized hours absent from treatment shall be included in [~~this the~~] lifetime service limit. [~~This type of treatment shall provide the following types of services or activities~~] In order to be eligible to receive Medicaid payment [the following types of services shall be provided]:

a. Substance abuse rehabilitation, counseling and treatment shall be provided, including education about the impact of alcohol and other drugs on the fetus and on the maternal relationship, smoking cessation classes if needed; [~~education about~~] relapse prevention to recognize personal and environmental cues which may trigger a return to the use of alcohol or other drugs; and the integration of urine toxicology screens and other toxicology screens, as appropriate, to monitor intake of illicit drugs and alcohol and provide information for counseling.

b. Training about pregnancy and fetal development shall be provided at a level and in a manner comprehensible by the participating women to include, but not necessarily be limited to, the impact of alcohol and other drugs on fetal development [;] normal physical changes associated with pregnancy, [as well

as training in normal gynecological functions;] personal nutrition [;] delivery expectations [;] and infant nutrition.

c. Initial and ongoing assessments shall be provided specifically for substance abuse, including psychiatric and psychological assessments.

[~~d.~~ Service coordination with EPSDT shall be provided to address the needs of the existing children in the program.]

[~~e.~~ d.] Symptom and behavior management [as appropriate] for co-existing mental illness shall be provided, including medication management and ongoing psychological treatment.

[~~f.~~ e.] Personal health care training and assistance shall be provided. Such training shall include:

(1) Educational services and referral services for testing, counseling, and management of HIV, provided as described in 42 USC § 300x-24(b)(6)(A) and (B), including early intervention services as defined in 42 USC § 300x-24(b)(7) and in coordination with the programs identified in 45 CFR 96.128;

(2) Educational services and referral services for testing, counseling, and management of tuberculosis, including tuberculosis services as described in 42 USC § 300x-24(a)(2) (1992) and in coordination with the programs identified in 45 CFR 96.127; and

(3) [~~Education~~ Educational] services and referral services for testing, counseling, and management of hepatitis.

[~~g.~~ f.] Case coordination with providers of primary medical care shall be provided, including obstetrics and gynecology services for the recipient.

[~~h.~~ g.] Training in decision-making, anger management and conflict resolution shall be provided.

[~~i.~~ h.] Extensive discharge planning shall be provided in collaboration with the recipient, any [appropriate] significant others, [~~and~~ as well as] representatives of appropriate service agencies.

C. Qualified providers. Any duly enrolled provider which the department determines to be qualified who has signed an agreement may provide expanded prenatal care services. The qualified providers will provide prenatal care services regardless of their capacity to provide any other services under the Plan. Providers of substance abuse treatment services must be licensed and approved by the Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS). Substance abuse services providers shall be required to meet the standards and criteria established by DMHMRSAS.

PART VI.
DRUGS OR DRUG CATEGORIES.

(Begins with 12 VAC 30-50-520)

PART VII.
TRANSPORTATION.

(Begins with 12 VAC 30-50-530)

PART VIII.
ORGAN TRANSPLANT SERVICES.

(Begins with 12 VAC 30-50-540)

12 VAC 30-60-147. Substance abuse treatment services utilization review criteria.

A. Utilization reviews shall include a determination that providers meet all the requirements of Part VIII (12 VAC 30-130-540 et seq.) of 12 VAC 30-130.

B. [~~Residential~~] Substance abuse [residential] treatment services for pregnant [and postpartum] women. This subsection provides for required services which must be provided to participants, linkages to other programs tailored to specific recipient needs, and program staff qualifications. The following services must be rendered to program participants and documented in their case files in order for this residential service to be reimbursed by Medicaid.

1. Services must be authorized following face-to-face evaluation/diagnostic assessment conducted by one of the appropriately licensed [or certified] professionals as specified in Part VIII (12 VAC 30-130-540 et seq.) of 12 VAC 30-130.

a. To assess whether the [~~adult~~ woman] will benefit from the treatment provided by this service, the professional shall utilize the Adult Patient Placement Criteria for Level III.3 (Clinically-Managed Medium-Intensity Residential Treatment) or Level III.5 (Clinically-Managed Medium/High Intensity Residential Treatment) as described in Patient Placement Criteria for the Treatment of Substance-Related Disorders, Second Edition, 1996, published by the American Society of Addiction Medicine. Services must be reauthorized every 90 days by one of the [~~same~~ appropriately authorized] professionals, based on documented assessment using Adult Continued Service Criteria for [Level III.3 () Clinically-Managed Medium-Intensity Residential Treatment ()] or [Level III.5 () Clinically-Managed Medium-High Intensity Residential Treatment ()] as described in Patient Placement Criteria for the Treatment of Substance-Related Disorders, Second Edition, 1996, published by the American Society of Addiction Medicine. In addition, services must be reauthorized by one of the [~~same~~ authorized] professionals if the patient is absent for [a designated length of time more than 72 hours] from the program without staff permission. All of the professionals must demonstrate competencies in the use of these criteria. [~~This~~ The] authorizing

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professional must not be the same individual providing nonmedical clinical supervision in the program.

b. Utilization reviews shall verify, but not be limited to, the presence of these 90-day reauthorizations as well as the appropriate re-authorizations after absences.

c. Documented assessment regarding the [recipient's woman's] need for the intense level of services must have occurred within 30 days prior to admission.

d. The Individual Service Plan (ISP) shall be developed within one week of admission and [~~when appropriate, the~~] obstetric [~~and psychiatric assessments~~ assessment] completed and documented within a two-week period following admission. Development of the ISP shall involve the [recipient woman], appropriate significant others, and representatives of appropriate service agencies.

e. The ISP shall be reviewed and updated every two weeks.

f. Psychological and psychiatric assessments, when appropriate, shall be completed within 30 days of admission [~~for the adult~~].

g. Face-to-face therapeutic contact with the [recipient woman] which is directly related to her Individual Service Plan shall be documented at least twice per week.

h. While the [recipient woman] is participating in this substance abuse residential program [~~for pregnant women~~], reimbursement shall not be made for any other community mental health/mental retardation/substance abuse rehabilitative services concurrently rendered to her.

i. Documented discharge planning shall begin at least 60 days prior to the estimated date of delivery. If the service is initiated later than 60 days prior to the estimated date of delivery, discharge planning must begin within two weeks of admission. Discharge planning shall involve the [recipient woman, appropriate significant others, and representatives of appropriate service agencies]. [The priority services of] discharge planning shall seek to assure a stable, sober, and drug-free environment [and treatment supports] for the [recipient, and treatment supports for the recipient woman]. [Discharge planning shall include representatives of appropriate service agencies.]

2. Linkages to other services. Access to the following services shall be provided and documented in either the [~~adult or family record~~ woman's record] or the program documentation:

a. The program must have [either] a contractual relationship with [both] an obstetrician/gynecologist [~~or with a family practice physician~~. The physician who must] be licensed by the Board of Medicine of the

Virginia Department of Health Professions [~~as a medical doctor~~]. The contract must include a provision for medical supervision of the nurse case manager.

b. The program must also have a documented agreement with a high-risk pregnancy unit of a tertiary care hospital to provide 24-hour access to services for the [recipient woman] and ongoing training and consultation to the staff of the program.

c. In addition, the provider must provide access to the following services [either through staff at the residential program or through contract]:

(1) Psychiatric assessments as needed, which must be performed by a physician licensed to practice by the [Virginia] Board of Medicine.

(2) Psychological assessments as needed, which must be performed by a clinical psychologist licensed to practice by the Board of Psychology [of the Virginia Department of Health Professions].

(3) Medication management as needed or at least quarterly for [adults women] in the program, which must be performed by a physician licensed to practice by the Board of Medicine in consultation with the high-risk pregnancy unit, if appropriate.

(4) Psychological treatment, as appropriate, for [adults women] present in the program, with clinical supervision provided by a clinical psychologist licensed to practice by the Board of Psychology.

(5) Primary health care, including routine gynecological and obstetrical care, if not already available to the [recipients women] in the program through other means (e.g., Medallion or other Medicaid-sponsored primary health care program).

3. Program and staff qualifications. In order to be eligible for Medicaid reimbursement, the following minimum program and staff qualifications must be met:

a. The provider of treatment services shall be licensed by DMHMRSAS to provide residential substance abuse services.

b. Nonmedical clinical supervision must be provided to staff at least weekly by one of the following professionals:

[(1)] A counselor who has completed master's level training in either psychology, social work, counseling or rehabilitation who is also [either] certified as a substance abuse counselor by the Board of Licensed Professional Counselors, Marriage and Family Therapists, and Substance Abuse Treatment Professionals [of the Virginia Department of Health Professions] or as a certified addictions counselor by the Substance Abuse Certification Alliance of Virginia [;], or who holds any certification from the National

Association of Alcoholism and Drug Abuse Counselors.]

[(2)] A professional licensed by the [~~Board of Licensed Professional Counselors, Marriage and Family Therapists, and Substance Abuse Treatment Professionals~~ appropriate board of the Virginia Department of Health Professions] as either a professional counselor, clinical social worker, registered nurse, clinical psychologist, or physician who demonstrates competencies [~~described in Addiction Counselor Competencies published by the Center for Substance Abuse Treatment, March 1997; a substance abuse professional; or a certified clinical supervisor as defined by the Substance Abuse Certification Alliance of Virginia.~~ in all of the following areas of addiction counseling: clinical evaluation; treatment planning; referral; service coordination; counseling; client, family, and community education; documentation; professional and ethical responsibilities; or as a licensed substance abuse professional.

(3) A professional certified as either a clinical supervisor by the Substance Abuse Certification Alliance of Virginia or as a master addiction counselor by the National Association of Alcoholism and Drug Abuse Counselors.]

c. Residential facility capacity shall be limited to 16 adults. Dependent children who accompany the [~~mother~~ woman] into the residential treatment facility and neonates born while the [~~mother~~ woman] is in treatment shall not be included in the 16-bed capacity count. These children shall not receive any treatment for substance abuse or psychiatric disorders from the facility.

d. The minimum ratio of clinical staff to [~~pregnant~~] women should ensure that sufficient numbers of staff are available to adequately address the needs of the [~~recipients~~ women] in the program.

C. Substance abuse day treatment services for pregnant [and postpartum] women. This subsection provides for required services which must be provided to [~~recipients~~ women], linkages to other programs tailored to specific [~~recipient's~~] needs, and program and staff qualifications.

1. [~~Services criteria.~~ The following services must be rendered [~~to recipients~~] and documented in [~~their~~] case files in order for this day treatment service to be reimbursed by Medicaid:

a. Services must be authorized following a face-to-face evaluation/diagnostic assessment conducted by one of the appropriately licensed professionals as specified in [~~Part VIII (~~) 12 VAC 30-130-540 [~~et seq.~~] of through] 12 VAC 30-130 [-590].

b. To assess whether the [~~recipient~~ woman] will benefit from the treatment provided by this service, the licensed health professional shall utilize the Adult Patient Placement Criteria for Level II.1 (Intensive Outpatient Treatment) or Level II.5 (Partial Hospitalization) as described in Patient Placement Criteria for the Treatment of Substance-Related Disorders, Second Edition, 1996, published by the American Society of Addiction Medicine. Services [~~must~~ shall] be reauthorized every 90 days by one of these [~~same~~ appropriately authorized] professionals, based on documented assessment using Level II.1 (Adult Continued Service Criteria for Intensive Outpatient Treatment) or Level II.5 ([Adult Continued Service Criteria for] Partial Hospitalization Treatment) as described in Patient Placement Criteria for the Treatment of Substance-Related Disorders, Second Edition, 1996, published by the American Society of Addiction Medicine. In addition, services [~~must~~ shall] be reauthorized by one of the [~~same~~ appropriately authorized] professionals if the patient is absent for five consecutively scheduled days of services without staff permission. All of the [authorized] professionals [~~must~~ shall] demonstrate competency in the use of these criteria. This individual [~~may~~ shall] not be the same individual providing nonmedical clinical supervision [in the program].

[c. Utilization reviews shall verify, but not be limited to, the presence of these 90-day reauthorizations, as well as the appropriate reauthorizations after absences.]

[~~e. d.~~] Documented assessment regarding the [~~recipient's~~ woman's] need for the intense level of services; the assessment must have occurred within 30 days prior to admission.

[~~e. e.~~] The Individual Service Plan (ISP) shall be developed within 14 days of admission and [~~the obstetrical assessments~~ an obstetric assessment] completed and documented within a 30-day period following admission. Development of the ISP shall involve the [~~recipient~~ woman], appropriate significant others, and representatives of appropriate service agencies.

[~~e. f.~~] The ISP shall be reviewed and updated every four weeks.

[~~f. g.~~] Psychological and psychiatric assessments, when appropriate, shall be completed within 30 days of admission [~~for the adult~~].

[~~g. h.~~] Face-to-face therapeutic contact with the [~~recipient~~ woman] which is directly related to [~~the recipient's~~ her] ISP shall be documented at least once per week.

[~~h. i.~~] Documented discharge planning shall begin at least 60 days prior to the estimated date of delivery. If the service is initiated later than 60 days prior to the

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estimated date of delivery, discharge planning shall seek to begin within two weeks of admission. Discharge planning shall involve the [~~recipient woman~~], appropriate significant others, and representatives of appropriate service agencies. The priority services of discharge planning shall seek to assure a stable, sober, and drug-free environment [and treatment supports] for the [~~recipient and treatment supports for the recipient woman~~].

[i.j.] While participating in this substance abuse day treatment program [~~for pregnant women~~], the only other mental health, mental retardation or substance abuse rehabilitation [~~service services~~] which can be concurrently reimbursed shall be mental health emergency services [or mental health crisis stabilization services].

2. Linkages to other services or programs. Access to the following services shall be provided and documented in the [~~recipient woman's~~] record or program documentation.

a. The program must [either] have a contractual relationship with [either] an obstetrician/gynecologist [~~or a family practice physician~~]. The [~~physician obstetrician/gynecologist~~] must be licensed by the [Virginia] Board of Medicine as a medical doctor. The contract must include provisions for medical supervision of the nurse case manager.

b. The program must have a documented agreement with a high-risk pregnancy unit of a tertiary care hospital to provide 24-hour access to services for the women and ongoing training and consultation to the staff of the program.

c. In addition, the program must provide access to the following services [(either by staff in the day treatment program or through contract)]:

(1) Psychiatric assessments [~~as needed for adults present in the program~~], which must be performed by a physician licensed to practice by the Board of Medicine [of the Virginia Department of Health Professions].

(2) Psychological assessments [,] as needed [~~for adults present in the program~~], which must be performed by clinical psychologist licensed to practice by the [Virginia] Board of Psychology.

(3) Medication management as needed or at least quarterly for [~~adults women~~] in the program, which must be performed by a physician licensed to practice by the [Virginia] Board of Medicine in consultation with the high-risk pregnancy unit, if appropriate.

(4) Psychological treatment, as appropriate, for [~~adults women~~] present in the program, with clinical supervision provided by a clinical psychologist

licensed to practice by the Board of Psychology [of the Virginia Department of Health Professions].

(5) Primary health care, including routine gynecological and obstetrical care, if not already available to the [~~recipients women~~] in the program through other means (e.g., Medallion or other Medicaid-sponsored primary health care program).

3. Program and staff qualifications. In order to be eligible for Medicaid reimbursement, the following minimum program and staff qualifications must be met:

a. The [~~organization providing provider of~~] treatment services shall be licensed by DMHMRSAS to provide either substance abuse outpatient services or substance abuse day treatment services.

b. Nonmedical clinical supervision must be provided to staff at least weekly by one of the following appropriately licensed professionals:

[(1)] A counselor who has completed master's level training in either psychology, social work, counseling or rehabilitation who is also [either] certified as a substance abuse counselor by the Virginia [~~Department of Health Professions Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals~~] or as a certified addictions counselor by the Substance Abuse Certification Alliance of Virginia [; , or who holds any certification from the National Association of Alcoholism and Drug Abuse Counselors.]

[(2)] A professional licensed by the [appropriate board of the] Virginia Department of Health Professions as either a professional counselor, clinical social worker, clinical psychologist, or physician who demonstrates competencies [~~described in Addiction Counselor Competencies published by the Center for Substance Abuse Treatment, March 1997; or~~] in all of the following areas of addiction counseling: clinical evaluation; treatment planning; referral; service coordination; counseling; client, family, and community education; documentation; professional and ethical responsibilities; or as a licensed substance abuse professional.]

[(3)] A [~~substance abuse~~] professional [~~;-or-a certified clinical supervisor, as defined~~] certified as either a clinical supervisor] by the Substance Abuse Certification Alliance of Virginia [or as a master addiction counselor by the National Association of Alcoholism and Drug Abuse Counselors].

c. The minimum ratio of clinical staff to [~~adult recipients women~~] should ensure that adequate staff

are available to address the needs of the [~~adults~~ women] in the program.

12 VAC 30-130-540. Definitions.

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

"Board" or "EMAS" means the Board of Medical Assistance Services.

"Code" means the Code of Virginia.

"Consumer service plan" means that document addressing the needs of the ~~client~~ recipient of mental retardation case management services, in all life areas. Factors to be considered when this plan is developed are, but not limited to, the ~~client's~~ recipient's age, primary disability, level of functioning and other relevant factors.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"DMHMRSAS" means the Department of Mental Health, Mental Retardation and Substance Abuse Services consistent with Chapter 1 (§ 37.1-39 et seq.) of Title 37.1 of the Code of Virginia.

"DRS" means the Department of Rehabilitative Services consistent with Chapter 3 (§ 51.5-8 et seq.) of Title 51.5 of the Code of Virginia.

"HCFA" means the Health Care Financing Administration as that unit of the federal Department of Health and Human Services which administers the Medicare and Medicaid programs.

"Individual Service Plan" or "ISP" means that which is defined in DMHMRSAS licensing regulations, 12 VAC 35-80-10 et seq. (Repealed).

"Medical or clinical necessity" means an item or service that must be consistent with the diagnosis or treatment of the individual's condition. It must be in accordance with the community standards of medical or clinical practice.

"Mental retardation" means the diagnostic classification of substantial subaverage general intellectual functioning which originates during the development period and is associated with impairment in adaptive behavior.

"Preauthorization" means the approval by the care coordinator of the plan of care which specifies recipient and provider. Preauthorization is required before reimbursement can be made.

"Qualified case managers for mental health case management services" means individuals possessing a combination of mental health work experience or relevant education which indicates that the individual possesses the knowledge, skills, and abilities, as established by DMHMRSAS, necessary to perform case management services.

"Qualified case managers for mental retardation case management services" means individuals possessing a combination of mental retardation work experience and relevant education which indicates that the individual possesses the knowledge, skills, and abilities, as established by DMHMRSAS, necessary to perform case management services.

"Related conditions," as defined for persons residing in nursing facilities who have been determined through Annual Resident Review to require specialized services, means a severe, chronic disability that (i) is attributable to a mental or physical impairment (attributable to mental retardation, cerebral palsy, epilepsy, autism, or neurological impairment or related conditions) or combination of mental and physical impairments; (ii) is manifested before that person attains the age of 22; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following major areas: self-care, language, learning, mobility, self-direction, capacity for independent living and economic self-sufficiency; and (v) results in the person's need for special care, treatment or services that are individually planned and coordinated and that are of lifelong or extended duration.

"Significant others" means persons related to or interested in the individual's health, well-being, and care. Significant others may be, but are not limited [;] to [,] a spouse, friend, relative, guardian, priest, minister, rabbi, physician, neighbor.

"State Plan for Medical Assistance" or "Plan" means the document listing the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"Substance abuse" means the use, without compelling medical reason, of any substance which results in psychological or physiological dependency as a function of continued use in such a manner as to induce mental, emotional or physical impairment and cause socially dysfunctional or socially disordering behavior.

12 VAC 30-130-565. Substance abuse treatment services.

A. Substance abuse treatment services shall be provided consistent with the criteria and requirements of 12 VAC 30-50-510.

B. The following criteria must be met and documented in the [~~recipient's~~ woman's] record before Medicaid reimbursement for substance abuse residential treatment services for pregnant [and postpartum] women can occur:

1. The [~~recipient~~ woman] must agree to participate in developing her own treatment plan; to comply with the treatment plan; to participate, support, and implement the plan of care; to utilize appropriate measures to negotiate changes in her treatment plan; to fully participate in treatment; to comply with program rules and procedures; and to complete the treatment plan in full.

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2. The [~~recipient~~ woman] must be pregnant at admission and intend to complete the pregnancy.

3. The [~~recipient~~ woman] must:

a. Have used alcohol or other drugs within six weeks of referral to the program;

b. Be participating in less intensive treatment for substance abuse and be assessed as high-risk for relapse without more intensive intervention and treatment; or

c. Within 30 days [of admission], have been discharged from a more intensive level of treatment, such as hospital-based inpatient or jail- or prison-based treatment for substance abuse.

4. The [~~recipient~~ woman] must be under the active care of a physician who [is an approved Virginia Medicaid provider and] has obstetrical privileges at a hospital [~~licensed by the Virginia Department of Health which is an approved Virginia Medicaid provider~~]. The [~~recipient~~ woman] must agree to reveal to her obstetrician her participation in substance abuse treatment and her substance abuse history and also agree to allow collaboration between the physician, the obstetrical [staff unit] of the hospital in which she plans to deliver [or has delivered], and the program staff.

[~~5. Limits on services. In order to be reimbursed by Medicaid, the following limits shall apply to those residential substance abuse treatment services for pregnant women:~~

~~a. The unit of service shall be one day;~~

~~b. The maximum allowable number of units to be delivered to one adult in her lifetime is 330 days of continuous service, not to exceed 60 days postpartum.~~

~~c. Services must be reauthorized every 90 days and after any absence not authorized by the program director.~~

~~d. Absences of more than 72 hours which have not been previously approved by the program director shall terminate Medicaid reimbursement for this service.]~~

C. The following criteria must be met and documented in the [~~recipient's~~ woman's] record before Medicaid reimbursement for substance abuse day treatment services for pregnant [and postpartum] women can occur:

1. The [~~recipient~~ woman] must agree to participate in developing her own treatment plan, to comply with the treatment plan, to utilize appropriate measures to negotiate changes in her treatment plan, to fully participate in treatment, to comply with program rules and procedures, and to complete the treatment [plan] in full.

2. The [~~recipient~~ woman] must be pregnant at admission and intend to complete the pregnancy.

3. The [~~recipient~~ woman] must:

a. Have used alcohol or other drugs within six weeks of referral to the program;

b. Be participating in less intensive treatment for substance abuse and assessed as high-risk for relapse without more intensive intervention and treatment; or

c. Within 30 days [of admission], have been discharged from a more intensive level of treatment for substance abuse, such as hospital-based or jail- or prison-based inpatient treatment or residential treatment.

4. The [~~recipient~~ woman] must be under the active care of a physician [who is an approved Virginia Medicaid provider and] who has obstetrical privileges at a hospital [~~licensed by the Virginia Department of Health which is an approved Medicaid provider~~]. The woman must agree to reveal to her obstetrician her participation in substance abuse treatment and her substance abuse history and also agree to allow collaboration between the physician and the obstetrical [staff unit] of the hospital in which she plans to deliver [or has delivered], and the program staff.

[~~5. Limits on services. In order to be reimbursed by Medicaid, the following limits shall apply to those programs of substance abuse day treatment services for pregnant women:~~

~~a. One unit of service shall equal two but no more than 3.00 hours of service on any one day. Two units of service shall equal a minimum of four but no more than 6.00 hours on any one day. Three units of service shall equal seven or more hours on any one day.~~

~~b. There shall be coverage of a lifetime maximum per individual of 440 units in a 12 month period inclusive of services provided to adults in the program.~~

~~c. Services must be reauthorized every 90 days and after any absence not authorized by the program director.~~

~~d. More than two episodes of five day unauthorized absences from scheduled treatment or one unauthorized absence exceeding seven days from scheduled treatment shall terminate Medicaid reimbursement for this service.]~~

12 VAC 30-130-570. Provider qualification requirements.

To qualify as a provider of services through DMAS for rehabilitative mental health or, mental retardation or substance abuse treatment services, the provider of the services must meet certain criteria. These criteria shall be:

1. The provider shall guarantee that clients recipients have access to emergency services on a 24-hour basis;

2. The provider shall demonstrate the ability to serve individuals in need of comprehensive services regardless of the individual's ability to pay or eligibility for Medicaid reimbursement;

3. The provider shall have the administrative and financial management capacity to meet state and federal requirements;

4. The provider shall have the ability to document and maintain individual case records in accordance with state and federal requirements;

5. The services shall be in accordance with the Virginia Comprehensive State Plan for Mental Health, Mental Retardation and Substance Abuse Services; and

[6. Services must be authorized following face-to-face evaluation/diagnostic assessment conducted by one of the following professionals:

a. A counselor who has completed master's level training in either psychology, social work, counseling or rehabilitation who is also either certified as a substance abuse counselor by the Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals or as a certified addictions counselor by the Substance Abuse Certification Alliance of Virginia, or who holds any certification from the National Association of Alcoholism and Drug Abuse Counselors.

b. A professional licensed by the appropriate board of the Virginia Department of Health Professions as either a professional counselor, clinical social worker, registered nurse, clinical psychologist, or physician who demonstrates competencies in all of the following areas of addiction counseling: clinical evaluation; treatment planning; referral; service coordination; counseling; client, family, and community education; documentation; professional and ethical responsibilities; or as a licensed substance abuse professional.

c. A professional certified as either a clinical supervisor by the Substance Abuse Certification Alliance of Virginia or as a master addiction counselor by the National Association of Alcoholism and Drug Abuse Counselors.

This individual must not be same individual providing nonmedical clinical supervision in the program.]

[~~6. 7.~~] In addition to those requirements stated above, a provider shall meet the following requirements ~~specific to each disability area~~ for residential and day treatment services for pregnant [and postpartum] women. For programs to be eligible to be reimbursed by Medicaid, they must meet all of the following standards:

a. ~~Mental health.~~

~~(1) Intensive in-home: licensure by DMHMRSAS as an outpatient program.~~

~~(2) Therapeutic day treatment for children/adolescents: licensure by DMHMRSAS as a day support program.~~

~~(3) Day treatment/partial hospitalization: licensure by DMHMRSAS as a day support program.~~

~~(4) Psychosocial rehabilitation: licensure by DMHMRSAS as a day support program.~~

~~(5) Crisis intervention: licensure by DMHMRSAS as an Outpatient Program~~

~~(6) Case Management: certified by DMHMRSAS~~

~~b. Mental retardation:~~

~~(1) Day Health and Rehabilitation Services: licensure by DMHMRSAS as a day support program~~

~~(2) Case Management: Certified by DMHMRSAS~~

~~c. Related conditions. Day health and rehabilitation services: licensure by DMHMRSAS as a day support program or contracted with DRS as habilitation services providers.~~

a. Medical care must be coordinated by a nurse case manager who is a registered nurse licensed by the Board of Nursing and who demonstrates competency in the following areas:

(1) Health assessment;

(2) Mental health;

(3) Addiction;

(4) Obstetrics and gynecology;

(5) Case management;

(6) Nutrition;

(7) Cultural differences; and

(8) Counseling.

b. The nurse case manager shall be responsible for coordinating the provision of all immediate primary care and shall establish and maintain communication and case coordination between the women in the program and necessary medical services, specifically with each obstetrician providing services to the women. In addition, the nurse case manager shall be responsible for establishing and maintaining communication and consultation linkages to high-risk obstetrical units, including regular conferences concerning the status of the [recipient woman] and recommendations for current and future medical treatment.

[~~e. The service must provide linkages to EPSDT services.~~]

Final Regulations

DOCUMENT INCORPORATED BY REFERENCE

Patient Placement Criteria for the Treatment of Substance-Related Disorders, Second Edition, ASAM PPC-2, 1996, American Society of Addiction Medicine, Inc.

~~Addiction Counselor Competencies, Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, Draft dated March 1997, U.S. Department of Health and Human Services.~~

VA.R. Doc. No. R97-650; Filed December 3, 1997, 11:52 a.m.

Agency Contact: Copies of the regulation may be obtained from Bonnie H. Robinson, Regulatory Coordinator, Department of Labor and Industry, 13 South 13th Street, Richmond, VA 23219, telephone (804) 371-2631.

Note on Incorporation by Reference

Pursuant to § 9-6.18 of the Code of Virginia, Longshoring and Marine Terminals, General Industry (29 CFR 1910.16) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason the entire document will not be printed in the Virginia Register of Regulations. Copies of the document are available for inspection at the Department of Labor and Industry, 13 South 13th Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, Capitol Square, Richmond, Virginia 23219.

TITLE 16. LABOR AND EMPLOYMENT

DEPARTMENT OF LABOR AND INDUSTRY

Safety and Health Codes Board

REGISTRAR'S NOTICE: The following regulatory actions are exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4 (c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 16 VAC 25-90-1910.16. Longshoring and Marine Terminals, General Industry (29 CFR 1910.16).

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Effective Date: April 1, 1998.

Summary:

Federal OSHA revised its safety and health regulations for Longshoring and those parallel sections of its Marine Terminals standard. These rules address cargo handling and related activities conducted aboard vessels (the Longshoring standard) and landside operations at marine terminals (the Marine Terminals standard). The revisions to the Longshoring standard are comprehensive.

Although the longshoring and marine terminal rules are "vertical" standards that apply only to longshoring and marine terminal activities, OSHA also made minor changes to some of the general industry provisions referenced within these rules. These nonsubstantive changes to paragraphs (a), (b) and (c)(4) of 29 CFR 1910.16, Longshoring and Marine Terminals, have been made to conform the general industry requirements to the terminology used in the marine cargo-handling environment.

On September 29, 1997, the Safety and Health Codes Board adopted an identical version of federal OSHA's amendment to the final rule on Longshoring and Marine Terminals, General Industry, 29 CFR 1910.16, as published in the Federal Register on July 25, 1997 (62 FR 40195). Also published with this amendment were the following revised final rules: Marine Terminals Standard, Public Sector Only, 29 CFR 1917.1 through 29 CFR 1917.158, and Longshoring, 29 CFR 1918.1 et seq. The amendments as adopted are not set out.

When the regulations, as set forth in the amendment to Longshoring and Marine Terminals, General Industry, 29 CFR 1910.16, are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
January 21, 1998	April 1, 1998



COMMONWEALTH of VIRGINIA

VIRGINIA CODE COMMISSION
General Assembly Building

E. M. MILLER, JR.
ACTING REGISTRAR OF REGULATIONS

JANE D. CHAFFIN
DEPUTY REGISTRAR

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December 12, 1997

Mr. Linwood Saunders, Chairman
Virginia Safety and Health Codes Board
Department of Labor and Industry
13 South Thirteenth Street
Richmond, VA 23219

Attention: Bonnie H. Robinson
Regulatory Coordinator

Dear Mr. Saunders:

This letter acknowledges receipt of the amendments to 16 VAC 25-90-1910.16, Longshoring and Marine Terminals, General Industry, submitted by the Department of Labor and Industry.

As required by § 9-6.14:4.1 C 4(c) of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act since they do not differ materially from those required by federal law.

Sincerely,

A handwritten signature in cursive script that reads "E. M. Miller, Jr." followed by a flourish.

E. M. Miller, Jr.
Acting Registrar of Regulations

VA.R. Doc. No. R98-110; Filed November 18, 1997, 4:17 p.m.

Final Regulations

Title of Regulations: 16 VAC 25-120-1917.1 through 16 VAC 25-120-1917.158, Marine Terminals Standards, Public Sector Only, Marine Terminals (29 CFR 1917.1 through 1917.158).

16 VAC 25-130-1918.1 through 16 VAC 25-130-1918.3, Scope and Definitions, Subpart A, Longshoring (29 CFR 1918.1 through 1918.3).

16 VAC 25-130-1918.11, Gear Certification, Subpart B, Longshoring (29 CFR 1918.11);

16 VAC 25-130-1918.21 through 16 VAC 25-130-1918.26, Gangways and Other Means of Access, Subpart C, Longshoring (29 CFR 1918.21 through 1918.26).

16 VAC 25-130-1918.31 through 16 VAC 25-130-1918.37, Working Surfaces, Subpart D, Longshoring (29 CFR 1918.31 through 1918.37).

16 VAC 25-130-1918.41 through 16 VAC 25-130-1918.43, Opening and Closing Hatches, Subpart E, Longshoring (29 CFR 1918.41 through 1918.43).

16 VAC 25-130-1918.51 through 16 VAC 25-130-1918.55, Vessel's Cargo Handling Gear, Subpart F, Longshoring (29 CFR 1918.51 through 1918.55).

16 VAC 25-130-1918.61 through 16 VAC 25-130-1918.69, Cargo Handling Gear and Equipment Other Than Ship's Gear, Subpart G, Longshoring (29 CFR 1918.61 through 1918.69).

16 VAC 25-130-1918.81 through 16 VAC 25-130-1918.89, Handling Cargo, Subpart H, Longshoring (29 CFR 1918.81 through 1918.89).

16 VAC 25-130-1918.90, Hazard Communications, Longshoring (29 CFR 1918.90).

16 VAC 25-130-1918.100, Emergency Action Plans, Longshoring (29 CFR 1918.100).

16 VAC 25-130-1918.101 through 16 VAC 25-130-1918.105, Personal Protective Equipment, Subpart J, Longshoring (29 CFR 1918.101 through 1918.105).

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Effective Date: April 1, 1998.

Summary:

Federal OSHA has revised its safety and health regulations for Longshoring and those parallel sections of its Marine Terminals standard. These rules address cargo handling and related activities conducted aboard vessels (the Longshoring standard) and landside operations at marine terminals (the Marine Terminals standard). The revisions to the Longshoring standard are comprehensive.

These final rules contain requirements for the testing and certification of specific types of cargo lifting appliances and associated auxiliary gear and other cargo-handling equipment such as conveyors and industrial trucks, access to vessels, entry into hazardous atmospheres, working surfaces, and use of personal protective equipment. Additionally, OSHA addressed specialized longshoring operations such as containerized cargo, logging, and roll-on/roll-off (Ro-Ro) operations.

The principal hazards these final rules address are injuries and fatalities associated with cargo lifting gear, transfer of vehicular cargo, manual cargo handling, and exposure to hazardous atmospheres. Also addressed are hazards posed by more modern and sophisticated cargo-handling methods such as intermodalism.

Agency Contact: Copies of the regulations may be obtained from Bonnie H. Robinson, Regulatory Coordinator, Department of Labor and Industry, 13 South 13th Street, Richmond, VA 23219, telephone (804) 371-2631.

Note on Incorporation by Reference

Pursuant to § 9-6.18 of the Code of Virginia, the Marine Terminals Standards (29 CFR Part 1917) and Longshoring Standards (29 CFR Part 1918) are declared documents generally available to the public and appropriate for incorporation by reference. For this reason the documents will not be printed in The Virginia Register of Regulations. Copies of the documents are available for inspection at the Department of Labor and Industry, 13 South 13th Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, Capitol Square, Richmond, Virginia 23219.

On September 29, 1997, the Safety and Health Codes Board adopted an identical version of federal OSHA's revisions to the following final rules as published on July 25, 1997 (62 FR 40142-40234):

1. 16 VAC 25-120-1917.1 through 16 VAC 25-120-1917.158, Marine Terminals Standards, Public Sector Only, Marine Terminals (29 CFR 1917.1 through 1917.158);
2. 16 VAC 25-130-1918.1 through 16 VAC 25-130-1918.3, Scope and Definitions, subpart A. Longshoring (29 CFR 1918.1 through 1918.3);
3. 16 VAC 25-130-1918.11, Gear Certification, Subpart B, Longshoring (29 CFR 1918.11);
4. 16 VAC 25-130-1918.21 through 16 VAC 25-130-1918.26, Gangways and Other Means of Access, Subpart C, Longshoring (29 CFR 1918.21 through 1918.26);
5. 16 VAC 25-130-1918.31 through 16 VAC 25-130-1918.37, Working Surfaces, Subpart D, Longshoring (29 CFR 1918.31 through 1918.37)
6. 16 VAC 25-130-1918.41 through 16 VAC 25-130-1918.43, Opening and Closing Hatches, Subpart E, Longshoring (29 CFR 1918.41 through 1918.43);
7. 16 VAC 25-130-1918.51 through 16 VAC 25-130-1918.55, Vessel's Cargo Handling Gear, Subpart F, Longshoring (29 CFR 1918.51 through 1918.55);
8. 16 VAC 25-130-1918.61 through 16 VAC 25-130-1918.69, Cargo Handling Gear and Equipment Other Than Ship's Gear, Subpart G, Longshoring (29 CFR 1918.61 through 1918.69);

9. 16 VAC 25-130-1918.81 through 16 VAC 25-130-1918.89, Handling Cargo, Subpart H, Longshoring (29 CFR 1918.81 through 1918.89);
10. 16 VAC 25-130-1918.90, Hazard Communications, Longshoring (29 CFR 1918.90);
11. 16 VAC 25-130-1918.100, Emergency Action Plans, Longshoring (29 CFR 1918.100);
12. 16 VAC 25-130-1918.101 through 16 VAC 25-130-1918.105, Personal Protective Equipment, Subpart J, Longshoring (29 CFR 1918.101 through 1918.105).

The regulations as adopted are not set out.

When the regulations, as set forth in the Marine Terminals and Longshoring standards, are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
January 21, 1998	April 1, 1998



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E. M. MILLER, JR.
ACTING REGISTRAR OF REGULATIONS
JANE D. CHAFFIN
DEPUTY REGISTRAR

December 12, 1997

Mr. Linwood Saunders, Chairman
Virginia Safety and Health Codes Board
Department of Labor and Industry
13 South Thirteenth Street
Richmond, VA 23219

Attention: Bonnie H. Robinson
Regulatory Coordinator

Dear Mr. Saunders:

This letter acknowledges receipt of the amendments to the following regulations submitted by the Department of Labor and Industry:

1. 16 VAC 25-120-1917.1 through 16 VAC 25-120-1917.158, Marine Terminals Standards, Public Sector Only;
2. 16 VAC 25-130-1918.1 through 16 VAC 25-130-1918.3, Scope and Definitions, Subpart A, Longshoring;
3. 16 VAC 25-130-1918.11, Gear Certifications, Subpart B, Longshoring;
4. 16 VAC 25-130-1918.21 through 16 VAC 25-130-1918.26, Gangways and Other Means of Access, Subpart C, Longshoring;
5. 16 VAC 25-130-1918.31 through 16 VAC 25-130-1918.37, Working Surfaces, Subpart D, Longshoring;

6. 16 VAC 25-130-1918.41 through 16 VAC 25-130-1918.43, Opening and Closing Hatches, Subpart E, Longshoring;
7. 16 VAC 25-130-1918.51 through 16 VAC 25-130-1918.55, Vessel's Cargo Handling Gear, Subpart F, Longshoring;
8. 16 VAC 25-130-1918.61 through 16 VAC 25-130-1918.69, Cargo Handling Gear and Equipment Other Than Ship's Gear, Subpart G, Longshoring;
9. 16 VAC 25-130-1918.81 through 16 VAC 25-130-1918.89, Handling Cargo, Subpart H, Longshoring;
10. 16 VAC 25-130-1918.90, Hazard Communications, Longshoring;
11. 16 VAC 25-130-1918.100, Emergency Action Plans, Longshoring and;
12. 16 VAC 25-130-1918.101 through 16 VAC 25-130-1918.105, Personal Protective Equipment, Subpart J, Longshoring.

As required by § 9-6.14:4.1 C 4(c) of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act since they do not differ materially from those required by federal law.

Sincerely,

E. M. Miller, Jr.
Acting Registrar of Regulations

Title of Regulation: 16 VAC 25-130-1918.91 through 16 VAC 25-130-1918.99. General Working Conditions, Longshoring (29 CFR 1918.91 through 29 CFR 1918.99).

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Effective Date: April 1, 1998.

Summary:

Federal OSHA has revised its safety and health regulations for Longshoring and those parallel sections of its Marine Terminals standard. These rules address cargo handling and related activities conducted aboard vessels (the Longshoring standard) and landside operations at marine terminals (the Marine Terminals standard). The revisions to the Longshoring standard are comprehensive.

Although the longshoring and marine terminal rules are "vertical" standards that apply only to longshoring and marine terminal activities, OSHA also made minor changes to some of the general industry provisions referenced within these rules. These nonsubstantive changes to paragraphs (a), (b) and (c) of 29 CFR 1910.16, Longshoring and Marine Terminals, have been made to conform the general industry requirements to the terminology used in the marine cargo-handling environment.

These final rules contain requirements for the testing and certification of specific types of cargo lifting appliances and associated auxiliary gear and other cargo-handling equipment such as conveyors and industrial trucks, access to vessels, entry into hazardous atmospheres, working surfaces, and use of personal protective equipment. Additionally, OSHA addressed specialized longshoring operations such as containerized cargo, logging, and roll-on/roll-off (Ro-Ro) operations.

The principal hazards these final rules address are injuries and fatalities associated with cargo lifting gear, transfer of vehicular cargo, manual cargo handling, and exposure to hazardous atmospheres. Also addressed are hazards posed by more modern and sophisticated cargo-handling methods, such as intermodalism.

Agency Contact: Copies of the regulation may be obtained from Bonnie H. Robinson, Regulatory Coordinator, Department of Labor and Industry, 13 South 13th Street, Richmond, VA 23219, telephone (804) 371-2631.

Note on Incorporation by Reference

Pursuant to § 9-6.18 of the Code of Virginia, General Working Conditions, Longshoring (29 CFR 1918.91) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason the entire document will not be printed in the Virginia Register of Regulations. Copies of the document are available for inspection at the Department of Labor and Industry, 13 South 13th Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, Capitol Square, Richmond, Virginia 23219.

On September 29, 1997, the Safety and Health Codes Board adopted an identical version of federal OSHA's revision of the final rule for General Working Conditions, Longshoring, 29 CFR 1918.91 through 29 CFR 1918.99, as published on July 25, 1997 (62 FR 40219-40222). Also published with this revision were the following revised final rules: Longshoring and Marine Terminals, General Industry, 29 CFR 1910.16; Marine Terminals Standard, Public Sector Only, Marine Terminals, 29 CFR 1917.1 through 29 CFR 1917.158, and other related provisions of 29 CFR Part 1918, Longshoring. The amendments as adopted are not set out.

When the regulations, as set forth in the revised regulations for 16 VAC 25-130-1918.91 through 16 VAC 25-130-1918.99, General Working Conditions, Longshoring, 29 CFR 1918.91 through 29 CFR 1918.99, are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
January 21, 1998	April 1, 1998



COMMONWEALTH of VIRGINIA

E.M. MILLER, JR.
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December 12, 1997

Mr. Linwood Saunders, Chairman
Virginia Safety and Health Codes Board
Department of Labor and Industry
13 South Thirteenth Street
Richmond, VA 23219

Attention: Bonnie H. Robinson
Regulatory Coordinator

Dear Mr. Saunders:

This letter acknowledges receipt of the amendments to 16 VAC 25-130-1918.91 through 16 VAC 25-130-1918.99, General Working Conditions, Longshoring, submitted by the Department of Labor and Industry.

As required by § 9-6.14:4.1 C 4(c) of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act since they do not differ materially from those required by federal law.

Sincerely,

A handwritten signature in cursive script that reads "E. M. Miller, Jr." followed by a stylized flourish.

E. M. Miller, Jr.
Acting Registrar of Regulations

Title of Regulation: 16 VAC 25-130-1918. Longshoring Standards, Appendices I, II, III, IV, and V (29 CFR 1918 Appendices I, II, III, IV, and V).

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Effective Date: April 1, 1998.

Summary:

Federal OSHA revised its safety and health regulations for Longshoring and those parallel sections of its Marine Terminals standard. These rules address cargo handling and related activities conducted aboard vessels (the Longshoring standard) and landside operations at marine terminals (the Marine Terminals standard). The revisions to the Longshoring standard are comprehensive.

The Longshoring and Marine Terminals regulations contain requirements for the testing and certification of specific types of cargo lifting appliances and associated auxiliary gear and other cargo-handling equipment such as conveyors and industrial trucks, access to vessels, entry into hazardous atmospheres, working surfaces, and use of personal protective equipment. Additionally, OSHA addressed specialized longshoring operations such as containerized cargo, logging, and roll-on/roll-off (Ro-Ro) operations.

These appendices provide guidance to 29 Part CFR 1918 to assist employers and employees in complying with the requirements of the Longshoring standard, as well as providing other helpful information.

The following topics are included in the appendices to 29 CFR Part 1918:

Appendix I--Cargo Gear Register and Certificates (nonmandatory);

Appendix II--Tables for Selected Miscellaneous Auxiliary Gear (mandatory) which are to be used in the appropriate sections of 29 CFR Part 1918 when certificates or the manufacturers' use recommendations are not available;

Appendix III--The Mechanics of Conventional Cargo Gear (nonmandatory) which provides an explanation of the mechanics in the correct spotting of cargo-handling gear;

Appendix IV--Special Cargo Gear and Container Spreader Test Requirements (mandatory) for all special cargo handling gear purchased or manufactured on or after January 21, 1998, and also for all special cargo-handling gear in use prior to January 21, 1998; and

Appendix V--Basic Elements of a First Aid Training Program (nonmandatory) which provides guidelines for small businesses, institutions teaching first aid, and the recipients of first aid training.

Agency Contact: Copies of the regulation may be obtained from Bonnie H. Robinson, Regulatory Coordinator, Department of Labor and Industry, 13 South 13th Street, Richmond, VA 23219, telephone (804) 371-2631.

Note on Incorporation by Reference

Pursuant to § 9-6.18 of the Code of Virginia, Longshoring Standard, Appendices I, II, III, IV, and V (29 CFR Part 1918) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason the entire document will not be printed in the Virginia Register of Regulations. Copies of the document are available for inspection at the Department of Labor and Industry, 13 South 13th Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, Capitol Square, Richmond, Virginia 23219.

On September 29, 1997, the Safety and Health Codes Board adopted an identical version of federal OSHA's Appendices I through V of 29 CFR Part 1918, Longshoring, as published in the Federal Register on July 25, 1997 (62 FR 40223-40232). Also published with these appendices to the Longshoring regulations were the following revised final rules: Longshoring and Marine Terminals, General Industry, 29 CFR 1910.16; Marine Terminals Standard, Public Sector Only, Marine Terminals, 29 CFR 1917.1 through 29 CFR 1917.158; and other related provisions of 29 CFR Part 1918, Longshoring. The regulations as adopted are not set out.

When the regulations, as set forth in Appendices I through V, Longshoring, are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
January 21, 1998	April 1, 1998



COMMONWEALTH of VIRGINIA

VIRGINIA CODE COMMISSION
General Assembly Building

E.M. MILLER, JR.
ACTING REGISTRAR OF REGULATIONS

JANE D. CHAFFIN
DEPUTY REGISTRAR

710 CAPITOL STREET
RICHMOND, VIRGINIA 23219
PHONE (804) 758-3591
FAX (804) 692-0625

December 12, 1997

Mr. Linwood Saunders, Chairman
Virginia Safety and Health Codes Board
Department of Labor and Industry
13 South Thirteenth Street
Richmond, VA 23219

Attention: Bonnie H. Robinson
Regulatory Coordinator

Dear Mr. Saunders:

This letter acknowledges receipt of the amendments to 16 VAC 25-130-1918, Appendices I, II, III, IV, and V, Longshoring Standards, submitted by the Department of Labor and Industry.

As required by § 9-6.14:4.1 C 4(c) of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act since they do not differ materially from those required by federal law.

Sincerely,

A handwritten signature in cursive script that reads "E.M. Miller, Jr." followed by a stylized flourish.

E. M. Miller, Jr.
Acting Registrar of Regulations

EMERGENCY REGULATIONS

TITLE 16. LABOR AND EMPLOYMENT

DEPARTMENT OF LABOR AND INDUSTRY

Safety and Health Codes Board

Title of Regulation: 16 VAC 25-50-10 et seq. Boiler and Pressure Vessel Rules and Regulations (amending 16 VAC 25-50-70, 16 VAC 25-50-120, 16 VAC 25-50-150 and 16 VAC 25-50-270).

Statutory Authority: § 40.1-51.6 of the Code of Virginia and Chapter 212 of the 1997 Acts of Assembly.

Effective Dates: January 1, 1998, through December 31, 1998.

Purpose of the Emergency Regulation:

The Safety and Health Codes Board has approved the promulgation of this emergency regulation (1) setting fee amounts for regulating and inspecting boilers and pressure vessels, (2) providing a framework for authorizing certain inspectors to issue certificates and collect certificate fees, and (3) providing for government inspectors where private sector inspectors are unavailable, in order to implement the requirements of Chapter 212, 1997 Acts of Assembly.

Chapter 212 amends the Boiler and Pressure Vessel Safety Act by transferring fee rates from statute to regulation, allowing specially authorized inspectors to issue certificates and collect fees and providing for Commonwealth inspectors to inspect uninsured boilers and pressure vessels where inspection service is otherwise unavailable. The statutory provisions of Chapter 212 become effective on January 1, 1998.

Setting fee amounts by regulation will allow an easier adjustment of the moneys collected from fees to coincide with and accurately reflect the Boiler Safety Compliance Program's allocated expenses. Authorizing certain inspectors to issue certificates and collect fees will dramatically shorten the process for owner-users to obtain inspection certificates, while saving the agency's resources otherwise expended towards that process. Finally, directing Commonwealth inspectors to inspect uninsured boilers and pressure vessels, addresses and eliminates a criticism of the privatized inspection system for those geographic areas or limited time periods within which commercial services would not be available.

These emergency regulation amendments are necessary to implement the statutory effective date of January 1, 1998, set by Chapter 212, 1997 Acts of Assembly. In compliance with the APA, these emergency regulation amendments will remain in effect for no more than one year. The proposed effective date for the emergency regulation is January 1, 1998. The Board has instructed the Department to begin the promulgation of a

permanent regulation in accordance with the Administrative Process Act to replace these emergency regulatory amendments.

Summary:

A. *Establishing fees under the Boiler and Pressure Vessel Safety Act.*

The Boiler and Pressure Vessel Safety Act, at Virginia Code §§ 40.1-51.5 through 40.1-51.19, provides for the Department of Labor and Industry's Boiler Safety Compliance Program to assess certain fees, including issuing inspection certificates, examining and certifying boiler and pressure vessel inspectors, and conducting other reviews and inspections of boilers and pressure vessels. Chapter 212 of the 1997 Acts of Assembly, which amended Virginia Code § 40.1-51.15 and other related statutes, directs the Safety and Health Codes Board to establish these fees as regulations. The amended language deleted certain fee amounts from within the Act and authorized the Board to promulgate regulations setting forth these amounts. The intent was to eliminate the necessity for legislative action to amend fee amounts and transfer this authority to the Board.

The Boiler and Pressure Vessel Rules and Regulations currently include several provisions setting forth the same fees previously authorized in statute. They were adopted to support the codified fee structure. This proposed Emergency Regulation amends the language in some of the fee provisions and completely rewrites others. The amended regulations are 16 VAC 25-50-70, 16 VAC 25-50-120, and 16 VAC 25-50-270. The 1997 amendment to Virginia Code § 40.1-51.15 also requires that the Boiler Safety Compliance program's registration, inspection, and renewal fees be reviewed at the close of each biennium, and that the fees be revised when the collected moneys either exceed or fall below expenses by more than ten percent (10%).

B. *Authorizing certain inspectors to issue certificates and collect fees.*

Chapter 212, 1997 Acts of Assembly also added a new section in the Virginia Code § 40.1-51.10:1, "Issuance of Certificates; Charges," to the Boiler and Pressure Vessel Safety Act. This new statute permits the Commissioner to designate certain inspectors to issue inspection certificates and collect certificate fees. This emergency regulation amends the Boiler and Pressure Vessel Rules and Regulations, at 16 VAC 25-50-150, to offer the boiler owner the option of either paying \$20 directly to the Department or to a designated inspector. This emergency regulation also allows designated inspectors to keep a maximum of three dollars (\$3.00) out of each certificate fee collected, reflecting costs incurred in collecting and forwarding the remaining fees (\$ 17) to the Chief Inspector.

C. *Establishing inspections by Commonwealth inspectors where contract fee inspectors are unavailable.*

Emergency Regulations

The final paragraph of Chapter 212, 1997 Acts of Assembly directs the Board to promulgate regulations "governing the use of Commonwealth inspectors to inspect uninsured boilers or pressure vessels when contract fee inspectors are unavailable and to set fees for such inspections conducted by Commonwealth inspectors." Subsection C of 16 VAC 25-50-150 of the Boiler and Pressure Vessel Rules and Regulations is amended to describe the Boiler Safety Compliance Program's Chief Inspector's criteria for determining unavailability and to establish rates for certification inspections conducted by Commonwealth Inspectors.

Statement that the Emergency Regulation is Necessary with the Reason for the Emergency.

Chapter 212 of the 1997 Acts of Assembly signed by Governor Allen on March 9, 1997, authorizes the Board to promulgate regulations permitting the Commissioner to designate certain inspectors to issue inspection certificates and collect certificate fees, and explicitly requires the Board to promulgate regulations (1) establishing the necessary fees and charges and (2) governing the use of Commonwealth inspectors for certain uninsured boilers by October 1, 1997, with the statutory provisions becoming effective on January 1, 1998.

To further protect public safety by regulating unsafe boilers and pressure vessels, it is necessary to promulgate this emergency regulation with an effective date of January 1, 1998, to meet the statutory provisions of Chapter 212, 1997 Acts of Assembly.

16 VAC 25-50-70. Certificate of competency and identification card.

A. Upon request and subject to subsection B of this section, a certificate of competency and an identification card shall be issued by the commissioner to:

1. An inspector who is employed full-time by a governmental authority having an authorized inspection agency as defined in Part I (16 VAC 25-50-10 et seq.).
2. An inspector who is employed by an insurance company which is authorized (licensed) to write boiler and pressure vessel insurance in this Commonwealth.
3. An inspector who is employed by a company which operates unfired pressure vessels in Virginia and has a valid owner-user inspection agency agreement as provided in 16 VAC 25-50-120.
4. A contract fee inspector.

B. The applicant must pass the examination as set forth in Part II, 16 VAC 25-50-50 and pay the application fee of \$50; or hold a valid commission or certificate of competency from a state that has a standard of examination substantially equal to that of Virginia, and a valid commission and identification card issued by the National Board.

C. Requests for a certificate of competency and identification card shall be completed on forms provided by the chief inspector and shall be accompanied by, when applicable, a facsimile of the applicant's commission, certificate of competency and identification cards, named above, and a processing fee of ~~\$40~~ \$20 payable to the Treasurer of Virginia.

D. The Virginia valid identification card shall be returned to the chief inspector when the certificate holder is no longer employed by the organization employing him at the time that the certificate was issued or, in the case of a self-employed contract fee inspector, has ceased inspection activities.

E. Each person holding a valid Virginia certificate of competency and who conducts inspections as provided by the Act shall apply to the chief inspector on forms provided by the chief inspector and obtain an identification card biennially, not later than June 30 of the year in which the card is due for renewal. A processing fee of ~~\$40~~ \$20 for each card, payable to the Treasurer of Virginia, shall accompany the application.

F. An inspector's certificate of competency may be suspended by the chief inspector after due investigation and recommendation by the commissioner, for incompetence or untrustworthiness of the holder of the certificate, or for willful falsification of any matter or statement contained in his application, or in a report of any inspection made by him. Written notice of any suspension shall be given by the chief inspector to the inspector and his employer. Persons whose certificate of competency has been suspended shall be entitled to an appeal to the board as provided for in the Act and to be present in person or to be represented by counsel at the hearing of the appeal.

16 VAC 25-50-120. Owner-user inspection agency.

A. Any person, firm, partnership or corporation operating pressure vessels in this Commonwealth may seek approval and registration as an owner-user inspection agency by filing an application with the chief inspector on forms prescribed and available from the department, and request approval by the board. Each application shall be accompanied by ~~a fee of \$25 and~~ a bond in the penal sum of \$5,000 which shall continue to be valid during the time the approval and registration of the company as an owner-user inspection agency is in effect.

B. The application and registration shall show the name of the agency and its principal address in this Commonwealth, and the name and address of the person or persons having supervision over inspections made by the agency. Changes in supervisory personnel shall be reported to the chief inspector within 30 days after any change.

C. Each owner-user inspection agency as required by the provisions of the Act and this chapter shall:

1. Maintain its own inspection group under the supervision of one or more individuals who have qualified as an inspector under the provisions of the National Board Inspection Code;

2. Conduct inspections of unfired pressure vessels, not exempt by the Act, utilizing only qualified inspection personnel, certified pursuant to Part II, 16 VAC 25-50-50, 16 VAC 25-50-60 and 16 VAC 25-50-70;

3. Retain on file at the location where the equipment is inspected a true record or copy of the report of the latest of each inspection signed by the inspector who made the inspection;

4. Execute and deliver to the owner or user (management) a true report of each inspection together with appropriate requirements or recommendations that result from the inspections;

5. Promptly notify the chief inspector of any unfired pressure vessel which does not meet the requirements of safe operating conditions;

6. Maintain inspection records which will include a list of each unfired pressure vessel covered by the Act, showing a serial number and an abbreviated description as may be necessary for identification; the date of last inspection of each unit and approximate date for the next inspection, arrived at by applying the appropriate rules to all data available at the time the inspection record is compiled (re: Frequency and type of inspection, see Part II, 16 VAC 25-50-30). This inspection record shall be readily available for examination by the chief inspector or his authorized representative during normal business hours; and

7. File a statement annually, on a date mutually agreed upon, with the chief inspector. This statement shall be signed by the individual having supervision over the inspections made during the period covered. The statement shall include the number of vessels, covered by the Act, inspected during the year and certifying that each inspection was conducted pursuant to the inspection requirements provided for by the Act and in a format acceptable to the chief inspector. The annual statement shall be accompanied by a filing fee in accordance with the schedule in § 40.1-51.11:1 of the Act as follows:

- a. For statements covering not more than 25 vessels - \$7 per vessel;
- b. For statements covering more than 25 vessels but less than 101 vessels - \$200;
- c. For statements covering more than 100 but less than 501 vessels - \$400; and
- d. For statements covering more than 500 vessels - \$800.

16 VAC 25-50-150. Inspection certificate and inspection fees.

A. Upon the inspection and determination that a boiler or pressure vessel is suitable and conforms to this chapter, the owner or user shall remit the sum of \$20 to the commissioner payment in one of the forms and amounts as described below

~~for an inspection certificate for each item required to be inspected under the Act. A certificate of inspection shall not be issued to the owner or user until receipt of funds by the department. Checks and money orders for payment of inspection certificate fees should be made payable to the Treasurer of Virginia.~~

1. Payment of \$20 may be mailed from the owner or user to the chief inspector. Checks and money orders for payment of inspection certificate fees should be made payable to the Treasurer of Virginia; or

2. Payment for the inspection certificate may be presented to a special inspector, where the inspector is previously authorized to collect and forward such fees on the department's behalf. The commissioner may authorize special inspectors to collect and forward to the chief inspector \$17 for each inspection certificate. Pursuant to paragraph 2 of § 40.1-51.10:1 of the Code of Virginia, special inspectors may charge owners or users a fee not exceeding \$3.00 for collecting and forwarding inspection certificate fees.

An inspection certificate will not be issued to the owner or user until payment is received by either the department or, if previously authorized, by a special inspector.

B. The chief inspector may extend an inspection certificate for up to three additional months beyond a two-month grace period following the expiration of a certificate. Such extension is subject to a satisfactory external inspection of the boiler or pressure vessel and receipt of a fee of \$20 for each month of extension.

~~C. When inspected by the department, an additional fee for the inspection service shall be paid before the inspection certificate is issued. When the chief inspector determines that no contract fee inspectors are available to inspect a regulated boiler or pressure vessel in a timely manner, a Commonwealth inspector may be directed to conduct a certification inspection. Contract fee inspection service shall be determined unavailable where (i) at least two contract fee inspectors contacted will not agree to provide inspection services to the owner or user within at least twenty-one days from the request, and (ii) the owner's or user's inspection certificate will expire within that same period.~~

The following rates per inspected object, in addition to inspection certificate fees, shall apply for certification inspections conducted by a Commonwealth inspector:

a. Power boilers and high pressure, high temperature water boilers	\$135
b. Heating boilers	\$70
c. Pressure vessels	\$50

D. The review of a manufacturer's or repair organization's facility for the purpose of national accreditation will be performed by the chief inspector or his qualified designee for an additional fee of \$800 per review or survey.

Emergency Regulations

E. The owner or user who causes a boiler or pressure vessel to be operated without a valid certificate shall be subject to the penalty as provided for in § 40.1-51.12 of the Act.

F. Inspection certificates are not required for unfired pressure vessels inspected by an authorized owner-user inspection agency. However, the agency shall keep on file in its office in the establishment where the equipment is located a true record or copy of the report of the latest of each inspection signed by the inspector who made the inspection.

16 VAC 25-50-270. Review fees.

~~The fees to be charged by the Chief Inspector or Commonwealth Inspectors for a review or inspection other than a certificate inspection, of a boiler or pressure vessel shall be in accordance with § 40.1-51.15 of the Act, and may include but not be limited to consultation, data review, engineering evaluation, or quality control review.~~

Reviews and emergency inspections other than certificate inspections, conducted by the chief inspector or Commonwealth inspectors, including but not limited to consultations, data reviews, engineering evaluations, or quality control reviews shall be billed at the following rates:

- a. *For one-half day of four hours* *\$100, plus expenses, including travel and lodging*
- b. *For one full day of eight hours* *\$200, plus expenses, including travel and lodging*

/s/ Linwood Saunders, Chairman
Safety and Health Codes Board
Date: September 29, 1997

/s/ Theron J. Bell, Commissioner
Department of Labor and Industry
Date: October 9, 1997

/s/ Robert T. Skunda, Secretary of Commerce and Trade
Date: October 25, 1997

/s/ George Allen, Governor
Date: November 14, 1997

VA.R. Doc. No. R98-134; Filed November 25, 1997, 11:46 a.m.

GOVERNOR

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

REAL ESTATE BOARD

Title of Regulation: 18 VAC 135-20-10 et seq. Virginia Real Estate Board Licensing Regulations.

Governor's Comment:

I have reviewed this proposed regulation on a preliminary basis. While I reserve the right to take action authorized by the Administrative Process Act during the final adoption period, I have no objection to the proposed regulation based on the information and public comment currently available.

/s/ George Allen, Governor

Date: September 24, 1997

VA.R. Doc. No. R96-373; Filed November 24, 1997, 10:14 a.m.

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The Legislative Record

Volume 7 No. 6

November 1997

SJR 259

Joint Subcommittee Studying Electric Utility Restructuring

November 7, 1997, Richmond

The joint subcommittee convened its latest meeting to receive a key report from the Virginia State Corporation Commission's (SCC) utility staff. The report, requested by the 1997 General Assembly in the SJR 259 subcommittee's enabling resolution, outlined the SCC's plan for Virginia's transition to retail competition in the electric utility industry. The SCC's proposal (self-described as a "rational and deliberative process") detailed a five-year, two-phase process in which Virginia would proceed in measured steps from fully regulated electric utility rates to competition.

SCC Restructuring Plan

The SCC's plan is a two-phase restructuring process beginning in 1998. In Phase 1 (1998-2001), the rates of all electric utilities would be thoroughly examined, retail pilots would be conducted, and the SCC would pursue such key ingredients as independent system operator (ISO) formation. Phase 2 would mark the beginning of actual retail competition—if the SCC and General Assembly agreed that retail competition was in the public interest—and Virginia's electric utilities would be required to file retail competition plans. (The SCC's plan can be viewed at the SCC's Internet web site: <http://dit1.state.va.us/scc>).

According to SCC staff, the Phase 1 rate examination is essential, because these rates could be in effect for an extended period of time during a transition to competition. Virginia Power and AEP Virginia have rate/alternative regulatory plan cases currently pending before the commission (Virginia Power's case is set for hearing in early 1998), and Allegheny Power is expected file a rate case as early as 1998. Thus, in some respects, Phase 1 has already begun.

The rate reviews proposed by the SCC would (i) determine whether current rates reflect costs and (ii) undertake preparatory work for a competitive model. The review would include exami-

nation of such issues as inter-class subsidies, unbundled rates and bills, stranded costs and margins, transition and transaction costs, and consumer services.

SCC staff believes that the formation of a regional independent system operator (ISO) is critical to the success of any significant level of retail access. In concept, ISOs would establish order and efficiency in a competitive market by providing centralized generation dispatch coordination. Consequently, the report proposes ISO formation (coordinated with other states and the federal government) during Phase 1, as well as the concurrent formation of a regional power exchange (RPX) to develop a spot market for electricity.

Pilot Programs

Phase 1 of the plan would also include retail access pilot programs and studies lasting up to two years. The SCC's plan anticipates SCC-coordinated retail pilots conducted by Virginia's investor-owned utilities (such as AEP Virginia and Virginia Power) and at least two electric cooperatives. SCC staff hopes that the pilot programs would produce useful information in several areas, including information technology requirements, generation supply and load matching, time-of-use metering, marketing and rate information, rules governing utility affiliates, and consumer protection.

The staff cautioned the subcommittee, however, that the pilots were unlikely to produce meaningful information about electricity prices or reliability in a competitive market. The joint subcommittee received a similar message from a New Hampshire Public Utility Commission representative, who commented earlier this year on that state's retail competition pilot. However, SCC staff emphasized the value of pilots in Virginia, underscoring the necessity of developing information about technology requirements and consumer protection in particular—information best developed in the test tube of a pilot project.

Stranded Costs

A key restructuring issue is utility compensation for anticipated capital losses resulting from generation asset devaluation in a competitive market. Put simply, some utilities anticipate that regulated rates are the only means of ensuring sufficient rates of return on some electricity generation plants. New coal-fired plants

VIRGINIA DIVISION OF LEGISLATIVE SERVICES

Virginia Register of Regulations

with the latest in federally required emissions control technology may fall into this category. Nuclear power plants and power purchased from nonutility generators (NUGs) may be in this category as well.

The SCC's report raises many questions about stranded cost recovery, while providing no proposed formula for its calculation. Included are questions about mitigation, equitable cost sharing between shareholders and ratepayers, recovery periods, and allocation among customer classes—to name just a few. The staff told the joint subcommittee that its plan included no recovery formula, to avoid prejudicing ongoing discussions between Virginia Power and its NUGs, with whom Virginia Power has purchase power contracts (contracts said to be currently above market—and potentially the source of stranded costs). These discussions resulted from a November 1996 SCC order directing Virginia Power to conduct negotiations with its NUGs to determine whether the contracts could be renegotiated to reduce this utility's potential stranded cost exposure.

Phase 2

In Phase 2 (denominated as the "decisional phase"), the SCC and General Assembly would jointly review the pilot program results, ISO/RPX formation progress, and retail competition in other states. They would also review reliability issues and the transaction and transition costs associated with restructuring. A cost-benefit analysis would be undertaken as part of this review to determine whether the benefits of retail competition outweigh its costs. If the review supports the development of retail competition, all electric utilities would be required to file retail competition plans.

The electric utilities' retail competition filings would be required to detail the following:

- Generation reliability,
- ISO/RPX development,
- Likely rate impact on customer classes,
- Necessary information and metering technology,
- Market power issues,
- Necessary consumer protection measures and their implementation,
- Proposed implementation period,
- Stranded costs and margins, and
- Environmental impact.

The SCC would conduct public hearings on these submissions, ensuring that each approved plan meets the above standards and that net benefits would accrue from its adoption. If transition proceeds smoothly, the SCC could choose to accelerate the phase-in pace; if it does not, the phase-in period could be extended.

Options for Competition

The SCC staff believes there are several models for competition in Virginia, including a *wholesale* competition model and

a *retail* competition model that encompasses (i) an expanded wholesale model, (ii) an ISO/RPX model, and (iii) straight bilateral contracts. Essentially, the SCC's wholesale model would encourage market pricing by basing electric utilities' return on new capacity (where they choose to build rather than buy) on wholesale market prices and not on traditional rate base pricing. An expanded, or modified wholesale model would permit large retail power purchases by a limited number of industrial customers. The logic: these purchases are indistinguishable in size from the direct, wholesale purchases (from the supplier of their choice) currently made by municipal power suppliers and electric cooperatives.

The ISO/RPX model is key to the SCC's view of a functional competitive retail market. An RPX (regional power exchange) would provide dispatch logic for generation and a competitive spot market for electricity based on generation owners' bids for generation at specified times of the day. An ISO (independent system operator) would then direct generation dispatch using RPX-developed information concerning anticipated loads at different times of the day (load curves).

The electricity customer fits into this model by having the *equivalent* of retail access. This is accomplished—assuming the local distribution companies have appropriate information technology—by customers exercising "contracts for differences." Straight, bilateral contracts could be accommodated within this model for a limited number of large customers. However, the SCC staff believes that the ISO/RPX model diminishes the logic or need for such transactions. Moreover, the straight bilateral contract model (one between a retail supplier and purchaser) does not, in the SCC staff's estimation, provide for effective access to competitive suppliers for many classes of customers.

Need for Legislation

The SCC plan identified two narrow areas where legislation may be needed to support retail competition's evolution: first, legislation authorizing construction of "merchant plants" (essentially NUGs) in incumbent utilities' service territories to counterbalance the utilities' potential market power and, second, legislation to address issues associated with eminent domain and merchant plants' construction and siting. SCC staff strongly recommended that this and all other legislation associated with restructuring be done without an attempt to anticipate federal legislative activity in this area. While some federal bills under consideration offer "grandfathering" to states with restructuring plans enacted prior to the federal bills' effective dates, the staff noted that such grandfathering ultimately requires conformity with the federal enactment.

Taxation Task Force

The state and local taxation task force furnished an update concerning its continuing examination of restructuring's likely impact on state gross receipts and local property taxes. A potential constitutional barrier to gross receipts tax collection from

out-of-state electricity providers spurred the formation of this task force. The task force has also addressed localities' concerns about potential property tax revenue reductions that could result from retail competition—reductions tied to generating units that may be uneconomic (and consequently reassessed at lower values) in a retail market.

The task force chairman made several recommendations to the joint subcommittee. First, he recommended that the joint subcommittee communicate with Virginia's congressional delegation, urging them to support legislation authorizing states to tax every person or entity supplying electricity within its borders (thereby eliminating the taxation nexus issue discussed above). He also recommended that any retail competition pilot program undertaken in the Commonwealth ensure taxation parity among all electricity providers. The partial deregulation of the natural gas industry has resulted, he noted, in gross receipts tax disparity, because certain natural gas transactions purchased from out-of-state suppliers are now exempt from that tax, while others are not. In that vein, he also suggested a 1998 study of all energy-related taxation.

Utility Entry into Unregulated Markets

Virginia Power and the Coalition for Fair Competition, comprised of heating, ventilation, air conditioning and refrigeration (HVACR) contractors, together with fuel oil and propane distributors, told the subcommittee that their year-long negotiations have produced a compromise. At stake was the range of permitted activities by Virginia Power subsidiaries in unregulated markets served by coalition members.

The parties negotiated guidelines (termed "standards of conduct") applicable to any Virginia Power subsidiary activity involving the sale of fuel oil or propane, general contracting, consulting engineering, or HVACR appliances during the transition to competition. The agreement mandates structural, operational and personnel separation between Virginia Power and any such subsidiary. Furthermore, it establishes billing and marketing restrictions, including restrictions on such a subsidiary's use of the Virginia Power logo in subsidiary promotional material. These standards would be implemented in the SCC's review of any application by Virginia Power for SCC approval of a subsidiary's entry into these markets.

Future Activities

The joint subcommittee will convene its next meeting on December 17 to receive stakeholder responses to the SCC's proposed restructuring plan and to receive and discuss proposals for restructuring-related legislation in the 1998 Session.

The Honorable Jackson E. Reasor, Jr., *Chairman*
Legislative Services contact: Arlen K. Bolstad



Joint Subcommittee Studying Industrial Swine Production

October 29, 1997, Richmond

The joint subcommittee's second meeting focused on the Virginia pollution abatement general permit for confined animal feeding operations. The subcommittee also received a briefing on *Pfiesteria* and identified issues for further study.

General Permit

The general permit is issued by the Department of Environmental Quality (DEQ) to operations with 750 or more swine (or an equivalent number of other livestock). To be eligible for the general permit, an operation must have and implement a nutrient management plan that has been approved by the Department of Conservation and Recreation (DCR). The subcommittee examined in detail the program implementation activities of the two agencies.

The nutrient management plan may be written by DCR nutrient management specialists or by others. Most nutrient management plans for new or expanding swine operations are written by private sector employees. Plans written by DCR staff are reviewed by the nutrient management program manager, while plans written by those outside the agency are reviewed by an agency nutrient management specialist and the program manager. The agency operates a nutrient management training and certification program. To date, those certified under the program include 40 government employees, 14 employees of sludge contractors, 56 workers in the fertilizer industry, and 10 in other private sector positions. DCR nutrient management specialists are required to have a degree in agronomy, agricultural engineering, dairy science, or related area, or an equivalent combination of training and experience, and must be a certified nutrient management planner. Over the past year general permit nutrient management plan submittals, as well as inquiries from citizens and local government, have increased.

Nutrient management plans are revised at least once every three years, and must be updated prior to expiration if the number or type of animals raised by the operation changes. For DCR-written plans, staff often visits the farm when the plan is revised and may visit the farm at other times to assist with manure sampling, manure spreader calibrations and other activities. Agency nutrient management specialists try to assist farmers with compliance during such visits, rather than reporting noncompliance to DEQ.

DEQ is required to inspect permitted operations at least once every five years. Inspections are usually unannounced. During inspections, farmers are asked questions based on an inspection form developed by the regional office. Monitoring results and records of waste applications, which are required to be kept for two years, are inspected. The condition and storage capac-

ity of the lagoon is inspected. If the lagoon has an underground leak, it may be detected by groundwater monitoring data, if the operation is required to monitor groundwater. Most inspectors have college degrees and experience in wastewater laboratories, wastewater treatment plants, or both. They are encouraged to take the nutrient management and training course offered by DCR. Day-to-day interaction between DCR staff and DEQ inspection staff is infrequent. On a very limited number of occasions, DCR staff have accompanied DEQ staff on inspection visits.

With regard to lagoons, the general permit requires that the nutrient management plan contain "storage and land area requirements." The only aspect of lagoon design and maintenance covered by most nutrient management plans, therefore, is lagoon volume. The permit itself contains requirements regarding the lagoon liner, the level of waste that must be maintained in any lagoon constructed below the water table, the storage capacity of the lagoon, and prevention from inundation during a 100-year flood. Most farmers have their lagoons constructed in accordance with the design manual produced by the Natural Resources Conservation Service. Lagoons are not inspected prior to use, although proper installation of the liner must be certified by "a liner manufacturer, a professional engineer, an employee of the Soil Conservation Service of the United States Department of Agriculture with appropriate engineering approval authority, an employee of a soil and water conservation district with appropriate engineering approval authority, or other qualified individual."

Pfiesteria

The chairman of the Commonwealth's interagency task force on *Pfiesteria* spoke to the subcommittee about Virginia's response to last summer's outbreaks and the current state of scientific knowledge regarding the relationship between agriculture, nutrient pollution and *Pfiesteria* outbreaks. The five main agencies involved in responding to *Pfiesteria* are (i) the Virginia Department of Health, which is the lead agency for providing human health advisories and compiling press releases; (ii) DEQ, which has the lead in field responses to fish kills and

collecting water and sediment samples; (iii) the Virginia Institute of Marine Science, which is in charge of pathology work on fish lesions and trawl surveys in which fish lesions are recorded and quantified; (iv) Old Dominion University, which conducts initial screenings of water samples suspected of containing *Pfiesteria* and forwarding appropriate samples to laboratories equipped to identify *Pfiesteria*; and (v) the Virginia Marine Resources Commission (VMRC), which coordinates the task force. VMRC has made presentations on *Pfiesteria* to the House Appropriations Committee, the House Committee on the Chesapeake and Its Tributaries, the State Water Commission, and the Virginia congressional delegation.

There are actually several species of microscopic organisms that are similar to *Pfiesteria piscicida*, which is the organism that has been linked to massive fish kills in North Carolina. Research is being conducted to determine which of these organisms may have been present in the Maryland and Virginia waters in which fish kills occurred last summer and whether their toxic effects are the same as those that can be caused by *Pfiesteria piscicida*. Research is also ongoing on the issue of environmental influences on fish kills caused by such organisms. It is suspected that outbreaks are more likely to occur in waters with poor flushing and high levels of nutrient enrichment. According to a leading expert on the issue, 75 percent of outbreaks have occurred in nutrient over-enriched waters, and the remainder were associated with aquaculture facilities.

Future Activities

The subcommittee's third meeting, scheduled for December 8th in House Room C of the General Assembly Building in Richmond, will focus on alternative waste management technologies. The subcommittee will also discuss legislative changes to the general permit law. The study is planned to continue for another year, during which time the subcommittee will be comparing both the state's regulatory program and the Right to Farm Act with the laws of other states.

The Honorable Mitchell Van Yahres, *Chairman*
Legislative Services contact: Nicole R. Beyer



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GENERAL NOTICES/ERRATA

STATE CORPORATION COMMISSION

AT RICHMOND, NOVEMBER 21, 1997

COMMONWEALTH OF VIRGINIA, ex rel.,

STATE CORPORATION COMMISSION

CASE NO. PUC970135

Ex Parte, in re: Implementation
of Requirements of § 214(e)
of the Telecommunications Act
of 1996

ORDER

Section 214(e) of the Telecommunications Act of 1996, 47 U.S.C. § 251 et seq., (the "Act") and associated Federal regulations¹ require the Commission to take actions to implement certain provisions of universal service. These actions include the designation of telecommunications carriers eligible to receive universal service support within a service area established by the Commission. The Act permits the Commission to designate carriers on its own motion or upon request.² On September 15, 1997, the Commission entered an Order for Comments, which established this docket and called for comments from interested parties on or before October 15, 1997.

Under the Act, a carrier may be designated as eligible for universal service support by the Commission only upon a sufficient demonstration by the carrier that, throughout the designated service area, it:

(A) offer[s] the services that are supported by the Federal universal service support mechanisms under section 254(c) [of the Act], either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise[s] the availability of such services and the charges therefor using media of general distribution.³

Comments were filed in this docket by Sprint Spectrum, L.P., the Competitive Telecommunications Association, the Virginia Cable Telecommunications Association, Cox Virginia Telecom, Inc., Certain Members of The Virginia Telecommunications Industry Association, Bell Atlantic-Virginia, Inc., MCImetro Access Transmission Services of Virginia, Inc., AT&T Communications of Virginia, Inc., Bell Atlantic Mobile, and GTE South Incorporated. Joint comments on behalf of Central Telephone Company of

Virginia, United Telephone-Southeast, Inc., and Sprint Communications Company L.P. were also filed.

The process for designation should be simple and streamlined, imposing no undue regulatory burden on applicants. Accordingly, the Commission will allow applicants to certify that they meet the requirements of the Act for designation, by means of an affidavit filed with the Clerk of the Commission and signed by the appropriate officer of the applicant, attesting that the applicant provides the designated services⁴ and describing the manner and means by which the applicant advertises the availability of the services necessary for designation in the service area for which designation is requested. Should any interested party object to another's designation as an eligible carrier, the complaint procedure in the Commission's Rules of Practice and Procedure is available for the resolution of such objections.

Many of the commenting parties recommend the Commission further allow applicants to self-designate the service area for which they seek designation. Other parties have suggested that the Commission designate some minimum service area for which designation may be sought. Section 214(e)(2) of the Act requires the Commission to designate multiple eligible carriers for non-rural areas and permits the Commission to designate multiple eligible carriers for rural areas⁵ only if it finds that such designation "is in the public interest."

The Commission has concluded that carriers, with the exception of incumbent carriers, should be allowed to self-designate the service area for which they seek designation, subject to objection from interested parties, at least for calendar year 1998. Incumbent carriers shall initially be required to seek designation of their entire service territory. An incumbent carrier that seeks to relinquish its designation for any portion of its service area served by more than one eligible carrier must petition separately for such authorization. Any carrier, other than the incumbent local exchange carrier currently serving a rural area, that seeks designation for such rural area will bear the burden of proving that such designation is in the public interest, if challenged. Finally, the Commission may consider whether some additional definition of a minimum designated service area should be adopted during the coming months.

All issues related to carrier eligibility may not have been addressed by this Order. However, given the federal administrative deadline of December 31, 1997, for designation of carriers eligible to receive funding beginning January 1, 1998, the Commission has concluded that the

¹ 47 C.F.R. § 54.201-.207.

² The Virginia Telecommunications Industry Association has filed such a request on behalf of a number of local exchange telephone companies.

³ 47 U.S.C. § 214(e)(1)(A) and (B).

⁴ Any carrier that seeks additional time to complete network upgrades needed to provide certain of these services should file a petition for consideration by the Commission, as permitted under 47 C.F.R. § 54.101(c).

⁵ Any carrier seeking designation for any area served by a rural telephone company will be required to designate that company's entire study area, until such time as the FCC and the States issue a new definition of service area pursuant to Section 214(e)(5) of the Act.

abbreviated procedures set out above are sufficient for now. As noted, the Commission will continue its consideration of the issues, study the results of the procedures adopted herein, and will seek additional input from the parties if modification of these procedures appears necessary.

Accordingly, IT IS ORDERED that:

(1) As set out above, any local exchange carrier that seeks to be designated as eligible to receive federal universal service support on January 1, 1998, shall, on or before December 5, 1997, file an affidavit with the Clerk of the Commission and on the same day serve a copy on each local exchange carrier, signed by an appropriate company officer, attesting:

(a) the carrier offers the services required for such designation and advertises the availability of these services to the public; and

(b) the manner and means by which the carrier advertises the availability of such services to the public.

(2) Such affidavit shall also describe with particularity the service area for which designation is sought.

(3) Requests for extension of time to complete network upgrades necessary to provide designated services shall be filed and served as set out in Paragraph (1) on or before December 5, 1997.

(4) Carriers that seek designation, and/or extension of time to complete network facilities, of eligibility beginning on a date other than January 1, 1998, shall file the affidavit or request set out above 21 days before the date the carrier requests for designation or extension.

(5) This matter is continued for further orders of the Commission.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: All Certificated Local Exchange Telephone Companies as set out in Appendix A; all Certificated Interexchange Carriers as set out in Appendix B; Division of Consumer Counsel, Office of the Attorney General, 900 East Main Street, Second Floor, Richmond, Virginia 23219; Tina M. Pidgeon, Esquire, Drinker, Biddle & Reath, 901 15th Street, N.W., Suite 900, Washington, D.C. 20005; Paul P. Hlavac, 7 Ashbury Lane, Barrington Hills, Illinois 60010; John Antonuk, 790 Pine Tree Road, Hummelstown, Pennsylvania 17036; Tom Krafcik, 77 Southfield Drive, Belle Mead, New Jersey 08502; Carl Huppert, 250 West Pratt Street, Baltimore, Maryland 21201; Louis R. Monacell, Esquire, Christian and Barton, LLP, 1200 Mutual Building, 909 East Main Street, Richmond, Virginia 23219-3095; Mark Argenbright, Manager, Regulatory Analysis, LDDS Worldcom, 515 East Amite Street, Jackson, Mississippi 39201-2702; Jean Ann Fox, Virginia Citizens Consumer Council, 114 Coachman Drive, Yorktown, Virginia 23693; James C. Roberts, Esquire, and Donald G. Owens, Esquire, Mays & Valentine, P.O. Box 1122, Richmond, Virginia 23208-1122; Ronald B. Mallard, Fairfax County

Consumer Affairs, 12000 Government Center Parkway, Suite 443, Fairfax, Virginia 22035; Claude W. Reeson, Surry County Chamber of Commerce, 8263 Colonial Trail West, Spring Grove, Virginia 23881; Jeffrey J. Walker, Attorney, Preferred Carrier Services, 500 Grapevine Highway, Suite 300, Hurst, Texas 76054-2707; Michael Beresik, AARP, 601 East Street, N.W., Washington, D.C. 20049; James R. Hobson, Esquire, National Emergency Number Association, 1100 New York Avenue, N.W., #750, Washington, D.C. 20005-3934; Sheryl Butler, United States Department of Defense, 901 North Stuart Street, Arlington, Virginia 22203-1837; Richard M. Tetelbaum, Citizens Telecommunications, 1400 16th Street, N.W., #500, Washington, D.C. 20036; Naomi C. Klaus, Esquire, Metro Washington Airports Authority, 44 Canal Center Plaza, #218, Alexandria, Virginia 22314; Paul Kouroupas, Esquire, TCG Virginia, Inc., 1133 21st Street, N.W., Washington, D.C. 20036; Andrew O. Isar, Telecommunications Resellers, 4312 92nd Avenue, N.W., Gig Harbor, Washington 98335; Andrew D. Lipman, Esquire, MFS Intelenet of Virginia, Inc., 3000 K Street, N.W., #300, Washington, D.C. 20007; David W. Clarke, Washington/Baltimore Cellular, P.O. Box 796, Richmond, Virginia 23218; James B. Wright, Esquire, Senior Attorney, Central Telephone Company of Virginia, 14111 Capital Boulevard, Wake Forest, North Carolina 27587-5900; Kenworth E. Lion, Jr., Esquire, Virginia Citizens Consumer Council, 2201 West Broad Street, Suite 100, Richmond, Virginia 23220; Warner F. Brundage, Jr., Esquire, Bell Atlantic-Virginia, 600 East Main Street, 24th Floor, Richmond, Virginia 23219; Edward L. Flippen, Esquire, AT&T Communications of Virginia, P.O. Box 1122, Richmond, Virginia 23208-1122; Jack H. Derrick, Esquire, Sprint Telecommunications, 14111 Capital Boulevard, Wake Forest, North Carolina 27587-5900; Patrick T. Horne, Esquire, and Stephen H. Watts, Esquire, McGuire, Woods, Battle & Boothe, One James Center, 901 East Cary Street, Richmond, Virginia 23219-4030; Scott McMahan, LCI International Worldwide, 8180 Greensboro Drive, McLean, Virginia 22102; Robert Smithmidford, Nationsbanc Services, Inc., 8001 Villa Park Drive, Richmond, Virginia 23228-6502; J. Christopher Lagow, Esquire, Bellsouth Cellular Corporation, P.O. Box 1998, Richmond, Virginia 23218; Ralph L. Frye, Executive Director, Virginia Telecommunications Industry Association, 11 South 12th Street, Suite 310, Richmond, Virginia 23219; Eric M. Page, Esquire, LeClair Ryan, 4201 Dominion Boulevard, Suite 200, Glen Allen, Virginia 23060; James C. Falvey, Esquire, American Communications Services, 131 National Business Parkway, #100, Annapolis Junction, Maryland 20701; Bill Hanchey, Virginia Cable Television Association, 300 West Franklin Street, Richmond, Virginia 23220; and the Commission's Divisions of Communications, Economics and Finance, and Public Utility Accounting, and Office of General Counsel.

VA.R. Doc. No. R98-136; Filed December 1, 1997, 3:26 p.m.

General Notices/Errata

AT RICHMOND, DECEMBER 1, 1997

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. PUE950089

Ex Parte: In the matter of reviewing and considering Commission policy regarding restructuring of and competition in the electric utility industry

ORDER

By order dated September 18, 1995, the Commission established this docket to examine the possible restructuring of the electric utility industry in Virginia and its potential impacts upon the public interest. The Commission Staff was directed to continue and expand an examination of issues related to potential restructuring. All investor-owned utilities and electric cooperatives were made parties to this proceeding. The Commission directed the Staff to analyze and report on restructuring issues. The Staff issued a comprehensive report in July 1996, which addressed in detail a broad range of issues, including reliability of service and possible rate impacts on customers.

On November 12, 1996, the Commission took its next step in evaluating this important subject by issuing orders directing major investor-owned electric utilities to develop, analyze, and file detailed information relevant to possible restructuring. The requested information included updated cost of service analyses, tariffs unbundled to illustrate separately the generation, transmission, and distribution costs associated with providing service, a review of deferred accounting mechanisms, data on reserve margins and possible changes, an evaluation of capacity solicitation and demand-side management programs, and other matters. Utilities responded with the requested information. The two largest electric utilities operating in Virginia, Virginia Power and Appalachian Power ("AEP-Virginia"), produced the information in the same pending proceedings with their respective proposed alternative regulatory plans.

The Commission also directed the Staff to monitor developments in the wholesale power market, to evaluate wholesale competition and its impact on Virginia's utilities and to report its findings to the Commission. Staff was also directed to file a report on the results of retail wheeling experiments and activities in other states. Staff has filed these reports, and further submissions are anticipated.

In February 1997, the General Assembly, in Senate Joint Resolution No. 259, directed the Staff to develop a draft working model on restructuring for the Joint Subcommittee Examining the Restructuring in the Electric Utility Industry. As part of its ongoing investigation of restructuring issues, the Staff established and directed working groups consisting of utilities, cooperatives, customers, and other interested parties

to explore restructuring topics in greater detail, which aided the Staff in its preparation of a draft working model.

The Staff issued and presented its report, entitled "Draft Working Model for Restructuring the Electric Utility Industry in Virginia", to the Joint Subcommittee on November 7, 1997. The report addresses a number of issues in detail, and makes specific recommendations on certain steps that should be taken to better prepare Virginia for the changing electric industry environment and to enable the General Assembly, as well as the Commission, to make informed decisions in the future on the possible development of a more competitive industry framework in Virginia.

Several of the principal recommendations made in the Staff's draft working model, and which have been the subject of Staff monitoring and working group discussions, are ready, in our view, for public comment regarding possible implementation. These issues include the following:

1. Utilities and cooperatives should be subject to rate review and evaluation, including a comprehensive cost of service study, unbundling of rates between generation, transmission and distribution costs (for informational purposes), evaluation of rate disparities among classes, and related issues.
2. The Commission should pursue a process that will accommodate the formation of one or more regional independent system operators ("ISOs") and utilities should pursue the formation of one or more ISOs and regional power exchanges ("RPXs").
3. The Commission should implement retail access pilot programs and studies for Virginia's major investor-owned utilities and at least two cooperatives.

With respect to Virginia Power and AEP-Virginia, we note that the rate review and evaluation process set forth in the Staff recommendation has already commenced in proceedings now pending before the Commission.

The Staff's report recommends that the Commission undertake the first two actions listed above irrespective of any decision about the implementation of retail competition or other restructuring of the electric industry in the Commonwealth.

The Staff also concluded that properly designed retail access pilot programs can provide much information¹ vital to the consideration of restructuring issues. With regard to the proposed pilot programs, the Commission notes the requirement of Section 56-234 of the Code of Virginia that permits the Commission to establish "voluntary rate or rate design tests or experiments," but only "where such experiments have been approved by the Commission *after notice and hearing*. . . ." The Commission particularly wishes to have the views of interested parties on the value, scope and design of pilot retail access programs as it considers

¹ See pages 14-15 of the Staff's November 7, 1997, report.

whether to take the step of establishing hearings for such programs.

Therefore, as part of our continuing investigation into restructuring, the Commission has determined that it is appropriate that Staff's report be made a part of this docket and that interested parties be allowed to express their views to the Commission on the conclusions and recommendations made therein. The investor-owned electric utilities with a major presence in Virginia (Virginia Power, AEP-Virginia, and Potomac Edison) shall respond to the recommendations set forth above, and cooperatives shall respond, either jointly or individually, to the rate review and evaluation and pilot program recommendations and are encouraged to respond to the ISO/RPX recommendations. Other utilities and interested parties are invited to file comments as well. Any party may also file additional comments on any related issue deemed pertinent by the party to our inquiry.

Accordingly, IT IS ORDERED THAT:

On or before January 16, 1998, investor-owned utilities and cooperatives and other interested parties shall respond as set forth in this Order.

This matter shall be continued pending further order of the Commission.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: all Virginia Electric Cooperatives and Electric Utilities as set out in Appendix A to this Order; the additional service list attached as Appendix B to this Order; members of the Working Groups as set out in Appendix C; Guy T. Tripp, III, Esquire, Hunton & Williams, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074; Philip F. Abraham, Esquire, Hazel & Thomas, P.C., P.O. Box 788, Richmond, Virginia 23206; John A. Pirko, Esquire, LeClair Ryan, 4201 Dominion Boulevard, #200, Glen Allen, Virginia 23060; Donald R. Hayes, Esquire, Washington Gas Light Company, 1100 H Street, N.W., Washington, D.C. 20080; James L. Dobson, CFA, Donaldson, Lufkin & Jenrette, 140 Broadway, New York, New York 10005; James E. Franklin, Cogentrix Energy, Inc., 9405 Arrowpoint Boulevard, Charlotte, North Carolina 28273-8110; Lisa J. Gefen, Allied Signal, Inc., 6 Eastmans Road, Parsippany, New Jersey 07054; Eric R. Todderun, Esquire, Heller, Ehrman, White & McAuliffe, 200 S.W. Market Street, #1750, Portland, Oregon 97201; Jean Ann Fox, Vice President, Virginia Citizens Consumer Council, 114 Coachman Drive, Yorktown, Virginia 23693; Thomas B. Nicholson, Esquire, Office of Attorney General, Division of Consumer Counsel, 900 East Main Street, Second Floor, Richmond, Virginia 23219; Dennis R. Bates, Esquire, Office of Fairfax County, 12000 Government Center Parkway, Suite 549, Fairfax, Virginia 22035-0064; Wayne S. Leary, Peat Energy, Inc., P.O. Box 14309, New Bern, North Carolina 28561-4309; Frederick H. Ritts, Esquire, and Vincent P. Duane, Esquire, 1025 Thomas Jefferson Street, Suite 800, Washington, D.C. 20007; Andrew Gelbaugh, C.C. Page Resources, 4375 Fairlakes Court, #2000, Fairfax, Virginia 22033; Jim O'Reilly, McKinsey & Company, Inc., 1101 Pennsylvania Avenue,

N.W., Suite 700, Washington, D.C. 20004; S. Lynn Sutcliffe, Sycam Enterprises, 1010 Wisconsin Avenue, Suite 340, Washington, D.C. 20007; Allen C. Barringer, Esquire, Potomac Electric Power Company, 1900 Pennsylvania Avenue, N.W., Room 841, Washington, D.C. 20068; Frann G. Francis, 1050 17th Street, N.W., Washington, D.C. 20036; David B. Kearney, Esquire, City of Richmond, 900 East Broad Street, Suite 300, Richmond, Virginia 23219; Steven W. Ruback, The Columbia Group, Inc., 785 Washington Street, Canton, Massachusetts 02021; Mid-Atlantic Power Supply Association, Suzanne Daycock, 1153 Sycamore Lane, Mahwah, New Jersey 07430; Jeffrey M. Gleason, Esquire, Southern Environmental Law Center, 201 West Main Street, Suite 14, Charlottesville, Virginia 22902; Douglas D. Wilson, Esquire, Wilson & Associates, P.C., P.O. Box 8190, Roanoke, Virginia 24014; Joe Lenzi, Energy Engineer, CEK Consulting Engineering, P.O. Box 907, Mechanicsville, Virginia 23111; Carter Glass, IV, Esquire, Municipal Electric Power Association, P.O. Box 1122, Richmond, Virginia 23218-1122; James H. Gentry, Tennessee Valley Authority, 1101 Market Street, Chattanooga, Tennessee 37402-2801; Louis R. Monacell, Esquire, and John D. Sharer, Esquire, Christian & Barton, 909 East Main Street, Suite 1200, Richmond, Virginia 23219-3095; Eric M. Joffe, President, Ultimate Lighting Systems, Inc., 2136 Great Neck Square, #402, Virginia Beach, Virginia 23454; David X. Kolk, PHD, Power Resource Managers, L.L.C., 1233 Shelburne Road, #200, South Burlington, Vermont 05403; Dasil R. Sizemore, System Council U-1, IBEW, P.O. Box 6537, Richmond, Virginia 23230; Sarah D. Sawyer, Legal Assistant, Bracewell & Patterson, L.L.P., 2000 K Street, N.W., Suite 500, Washington, D.C. 20006-1872; Gary T. Piacentini, Esquire, Maloney, Barr & Huennekens, 1111 East Main Street, Suite 800, Richmond, Virginia 23219-3103; Karen Sinclair, National Renewable Energy Lab, 1617 Cole Boulevard, Golden, Colorado 80401; Albert J. Francese, Esquire, 6597 Rockland Drive, Clifton, Virginia 22024; Pamela Johnson, Esquire, Virginia Electric and Power Company, P.O. Box 26666, Richmond, Virginia 23261; Legal Environmental Assistance Foundation, 1115 North Gadsden Street, Tallahassee, Florida 32303-6327; Glenn J. Berger, Esquire, Union Camp Corporation, 1440 New York Avenue, N.W., Washington, D.C. 20005-2111; Norman D. Reiser, Director, D.C. Public Service Commission, 450 5th Street, N.W., Washington, D.C. 20001; Richard Silkman, Richard Silkman & Associates, 163 Main Street, Yarmouth, Maine 04096; Robert Blohm, 3 Dover Road, Hamilton, New Jersey 08620; James R. Kibler, Jr., Esquire, Mezzullo & McCandlish, P.O. Box 796, Richmond, Virginia 23218; Sarah Hopkins Finley, Esquire, Williams, Mullen, Christian & Dobbins, P.O. Box 1320, Richmond, Virginia 23210; Josh Flynn, KPMG Peat Marwick, 8200 Greensboro Drive, #400, McLean, Virginia 22102; Donald A. Fickenscher, Esquire, Virginia Natural Gas Company, 5100 East Virginia Beach Boulevard, Norfolk, Virginia 23502; Allen Glover, Esquire, and Michael J. Quinan, Esquire, Woods, Rogers & Hazlegrove, P.O. Box 14125, Roanoke, Virginia 24011; J. Christopher Lagow, Esquire, Sands, Anderson, Marks & Miller, P.O. Box 1998, Richmond,

General Notices/Errata

Virginia 23218-1998; Glenn E. Camus, Esquire, CNG Energy Services Corporation, P.O. Box 15746, Pittsburgh, Pennsylvania 15244-0746; and to the Commission's Divisions of Energy Regulation, Economics and Finance, and Public Utility Accounting.

VA.R. Doc. No. R98-138; Filed December 3, 1997, 10:49 a.m.

STATE BOARD OF HEALTH Radiation Protection Regulations Additional Comment Period

The State Board of Health published a Notice of Intended Regulatory Action in the May 16, 1994, issue of the Virginia Register (Volume 10, Issue 17), pages 4442 through 4445. That notice announced the board's intention to amend the Radiation Protection Regulations, 12 VAC 5-480-10 et seq. (VR 355-20-100), and requested public comments in response to the board's intention. More specifically, the notice stated the board's intention to adopt the Suggested State Regulations for Control of Radiation published by the Conference of Radiation Control Program Directors, Inc., and to adopt amendments made in 1992 to the federal radiation protection standards, 10 CFR Part 20.

With this general notice, the board is reminding the citizenry that it intends to continue with the regulatory process begun in 1994 to adopt updated Radiation Protection Regulations based in part on the current version of the Suggested State Regulations for Control of Radiation (which include the amendments made in 1992 to the federal radiation protection standards), and to repeal unnecessary or outdated provisions. The board is soliciting, and will welcome until 5 p.m. on January 23, 1998, additional comments on the notice published on May 16, 1994. Comments should be addressed to Leslie P. Foldesi, Director, Radiological Health Program, Virginia Department of Health, 1500 East Main Street, Room 240, Richmond, Virginia 23218-2448, telephone (804) 786-5932 or FAX (804) 786-6979.

BOARD OF JUVENILE JUSTICE

Length of Stay Guidelines

The Board of Juvenile Justice invites comments from the public on draft "Length of Stay Guidelines" for juveniles indeterminately committed to the Department of Juvenile Justice. A copy of the draft guidelines may be obtained from Donald Carignan, Policy Analyst, Department of Juvenile Justice, 700 East Franklin Street, Richmond, VA 23218-1110, telephone (804) 371-0743 or FAX (804) 371-0773. The department will conduct an open meeting at 9 a.m. on Tuesday, January 6, 1998, at the above address to present the purpose, scope and operational procedures of the draft guidelines. Written comments on the draft guidelines will be received at the above address until Friday, January 16, 1998. Pursuant to § 66-10(8) of the Code of Virginia, the board

intends to adopt final "Length of Stay Guidelines" at its February 11, 1998, meeting.

STATE LOTTERY DEPARTMENT

DIRECTOR'S ORDER NUMBER THIRTY-FOUR (97)

VIRGINIA'S EIGHTY-SEVENTH INSTANT GAME LOTTERY;
"IN THE CHIPS," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Sections 9-6.14.4.1 B(15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's eighty-seventh instant game lottery, "In the Chips." These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Penelope W. Kyle, Director

Date: September 12, 1997

VA.R. Doc. No. R98-126; Filed November 24, 1997, 2:01 p.m.

DIRECTOR'S ORDER NUMBER THIRTY-FIVE (97)

VIRGINIA'S EIGHTY-EIGHTH INSTANT GAME LOTTERY;
"MONSTER CASH," FINAL RULES FOR GAME
OPERATION.

In accordance with the authority granted by Sections 9-6.14.4.1 B(15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's eighty-eighth instant game lottery, "Monster Cash." These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Penelope W. Kyle, Director
Date: September 12, 1997

VA.R. Doc. No. R98-127; Filed November 24, 1997, 2:01 p.m.

DIRECTOR'S ORDER NUMBER FORTY (97)

VIRGINIA'S INSTANT GAME LOTTERY 418; "HOLIDAY CHEER," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Sections 9-6.14:4.1 B(15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's instant game lottery (Number 0418), "Holiday Cheer." These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Penelope W. Kyle, Director
Date: October 15, 1997

VA.R. Doc. No. R98-128; Filed November 24, 1997, 2:01 p.m.

DIRECTOR'S ORDER NUMBER FORTY-ONE (97)

VIRGINIA'S INSTANT GAME LOTTERY 419; "HOLIDAY SURPRISE," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Sections 9-6.14:4.1 B(15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's instant game lottery (Number 0419), "Holiday Surprise." These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Penelope W. Kyle, Director
Date: November 12, 1997

VA.R. Doc. No. R98-129; Filed November 24, 1997, 2:01 p.m.

DIRECTOR'S ORDER NUMBER FORTY-THREE (97)

VIRGINIA'S NINETY-THIRD INSTANT GAME LOTTERY; "WINNER WONDERLAND," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Sections 9-6.14:4.1 B(15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's ninety-third instant game lottery, "Winner Wonderland." These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Penelope W. Kyle, Director
Date: November 12, 1997

VA.R. Doc. No. R98-130; Filed November 24, 1997, 2:01 p.m.

DIRECTOR'S ORDER NUMBER FORTY-FOUR (97)

VIRGINIA'S NINETY-FOURTH INSTANT GAME LOTTERY; "CASINO ROYALE," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Sections 9-6.14:4.1 B(15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's ninety-fourth instant game lottery, "Casino Royale." These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Penelope W. Kyle, Director
Date: November 20, 1997

VA.R. Doc. No. R98-131; Filed November 24, 1997, 2:01 p.m.

General Notices/Errata

VIRGINIA CODE COMMISSION

Notice to Subscribers

Beginning with Volume 14, Issue 1 of the Virginia Register (14:1 VA.R. September 29, 1997), the format of the Register changed slightly. Regulations and other information previously published in the State Corporation Commission, Marine Resources Commission, State Lottery Department, and Tax Bulletin sections have been merged into the Proposed Regulations, Final Regulations, Emergency Regulations, or General Notices sections as appropriate. In addition, regulations appear in order by Virginia Administrative Code (VAC) title order to correspond with the VAC.

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
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ERRATA

STATE AIR POLLUTION CONTROL BOARD

Title of Regulation: Regulations for the Control and Abatement of Air Pollution.

Publication: 14:3 VA.R. 430-483 October 27, 1997.

Correction to Final Regulation:

Page 437, 9 VAC 5-10-20, column 2, definition of "Volatile organic compound," change 1 e from "1,1,1-trichloro-2,2,2-trifluoroethane (CFC-113)" to "1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)"

Page 442, 9 VAC 5-20-130, column 1, the entire section should be stricken as follows:

~~9 VAC 5-20-130. Delegation of authority. (Repealed).~~

~~A. In accordance with the Virginia Air Pollution Control Law and the Administrative Process Act, the board confers upon the executive director such administrative, enforcement, and decision making powers as are set forth in this section.~~

~~B. Restrictions upon delegation of authority. The delegation of authority specified within subsection C of this section is subject to the following restrictions:~~

~~1. The board reserves the right to exercise its authority in any of the following delegated powers should it choose to do so.~~

~~2. A party significantly affected by any decision of the executive director may request that the board exercise its authority for direct consideration of the issue. The request shall be filed within 30 days after the decision is rendered and shall contain reasons for request.~~

~~3. The submittal of the request by itself shall not constitute a stay of decision. A stay of decision shall be sought through appropriate legal channels.~~

~~C. Substance of delegation of authority.~~

~~1. The executive director is delegated the authority to act within the scope of the Virginia Air Pollution Control Law and these regulations and for the board when it is not in session except for the authority to:~~

~~a. Control and regulate the internal affairs of the board;~~

~~b. Approve proposed regulations for the public comment and adopt final regulations;~~

~~c. Grant variances to regulations;~~

~~d. Issue orders and special orders, except for consent orders and emergency special orders;~~

~~e. Determine significant ambient air concentrations under 9 VAC 5-40-190 and 9 VAC 5-50-190;~~

~~f. Approve amendments to any policy or procedure approved by the board, except as may be provided in the policy or procedure;~~

~~g. Appoint persons to the State Advisory Board on Air Pollution;~~

~~h. Create local air pollution control districts and appoint representatives; and~~

~~i. Approve local ordinances.~~

~~2. The board may exercise its authority for direct consideration of permit applications in cases where one or more of the following issues is involved in the evaluation of the application: (i) the stationary source generates public concern relating to air quality issues; (ii) the stationary source is precedent setting; or (iii) the stationary source is a major stationary source or major modification expected to impact on any nonattainment area or class I area.~~

~~3. The executive director shall notify the board chairman of permit applications falling within the categories specified in subdivision C 2 of this section and the board chairman shall advise the executive director of those permits the board wishes to consider directly.~~

~~4. The executive director has final authority to adjudicate contested decisions of subordinates delegated powers by him prior to appeal of such decisions to the circuit court or consideration by the board.~~

Page 469, 9 VAC 5-160-20, column 1, second definition of "Emergency" line 1, after "in the context of 9 VAC 5-160-40" strike "and 9 VAC 5-160-50"

Page 482, 9 VAC 5-170-150 D 1, column 1, after "A public hearing is held" insert "by the locality"

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) 698-1500 or Senate Information and Constituent Services at (804) 698-7410 or (804) 698-7419/TDD☎, or visit the General Assembly web site's Legislative Information System (<http://leg1.state.va.us/lis.htm>) and select "Meetings."

VIRGINIA CODE COMMISSION

EXECUTIVE

BOARD OF ACCOUNTANCY

January 20, 1998 - 10 a.m. -- Open Meeting
January 21, 1998 - 8 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, request for proposals for privatization, 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 within 24 hours of the meeting for confirmation. 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, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590 or (804) 367-9753/TDD☎

GOVERNOR'S ADVISORY BOARD ON AGING

† January 26, 1998 - 3 p.m. -- Open Meeting
Department for the Aging, 1600 Forest Avenue, Suite 102, Richmond, Virginia.♿ (Interpreter for the deaf provided upon request)

A meeting to conduct board business.

Contact: Kimlah Hyatt, Staff to the Board, Department for the Aging, 1600 Forest Ave., Suite 102, Richmond, VA 23229, telephone (804) 662-9318, FAX (804) 662-9354, toll-free 1-800-552-3402, or (804) 662-9333/TDD☎

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Virginia Egg Board

† December 22, 1997 - 11 a.m. -- Open Meeting
Southern States Cooperative, 6606 West Broad Street, Conference Room, Richmond, Virginia.♿ (Interpreter for the deaf provided upon request)

A meeting to (i) approve the proposed budget for FY 97-98; (ii) review proposed educational and promotional programs, and advertising and research proposals; and (iii) review the registered handlers and address the collection procedures. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Cecilia Glembocki at least five days before the meeting date so that suitable arrangements can be made.

Contact: Cecilia Glembocki, Secretary, Virginia Egg Board, 911 Saddleback Court, McLean, VA 22102, telephone (703) 790-1984, FAX (703) 821-6748 or toll-free 1-800-779-7759.

Virginia Horse Industry Board

† February 17, 1998 - 11 a.m. -- Open Meeting
Virginia Historical Society, Boulevard and Kensington Avenue, Richmond, Virginia.♿

A meeting to discuss the status of proposed marketing plans, elect officers and decide on committees. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Andrea S. Heid at least five days before the meeting date so that suitable arrangements can be made.

Contact: Andrea S. Heid, Equine Marketing Specialist/Program Manager, Department of Agriculture and Consumer Services, 1100 Bank St., Suite 1004, Richmond, VA 23219, telephone (804) 786-5842 or FAX (804) 371-7786.

Pesticide Control Board

January 15, 1998 - 9 a.m. -- Open Meeting
Washington Building, 1100 Bank Street, Board Room, Room 204, Richmond, Virginia. ☒

Committee meetings and a general business meeting. Portions of the meeting may be held in closed session pursuant to § 2.1-344 of the Code of Virginia. The public will have an opportunity to comment on any matter not on the board's agenda beginning at 9 a.m. Any person needing any accommodations in order to participate at the meeting should contact Dr. Marvin A. Lawson at least 10 days before the meeting date so that suitable arrangements can be made.

Contact: Dr. Marvin A. Lawson, Program Manager, Office of Pesticide Services, Department of Agriculture and Consumer Services, 1100 Bank St., Room 401, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-6558 or toll-free 1-800-552-9963.

Virginia Plant Pollination Advisory Board

February 6, 1998 - 10 a.m. -- Open Meeting
Washington Building, 1100 Bank Street, 4th Floor Conference Room, Richmond, Virginia. ☒

A regular meeting to receive reports from members on the past year's activity in their respective disciplines as it relates to apiculture, pollination, education and the production of food and fiber in the Commonwealth. The board will also consider matters for the future in the aforementioned categories. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person needing special assistance in order to participate at the meeting should contact Robert G. Wellemeyer at least five days before the meeting date so that suitable arrangements can be made.

Contact: Robert G. Wellemeyer, Secretary-Treasurer, Virginia Plant Pollination Advisory Board, 234 West Shirley Ave., Warrenton, VA 22186, telephone (540) 347-6380, FAX (540) 347-6384, or (804) 371-6344/TDD ☒

Virginia Small Grains Board

January 7, 1998 - Noon -- Open Meeting
January 8, 1998 - 7:30 a.m. -- Open Meeting
Roanoke Airport Hilton, 2801 Hershberger Road, N.W., Roanoke, Virginia. ☒

A meeting to hear additional FY 1997-98 project proposals and allocate funding for those projects.

Additionally, the board will make funding decisions for U.S. Wheat Associates for FY 1998-99, and 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.

STATE AIR POLLUTION CONTROL BOARD

January 14, 1998 - 10 a.m. -- Public Hearing
Department of Environmental Quality, 629 East Main Street, First Floor, Training Room, Richmond, Virginia.

February 6, 1998 - Public comments may be submitted until 4:30 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: **Regulations for the Control and Abatement of Air Pollution: 9 VAC 5-20-10 et seq. General Provisions; 9 VAC 5-50-10 et seq. New and Modified Stationary Sources; and 9 VAC 5-80-10 et seq. Permits for Stationary Sources.** The regulation applies to the construction or reconstruction of new stationary sources or expansions (modifications) to existing ones. Exemptions are provided for smaller facilities. With some exceptions, the owner must obtain a permit from the agency prior to the construction or modification of the source. The owner of the proposed new or modified source must provide information as may be needed to enable the agency to conduct a preconstruction review in order to determine compliance with applicable control technology and other standards and to assess the impact of the emissions from the facility on air quality. The regulation also provides the basis for the agency's final action (approval or disapproval) on the permit depending upon the results of the preconstruction review. The regulation provides a sourcewide perspective to determine applicability based solely upon the emissions changes directly resultant from the physical or operational change. The regulation provides for the use of a plantwide applicability limit (PAL). Under this concept, a source owner could make physical or operational changes to emissions units covered by the PAL without being subject to the permit program as long as the overall emissions did not exceed the PAL. Concurrent construction, i.e., construction while waiting for the permit to be issued, is allowed. Under this arrangement the source owner would assume full liability should the permit not be issued. Provisions covering general permits are included. Procedures for making changes to permits are included. The regulation also allows consideration of additional factors for making Best Available

Calendar of Events

Control Technology (BACT) determinations for sources subject to minor new source review. In addition, 9 VAC 5-80-10 (Permits - new and modified stationary sources) and 9 VAC 5-80-11 (Stationary source permit exemption levels) are to be repealed.

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 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

Public comments may be submitted until 4:30 p.m. February 6, 1998, to the Director, Office of Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Contact: Mary E. Major, Environmental Program Manager, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4423 or toll-free 1-800-592-5482.

ALCOHOLIC BEVERAGE CONTROL BOARD

December 22, 1997 - 9:30 a.m. – Open Meeting
Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia. 

A meeting to receive and discuss reports and activities of staff members. Other matters have not been determined.

Contact: W. Curtis Coleburn, Secretary to the Board, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4409 or FAX (804) 213-4442.

COMPREHENSIVE SERVICES FOR AT-RISK YOUTH AND THEIR FAMILIES

State Management Team

† **January 6, 1998 - 9 a.m. – Open Meeting**
St. Joseph's Villa, 8000 Brook Road, Richmond, Virginia. 
(Interpreter for the deaf provided upon request)

A meeting to discuss recommendations for policy and procedures to the State Executive Council on the Comprehensive Services Act.

Contact: Elisabeth Hutton, Secretary, Department of Health, P.O. Box 2448, Richmond, VA 23218, telephone (804) 371-4099.

AUCTIONEERS BOARD

† **January 9, 1998 - 10 a.m.** -- Open Meeting
Virginia Beach Sheraton Inn, Virginia Beach, 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 OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

January 15, 1998 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.☎

A meeting to discuss comments received on proposed regulations.

Contact: Senita Booker, Program Support Technician Senior, Board of Audiology and Speech-Language Pathology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7390, FAX (804) 662-9523 or (804) 662-7197/TDD ☎

January 21, 1998 - 2 p.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.☎

A meeting to discuss general business.

Contact: Senita Booker, Program Support Technician Senior, Board of Audiology and Speech-Language Pathology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7390, FAX (804) 662-9523 or (804) 662-7197/TDD ☎

BOARD FOR BARBERS

† **February 2, 1998 - 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 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad

St., Richmond, VA 23230-4917, telephone (804) 367-0500, FAX (804) 367-2475 or (804) 367-9753/TDD ☎

CHILD DAY-CARE COUNCIL

† **January 8, 1998 - 9:30 a.m.** -- Open Meeting
Theater Row Building, 730 East Broad Street, 7th Floor Conference Room, Richmond, Virginia.☎ (Interpreter for the deaf provided upon request)

The council will meet to discuss issues and concerns that impact child day centers, camps, school age programs, and preschool/nursery schools. Public comment will be received at noon. Please call ahead of time for possible changes in meeting time.

Contact: Rhonda Harrell, Division of Licensing Programs, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1775 or FAX (804) 692-2370.

STATE BOARD FOR COMMUNITY COLLEGES

† **January 14, 1998** -- Teleconference

State board committee meetings will be held via teleconference. Times and locations to be announced.

Contact: Dr. Joy S. Graham, Assistant Chancellor, Public Affairs, State Board for Community Colleges, James Monroe Bldg., 101 N. 14th St., 15th Floor, Richmond, VA 23219, telephone (804) 225-2126, FAX (804) 371-0085, or (804) 371-8504/TDD ☎

† **January 15, 1998 - 10 a.m.** -- Videoconference

A board meeting via videoconference. One video site will be at the James Monroe Building, 101 North 14th Street, 16th Floor, Conference Room 4, Richmond, Virginia. Additional video sites to be announced.

Contact: Dr. Joy S. Graham, Assistant Chancellor, Public Affairs, State Board for Community Colleges, James Monroe Bldg., 101 N. 14th St., 15th Floor, Richmond, VA 23219, telephone (804) 225-2126, FAX (804) 371-0085, or (804) 371-8504/TDD ☎

COMPENSATION BOARD

† **January 13, 1998 - 2 p.m.** -- Open Meeting
† **January 29, 1998 - 11 a.m.** -- Open Meeting
Ninth Street Office Building, 202 North Ninth Street, 10th Floor Conference Room, 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 ☎

Calendar of Events

DEPARTMENT OF CONSERVATION AND RECREATION

Falls of the James Scenic River Advisory Board

† **January 8, 1998 - Noon** -- Open Meeting

† **February 5, 1998- Noon** -- Open Meeting

City Hall, 900 East Broad Street, Planning Commission Conference Room, 5th Floor, 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 

DEPARTMENT FOR THE DEAF AND HARD-OF-HEARING

Advisory Board

† **February 4, 1998 - 10 a.m.** -- Open Meeting

Department for the Deaf and Hard-of-Hearing, Koger Center, 1602 Rolling Hills Drive, Suite 203, Richmond, Virginia. 

A regular quarterly meeting of the advisory board. Public comment will be received with advance notice.

Contact: Beverly Dickinson, Executive Secretary, Department for the Deaf and Hard-of-Hearing, Ratcliffe Bldg., 1602 Rolling Hills Dr., Suite 203, Richmond, VA 23229, telephone (804) 662-9705/VTTY/TDD, FAX 1-800-552-7917 or toll-free 1-800-552-7917 (VTTY).

BOARD OF EDUCATION

† **January 8, 1998 - 8 a.m.** -- Open Meeting

James Monroe Building, 101 North 14th Street, Richmond, Virginia. 

The Board of Education and the Board of Vocational Education will hold a regularly scheduled meeting. Business will be conducted according to items listed on the agenda which is available upon request.

Contact: Dr. James E. Laws, Jr., Administrative Assistant for Board Relations, Department of Education, 101 N. 14th St., Richmond, VA 23218-2120, telephone (804) 225-2540, FAX (804) 225-2524 or toll-free 1-800-292-3820.

DEPARTMENT OF ENVIRONMENTAL QUALITY

January 8, 1998 - 5:30 p.m. -- Open Meeting

Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia. 

A meeting to provide explanation of the proposed repeal of 9 VAC 25-420-10 et seq., James River 3(c) Wastewater Management Plan Peninsula Area, and to invite comments related to the proposal including the costs and benefits of the proposed action or other alternatives the public may wish to provide.

Contact: Erlinda L. Patron, Environmental Engineer Consultant, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4047 or FAX (804) 698-4136.

Work Group on Ammonia, Mercury, Lead and Copper with Respect to Water Quality Standards

† **January 15, 1998 - 10 a.m.** -- Open Meeting

Department of Environmental Quality, 629 East Main Street, Conference Room 505, Richmond, Virginia. 

The department has established a work group on four topics with respect to the water quality standards program: mercury, ammonia, lead, and copper. The work group will, upon completion, advise the Director of Environmental Quality. Other meetings of the work group have been tentatively scheduled for February 19, March 19, April 16, and May 21. Persons interested in the meetings should confirm meeting date, time and location with the contact person below.

Contact: Alan J. Anthony, Chairman, Work Group on Ammonia, Mercury, Lead and Copper, 629 E. Main St., P.O. Box 10009, Room 205, Richmond, VA 23240-0009, telephone (804) 698-4114, FAX (804) 698-4522, or toll-free 1-800-592-5482.

Virginia Ground Water Protection Steering Committee

† **January 20, 1998 - 9 a.m.** -- Open Meeting

Department of Environmental Quality, 629 East Main Street, First Floor Training Room, Richmond, Virginia. 

A regularly scheduled meeting. Anyone interested in ground water protection issues is encouraged to attend. To obtain a meeting agenda contact Mary Ann Massie at (804) 698-4042.

Contact: Mary Ann Massie, Environmental Program Planner, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4042 or FAX (804) 698-4032.

FAMILY AND CHILDREN'S TRUST FUND BOARD

January 16, 1998 - 10 a.m. – Open Meeting
February 20, 1998 - 10 a.m. – Open Meeting
Department of Social Services, 730 East Broad Street,
Richmond, Virginia. ☎

A regular monthly meeting. Contact the trust fund for more information or for a copy of the agenda.

Contact: Margaret Ross Schultze, Executive Director, Family and Children's Trust Fund Board, 730 E. Broad St., 8th Floor, Richmond, VA 23219, telephone (804) 692-1823 or FAX (804) 692-1869.

BOARD OF FORESTRY

† January 15, 1998 - 9:30 a.m. -- Open Meeting
Marriott Hotel, 500 East Broad Street, Commonwealth Room, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A general business meeting. 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, telephone (804) 977-6555 or (804) 977-6555/TDD ☎

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

January 8, 1998 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia. ☎

A general board meeting. Public comment will be received during the first 15 minutes of the meeting. A formal hearing will follow the general board meeting.

Contact: Elizabeth Young Tisdale, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907 or (804) 662-7197/TDD ☎

Special Conference Committee

† December 31, 1997 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia. ☎

A meeting to conduct informal conference hearings. Public comment will not be received.

Contact: Elizabeth Young Tisdale, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907 or (804) 662-7197/TDD ☎

BOARD OF GAME AND INLAND FISHERIES

January 8, 1998 - 9 a.m. – Open Meeting
January 9, 1998 - 9 a.m. – Open Meeting
Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to address regulation amendments proposed at its October 23, 1997, meeting pertaining to wildlife permitting generally and permitting for raptor propagation and for use of gill nets specifically. 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 determine whether the proposed regulation amendments will be adopted as final regulations. The board reserves the right to adopt final amendments which may be more liberal than or more stringent than the regulations currently in effect or the regulations proposed at the October 23, 1997, board meeting, as necessary for the proper management of wildlife resources. The board will address the agency's legislative proposals and other legislation which is anticipated during the 1998 Session of the General Assembly. General and administrative issues may be discussed by the board. The board may hold an executive session before the public session begins on January 8. If the board completes its entire agenda on January 8, it may not convene on January 9.

Contact: Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4010 W. Broad St., Richmond, VA 23230, telephone (804) 367-8341 or FAX (804) 367-2311.

BOARD FOR HEARING AID SPECIALISTS

January 27, 1998 - 8:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 5 West, 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 David Dick 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 ☎

Calendar of Events

HOPEWELL INDUSTRIAL SAFETY COUNCIL

January 6, 1998 - 9 a.m. -- Open Meeting
February 3, 1998 - 9 a.m. -- Open Meeting
March 3, 1998 - 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.

STATEWIDE INDEPENDENT LIVING COUNCIL

† January 22, 1998 - 10 a.m. -- Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms
Drive, Richmond, Virginia. (Interpreter for the deaf provided
upon request)

A meeting to conduct regular business.

Contact: Jim Rothrock, Statewide Independent Living
Council Staff, 1802 Marroit Rd., Richmond, VA 23229,
telephone (804) 673-0119, FAX (804) 282-7118, or e-mail
jarothro@aol.com.

COUNCIL ON INFORMATION MANAGEMENT

Virginia Geographic Information Network Advisory Board

† January 12, 1998 - 10 a.m. -- Open Meeting
Council on Information Management, Washington Building,
1100 Bank Street, Suite 901, Richmond, Virginia.

A regular meeting.

Contact: Linda Hening, Administrative Assistant, Council on
Information Management, Washington Bldg., 1100 Bank St.,
Suite 901, Richmond, VA 23219, telephone (804) 225-3622
or toll-free 1-800-828-1120.

Land Records Management Task Force

† December 29, 1997 - 10 a.m. -- Open Meeting
Supreme Court Building, 100 North 9th Street, 6th Floor,
Richmond, Virginia.

A meeting to approve the Land Records Management
Plan for submission to the 1998 General Assembly.

Contact: Linda Hening, Administrative Assistant, Council on
Information Management, Washington Bldg., 1100 Bank St.,
Suite 901, Richmond, VA 23219, telephone (804) 225-3622
or toll-free 1-800-828-1120.

STATE BOARD OF JUVENILE JUSTICE

† January 6, 1998 - 9 a.m. -- Open Meeting
700 Centre, 700 East Franklin Street, 4th Floor, Richmond,
Virginia.

A meeting to (i) present the purpose, scope and
operational procedures proposed as part of the Length of
Stay Guidelines to be issued for public comment by the
State Board of Juvenile Justice; (ii) address concerns
and issues identified by public commentators, and (iii)
answer questions regarding the rationale for and
formulas used in developing the Length of Stay
Guidelines.

Contact: Donald R. Carignan, Policy Coordinator,
Department of Juvenile Justice, 700 E. Franklin St., P.O. Box
1110, Richmond, VA 23218-1110, telephone (804) 371-0743
or FAX (804) 371-0773.

† January 14, 1998 - 9 a.m. -- Open Meeting
700 Centre, 700 East Franklin Street, 4th Floor, Richmond,
Virginia.

The Secure Program Committee and the Nonsecure
Program Committee will meet at 9 a.m. The full board
will meet at 10 a.m. to take action on program
certifications and other matters brought before it.

Contact: Donald R. Carignan, Policy Coordinator,
Department of Juvenile Justice, 700 E. Franklin St., P.O. Box
1110, Richmond, VA 23218-1110, telephone (804) 371-0743
or FAX (804) 371-0773.

† February 11, 1998 - 9 a.m. -- Open Meeting
700 Centre, 700 East Franklin Street, 4th Floor, Richmond,
Virginia.

The Secure Program Committee and the Nonsecure
Program Committee will meet at 9 a.m. The full board
will meet at 10 a.m. to take action on certification of
residential and nonresidential programs, to consider
adopting length of stay guidelines as required by § 66-
10(8) of the Code of Virginia and to take up other matters
brought before it.

Contact: Donald R. Carignan, Policy Coordinator,
Department of Juvenile Justice, 700 E. Franklin St., P.O. Box
1110, Richmond, VA 23218-1110, telephone (804) 371-0743
or FAX (804) 371-0773.

LIBRARY BOARD

† February 23, 1998 - Time to be announced -- Open
Meeting
Location to be announced.

A meeting to discuss matters related to The Library of
Virginia and its board.

Contact: Jean H. Taylor, Secretary to the State Librarian,
The Library of Virginia, 800 E. Broad St., Richmond, VA
23219-1905, telephone (804) 692-3535.

Archival and Information Services Committee

† February 23, 1998 - Time to be announced -- Open Meeting
Location to be announced.

A meeting to discuss archival and information services at The Library of Virginia.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

Automation and Networking Committee

† February 23, 1998 - Time to be announced -- Open Meeting
Location to be announced.

A meeting to discuss automation and networking matters.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

By-Laws Committee

† February 23, 1998 - Time to be announced -- Open Meeting
Location to be announced.

A meeting to matters related to any proposed changes to the by-laws.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

Executive Committee

† February 23, 1998 - Time to be announced -- Open Meeting
Location to be announced.

A meeting to discuss matters related to The Library of Virginia and its board.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

Facilities Committee

† February 23, 1998 - Time to be announced -- Open Meeting
Location to be announced.

A meeting to discuss matters pertaining to the new Library of Virginia building and the status of the records center.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

Legislative and Finance Committee

† February 23, 1998 - Time to be announced -- Open Meeting
Location to be announced.

A meeting to discuss legislative and financial matters.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

Nominating Committee

† February 23, 1998 - Time to be announced -- Open Meeting
Location to be announced.

A meeting to consider possible candidates for nomination to next year's slate of officers.

Contact: Jean H. Taylor, Secretary to the State Librarian, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

Publications and Educational Services Committee

† February 23, 1998 - Time to be announced -- Open Meeting
Location to be announced.

A meeting to discuss matters related to the Publications and Educational Services Division and The Library of Virginia.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

Public Library Development Committee

† February 23, 1998 - Time to be announced -- Open Meeting
Location to be announced.

A meeting to discuss matters pertaining to public library development and The Library of Virginia.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

Calendar of Events

Records Management Committee

† February 23, 1998 - Time to be announced -- Open Meeting

Location to be announced.

A meeting to discuss matters pertaining to records management.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

LITTER CONTROL AND RECYCLING FUND ADVISORY BOARD

January 7, 1998 - 10 a.m. -- Open Meeting

Plantation House, 1108 East Main Street, Second Floor, Conference Center, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A quarterly meeting to promote the control, prevention and elimination of litter from the Commonwealth and encourage recycling and advise the Director of the Department of Environmental Quality on other litter control and recycling matters. 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.

BOARD OF MEDICINE

Informal Conference Committee

January 8, 1998 - 10 a.m. -- Open Meeting

Roanoke Airport Marriott, 2801 Hershberger Road, N.W., Roanoke, Virginia.

† January 9, 1998 - 9:30 a.m. -- Open Meeting

Williamsburg Marriott, 50 Kingsmill Road, Williamsburg, Virginia.

The Informal Conference Committee, composed of three members of the board, will inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 A 7 and A 15 of the Code of Virginia. Public comment will not be received.

Contact: Karen W. Perrine, Deputy Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7693, FAX (804) 662-9517 or (804) 662-7197/TDD

† January 13, 1998 - 9:30 a.m. -- Open Meeting
Sheraton Inn, 2801 Plank Road, Fredericksburg, Virginia.

† January 15, 1998 - 9 a.m. -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, 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. Additionally, a panel of the board will convene, pursuant to § 54.1-2400 of the Code of Virginia, to inquire into allegations that a practitioner may have violated laws governing the practice of medicine. The committee and 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) 662-9517 or (804) 662-7197/TDD

BOARD OF NURSING HOME ADMINISTRATORS

† January 7, 1998 - 8:30 a.m. -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.

A general business meeting. Public comment will be held for 15 minutes prior to the beginning of the meeting.

Contact: Senita Booker, Administrative Staff Assistant, Board of Nursing Home Administrators, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9111, FAX (804) 662-9523 or (804) 662-7197/TDD

BOARD OF PSYCHOLOGY

January 27, 1998 - 10 a.m. -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia.

A regular meeting to discuss general board business, receive committee reports and consider proposed amendments to the Regulations Governing the Practice of Psychology, 18 VAC 125-20-10 et seq., pursuant to Executive Order 15 (94). Public comment will be received at the beginning of the meeting.

Contact: LaDonna Duncan, Administrative Assistant, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9913 or FAX (804) 662-9943.

REAL ESTATE APPRAISER BOARD

† **January 13, 1998 - 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 ☎

REAL ESTATE BOARD

December 27, 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 Real Estate Board intends to amend regulations entitled: **18 VAC 135-20-10 et seq. Virginia Real Estate Board Licensing Regulations**. The purpose of the proposed action is to replace emergency regulations governing the duties of real estate brokers and salespersons and to incorporate statutory changes effective July 1, 1995, and July 1, 1996.

Statutory Authority: § 54.1-2105 of the Code of Virginia.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552.

BOARD OF REHABILITATIVE SERVICES

January 29, 1998 - 10 a.m. – Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular 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 ☎

BOARD FOR THE VISUALLY HANDICAPPED

January 20, 1998 - 1 p.m. -- Open Meeting
Department for the Visually Handicapped, Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The board is responsible for advising the Governor, the Secretary of Health and Human Resources, the Commissioner, and the General Assembly on the delivery of public services to the blind and the protection of their rights. The board also reviews and comments on policies, budgets and requests for appropriations for the department. At this regular quarterly meeting, the board members will receive information regarding department activities and operations, review expenditures from the board's institutional fund, and discuss other issues raised by board members.

Contact: Katherine C. Proffitt, Executive Secretary Senior, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140, toll-free 1-800-622-2155, or (804) 371-3140/TDD ☎

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

January 8, 1998 - 8:30 a.m. – Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Richmond, Virginia.

A meeting to discuss regulatory review and other matters requiring board action, including disciplinary cases. All meetings are subject to cancellation. Time of the meeting is subject to change. Call the board office within 24 hours of the meeting to confirm meeting 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 interpreter services should contact the department so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590 or (804) 367-9753/TDD ☎

COUNCIL ON THE STATUS OF WOMEN

† **January 8, 1998 - 1:30 p.m.** – Open Meeting
Department for the Aging, 1600 Forest Avenue, Conference Room, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A briefing on health, welfare and public safety issues.

Contact: Cathy Noonan, Assistant Secretary of Health and Human Resources, Council on the Status of Women, 202 N. 9th St., Suite 622, Richmond, VA 23219, telephone (804) 786-7765, FAX (804) 371-6984 or (804) 786-7765/TDD ☎

Calendar of Events

LEGISLATIVE

VIRGINIA CODE COMMISSION

† **January 7, 1998 - 10 a.m.** – Open Meeting
General Assembly Building, 910 Capitol Square, 6th Floor,
Speaker's Conference Room, Richmond, Virginia. ☎

A meeting to conclude the commission's review of Titles 14.1 (Costs, Fees, Salaries and Allowances) and 17 (Courts of Record) of the Code of Virginia for recodification.

Contact: Jane D. Chaffin, Deputy Registrar, General Assembly Bldg., 2nd Floor, 910 Capitol Square, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 692-0625 or e-mail jchaffin@leg.state.va.us.

SPECIAL SUBCOMMITTEE OF COUNTIES, CITIES AND TOWNS STUDYING SOLID WASTE

† **December 29, 1997 - 2 p.m.** – Open Meeting
General Assembly Building, 910 Capitol Square, 6th Floor
Conference Room, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular meeting. Questions about the agenda should be addressed to Shannon Varner, Senior Attorney, Division of Legislative Services, (804) 786-3591. For interpreter services or other assistance, call Anne Howard.

Contact: Anne R. Howard, Committee Operations, House of Delegates, State Capitol, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TDD ☎

COMMISSION ON THE IMPACT OF CERTAIN FEDERAL COURT DECISIONS ON THE COMMONWEALTH'S INSTITUTIONS OF HIGHER EDUCATION - HJR 525 (HJR 184 - 1996)

† **December 22, 1997 - 2 p.m.** – Open Meeting
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular meeting. Please call Brenda Edwards, Division of Legislative Services, (804) 786-3591, with any questions regarding the agenda. Individuals requiring interpreter services or special assistance should contact Dawn Smith. Persons making audiovisual presentations should call for specifications.

Contact: Dawn B. Smith, Committee Operations, House of Delegates, State Capitol, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TDD ☎

JOINT SUBCOMMITTEE STUDYING THE FUTURE DELIVERY OF PUBLICLY FUNDED MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES - HJR 240

† **January 8, 1998 - 10 a.m.** – Open Meeting
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

The final meeting of the subcommittee originally scheduled on December 17, 1997, has been rescheduled for January 8. Questions regarding the agenda should be addressed to Gayle Vergara, (804) 786-3591. Individuals requiring interpreter services or other assistance should call Committee Operations prior to the hearings.

Contact: Anne R. Howard, House Committee Operations, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TDD ☎

JOINT SUBCOMMITTEE STUDYING SCHOOL DROP OUTS AND WAYS TO PROMOTE THE DEVELOPMENT OF SELF-ESTEEM AMONG YOUTH AND ADULTS (HJR 241 - 1997)

† **December 29, 1997 - 10 a.m.** – Open Meeting
General Assembly Building, 910 Capitol Square, 6th Floor
Conference Room, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular meeting. Questions about the agenda should be addressed to Brenda Edwards, Division of Legislative Services, (804) 786-3591. For interpreter services or other assistance, call Kathleen Myers.

Contact: Kathleen Myers, Committee Operations, House of Delegates, State Capitol, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TDD ☎

JOINT COMMISSION ON TECHNOLOGY AND SCIENCE

† **January 5, 1998 - 10 a.m.** – Open Meeting
General Assembly Building, 910 Capitol Square, House Room D, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting of the commission to finalize its findings and recommendations for the 1998 General Assembly session. The public is invited to attend. The final agenda for this meeting can be obtained via the commission's website at <http://legis.state.va.us/agencies.htm>.

Contact: Diane E. Horvath, Director, Joint Commission on Technology and Science, 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591 or FAX (804) 371-0169.

† **January 14, 1998 - 10 a.m.** – Open Meeting
 General Assembly Building, 910 Capitol Square, 5th Floor
 West Conference Room, Richmond, Virginia. (Interpreter
 for the deaf provided upon request)

A meeting of the commission to review and sign
 proposed legislation for the 1998 General Assembly
 session. The public is invited to attend. The final
 agenda for this meeting can be obtained via the
 commission's website at
<http://legis.state.va.us/agencies.htm>.

Contact: Diane E. Horvath, Director, Joint Commission on
 Technology and Science, 910 Capitol St., 2nd Floor,
 Richmond, VA 23219, telephone (804) 786-3591 or FAX
 (804) 371-0169.

CHRONOLOGICAL LIST

OPEN MEETINGS

December 22

- † Agriculture and Consumer Services, Department of
 - Virginia Egg Board
- Alcoholic Beverage Control Board
- † Higher Education, Commission on the Impact of
 Certain Federal Court Decisions on the Commonwealth's
 Institutions of

December 29

- † Counties, Cities and Towns, Special Subcommittee
 Studying Solid Waste of
- † Drop Outs and Ways to Promote the Development of
 Self-esteem Among Youth and Adults (HJR 241 - 1997),
 Joint Subcommittee Studying School
- † Information Management, Council on
 - Land Records Management Task Force

December 31

- † Funeral Directors and Embalmers, Board of
 - Special Conference Committee

January 5, 1988

- † Technology and Science, Joint Commission on

January 6

- † At-Risk Youth and Their Families, Comprehensive
 Services for
 - State Management Team
- Hopewell Industrial Safety Council
- † Juvenile Justice, State Board of

January 7

- Agriculture and Consumer Services, Department of
 - Virginia Small Grains Board
- † Code Commission, Virginia
- Litter Control and Recycling Fund Advisory Board
- † Nursing Home Administrators, Board of

January 8

- Agriculture and Consumer Services, Department of

- Virginia Small Grains Board
- † Child Day-Care Council
- † Conservation and Recreation, Department of
 - Falls of the James Scenic River Advisory Board
- † Education, Board of
- Environmental Quality, Department of
- Funeral Directors and Embalmers, Board of
- Game and Inland Fisheries, Board of
- Medicine, Board of
 - Informal Conference Committee
- † Mental Health, Mental Retardation and Substance
 Abuse Services - HJR 240, Joint Subcommittee Studying
 the Future Delivery of Publicly Funded
- Waterworks and Wastewater Works Operators, Board for
- † Women, Council on the Status of

January 9

- † Auctioneers Board
- Game and Inland Fisheries, Board of
- † Medicine, Board of
 - Informal Conference Committee

January 12

- † Information Management, Council on
 - Virginia Geographic Information Network Advisory
 Board

January 13

- † Compensation Board
- † Medicine, Board of
 - Informal Conference Committee
- † Real Estate Appraiser Board

January 14

- † Community Colleges, State Board for
- † Juvenile Justice, State Board of
- † Technology and Science, Joint Commission on

January 15

- Agriculture and Consumer Services, Department of
 - Pesticide Control Board
- Audiology and Speech-Language Pathology, Board of
- † Community Colleges, State Board for
- † Environmental Quality, Department of
 - Work Group on Ammonia, Mercury, Lead and
 Copper with Respect to Water Quality Standards
- † Forestry, Board of
- † Medicine, Board of
 - Informal Conference Committee

January 16

- Family and Children's Trust Fund Board

January 20

- Accountancy, Board for
- † Environmental Quality, Department of
 - Virginia Ground Water Protection Steering
 Committee
- Visually Handicapped, Board for the

January 21

- Accountancy, Board for
- Audiology and Speech-Language Pathology, Board of

Calendar of Events

January 22

† Independent Living Council, Statewide

January 26

† Aging, Governor's Advisory Board on

January 27

Hearing Aid Specialists, Board for
Psychology, Board of

January 29

† Compensation Board
Rehabilitative Services, Board of

February 2

† Barbers, Board for

February 3

Hopewell Industrial Safety Council

February 4

† Deaf and Hard-of-Hearing, Department for the
- Advisory Board

February 5

† Conservation and Recreation, Department of
- Falls of the James Scenic River Advisory Board

February 6

Agriculture and Consumer Services, Department of
- Virginia Plant Pollination Advisory Board

February 11

† Juvenile Justice, State Board of

February 17

† Agriculture and Consumer Services, Department of
- Virginia Horse Industry Board

February 20

Family and Children's Trust Fund Board

February 23

† Library Board
- Archival and Information Services Committee
- Automation and Networking Committee
- By-Laws Committee
- Executive Committee
- Facilities Committee
- Legislative and Finance Committee
- Nominating Committee
- Publications and Educational Services Committee
- Public Library Development Committee
- Records Management Committee

March 3

Hopewell Industrial Safety Council

PUBLIC HEARINGS

January 14, 1998

Air Pollution Control Board, State