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CUMULATIVE TABLE OF VIRGINIA ADMINISTRATIVE CODE SECTIONS ADOPTED, AMENDED, OR REPEALED

The table printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Fall 2000 VAC Supplement includes final regulations published through *Virginia Register* Volume 16, Issue 24, dated August 14, 2000). Emergency regulations, if any, are listed, followed by the designation "emer," and errata pertaining to final regulations are listed. Proposed regulations are not listed here. The table lists the sections in numerical order and shows action taken, the volume, issue and page number where the section appeared, and the effective date of the section.

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
Title 2. Agriculture			
2 VAC 5-330-30	Amended	17:8 VA.R. 1192	2/5/01
2 VAC 5-430-10 et seq.	Repealed	17:8 VA.R. 1192	1/31/01
2 VAC 5-600-10	Amended	17:9 VA.R. 1293	12/14/00
Title 4. Conservation and Natural Resources			
4 VAC 15-20-50	Amended	17:6 VA.R. 919	1/1/01
4 VAC 15-20-130	Amended	17:6 VA.R. 920	1/1/01
4 VAC 15-30-40	Amended	17:6 VA.R. 921	1/1/01
4 VAC 15-250-30	Amended	17:6 VA.R. 923	1/1/01
4 VAC 15-320-30	Amended	17:6 VA.R. 924	1/1/01
4 VAC 15-320-100	Amended	17:6 VA.R. 925	1/1/01
4 VAC 15-320-120	Amended	17:6 VA.R. 925	1/1/01
4 VAC 15-320-170	Added	17:6 VA.R. 925	1/1/01
4 VAC 15-330-30	Amended	17:6 VA.R. 926	1/1/01
4 VAC 15-330-50	Amended	17:6 VA.R. 926	1/1/01
4 VAC 15-330-60	Amended	17:6 VA.R. 926	1/1/01
4 VAC 15-330-100	Amended	17:6 VA.R. 926	1/1/01
4 VAC 15-330-120	Amended	17:6 VA.R. 926	1/1/01
4 VAC 15-330-160	Amended	17:6 VA.R. 927	1/1/01
4 VAC 15-330-190	Amended	17:6 VA.R. 927	1/1/01
4 VAC 15-360-10	Amended	17:6 VA.R. 928	1/1/01
4 VAC 15-360-60	Amended	17:6 VA.R. 928	1/1/01
4 VAC 20-110-10	Amended	17:5 VA.R. 698	10/30/00
4 VAC 20-110-15	Added	17:5 VA.R. 698	10/30/00
4 VAC 20-110-20 through 4 VAC 20-110-50	Amended	17:5 VA.R. 698	10/30/00
4 VAC 20-110-55	Added	17:5 VA.R. 699	10/30/00
4 VAC 20-110-60	Amended	17:5 VA.R. 699	10/30/00
4 VAC 20-110-65	Added	17:5 VA.R. 699	10/30/00
4 VAC 20-252-30	Amended	17:5 VA.R. 699	10/30/00
4 VAC 20-337-10 through 4 VAC 20-337-30	Added	17:5 VA.R. 700-702	11/1/00
4 VAC 20-490-20	Amended	17:3 VA.R. 386	10/15/00
4 VAC 20-490-40	Amended	17:3 VA.R. 387	10/15/00
4 VAC 20-490-60	Amended	17:3 VA.R. 387	10/15/00
4 VAC 20-540-30	Amended	17:5 VA.R. 702	1/1/01
4 VAC 20-540-40	Amended	17:5 VA.R. 702	1/1/01
4 VAC 20-560-40	Amended	17:7 VA.R. 1035	12/1/00
4 VAC 20-560-50	Amended	17:7 VA.R. 1035	12/1/00
4 VAC 20-620-40	Amended	17:5 VA.R. 703	10/30/00
4 VAC 20-720-20	Amended	17:3 VA.R. 387	10/1/00
4 VAC 20-720-40	Amended	17:3 VA.R. 388	10/1/00
4 VAC 20-720-50	Amended	17:3 VA.R. 388	10/1/00
4 VAC 20-720-60	Amended	17:3 VA.R. 389	10/1/00
4 VAC 20-720-70	Amended	17:3 VA.R. 389	10/1/00
4 VAC 20-720-80	Amended	17:3 VA.R. 390	10/1/00
4 VAC 20-754-30	Amended	17:3 VA.R. 393	10/1/00

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-755-10	Amended	17:5 VA.R. 704	10/30/00
4 VAC 20-755-20	Amended	17:5 VA.R. 704	10/30/00
4 VAC 20-755-30	Amended	17:5 VA.R. 704	10/30/00
4 VAC 20-890-20	Amended	16:25 VA.R. 3227	10/1/00
4 VAC 20-890-25	Amended	17:1 VA.R. 62	9/21/00
4 VAC 20-890-30	Amended	17:1 VA.R. 62	9/21/00
4 VAC 20-890-40	Amended	16:25 VA.R. 3227	10/1/00
4 VAC 20-900-10 emer	Amended	16:25 VA.R. 3330	7/28/00-8/24/00
4 VAC 20-900-25	Amended	17:1 VA.R. 63	9/1/00
4 VAC 20-900-25 emer	Amended	16:25 VA.R. 3330	7/28/00-8/24/00
4 VAC 20-900-25 emer	Amended	17:5 VA.R. 832	10/20/00-11/19/00
4 VAC 20-900-25	Amended	17:7 VA.R. 1036	11/17/00
4 VAC 20-910-45	Amended	17:3 VA.R. 393	11/1/00
4 VAC 20-950-10	Amended	17:3 VA.R. 394	10/1/00
4 VAC 20-950-45	Amended	17:3 VA.R. 394	10/1/00
4 VAC 20-995-20	Amended	17:5 VA.R. 705	10/30/00
4 VAC 20-995-30	Amended	17:5 VA.R. 706	10/30/00
4 VAC 25-30 (Forms)	Amended	17:4 VA.R. 613	--
4 VAC 25-30 (Forms)	Amended	17:8 VA.R. 1201	--
4 VAC 25-40 (Forms)	Amended	17:4 VA.R. 613	--
4 VAC 25-40 (Forms)	Amended	17:8 VA.R. 1201	--
4 VAC 25-90 (Forms)	Amended	17:4 VA.R. 613	--
4 VAC 25-100 (Forms)	Amended	17:4 VA.R. 613	--
4 VAC 25-130 (Forms)	Amended	17:4 VA.R. 614	--
4 VAC 25-130 (Forms)	Amended	17:8 VA.R. 1201	--
4 VAC 25-170 (Forms)	Amended	17:8 VA.R. 1203	--
Title 6. Criminal Justice and Corrections			
6 VAC 20-190-10 through 6 VAC 20-190-200	Amended	17:3 VA.R. 395-398	11/23/00
6 VAC 20-190 (Forms)	Added	17:8 VA.R. 1204	--
Title 8. Education			
8 VAC 20-21-10	Amended	17:8 VA.R. 1193	1/31/01
8 VAC 20-21-50	Amended	17:8 VA.R. 1194	1/31/01
8 VAC 20-21-80	Amended	17:8 VA.R. 1195	1/31/01
8 VAC 20-21-260	Amended	17:8 VA.R. 1196	1/31/01
8 VAC 20-80-10	Amended	17:5 VA.R. 707	1/1/01
8 VAC 20-80-10	Erratum	17:8 VA.R. 1217	--
8 VAC 20-80-20	Repealed	17:5 VA.R. 717	1/1/01
8 VAC 20-80-30	Amended	17:5 VA.R. 717	1/1/01
8 VAC 20-80-30	Erratum	17:8 VA.R. 1217	--
8 VAC 20-80-40	Amended	17:5 VA.R. 721	1/1/01
8 VAC 20-80-40	Erratum	17:8 VA.R. 1217	--
8 VAC 20-80-45	Added	17:5 VA.R. 722	1/1/01
8 VAC 20-80-45	Erratum	17:8 VA.R. 1217	--
8 VAC 20-80-50	Amended	17:5 VA.R. 725	1/1/01
8 VAC 20-80-52	Added	17:5 VA.R. 727	1/1/01
8 VAC 20-80-54	Added	17:5 VA.R. 728	1/1/01
8 VAC 20-80-54	Erratum	17:8 VA.R. 1217	--
8 VAC 20-80-56	Added	17:5 VA.R. 731	1/1/01
8 VAC 20-80-56	Erratum	17:8 VA.R. 1217	--
8 VAC 20-80-58	Added	17:5 VA.R. 735	1/1/01
8 VAC 20-80-60	Amended	17:5 VA.R. 736	1/1/01
8 VAC 20-80-62	Added	17:5 VA.R. 738	1/1/01
8 VAC 20-80-62	Erratum	17:8 VA.R. 1217	--
8 VAC 20-80-64	Added	17:5 VA.R. 746	1/1/01
8 VAC 20-80-65	Added	17:5 VA.R. 748	1/1/01
8 VAC 20-80-66	Added	17:5 VA.R. 748	1/1/01

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
8 VAC 20-80-68	Added	17:5 VA.R. 752	1/1/01
8 VAC 20-80-70	Amended	17:5 VA.R. 756	1/1/01
8 VAC 20-80-70	Erratum	17:8 VA.R. 1217	--
8 VAC 20-80-72	Added	17:5 VA.R. 765	1/1/01
8 VAC 20-80-74	Added	17:5 VA.R. 767	1/1/01
8 VAC 20-80-76	Added	17:5 VA.R. 768	1/1/01
8 VAC 20-80-76	Erratum	17:8 VA.R. 1217	--
8 VAC 20-80-78	Added	17:5 VA.R. 776	1/1/01
8 VAC 20-80-80 through 8 VAC 20-80-150	Amended	17:5 VA.R. 778-786	1/1/01
8 VAC 20-80-80	Erratum	17:8 VA.R. 1217	--
8 VAC 20-80-152	Added	17:5 VA.R. 786	1/1/01
8 VAC 20-80-152	Erratum	17:8 VA.R. 1217	--
8 VAC 20-80-155	Added	17:5 VA.R. 787	1/1/01
8 VAC 20-80-160	Amended	17:5 VA.R. 787	1/1/01
8 VAC 20-80-160	Erratum	17:8 VA.R. 1217	--
8 VAC 20-80-170	Repealed	17:5 VA.R. 788	1/1/01
8 VAC 20-80-180	Repealed	17:5 VA.R. 789	1/1/01
8 VAC 20-80-190	Amended	17:5 VA.R. 790	1/1/01
8 VAC 20-80-200	Repealed	17:5 VA.R. 790	1/1/01
8 VAC 20-80 Appendix A	Erratum	17:8 VA.R. 1217	--
8 VAC 20-131-10 through 8 VAC 20-131-150	Amended	16:25 VA.R. 3228-3237	9/28/00
8 VAC 20-131-170	Amended	16:25 VA.R. 3237	9/28/00
8 VAC 20-131-180	Amended	16:25 VA.R. 3237	9/28/00
8 VAC 20-131-210	Amended	16:25 VA.R. 3238	9/28/00
8 VAC 20-131-220	Amended	16:25 VA.R. 3239	9/28/00
8 VAC 20-131-240	Amended	16:25 VA.R. 3239	9/28/00
8 VAC 20-131-250	Repealed	16:25 VA.R. 3240	9/28/00
8 VAC 20-131-260 through 8 VAC 20-131-320	Amended	16:25 VA.R. 3240-3249	9/28/00
8 VAC 20-131-325	Added	16:25 VA.R. 3249	9/28/00
8 VAC 20-131-340	Amended	16:25 VA.R. 3250	9/28/00
8 VAC 20-570-10 et seq.	Repealed	17:5 VA.R. 706	1/1/01
8 VAC 20-640-10	Added	17:8 VA.R. 1198	1/31/01
Title 9. Environment			
9 VAC 5-60-120 through 9 VAC 5-60-180	Added	17:4 VA.R. 585	1/1/01
9 VAC 5-60-150	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-50 through 9 VAC 5-80-120	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-180 through 9 VAC 5-80-300	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-305	Repealed	17:4 VA.R. 585	1/1/01
9 VAC 5-80-310 through 9 VAC 5-80-350	Amended	17:4 VA.R. 585	*
9 VAC 5-80-355	Repealed	17:4 VA.R. 585	*
9 VAC 5-80-360 through 9 VAC 5-80-380	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-400 through 9 VAC 5-80-460	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-480	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-490	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-510	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-540 through 9 VAC 5-80-570	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-610	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-620	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-650	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-660	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-680	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-700	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-705	Repealed	17:4 VA.R. 585	1/1/01

* Regulatory process suspended in 17:9 VA.R. 1297.

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 5-80-720	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-90-10 et seq.	Repealed	17:1 VA.R. 63	10/25/00
9 VAC 5-100-10 et seq.	Repealed	17:1 VA.R. 63	10/25/00
9 VAC 5-121-10 et seq.	Repealed	17:4 VA.R. 585	1/1/01
9 VAC 20-60-18	Amended	17:2 VA.R. 220	11/8/00
9 VAC 20-170-10 through 9 VAC 20-170-410	Added	17:9 VA.R. 1297-1327	2/16/01
9 VAC 25-31-10	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-30	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-40	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-100	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-120	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-121 (renumbered from 9 VAC 25-31-125)	Added	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-170	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-190	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-200	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-230	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-280	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-340	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-390	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-500	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-570	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-580	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-590	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-620	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-660	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-670	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-710	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-720	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-750	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-770	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-780	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-800	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-810	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-840	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-210-10	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-210-50	Amended	16:25 VA.R. 3254	9/27/00
9 VAC 25-210-110	Amended	16:25 VA.R. 3254	9/27/00
9 VAC 25-210-110	Erratum	17:3 VA.R. 433	--
9 VAC 25-400-10	Amended	16:25 VA.R. 3255	9/27/00
9 VAC 25-630-10 through 9 VAC 25-630-60	Amended	17:3 VA.R. 399-409	12/1/00
9 VAC 25-630-30	Erratum	17:7 VA.R. 1112	--
9 VAC 25-630-50	Erratum	17:7 VA.R. 1112	--
9 VAC 25-630 (Forms)	Amended	17:8 VA.R. 1207	--
9 VAC 25-650-10 through 9 VAC 25-650-210 emer	Added	17:9 VA.R. 1370-1383	12/14/00-12/13/01
9 VAC 25-730-10 through 9 VAC 25-730-40	Added	17:9 VA.R. 1328	2/16/01
Title 11. Gaming			
11 VAC 10-100-30	Amended	16:25 VA.R. 3261	8/8/00
11 VAC 10-100-110	Amended	16:25 VA.R. 3261	8/8/00
11 VAC 10-100-170	Amended	16:25 VA.R. 3262	8/8/00
11 VAC 10-100-210	Amended	16:25 VA.R. 3262	8/8/00
11 VAC 10-110-30	Amended	16:25 VA.R. 3262	8/8/00
11 VAC 10-110-90	Amended	16:25 VA.R. 3262	8/8/00
11 VAC 10-110-230	Added	16:25 VA.R. 3263	8/8/00
11 VAC 10-120-50	Amended	16:26 VA.R. 3507	8/14/00
11 VAC 10-120-80	Amended	16:26 VA.R. 3508	8/14/00
11 VAC 10-120-90	Amended	16:26 VA.R. 3508	8/14/00

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
11 VAC 10-130-10	Amended	17:4 VA.R. 586	10/16/00
11 VAC 10-130-20	Amended	17:4 VA.R. 587	10/16/00
11 VAC 10-130-40	Amended	17:4 VA.R. 588	10/16/00
11 VAC 10-130-60	Amended	17:4 VA.R. 588	10/16/00
11 VAC 10-130-70	Amended	17:4 VA.R. 589	10/16/00
11 VAC 10-130-76	Amended	17:4 VA.R. 589	10/16/00
11 VAC 10-130-77	Amended	17:4 VA.R. 589	10/16/00
11 VAC 10-130-80	Amended	17:4 VA.R. 590	10/16/00
11 VAC 10-150-10	Amended	16:26 VA.R. 3510	8/14/00
11 VAC 10-150-20	Amended	16:26 VA.R. 3510	8/14/00
11 VAC 10-150-30	Amended	16:26 VA.R. 3510	8/14/00
11 VAC 10-150-40	Amended	16:26 VA.R. 3510	8/14/00
11 VAC 10-150-80	Amended	16:26 VA.R. 3510	8/14/00
11 VAC 10-150-90	Amended	16:26 VA.R. 3511	8/14/00
11 VAC 10-150-120	Amended	16:26 VA.R. 3511	8/14/00
11 VAC 10-150-130	Amended	16:26 VA.R. 3511	8/14/00
11 VAC 10-150-170	Amended	16:26 VA.R. 3511	8/14/00
Title 12. Health			
12 VAC 5-185-10 through 12 VAC 5-185-110	Added	17:9 VA.R. 1329-1331	2/14/01
12 VAC 5-371-150	Amended	17:1 VA.R. 64	10/27/00
12 VAC 5-371-260	Amended	17:1 VA.R. 64	10/27/00
12 VAC 5-410-220	Amended	17:1 VA.R. 65	10/27/00
12 VAC 30-10-150	Amended	17:5 VA.R. 791	1/1/01
12 VAC 30-40-345	Amended	17:3 VA.R. 410	11/22/00
12 VAC 30-50-30	Amended	17:5 VA.R. 792	1/1/01
12 VAC 30-50-70	Amended	17:5 VA.R. 792	1/1/01
12 VAC 30-50-130	Amended	17:5 VA.R. 792	1/1/01
12 VAC 30-50-229.1	Amended	17:5 VA.R. 798	1/1/01
12 VAC 30-50-250	Amended	17:5 VA.R. 793	1/1/01
12 VAC 30-50-480	Amended	17:5 VA.R. 801	1/1/01
12 VAC 30-60-170	Amended	17:5 VA.R. 802	1/1/01
12 VAC 30-80-21	Added	17:5 VA.R. 793	1/1/01
12 VAC 30-80-111	Added	17:5 VA.R. 803	1/1/01
12 VAC 30-130-850 through 12 VAC 30-130-890	Added	17:5 VA.R. 794-796	1/1/01
12 VAC 30-130-880	Erratum	17:6 VA.R. 932	--
12 VAC 30-130-900 through 12 VAC 30-130-950	Added	17:5 VA.R. 803-806	1/1/01
Title 13. Housing			
13 VAC 5-51-71	Amended	17:7 VA.R. 1036	1/17/01
13 VAC 5-51-81	Amended	17:7 VA.R. 1037	1/17/01
13 VAC 5-51-130	Amended	17:7 VA.R. 1038	1/17/01
13 VAC 5-51-150	Amended	17:7 VA.R. 1038	1/17/01
13 VAC 5-51-170	Amended	17:7 VA.R. 1040	1/17/01
13 VAC 10-160-10	Amended	16:26 VA.R. 3512	9/1/00
13 VAC 10-160-30	Amended	16:26 VA.R. 3513	9/1/00
13 VAC 10-160-41	Repealed	16:26 VA.R. 3514	9/1/00
13 VAC 10-160-51	Repealed	16:26 VA.R. 3514	9/1/00
13 VAC 10-160-55 through 13 VAC 10-160-90	Amended	16:26 VA.R. 3515-3518	9/1/00
Title 14. Insurance			
14 VAC 5-200-20 through 14 VAC 5-200-60	Amended	17:4 VA.R. 594-597	12/1/00
14 VAC 5-200-65	Added	17:4 VA.R. 597	12/1/00
14 VAC 5-200-70	Amended	17:4 VA.R. 598	12/1/00
14 VAC 5-200-90	Amended	17:4 VA.R. 598	12/1/00
14 VAC 5-200-110	Amended	17:4 VA.R. 599	12/1/00
14 VAC 5-200-120	Amended	17:4 VA.R. 601	12/1/00
14 VAC 5-200-150	Amended	17:4 VA.R. 601	12/1/00
14 VAC 5-200-155	Added	17:4 VA.R. 602	12/1/00

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
14 VAC 5-200-170	Amended	17:4 VA.R. 602	12/1/00
14 VAC 5-200-175	Added	17:4 VA.R. 603	12/1/00
14 VAC 5-200-180	Repealed	17:4 VA.R. 603	12/1/00
14 VAC 5-200-185	Added	17:4 VA.R. 603	12/1/00
14 VAC 5-200-187	Added	17:4 VA.R. 605	12/1/00
14 VAC 5-200-200	Amended	17:4 VA.R. 606	12/1/00
14 VAC 5-370-20	Amended	16:25 VA.R. 3264	9/30/00
14 VAC 5-370-100	Amended	16:25 VA.R. 3264	9/30/00
Title 16. Labor and Employment			
16 VAC 15-30-20	Amended	17:1 VA.R. 66	10/25/00
16 VAC 15-30-200	Amended	17:1 VA.R. 66	10/25/00
16 VAC 15-30-210	Added	17:1 VA.R. 68	10/25/00
16 VAC 15-30-220	Added	17:1 VA.R. 68	10/25/00
16 VAC 15-30-230	Added	17:1 VA.R. 69	10/25/00
16 VAC 25-120-1917.1	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.2	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.3	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.23	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.25	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.26	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.27	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.30	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.42 through 16 VAC 25-120-1917.45	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.50	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.71	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.73	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.92	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.95	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.112	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.117 through 16 VAC 25-120-1917.122	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.124	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.151	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.152	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.153	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.156	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120 Appendix I	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.1	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.2	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.24	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.25	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.37	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.41	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.42	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.43	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.51	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.52	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.54	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.61	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.62	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.65	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.66	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.69	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.85	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.86	Amended	16:25 VA.R. 3265	10/1/00

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
16 VAC 25-130-1918.94	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.97	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.98	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.100	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.102	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.105	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130 Appendix II	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130 Appendix IV	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 30-100-10 through 16 VAC 30-100-80	Added	17:9 VA.R. 1331-1334	2/14/01
Title 18. Professional and Occupational Licensing			
18 VAC 45-20-5	Added	17:7 VA.R. 1041	2/1/01
18 VAC 45-20-10	Amended	17:7 VA.R. 1041	2/1/01
18 VAC 45-20-20	Amended	17:7 VA.R. 1042	2/1/01
18 VAC 45-20-30	Amended	17:7 VA.R. 1042	2/1/01
18 VAC 45-20-40	Amended	17:7 VA.R. 1042	2/1/01
18 VAC 45-20-50	Added	17:7 VA.R. 1043	2/1/01
18 VAC 85-20-131 emer	Amended	17:4 VA.R. 610	10/13/00-10/12/01
18 VAC 85-20-140	Amended	17:8 VA.R. 1198	1/31/01
18 VAC 85-31-10 through 18 VAC 85-31-160	Repealed	16:25 VA.R. 3266-3270	9/27/00
18 VAC 85-110-100 emer	Amended	17:7 VA.R. 1091	11/17/00-11/16/01
18 VAC 90-20-36 emer	Added	17:2 VA.R. 221	9/19/00-9/18/01
18 VAC 90-30-120	Amended	17:7 VA.R. 1047	1/17/01
18 VAC 100-20-5	Added	17:9 VA.R. 1334	3/1/01
18 VAC 100-20-10	Amended	17:9 VA.R. 1334	3/1/01
18 VAC 100-20-20	Repealed	17:9 VA.R. 1335	3/1/01
18 VAC 100-20-30	Repealed	17:9 VA.R. 1335	3/1/01
18 VAC 100-20-40	Repealed	17:9 VA.R. 1335	3/1/01
18 VAC 100-20-50	Amended	17:9 VA.R. 1335	3/1/01
18 VAC 100-20-54	Added	17:9 VA.R. 1335	3/1/01
18 VAC 100-20-55	Added	17:9 VA.R. 1336	3/1/01
18 VAC 100-20-56	Added	17:9 VA.R. 1336	3/1/01
18 VAC 100-20-60	Amended	17:9 VA.R. 1336	3/1/01
18 VAC 100-20-65	Added	17:9 VA.R. 1336	3/1/01
18 VAC 100-20-70	Amended	17:9 VA.R. 1337	3/1/01
18 VAC 100-20-80	Repealed	17:9 VA.R. 1337	3/1/01
18 VAC 100-20-81	Added	17:9 VA.R. 1337	3/1/01
18 VAC 100-20-85	Added	17:9 VA.R. 1338	3/1/01
18 VAC 100-20-87	Added	17:9 VA.R. 1338	3/1/01
18 VAC 100-20-90	Amended	17:9 VA.R. 1338	3/1/01
18 VAC 100-20-100	Amended	17:9 VA.R. 1338	3/1/01
18 VAC 100-20-110	Amended	17:9 VA.R. 1338	3/1/01
18 VAC 100-20-120	Added	17:9 VA.R. 1339	3/1/01
18 VAC 100-20-130	Added	17:9 VA.R. 1339	3/1/01
18 VAC 110-20-10	Amended	17:7 VA.R. 1047	1/17/01
18 VAC 110-20-20	Amended	17:7 VA.R. 1050	1/17/01
18 VAC 110-20-425	Added	17:7 VA.R. 1050	1/17/01
18 VAC 110-30-10	Amended	17:7 VA.R. 1058	1/17/01
18 VAC 110-30-15	Added	17:7 VA.R. 1058	1/17/01
18 VAC 110-30-20	Amended	17:7 VA.R. 1058	1/17/01
18 VAC 110-30-30	Amended	17:7 VA.R. 1059	1/17/01
18 VAC 110-30-35	Added	17:7 VA.R. 1059	1/17/01
18 VAC 110-30-50	Amended	17:7 VA.R. 1059	1/17/01
18 VAC 110-30-60	Repealed	17:7 VA.R. 1059	1/17/01
18 VAC 110-30-80	Amended	17:7 VA.R. 1059	1/17/01
18 VAC 110-30-90	Amended	17:7 VA.R. 1059	1/17/01
18 VAC 110-30-100	Amended	17:7 VA.R. 1060	1/17/01

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 110-30-110	Amended	17:7 VA.R. 1060	1/17/01
18 VAC 110-30-160	Amended	17:7 VA.R. 1060	1/17/01
18 VAC 110-30-170	Amended	17:7 VA.R. 1061	1/17/01
18 VAC 110-30-190	Amended	17:7 VA.R. 1061	1/17/01
18 VAC 110-30-200	Amended	17:7 VA.R. 1061	1/17/01
18 VAC 110-30-210	Amended	17:7 VA.R. 1061	1/17/01
18 VAC 110-30-220	Amended	17:7 VA.R. 1062	1/17/01
18 VAC 110-30-240	Amended	17:7 VA.R. 1062	1/17/01
18 VAC 110-30-255	Added	17:7 VA.R. 1062	1/17/01
18 VAC 110-30-260	Amended	17:7 VA.R. 1062	1/17/01
18 VAC 110-30-270	Amended	17:7 VA.R. 1062	1/17/01
18 VAC 110-40-10 through 18 VAC 110-40-70	Added	17:7 VA.R. 1066-1067	1/17/01
18 VAC 112-10-10 through 18 VAC 112-10-120 emer	Added	17:4 VA.R. 611-612	10/17/00-10/16/01
18 VAC 112-20-10 through 18 VAC 112-20-150	Added	16:25 VA.R. 3266-3270	9/27/00
18 VAC 160-20-10	Amended	17:9 VA.R. 1342	2/15/01
18 VAC 160-20-20 through 18 VAC 160-20-70	Repealed	17:9 VA.R. 1343-1345	2/15/01
18 VAC 160-20-74	Added	17:9 VA.R. 1345	2/15/01
18 VAC 160-20-76	Added	17:9 VA.R. 1345	2/15/01
18 VAC 160-20-80	Amended	17:9 VA.R. 1345	2/15/01
18 VAC 160-20-85	Added	17:9 VA.R. 1345	2/15/01
18 VAC 160-20-90	Amended	17:9 VA.R. 1345	2/15/01
18 VAC 160-20-100	Repealed	17:9 VA.R. 1349	2/15/01
18 VAC 160-20-102	Added	17:9 VA.R. 1350	2/15/01
18 VAC 160-20-104	Added	17:9 VA.R. 1350	2/15/01
18 VAC 160-20-106	Added	17:9 VA.R. 1350	2/15/01
18 VAC 160-20-109	Added	17:9 VA.R. 1350	2/15/01
18 VAC 160-20-110	Repealed	17:9 VA.R. 1351	2/15/01
18 VAC 160-20-120	Added	17:9 VA.R. 1351	2/15/01
18 VAC 160-20-130	Added	17:9 VA.R. 1352	2/15/01
18 VAC 160-20-140	Added	17:9 VA.R. 1353	2/15/01
18 VAC 160-20-160	Amended	17:9 VA.R. 1353	2/15/01
Title 20. Public Utilities and Telecommunications			
20 VAC 5-200-21	Amended	16:25 VA.R. 3274	7/28/00
20 VAC 5-200-30	Amended	16:25 VA.R. 3296	7/28/00
20 VAC 5-200 Appendix	Amended	16:25 VA.R. 3298	7/28/00
20 VAC 5-202-10 through 20 VAC 5-202-50	Added	17:5 VA.R. 819-824	10/20/00
20 VAC 5-309-10	Amended	17:9 VA.R. 1366	7/1/01
20 VAC 5-309-15	Added	17:9 VA.R. 1366	7/1/01
20 VAC 5-309-20	Amended	17:9 VA.R. 1366	7/1/01
20 VAC 5-309-30	Amended	17:9 VA.R. 1366	7/1/01
20 VAC 5-309-40	Amended	17:9 VA.R. 1366	7/1/01
20 VAC 5-309-50	Amended	17:9 VA.R. 1367	7/1/01
20 VAC 5-309-70	Amended	17:9 VA.R. 1367	7/1/01
20 VAC 5-309-90 through 20 VAC 5-309-220	Added	17:9 VA.R. 1367-1369	7/1/01
Title 22. Social Services			
22 VAC 30-20-10 through 22 VAC 30-20-60	Amended	17:7 VA.R. 1067-1076	1/17/01
22 VAC 30-20-80 through 22 VAC 30-20-130	Amended	17:7 VA.R. 1076-1086	1/17/01
22 VAC 30-20-150	Amended	17:7 VA.R. 1086	1/17/01
22 VAC 30-20-160	Amended	17:7 VA.R. 1087	1/17/01
22 VAC 30-20-170	Amended	17:7 VA.R. 1088	1/17/01
22 VAC 30-20-181	Amended	17:7 VA.R. 1088	1/17/01
22 VAC 30-20-200	Amended	17:7 VA.R. 1090	1/17/01
22 VAC 40-35-10	Amended	17:5 VA.R. 825	12/20/00
22 VAC 40-35-125	Amended	17:5 VA.R. 827	12/20/00
22 VAC 40-35-126	Added	17:5 VA.R. 827	12/20/00
22 VAC 40-35-127	Added	17:5 VA.R. 828	12/20/00

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
22 VAC 40-35-128	Added	17:5 VA.R. 828	12/20/00
22 VAC 40-60 (Forms)	Amended	17:1 VA.R. 72	--
22 VAC 40-170 (Forms)	Amended	17:5 VA.R. 833	--
22 VAC 40-180 (Forms)	Amended	16:25 VA.R. 3331-3332	--
22 VAC 40-600-10	Amended	17:1 VA.R. 70	10/25/00
22 VAC 40-600-50	Amended	17:1 VA.R. 70	10/25/00
22 VAC 40-600-70	Amended	17:1 VA.R. 70	10/25/00
22 VAC 40-600-90	Repealed	17:1 VA.R. 71	10/25/00
22 VAC 40-600-130	Amended	17:1 VA.R. 71	10/25/00
22 VAC 40-600-140	Amended	17:1 VA.R. 71	10/25/00
22 VAC 40-600-170	Amended	17:1 VA.R. 71	10/25/00
22 VAC 40-600-200	Amended	17:1 VA.R. 71	10/25/00
22 VAC 40-600-210	Amended	17:1 VA.R. 71	10/25/00
22 VAC 40-680-10	Amended	17:5 VA.R. 830	12/20/00
22 VAC 40-680-20	Amended	17:5 VA.R. 830	12/20/00
Title 24. Transportation and Motor Vehicles			
24 VAC 30-380-10	Amended	16:26 VA.R. 3518	8/23/00

NOTICES OF INTENDED REGULATORY ACTION

Symbol Key

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

TITLE 2. AGRICULTURE

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Agriculture and Consumer Services intends to consider amending regulations entitled: **2 VAC 5-530-10 et seq. Rules and Regulations Governing the Production, Handling and Processing of Milk for Manufacturing Purposes and Establishing Minimum Standards for Certain Dairy Products to be Used for Human Food.** The purpose of the proposed action is to review the regulation for effectiveness and continued need, including amending the regulation to (i) include the milk of goats, sheep, water buffalo, and other mammals if the milk or dairy products are intended for human consumption; (ii) be consistent with the USDA recommended requirements for milk for manufacturing purposes and plant purposes; and (iii) develop alternative requirements to foster the developing goats, sheep, and water buffalo industries in Virginia. The agency invites comment on whether there should be an adviser. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 3.1-530.1 and 3.1-530.2 of the Code of Virginia.

Public comments may be submitted until March 19, 2001.

Contact: John A. Beers, Program Supervisor, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Room 505, Richmond, VA 23219, telephone (804) 786-1453 or FAX (804) 371-7792.

VA.R. Doc. No. R01-64; Filed December 14, 2000, 2:49 p.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

BOARD OF CORRECTIONS

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 Corrections intends to consider amending regulations entitled: **6 VAC 15-20-10 et seq. Regulations Governing Certification and Inspection.** The current regulations have been in place since July 1, 1997. Since that time the board and department have

determined that revisions to the regulations are necessary to accommodate new recommendations and to ensure further the health and safety standards in facilities and services. The purpose of the proposed action is to revise, where necessary, the language in the standards to reflect changes to the pre- and post-audit process in state, local and community correctional facilities. Amendments in current organization structure and terminology, as well as in the administration of appeals and variances granted by the board, require possible revision. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 53.1-5 of the Code of Virginia.

Public comments may be submitted until February 1, 2001.

Contact: Joe Hagenlocker, Manager, Compliance and Accreditation Unit, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3576 or FAX (804) 674-3587.

VA.R. Doc. No. R01-67; Filed December 15, 2000, 8:02 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Corrections intends to consider amending regulations entitled: **6 VAC 15-40-10 et seq. Minimum Standards for Jails and Lockups.** The current regulations have been in place since 1995. Since the adoption of the standards, a significant number of regional jails have opened. Updated standards will provide additional guidance on supervision of inmates and bring Board of Corrections standards in conformance with American Correction Association standards. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 53.1-5, 53.1-68 and 53.1-131 of the Code of Virginia.

Public comments may be submitted until February 1, 2001.

Contact: Donna Lawrence, Supervisor, Compliance and Accreditation Unit, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3237 or FAX (804) 674-3587.

VA.R. Doc. No. R01-66; Filed December 15, 2000, 8:02 a.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to consider amending regulations entitled: **9 VAC 5-40-10 et seq. Existing Stationary Sources** and **9 VAC 5-91-10 et seq. Regulations for the Control of Motor Vehicle Emissions in the Northern Virginia Area** and promulgating regulations entitled: **9 VAC 5-180-10 et seq. Regulation for Mobile Sources (Rev. I-00)**. The purpose of the proposed action is to adopt a regulation that establishes controls for visible emissions from motor vehicles and repeal or amend other existing regulations as appropriate.

Purpose: The purpose of the proposed action is to (i) adopt a new regulation that meets current air quality needs and (ii) repeal the existing regulation because certain of its provisions have been determined to no longer be required by federal mandate and no longer essential to protect the health or welfare of citizens. This determination was made pursuant to the review of existing regulations mandated by Executive Order 15(94).

Need: Rule 4-41 (9 VAC 5-40-5650 et seq.) is no longer essential (i) to protect the health or welfare of citizens or (ii) for the efficient and economical performance of an important governmental function. An explanation as to how this conclusion was reached is set forth below.

The regulation is no longer needed for air quality planning purposes. The regulation was adopted in order to implement the policy set forth in the Virginia Air Pollution Control Law and to fulfill the Commonwealth's responsibilities under the federal Clean Air Act to provide a legally enforceable State Implementation Plan for the control of criteria pollutants. These statutes still remain in force, but the provisions that initiated adoption of the regulation have changed.

Analysis reveals that the regulation is not consistent with applicable state and federal regulations, statutory provisions, and judicial decisions. Factors and circumstances (federal statutes, original intent, state air quality program and air pollution control methodology and technology) which justified the initial issuance of the regulation have changed to a degree that would justify a change to the basic requirements of the regulation.

Federal guidance on states' approaches to air pollution control has varied considerably over the years, ranging from very general in the early years of the Clean Air Act to very specific in more recent years. This regulation, Rule 4-41, was adopted in 1972, when no detailed guidance existed. Therefore, the legally binding federal mandate for this regulation is general, not specific, consisting of the Clean Air Act's broad-based directive to states to meet the air quality standard for particulate matter that is emitted by mobile sources.

Since Rule 4-41 was adopted in 1972, important changes have been made to the State Implementation Plan that have

resulted in significantly better control of the emissions this regulation was designed to limit. For instance, under the 1990 amendments of the Clean Air Act, most motor vehicles in Virginia's metropolitan urban areas (one and a quarter million vehicles out of the statewide total of five million) are now subject to inspection and maintenance (I/M) programs, which will provide for a higher level of stringency for control of visible emissions and other pollutants than the level provided for by Rule 4-41. In addition, the enforcement of anti-tampering prohibitions is accomplished through statewide safety inspections carried out by the Department of State Police. (The anti-tampering provisions of Rule 4-41 merely duplicate those of § 46.2-1048 of the Code of Virginia.) In light of these newer and more effective controls, the regulation should be replaced. The replacement regulation (9 VAC 5 Chapter 180) will focus on the control of visible emissions from motor vehicles, which are the major concern of the general public. It contains provisions addressing anti-tampering, visible emission standards, commercial and public service motor vehicles, and export/import of motor vehicles.

Potential Issues: The potential issues that need to be addressed as the regulation is developed are as follows:

1. Repeal the existing rule for Emission Standards for Mobile Sources, Article 41 (9 VAC 5-40-5650 et seq.) of Part II of 9 VAC 5 Chapter 40 because certain of its provisions have been determined to be no longer required by federal mandate and no longer essential to protect the health or welfare of citizens.
2. Promulgate a new Regulation for Mobile Sources, 9 VAC 5 Chapter 180 (9 VAC 5-180-10 et seq.) that meets current air quality needs.
3. Amend the existing Regulation for the Control of Motor Vehicle Emissions in the Northern Virginia Area, 9 VAC 5 Chapter 91 (9 VAC 5-91-190 and 9 VAC 5-91-210) to render it consistent with the new regulatory provisions developed pursuant to issue 2 above.

Alternatives: Alternatives to the proposed amendments to the regulation are being considered by the department. The department has tentatively determined that the fourth alternative is appropriate as it is the least burdensome and least intrusive alternative that fully meets the purpose of the regulatory action. The alternatives being considered by the department, along with the reasoning by which the department has rejected any of the alternatives being considered, are as follows:

1. Take no action to amend Rule 4-41. This option was not chosen for the reason specified in 4 below.
2. Repeal Rule 4-41. This option was not chosen because citizens continue to register complaints about visible emissions from motor vehicles. The provisions addressing this problem should, therefore, be retained.
3. Repeal or amend Rule 4-41 and develop a model ordinance which local governments may adopt if they wish to implement a control program similar to that provided by Rule 4-41. This was done with Rule 4-40 (open burning); however, there are important differences between the two programs. Before the deregulation of open burning, many local governments already had

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sufficient and experienced staff capable of overseeing an open burning control program. But virtually no local government has any staff with sufficient experience or expertise to oversee a mobile source control program. To oversee such a program requires considerably more technical skill and resources than does an open burning control program. For instance, a mobile source program requires annual training in the evaluation of visible emissions and in the ability to determine whether air pollution control equipment has been tampered with. Most local governments do not have the funding or staff necessary to enforce such a control program. For these reasons, this option was not chosen.

4. Replace Rule 4-41 with more limited provisions. This option was chosen because the regulation is no longer needed for air quality planning purposes. Since the adoption of Rule 4-41, changes to the State Implementation Plan have resulted in more effective methods to control some of the emissions the regulation was designed to limit. Nonetheless, certain provisions need to be retained, as explained in 2 above.

Public Participation: The department is soliciting comments on (i) the intended regulatory action, to include ideas to assist the department in the development of the proposal, and (ii) the costs and benefits of the alternatives stated in this notice or other alternatives. All comments must be received by the department by 4:30 p.m. on the first business day after public meeting (see information below) in order to be considered. It is preferred that all comments be provided in writing to the department, along with any supporting documents or exhibits; however, oral comments will be accepted at the meeting. Comments may be submitted by mail, facsimile transmission, e-mail, or by personal appearance at the meeting, but must be submitted to Kathleen Sands, Policy Analyst, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia, 23240 (e-mail: krsands@deq.state.va.us) (fax number: (804) 698-4510). Comments by facsimile transmission will be accepted only if followed by receipt of the signed original within one week. Comments by e-mail will be accepted only if the name, address and phone number of the commenter are included. All testimony, exhibits and documents received are a matter of public record. Only comments (i) related to the potential issues, alternatives, and costs and benefits (see supporting information below) as specified in this notice and (ii) provided in accordance with the procedures specified in this notice will be given consideration in the development of the proposed regulation amendments.

A public meeting will be held by the department on February 16, 2001, 9 a.m., at Main Street Center, 600 East Main Street, Lower Level Conference Room, Richmond, Virginia to receive comments on and to discuss the intended action. Information on the date, time, and place of the meeting is published in the Calendar of Events section of the Virginia Register. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

After publication in the Virginia Register of Regulations, the department will hold at least one public hearing to provide

opportunity for public comment on any regulation amendments drafted pursuant to this notice.

Ad Hoc Advisory Group: The department is soliciting comments on the advisability of forming an ad hoc advisory group, utilizing a standing advisory committee or consulting with groups or individuals registering interest in working with the department to assist in the drafting and formation of any proposal. The primary function of any group, committee or individuals that may be utilized is to develop recommended regulation amendments for department consideration through the collaborative approach of regulatory negotiation and consensus. Any comments relative to this issue must be submitted to the agency contact in writing by 4:30 p.m. the last day of the comment period.

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

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

Public comments may be submitted until February 19, 2001.

Contact: Dr. Kathleen Sands, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4413 or FAX (804) 698-4510.

VA.R. Doc. No. R01-69; Filed December 21, 2000, 8:34 a.m.

STATE WATER CONTROL BOARD

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to consider amending regulations entitled: **9 VAC 25-260-5 et seq. Water Quality Standards**. The intent of this rulemaking is to protect designated and beneficial uses of state waters by adopting regulations that are technically correct, necessary and reasonable. These standards will be used in setting Virginia Pollutant Discharge Elimination System Permit limits and for evaluating the waters of the Commonwealth for inclusion in the Clean Water Act § 305(b) report and on the § 303(d) list. Waters not meeting standards will require development of a Total Maximum Daily Load under the Clean Water Act at § 303(e).

This rulemaking is needed because the last triennial review was completed in December 1997 and new scientific information is available to update the water quality standards. Changes to the regulation are also needed to improve permitting and monitoring programs as well as meet EPA priorities for this triennium. In addition, the agency has to fulfill the legal mandates for a three-year review under § 62.1-44.15(3a) of the Code of Virginia and federal regulations 40 CFR Part 131.

Federal and state mandates in the Clean Water Act at § 303(c), 40 CFR Part 131 and the Code of Virginia in § 62.1-44.15(3a) require that water quality standards be adopted, modified or cancelled every three years.

The scope and objective of the Clean Water Act is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. The Clean Water Act at § 303(c)(1)

requires that the states hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards.

The scope of the federal regulations at 40 CFR Part 131 is to describe the requirements and procedures for developing, reviewing, revising and approving water quality standards by the states as authorized by § 303(c) of the Clean Water Act. 40 CFR Part 131 specifically requires the states to adopt criteria to protect designated uses.

The scope and purpose of the State Water Control Law is to protect and to restore the quality of state waters, to safeguard the clean waters from pollution, to prevent and to reduce pollution and to promote water conservation. Section 62.1-44.15 (3a) of the State Water Control Law requires the board to establish standards of quality and to modify, amend or cancel any such standards or policies. It also requires the board to hold public hearings from time to time for the purpose of reviewing the water quality standards, and, as appropriate, adopting, modifying or canceling such standards.

The correlation between the proposed regulatory action and the legal authority identified above is that the amendments being considered are modifications of criteria that will protect designated uses and criteria and designated uses are requirements of the Water Quality Standards.

The authority to adopt standards as provided by the provisions in the previously referenced citations is mandated, although the specific standards to be adopted or modified are discretionary to the Environmental Protection Agency and the state.

Need: The rulemaking is essential to the protection of health, safety or welfare of the citizens of the Commonwealth. Proper water quality standards protect water quality and living resources of Virginia's waters for consumption of fish and shellfish, recreational uses and conservation in general.

Potential issues that may need to be addressed are listed in the alternatives sections. It should be noted that all sections of the regulation are open for comment during this mandated triennial review and a revision, addition or deletion could potentially occur in any section of the regulation. However, major revisions under consideration have been listed in the substance and alternatives sections.

Substance: The existing regulation will be changed to address EPA's national priorities for the states which are described in EPA's Guidance to States, Tribes, and Regions on Priorities for the Water Quality Standards Program for FY 2000-2002, January 1999 (www.epa.gov/OST/standards/2000guid.html). Some of the issues in this EPA document are to complete acceptable antidegradation, mixing zone, narrative criteria and sediment criteria implementation procedures, special protection for endangered and threatened species, updated use designations and biological criteria.

Other issues under consideration for this rulemaking are those items disapproved by EPA under the 1997 triennial review and/or recommended for inclusion in this triennial review. These issues are outlined in a letter from EPA dated August 16, 2000, and include an updated antidegradation

policy that applies to all activities and not just those activities under the jurisdiction of the board. Another issue is that the antidegradation policy must require the highest statutory and regulatory requirements to all new and existing point sources discharges for Tier 2 waters rather than all new and increased point sources. Other issues are updated human health and aquatic life criteria (December 10, 1998, Federal Register Vol. 63, No. 237 and April 22, 1999, Federal Register, Vol. 64, No. 77), identification and designation of exceptional state waters and improved protection of special waters by restricting mixing zones.

The department's staff has also provided many needs to be considered for amendments to the regulation. Some of the needs presented include updated definitions, surface water human health and aquatic life criteria, biological criteria, general criteria, groundwater criteria, groundwater standards, groundwater policies, surface water use designations, "Special Standards" and stream descriptions in the river basin section tables. Also needed are clarified language in the antidegradation section, disinfection policy, temperature criteria, shellfish criteria, variance procedures and water effect ratio procedures. DEQ is also considering new nutrient enriched waters designations, wetlands criteria and uses, whole effluent toxicity criteria, seasonal uses for trout streams, wet weather standards, a copper exemption for reservoirs, a site specific copper criterion for Hampton Roads Harbor and procedural requirements for sampling and monitoring. Other revisions for consideration are the mixing zone policy, halogen ban narrative criterion, saltwater/freshwater delineation and river basin numbering system. A complete reformat of the regulation is also an option being considered.

Alternatives: The following are alternatives for consideration but DEQ staff will work in conjunction with other state and federal agencies to find other alternatives. Alternatives provided by the public will also be considered.

The department has not accepted or rejected any alternatives as of yet. Some alternatives being considered by the agency now include, but are not limited to, the following:

- Whether definitions such as, but not limited to, "acute lethality," "mixing zone concepts," "passing and drifting organisms," "toxic substances," and "beneficial uses" should be included in the regulation,
- Whether the narrative biological criteria (General Criteria with Corresponding Use Designations) should be expanded or at least returned to the 1992 water quality standards general standard language to ensure that the intent is to maintain state waters at such quality to protect all existing beneficial uses and support the propagation and growth of all aquatic life and/or whether specific biological criteria are needed,
- Whether the antidegradation policy needs to add clarifications such as inserting the words "at least" in front of "the level of water quality" in Tier 1 language so that projects that would increase water quality would be allowed to remove the word "instream" in Tier 1 so that offstream uses are protected, to reconstruct the Tier 2 language so that high quality waters will not only be

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maintained when the board has the power to authorize a project or when a change has been socio-economically demonstrated, and to define Tiers 1, 2 and 3 better by placing the different permitting requirements in the regulation,

- Whether whole effluent toxicity criteria (narrative or numerical) should be added to the regulation and/or replace the narrative acute and chronic toxicity criteria,
- Whether mixing zones should be restricted or prohibited for bioaccumulative substances or substances with sediment loading concerns and/or whether mixing zones policy should be clarified in any way (for example, to address tidal mixing, to allow the board's staff to provide demonstrations for the waiver of the mixing zone requirements in 9 VAC 25-260-20 B 4 b, whether the general criteria and use designations can/cannot apply in mixing zones, whether the mixing zone policy should be expanded beyond the acute and chronic criteria),
- Whether the narrative general criteria should apply at all flows (i.e., even below 7Q10) and/or inside mixing zones,
- Whether wetlands should be specifically listed in the regulation or just referenced to an accepted source (National Wetlands Inventory) or procedure for delineation, how many different types of wetlands should be recognized and what alternative criteria should apply in wetlands (e.g., dissolved oxygen, pH, temperature and total suspended solids),
- Whether specific uses to be protected in wetlands should be listed and what these uses should be (for example: hydrologic functions and conditions, flood control, storage or filtration of sediment, nutrients and other pollutants, erosion protection, habitat for flora and fauna),
- Whether language should be added which clarifies that the temperature criteria apply outside mixing zones and/or whether it should be clarified that the rise above natural temperature and the maximum hourly temperature change criteria apply to streams, and/or whether the determination of "natural temperature" should continue to be that temperature due solely to natural conditions without the influence of point-sources,
- Whether EPA's new information for mercury, selenium and arsenic should be incorporated into the criteria and what other new or updated criteria are needed (e.g., atrazine, boron, cobalt, diazinon, diquat, iron, nitroglycerine, nitrophenols, nitrotoluenes, nonylphenol, solids, sulfate, petroleum products, and other criteria published in the December 10, 1998, Federal Register Vol. 63, No. 237 pages 68354-68364),
- Whether CAS numbers should be included in the "Table of Parameters" (9 VAC 25-260-140 B),
- Whether the duration, frequency and recurrence interval for the aquatic life criteria (currently listed as four year and one hour averages not to be exceeded more than once every three years on the average) should be changed,
- Whether the steady state design default flows for the dioxin criteria should be the harmonic mean flow or the mean annual flow and whether the words "average effluent limit" should be deleted from this criterion,
- Whether groundwater criteria, standards and antidegradation policy should be updated, what values should these concentration levels be based on (MCL's, health advisories, etc.) and how existing groundwater remediation and monitoring programs would be affected,
- Whether groundwater criteria, standards and policies should be deleted from the water quality standards and adopted as a separate regulation,
- Whether reservoirs should be exempt from the copper criteria because of the need to use copper to control algae to protect the drinking water use,
- Whether the saltwater copper criterion should be modified to reflect a water effect ratio that has been developed in the Hampton Roads area,,
- Whether water effect ratio implementation procedures should be changed (e.g., is it reasonable to implement water effect ratios as permit case decisions) and their application to criteria should be clarified (e.g., currently it is not clear that the WER factor also applies to saltwater metals criteria),
- Whether variances to water quality standards should be reworded to match the "use removal" language in 9 VAC 25-260-10 G (e.g., variances granted where conditions limit the attainment of the designated use rather than the attainment of the water quality criteria),
- Whether tidal water sampling at slack tide is still appropriate for toxics and if the regulation should define how monitoring and analytical procedures for toxics should be conducted,
- Whether language in the disinfection policy should be clarified (e.g., if tidal cycle and "upstream of shellfish waters" should be revised or defined and/or if disinfection waiver procedures need to be clarified, and/or should the policy be moved to Part VII "Special Standards"),
- Whether seasonal uses for trout streams and naturally occurring temperature violations should be recognized and what different criteria should apply in the different seasons and/or whether the variance allowance for temperature violations in stockable trout waters in Part VI "Procedural Requirements" would be easier to apply if written as a footnote to 9 VAC 25-260-50 and whether DGIF's subclassifications are needed in this regulation and/or whether upstream trout waters should be classified at the same quality as the downstream trout waters,
- Whether the halogen ban has been an effective regulatory tool to protect endangered and threatened species and trout and whether it would be more effective to update the chlorine standard to protect these species or include a dechlorination requirement to these waters and if any other clarifications are needed in this section,

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particularly the variance implementation and review procedures,

- Whether all "Special Standards" should be updated (e.g., Chickahominy River Effluent Standards, Rappahannock River effluent standards (Salem Church Dam), pH standards in the Shenandoah Valley and James River Basin),
- Whether both the median fecal coliform criterion for shellfish waters and the "not more than 10%" fecal coliform criterion for shellfish waters should both apply to a data set,
- Whether a public hearing is needed when the board must deny a proposal that results in shellfish bed condemnation or if any clarifications or changes to the requirements in 9 VAC 25-260-270 are needed,
- Whether new waters should be added to the "nutrient enriched waters designation" and/or whether existing nutrient enriched waters designations should be clarified,
- Whether we should update use designations (e.g., public water supplies, trout streams, recreation, shellfish),
- Whether the regulation should be reformatted so that the reader can easily identify a stream segment and the uses and criteria that apply there,
- Whether the river basin numbering system and the saltwater/freshwater delineation should be revised to match the numbering system in the § 305(b) report,
- Whether the stream classifications (e.g., nontidal Class III or mountainous zone Class IV) are correct or if these classifications are needed,
- Whether wet weather conditions and/or standards should be addressed,
- Whether to include the outstanding EPA issues provided to the department in a letter dated August 16, 2000, from the Regional Administrator of EPA III. These issues include an updated antidegradation policy that applies to all activities and not just those activities under the jurisdiction of the board, an antidegradation policy that requires the highest statutory and regulatory requirements to all new and existing point sources discharges for Tier 2 waters rather than all new and increased point sources, updated human health and aquatic life criteria (December 10, 1998, Federal Register Vol. 63, No. 237 and April 22, 1999, Federal Register, Vol. 64, No. 77), an identification and designation of exceptional state waters and an improved protection of special waters by restricting mixing zones.

Public Participation: The board is seeking comments on the intended regulatory action, including ideas to assist in the development of a proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Anyone wishing to submit written comments for the public comment file may do so at the public meeting, by mail, or by email to emdaub@deq.state.va.us. Written comments must include the name and address of the commenter. In order to be

considered comments must be received by the close of the comment period.

A public meeting will be held on March 1, 2001, at 2 p.m. in Richmond, Virginia. Notice of the meeting can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory Approach: The board seeks comment from the public on whether to use the participatory approach to assist the agency in the development of a proposal.

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

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

Public comments may be submitted until March 30, 2001.

Contact: Eleanore Daub, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4111.

VA.R. Doc. No. R01-78; Filed January 5, 2001, 9:22 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to consider promulgating regulations entitled: **9 VAC 25-650-10 et seq. Closure Plans and Demonstration of Financial Responsibility.** The purpose of the proposed action is to establish requirements for closure plans and demonstration of financial responsibility from owners of certain privately-owned sewerage system or sewerage treatment works.

Need: The unanticipated abandonment of a sewage treatment facility by its owner or operator creates a substantial and imminent threat to the public health or the environment because of the facility ceasing operations while still receiving sewage. When a sewage treatment facility is privately owned, there exists the threat of cessation of operations at the facility resulting from abandonment such that it would be reasonable to expect that operation at the facility will not be resumed by the owner or operator. When such a facility treats domestic waste generated by private residences, abatement of sewage flow to the facility is often impractical or impossible, as this may require the condemnation of property and eviction of homeowners or residents. Therefore, untreated sewage may be discharged directly to state waters, resulting in a substantial and imminent threat to public health and the environment. To protect public health and the environment, it has become necessary to continue operation of such facilities and/or connect to a publicly owned sewage treatment works using public funds.

To ensure that there is a plan in place for continued operation in the event that a privately-owned sewage treatment system ceases operation because of abandonment and to reduce the potential for continued operation of such system using public funds, the State Water Control Board has determined that a closure plan and the demonstration of financial capability to implement the plan is appropriate.

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Potential issues that may need to be addressed as the regulation is developed include the following:

1. Sections 62.1-44.15:1.1 and 62.1-44.18:3 have identical requirements regarding closure plans and demonstration of financial capability. However, § 62.1-44.18:3 is very specific as to the population of facilities to which the law applies. Section 62.1-44.15:1.1 is not specific at all in this regard. The issue is, therefore, to what facilities other than as specified in § 62.1-44.18:3 the regulation will apply.
2. The instruments by which the State Water Control Board can require closure plans and demonstration differ under the two sections of the State Water Control Law. Section 62.1-44.15:1.1 limits the board to the issuance of special orders in compliance with the Administrative Process Act, whereas § 62.1-44.18:3 does not. The issue is that if the population of facilities to which the regulation applies is expanded beyond those specified in § 62.1-44.18:3, this disparity will need to be addressed in the regulation.
3. If a facility is sold or transferred in the ordinary course of business or a permit transfer in accordance with board regulations is effected, the board may be required to return the instrument of financial assurance to the previous owner or operator or permit holder. The potential then exists for cessation of operations after return of the instrument of financial assurance to the previous owner or operator but before receipt of financial assurance from the new owner or operator. For the regulation to be effective, the board needs to ensure the new owner or operator will satisfy the financial assurance requirements.

Substance: This proposed regulation will require owners or operators of privately-owned sewerage systems or sewerage treatment works to file with the State Water Control Board a closure plan to abate, control, remove, or contain any substantial or imminent threat to public health or the environment that is reasonably likely to occur if such facility ceases operations. Such plan shall also include a demonstration of financial capability to implement the plan. Financial capability may be demonstrated by the creation of a trust fund, a submission of a bond, a corporate guarantee based upon audited financial statements, or such other instruments as the board may deem appropriate.

The regulation would not apply to facilities that qualify for a VPDES general permit for facilities that discharge 1,000 gallons per day or less. For those systems or works discharging more than 1,000 gallons per day and less than 40,000 gallons per day, the requirements will be incorporated into the VPDES permitting process. The regulation will require submittal of the closure plan as part of the application for a VPDES permit and compliance with the regulation will become an enforceable condition of the permit. In addition, the proposed regulation will include systems or works discharging 40,000 gallons or more per day (those subject to § 62.1-44.15:1.1). These systems or works will be required to submit a closure plan and financial assurance documentation through a special order, not a VPDES permit, and the requirement would be a condition for discharge to state

waters. The proposed regulation will address the different means of requiring closure plans and, if possible, result in a single method of requiring closure plans preferably through the permitting process instead of an enforcement mechanism.

For the purposes of the regulation, a privately-owned sewerage system or privately-owned sewage treatment works will be defined as a facility that treats wastes generated by private residences. Private residences include, but are not limited to, single family homes, townhouses, condominiums, mobile homes, and apartments.

For the purposes of the regulation, "ceases operation" will mean to cease conducting the normal operation of a facility under circumstances where it would be reasonable to expect that such operation will not be resumed by the owner or operator at the facility. The term shall not include the sale or transfer of a facility in the ordinary course of business or a permit transfer in accordance with board regulations.

Alternatives: The Department of Environmental Quality will be considering alternatives in the development of this regulation. Although several alternatives are presented here, it is anticipated that additional alternatives may be considered during the development of the regulation and the public participation process. Although one alternative presented (Alternative 6) currently forms the basis for the proposed regulation, no one alternative is currently recommended by the Department of Environmental Quality. However, some alternatives under consideration are not recommended. Alternatives already considered or to be considered include, but are not limited to, the following:

1. No Action Alternative. This alternative is not recommended. Section 62.1-44.18:3 of the Code of Virginia mandates that the Department of Environmental Quality promulgate regulations necessary to carry out the provisions of the section.
2. Limit Regulation to Facilities Identified in § 62.1-44.18:3 of the Code of Virginia. This alternative is under consideration but is not recommended. Section 62.1-44.18:3 requires that the State Water Control Board promulgate regulations to implement the provisions of the act to be effective within 280 days of its enactment. To meet this requirement, the Department of Environmental Quality is developing an emergency regulation in accordance with § 9-6.14:4.1(c)(5) of the Administrative Process Act. Section 62.1-44.15:1.1 of the Code of Virginia contains requirements for closure plans and demonstration of financial capability identical to the requirements of § 62.1-44.18:3, but does not restrict the population of facilities to which it applies to those discharging more than 1,000 gallons per day and less than 40,000 gallons per day. The threat to public health or the environment created if a privately-owned sewage treatment system ceases to operate is not diminished if such a facility discharges in excess of 40,000 gallons per day. Therefore, the population of facilities subject to regulation should be increased, as authorized under § 62.1-44.15:1.1 of the Code of Virginia.
3. Apply Regulation to All Facilities Permitted by the State Water Control Board. This alternative is not

Notices of Intended Regulatory Action

recommended. Under this alternative the regulation would apply to all facilities subject to the Virginia Pollution Elimination System (VPDES) Permit Regulation (9 VAC 25-31-10 et seq.) or to the Virginia Pollution Abatement (VPA) Permit Regulation (9 VAC 25-32-10 et seq.). The intent of the regulation is to reduce the potential for continued operation of privately-owned sewage treatment systems using public funds. Under this alternative, municipal sewage treatment systems, which are already operated using public funds, would be included. Therefore, this alternative is considered overly intrusive and burdensome.

4. Apply Regulation to All Privately Owned Facilities Permitted by the State Water Control Board. This alternative is under consideration. Under this alternative the regulation would apply to all privately-owned facilities subject to the Virginia Pollution Elimination System (VPDES) Permit Regulation (9 VAC 25-31-10 et seq.) and discharges subject to the Virginia Pollution Abatement (VPA) Permit Regulation (9 VAC 25-32-10 et seq.). This alternative is less intrusive than the previous alternative in that publicly-owned treatment facilities would be excluded.

Privately-owned facilities that treat wastes generated by industrial facilities and pollution management activities would be required to submit a plan and demonstration of financial assurance. This alternative would thereby reduce the potential that proper decommissioning and closure of such treatment facilities would not need to be performed using public funding in the event of facility abandonment. Pollution management activities, as defined by the VPA Permit Regulation, include, but are not limited to: animal feeding operations, storage or land application of sewage, sludge, industrial waste or other waste; or the complete reuse or recycle of wastewater.

5. Apply Regulation to All Privately-Owned Sewage Treatment Systems Permitted by the State Water Control Board that Treat Domestic Waste Generated by Private Residences. This alternative is under consideration. Under this alternative the regulation would apply to all privately owned facilities subject to the Virginia Pollution Elimination System (VPDES) Permit Regulation (9 VAC 25-31-10 et seq.) or the Virginia Pollution Abatement (VPA) Permit Regulation (9 VAC 25-32-10 et seq.) that treat domestic waste generated by private residences. This alternative further reduces the population of affected facilities by limiting the regulation to privately owned facilities and pollution management activities that treat or handle domestic sewage and/or treatment by-products generated by private residences.

6. Apply Regulation to Privately Owned Sewage Treatment Systems subject to the Virginia Pollution Discharge Elimination System (VPDES) Permit Regulation (9 VAC 25-31-10 et seq.) that Treat Domestic Waste Generated by Private Residences. This alternative is under consideration and forms the current basis for the proposed regulation. It is the least intrusive and burdensome alternative under consideration that addresses the requirements of both §§ 62.1-44.15:1.1

and 62.1-44.18:3 of the Code of Virginia. This alternative limits the population of facilities to those subject to the VPDES permit regulation and treats domestic sewage generated by private residences. Facilities that exclusively treat industrial wastes and pollution management activities subject to the VPA Permit Regulation (9 VAC 25-32-10 et seq.) are excluded from the regulation in this alternative.

Public Participation: The board is seeking comments on the intended regulatory action, including ideas to assist in the development of a proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Public meetings were held during January in various locations around the state.

More information on the meetings may be found in the Calendar of Events section of the Virginia Register of Regulations.

Participatory Approach: The board seeks comment from the public on whether to use the participatory approach to assist the Department of Environmental Quality in the development of the proposed regulation. If sufficient interest is shown, the Department of Environmental Quality intends to form a Technical Advisory Committee (TAC) of affected owners or operators, environmental organizations, citizen groups, private citizens and other interested parties. Therefore, concerned parties interested in participating in a TAC are encouraged to show such interest by attending the public meeting or by contacting the individual named below.

The decision to form a TAC will be made based on the level of interest and public input received at the public meeting.

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

Statutory Authority: §§ 62.1-44.18:3 and 62.1-44.15(10) of the Code of Virginia.

Public comments may be submitted until February 1, 2001.

Contact: Jon van Soestbergen, P.E., Office of Water Permit Programs, Division of Water Program Coordination, Department of Environmental Quality, 629 East Main Street, P.O. Box 10009, Richmond, VA 23240, voice (804) 698-4117, FAX (804) 698-4032, e-mail jvansoest@deq.state.va.us.

VA.R. Doc. No. R01-50; Filed November 14, 2000, 8:47 a.m.



TITLE 12. HEALTH

STATE BOARD OF HEALTH

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to consider promulgating regulations entitled: **12 VAC 5-31-10 et seq. Virginia Emergency Medical Services Regulations.** The purpose of the proposed action is to

Notices of Intended Regulatory Action

consolidate diverse provisions and place them in a logical order, remove outdated provisions, and reflect current technological standards. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 32.1-111.3 of the Code of Virginia.

Public comments may be submitted until February 16, 2001.

Contact: Dave Cullen, Regulatory and Compliance Manager, Department of Health, 1538 E. Parham Rd., Richmond, VA 23228, telephone (804) 371-3500 (Ext. 3512) or FAX (804) 371-3543.

VA.R. Doc. No. R01-71; Filed December 20, 2000, 12:39 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to consider promulgating regulations entitled: **12 VAC 5-407-10 et seq. Regulations for the Submission of Health Maintenance Organization Quality of Care Performance Information.** These regulations, required by Senate Bill 533 (2000 Acts of Assembly, c. 897) will help Virginia consumers make informed health insurance decisions by requiring the annual submission of HMO quality of care performance information. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 32.1-276.3, 32.1-276.4, 32.1-276.5 and 32.1-276.8 of the Code of Virginia.

Public comments may be submitted until February 16, 2001.

Contact: Margot Fritts, Senior Policy Analyst, Department of Health, P.O. Box 2448, Richmond, VA 23218, telephone (804) 892-0808 or FAX (804) 371-0116.

VA.R. Doc. No. R01-70; Filed December 20, 2000, 12:39 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to consider amending regulations entitled: **12 VAC 5-408-10 et seq. Certificate of Quality Assurance of Managed Care Health Insurance Plan (MCHIP) Licensees.** The purpose of the proposed action is to amend the regulation where necessary, including, but not limited to (i) providing criteria to grant variances, (ii) clarifying the exemptions regarding preferred provider organizations (PPOs) to better address the unique aspects of this type of managed care health insurance plan, (iii) providing better distinction between the plan and the plan's licensees, and (iv) reviewing the Utilization Review and Management section to ensure appropriate application. The intended amendments will be designed to (i) respond to affected parties' concerns, (ii) resolve identified issues, and (iii) clarify the protections that assure the quality of care and services provided to MCHIP enrollees.

Statutory Authority: § 32.1-137.3 of the Code of Virginia.

Public comments may be submitted until March 1, 2001.

Contact: Rene Carbral-Daniels, Senior Policy Analyst, Department of Health, 3600 W. Broad St., Suite 216, Richmond, VA 23230, telephone (804) 367-2100 or (804) 367-2149.

VA.R. Doc. No. R01-77; Filed January 4, 2001, 3:36 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled: **12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care Services.** The purpose of the proposed action is to add the coverage of certain substance abuse treatment services to the State Plan for Medical Assistance. 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 31, 2001, to Catherine Hancock, Analyst, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

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

VA.R. Doc. No. R01-62; Filed December 11, 2000, 1:46 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

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 85-50-56, 18 VAC 85-50-115 and 18 VAC 85-50-170. Regulations Governing the Practice of Physician Assistants.** The purpose of the proposed action is to (i) streamline the renewal process, reduce paperwork, and make the process of oversight of Continuing Education and renewal consistent with other regulated professions; (ii) clarify that the regulation addresses routine duties of the physician assistant; and (iii) move the section concerning fees to the beginning of the regulation for consistency with regulations of other professions. The agency intends to hold a public hearing on the proposed regulation after publication.

Notices of Intended Regulatory Action

Statutory Authority: §§ 54.1-2400 and 54.1-2951.1 of the Code of Virginia.

Public comments may be submitted until February 14, 2001.

Contact: William L. Harp, 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. R01-63; Filed December 14, 2000, 12:33 p.m.

BOARDS OF NURSING AND 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 Boards of Nursing and Medicine intend to consider amending regulations entitled: **18 VAC 90-40-10 et seq. Regulations Governing the Prescriptive Authority for Nurse Practitioners.** The purpose of the proposed action is to provide less burdensome requirements for site visits and chart reviews by supervising physicians, to make changes related to expanded prescriptive authority, and to clarify requirements or terminology that are not easily understood. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-2400 and 54.1-2957.01 of the Code of Virginia.

Public comments may be submitted until March 1, 2001.

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909 or FAX (804) 662-9943.

VA.R. Doc. No. R01-83; Filed January 10, 2001, 11:39 a.m.

BOARD OF PHARMACY

† 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 Pharmacy intends to consider amending regulations entitled: **18 VAC 110-20-10 et seq. Regulations Governing the Practice of Pharmacy.** The purpose of the proposed action is to consider amendments in compliance with requirements of Chapter 876 of the 2000 Acts of the Assembly for the establishment of innovative (pilot) projects in pharmacy. Regulations would establish applicable fees for approval of such projects and would replace emergency regulations currently in effect. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.

Public comments may be submitted until March 1, 2001.

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9911 or (804) 662-9943.

VA.R. Doc. No. R01-82; Filed January 10, 2001, 11:39 a.m.

BOARD OF PSYCHOLOGY

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 Psychology intends to consider amending regulations entitled: **18 VAC 125-30-10 et seq. Regulations Governing the Certification of Sex Offender Treatment Providers.** The purpose of the proposed action is to redistribute the hours required in the five sex offender treatment training areas to put greater emphasis on the more essential areas; change generic fees to conform with the fees of other boards in the agency; and make other minor changes for clarification. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-2400 and 54.1-3605 of the Code of Virginia.

Public comments may be submitted until February 14, 2001.

Contact: Evelyn Brown, Executive Director, Board of Psychology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9967 or FAX (804) 662-7250.

VA.R. Doc. No. R01-73; Filed December 27, 2000, 10:07 a.m.

TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR THE DEAF AND HARD-OF-HEARING

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department for the Deaf and Hard-of-Hearing intends to consider amending regulations entitled: **22 VAC 20-20-10 et seq. Regulations Governing Eligibility Standards and Application Procedures of the Distribution of Technological Assistive Devices.** The purpose of the proposed action is to add a requirement for program participants to provide proof of income and proof of residency. In addition, definitions and language will be updated for accuracy and clarity. The agency intends to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until March 2, 2001.

Contact: Leslie G. Hutcheson, Regulatory Coordinator, Department for the Deaf and Hard-of-Hearing, 1602 Rolling

Notices of Intended Regulatory Action

Hills Dr., Suite 203, Richmond, VA 23229-5012, telephone
(804) 662-9703 or FAX (804) 662-9718.

VA.R. Doc. No. R01-68; Filed December 15, 2000, 12:19 p.m.



PUBLIC COMMENT PERIODS - PROPOSED REGULATIONS



PUBLIC COMMENT PERIODS REGARDING STATE AGENCY REGULATIONS

This section gives notice of public comment periods and public hearings to be held on proposed regulations. The notice will be published once at the same time the proposed regulation is published in the Proposed Regulations section of the *Virginia Register*. The notice will continue to be carried in the Calendar of Events section of the *Virginia Register* until the public comment period and public hearing date have passed.

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

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

March 30, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-50-10 et seq., Amount, Duration and Scope of Medical and Remedial Care Services, 12 VAC 30-80-10 et seq., Methods and Standards for Establishing Payment Rates--Other Types of Care, and 12 VAC 30-120-10 et seq. Waivered Services (Individual and Family Developmental Disability Support Waiver)**. The purpose of the proposed amendments is to establish the program and provider requirements, service limitations and coverage, and recipient eligibility standards for the new DMAS program entitled Individual and Family Developmental Disability Support Waiver.

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

Public comments may be submitted until March 30, 2001, to Karen Lawson, Analyst, Division of Long-Term Care, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959 or FAX (804) 786-1680.

March 30, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-90-10 et seq. Methods and Standards for Establishing Payment Rates--Long-Term Care (2000 Nursing Home Payment System)**. The purpose of the proposed amendments is to

implement increased payments for operating costs and implement a new capital payment methodology (Fair Rental Value), both of which are authorized by the 2000 Appropriation Act.

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

Public comments may be submitted until March 30, 2001, to Stan Fields, Director, Cost Settlement and Audit Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959 or FAX (804) 786-1680.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF COUNSELING

February 1, 2001 - Noon -- Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

March 30, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 that the Board of Counseling intends to amend regulations entitled: **18 VAC 115-60-10 et seq. Regulations Governing the Licensure of Substance Abuse Treatment Practitioners**. The purpose of the proposed action is to amend fees in accordance with statutory requirements for the board to collect sufficient revenue to cover the expenditures of administering the regulatory program.

Statutory Authority: § 54.1-2400 and Chapter 35 (§ 54.1-3500 et seq.) of Title 54.1 of the Code of Virginia.

Contact: Evelyn Brown, Executive Director, Board of Counseling, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9967, FAX (804) 662-9943, or (804) 662-7197/TTY ☎

Public Comment Periods - Proposed Regulations

BOARD OF PSYCHOLOGY

February 8, 2001 - 3:30 p.m. -- Public Hearing
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 1, Richmond, Virginia.

March 30, 2001 - Public comments may be submitted until
this date.

Notice is hereby given in accordance with § 9-6.14:7.1
that the Board of Psychology intends to amend
regulations entitled: **18 VAC 125-20-10 et seq.**
Regulations Governing the Practice of Psychology.
The purpose of the proposed action is to establish
continuing education requirements for licensure renewal
and an inactive status for licensed individuals who are
not actively practicing psychology in Virginia.

Statutory Authority: §§ 54.1-2400 and 54.1-3606.1 of the
Code of Virginia.

Contact: Evelyn Brown, Executive Director, Board of
Psychology, 6606 W. Broad St., 4th Floor, Richmond, VA
23230, telephone (804) 662-9967, FAX (804) 662-9943, or
(804) 662-7197/TTY ☎

PROPOSED REGULATIONS

For information concerning Proposed Regulations, see Information Page.

Symbol Key

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

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **Individual and Family Developmental Disabilities Support Waiver.**

12 VAC 30-50-10 et seq. Amount, Duration and Scope of Medical and Remedial Care Services (adding 12 VAC 30-50-490).

12 VAC 30-80-10 et seq. Methods and Standards for Establishing Payment Rates--Other Types of Care (amending 12 VAC 30-80-110).

12 VAC 30-120-10 et seq. Waivered Services (adding Part XI: 12 VAC 30-120-700 through 12 VAC 30-120-799).

Statutory Authority: § 32.1-325 of the Code of Virginia and Item 319 T of Chapter 1073 of the 2000 Acts of Assembly.

Public Hearing Date: N/A -- Public comments may be submitted until March 30, 2001.

(See Calendar of Events section for additional information)

Agency Contact: Victoria Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, Virginia 23219, telephone (804) 786-7959 or FAX (804) 786-1680.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia grants to the Director of the Department of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance in lieu of board action pursuant to the board's requirements.

Federal provisions governing home and community-based services waivers are found in § 1915 (c) of the Social Security Act. Under this authority, states can waive the federal requirements for statewide service coverage, comparability of services, and community income and resource rules. This waiver capability affords states the flexibility to design waivers selecting the mix of services that best meet the needs of the targeted waiver populations.

In order to develop a waiver to specifically serve persons with developmental disabilities who do not have a diagnosis of mental retardation, there must be an alternative institutional placement. 42 CFR 435.1009 states that the institutional placement for individuals with related conditions is an institution for the mentally retarded or persons with related conditions. In Virginia, this institution is called an Intermediate Care Facility for the Mentally Retarded (ICF/MR). Although many individuals with developmental disabilities do not have mental retardation, many of the

services offered in an ICF/MR are more appropriate for these individuals than standard services offered in nursing facilities. Currently, Virginia has very few institutional placements for individuals with developmental disabilities.

Purpose: The purpose of this action is to promulgate permanent regulations for the Individual and Family Developmental Disabilities Support Waiver (DD Waiver). These regulations will help improve the health and welfare of families with children and adults who are affected by developmental disabilities. These regulations will provide community support services to enable these children and adults to live successfully in their homes and communities.

Substance: The 1999 General Assembly, through Item 335.LL of the 1999 Appropriation Act, mandated that the Director of the Department of Medical Assistance Services develop a new Medicaid-funded home- and community-based care waiver for persons with developmental disabilities, including persons with autism, to offer a full array of appropriate, flexible individual-and family-driven control of services to meet individuals' needs. The 2000 Appropriation Act specifically required that persons with autism be included in this waiver proposal to the federal government.

In order to comply with this mandate, DMAS convened a workgroup composed of representatives from various state agencies, consumers, families, advocates, and public and private providers to assist with the development of the waiver proposal. The members of the workgroup represented are the Brain Injury Association of Virginia; Centers for Independent Living; Consumer Representatives for Persons with Disabilities; Consumer Service Boards; the Department of Education; the Department of Medical Assistance Services; the Department of Mental Health, Mental Retardation and Substance Abuse Services; the Department of Rehabilitative Services; the Department for the Rights of Virginians with Disabilities; the Department of Social Services; Disability Service Boards; the Epilepsy Association of Virginia; the Epilepsy Foundation of Virginia; family representatives for persons with disabilities; UCP of Washington & Northern Virginia; the Virginia Association for Home Care; the Autism Program of Virginia (TAP-VA); the Virginia Board for People with Disabilities; and the Virginia Network of Private Providers.

WAIVER ELIGIBILITY

"Developmentally disabled" is a term used to refer to individuals who have mental retardation, as well as a "related condition" to mental retardation. However, states distinguish between individuals with mental retardation and individuals with related conditions when developing waivers such as this one.

Since individuals up to age six with developmental disabilities and individuals with mental retardation are already being served through the Mental Retardation Home and Community

Proposed Regulations

Based Services waiver, the DD waiver will be available only to individuals age six and older who meet the "related conditions" requirements as defined in 42 CFR 435.1009.

In addition to the above requirements, the individual cannot have, for purposes of this new waiver service, a diagnosis of mental retardation as defined by the American Association on Mental Retardation (AAMR). An individual must meet all of the following criteria:

1. The individual must meet the ICF/MR level of care, as established at 42 CFR 435.217 and 435.1009. This will be determined through a screening process conducted by qualified individuals under contract with DMAS;
2. The individual's monthly income must not exceed 300% of the SSI income level. Currently this amount is \$1,536 and increases in January of each year. The income of parents would not be deemed to a child; and
3. No individual can be enrolled in more than one waiver at a time.

WAIVER SERVICES

All individuals determined eligible to receive services in the DD waiver will have a case manager (support coordinator). Only individuals who are also receiving other DD waiver services will receive Medicaid-funded DD support coordination. No individuals will receive only IFDDS support coordination without other waiver services as well.

Individuals will select a support coordinator who will assist them and their families with accessing needed medical, psychiatric, social, educational, vocational, and other services essential to meeting the individuals' needs. Support coordinator services will include: assessment and planning (including referrals) services; linking the individuals to services and supports specified in the Individualized Service Plan (ISP); assisting the individuals (or family) directly to develop or obtain needed resources, including crisis assistance supports; coordinating services and treatment planning with other agencies and providers; enhancing community integration; monitoring service delivery (including assessment and reassessment of program participant level of care, oversight of the cost effectiveness of services, review of plans of care at designated intervals); and benefits counseling. Support coordination providers will not be permitted to be service delivery providers.

The services that will be offered under the IFDDS waiver include adult companion care, assistive technology, personal emergency response systems, crisis intervention/stabilization, environmental modifications, in-home residential supports, skilled nursing services, supported employment, therapeutic consultation, family and caregiver training, day support, personal care, respite care, and consumer-directed personal services (attendant and consumer-directed respite care).

DMAS asked the workgroup to provide projections of the potential number of individuals who could be eligible for the IFDDS waiver. Because Virginia does not serve individuals with developmental disabilities without diagnoses of mental retardation in state funded ICF/MRs, there was no institutional population from which to determine potential numbers of eligible individuals. The projections contained in Appendix E

were provided by the workgroup and DMAS. A method for initial acceptance into the waiver will include an initial application period of sixty days, beginning July 1, 2000, and ending August 31, 2000. This application period will be followed by an assessment of all applications based on established criteria. Applicants will be placed on the IFDDS waiver in accordance with available funding.

These regulations are essential to the health and welfare of developmentally disabled citizens. Prior to the onset of this waiver service, these affected individuals were either situated in their homes with little to no ability to function or institutionalized in other states far from their families and support systems. Because this waiver itself and the design of the service system are new, DMAS also believes that the mechanics of the program should be well established before expansion is sought. The long-term interests of the recipients of these services will be best served by a well-designed and functioning system. DMAS will work with consumers and providers to firmly establish this waiver program while maintaining cost effectiveness.

Issues: The primary advantage for the Commonwealth's citizens will be that developmentally disabled individuals will be able to live as independently as possible in their communities. It will allow some of these individuals to live on their own and enable others to remain with their families. To the extent of their abilities, they will be able to function in their communities, attending school and obtaining employment. The only disadvantage of this waiver is the limited funding which is expected to be exceeded by the demand for these services. Therefore, the agency projects no other negative issues involved in implementing this proposed change.

Fiscal Impact: The Medicaid-funded IFDDS program will be offered under a Social Security Act § 1915(c) home and community-based-care waiver which must be a cost-effective alternative to institutionalization. Including medical funding and administrative costs, the waiver is projected to cost \$8 million (\$3.8 million GF) in FY 2001 and \$11 million (\$5.3 million GF) in FY 2002. The Governor and General Assembly approved these amounts in the 2000 Appropriation Act. The appropriations for the waiver are sufficient to fund at least 254 individuals in FY 2001 and 323 individuals in FY 2002 positions in the waiver.

Reimbursement for case management services will be handled through the agency's existing fee-for-service methodology as reflected in 12 VAC 30-80-110.

FEDERAL COST-EFFECTIVENESS STANDARD

In order for HCFA to approve a HCBS waiver, it must be cost effective. A waiver can be cost effective in the aggregate or can be individually cost effective. Aggregate cost effectiveness means that the average cost to Medicaid of individuals on the waiver cannot exceed the average cost to Medicaid of individuals in the alternative institutional placement. Individual cost effectiveness means that an individual's expected waiver costs cannot exceed those of an individual's institutional expected cost. Regardless of the method the state chooses to determine cost effectiveness, aggregate costs are reported to HCFA.

There are arguments for adopting either method of determining cost effectiveness. The work group felt very strongly that aggregate cost effectiveness should be used. However, without some cost controls built into the IFDDS Waiver, all funds could be used by a small number of high cost individuals, leaving families who need some or moderate supports without services. This could thus increase the likelihood that these lower-cost family placements will fail and will increase the need for out-of-home (institutional) placements.

States are beginning to use other options in lieu of the "all or nothing" approach that has been the norm. The DMAS has secured HCFA approval of an approach geared to controlling costs while providing as much consumer choice as possible. DMAS believes that most individuals, given an array of services, will choose those that best meet their needs and are the most cost effective. The services chosen would have to be necessary to avoid institutionalization and the Consumer Service Plan (care plan) would need to be developed subject to approval by DMAS.

In order to assure cost effectiveness of this waiver, funds would be allocated between two "budget" levels to assure that, on the average, and DMAS does not exceed cost effectiveness. For this waiver, DMAS will establish a threshold for waiver costs for recipients in "level one" at approximately \$25,000. Recipients whose care plans exceed \$25,000 per year will be funded in "level two." There would not be a budget threshold for "level two." Regardless of the budget level an individual comes under, coverage of all individuals under this waiver program will be limited to available funding.

DMAS, upon the workgroup's recommendation, has targeted 55% of waiver funds to level one and targeted 40% of waiver funds to level two. The remaining 5.0% of funds would be allocated for emergencies. While the primary purpose of this bi-level cost allocation is to assure that the waiver remains cost effective, with good support coordination and stewardship of funds, it may be possible to serve more than the projected number of individuals. If individuals who cost up to or more than the actual institutional cost are covered, the potential number of waiver recipients served would decrease. The unknown factors are the cost of nonwaiver Medicaid covered services and the actual cost of recipients who would be eligible for services.

Since family dynamics change, sometimes rapidly, some funds will be set aside for emergency situations. These funds would be distributed according to emergency criteria that have been developed in conjunction with the workgroup and are located at 12 VAC 30-120-850.

There are no localities that are uniquely affected by these regulations as they apply statewide.

The following provider groups are expected to experience an expansion in their patient loads in providing these new waiver services: home health agencies, personal care agencies, and respite/attendant care providers. These providers who are already enrolled with Medicaid providing services to other individuals are being automatically enrolled to provide DD Waiver services. Some provider groups (family caregiver

training, companion care, personal emergency response systems) will have new opportunities to expand their patient populations to those served by Medicaid.

Funding Source/Cost to Localities/Affected Entities: The Department of Medical Assistance Services is established under Title 32.1, Chapter 10, of the Code of Virginia and receives federal financial participation pursuant to Title XIX of the Social Security Act (42 USC §§ 1396 through 1396v). The Virginia Medicaid Program is funded with both federal and state funds. The current federal funding participation (FFP) for medical assistance expenditures is 51.85%, which became effective on October 1, 2000.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 25 (98). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The proposed regulation establishes the policies and procedures for a new Medicaid home and community-based care waiver to serve individuals and families of individuals with developmental disabilities. The waiver is currently operating under emergency regulations that went into effect July 1, 2000.

Under the Individual and Family Developmental Disabilities Support Waiver (DD Waiver), certain Medicaid eligible individuals may become eligible to receive a wide array of home and community-based services that are not otherwise available to Medicaid eligible individuals. These services include: in-home residential supports, day support, supported employment, personal care (agency-directed), attendant care (consumer-directed), respite care (both agency- and consumer-directed), assistive technology, environmental modifications, nursing services, therapeutic consultation, crisis stabilization, personal emergency response systems (PERS), family and caregiver training, and companion care.

The eligibility criteria for these home-based services under the DD Waiver can be summarized as follows:

1. The person must be at least six years old and have a severe, chronic disability attributable to cerebral palsy, epilepsy or autism; or any other condition, other than mental illness, found to be closely related to mental retardation that is expected to continue indefinitely.
2. The person must not have a diagnosis of mental retardation.
3. The person must be eligible under current Medicaid criteria for placement in an Intermediate Care Facility for the Mentally Retarded (ICF/MR).

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4. Monthly income must not exceed 300% of the SSI income level (currently \$1,536). (The income of parents is not deemed to a child.)

Estimated economic impact. Currently, the only options available to Medicaid eligible individuals with developmental disabilities are institutional or remaining in the community where little or no support services are available. Some individuals with developmental disabilities may currently be inappropriately receiving services through the Elderly and Disabled (E&D) Waiver. The proposed DD Waiver will offer a full array of appropriate and flexible services to meet each participant's needs. By providing appropriate community support services, the new waiver will enable participants to live successfully in their homes and communities, as they may not have been able to before.

DMAS does not know exactly how many individuals might qualify for participation in the DD Waiver. Estimates of the number of people who might be eligible range from 2,500 to 3,000 Virginia citizens. The current appropriation is sufficient to provide services for approximately 254 individuals in FY 2001 and 323 individuals in FY 2002. Since the number of eligible participants will likely greatly exceed the current funding, this regulation includes a method of selecting from among eligible participants. During the initial implementation of the program, from July 1 through August 31, 2000, all applications were treated on an equal basis. Since the total cost for all eligible applicants was expected to exceed the available funding, DMAS randomly assigned a waiting list number to all applicants applying during this initial 60-day period. After this period, applicants will be added to the list on a first-come, first-served basis, and will be further screened and provided services depending on the availability of funds.

In order to ensure the cost effectiveness of this waiver (required in order to receive federal matching funds), DMAS has designed a dual-level waiting list strategy. Applicants with Consumer Service Plans (care plan) below \$25,000 will be added to one list (Level 1) and applicants with care plans above \$25,000 will be added to a second list (Level 2). DMAS has targeted 55% of the available waiver funds to Level 1 and 40% of waiver funds to Level 2. The remaining 5.0% of funds would be allocated for emergencies. This dual-level waiting list strategy is intended to ensure that the waiver program is a cost-effective alternative to institutionalization in the aggregate (i.e., the average cost of care for individuals on the waiver will not exceed the average cost of an institutional placement).

Total Medicaid costs for an individual in an ICF/MR are approximately \$90,000 annually. The total Medicaid costs for participants in the DD Waiver program are expected to average around \$30,000 annually. For some individuals, therefore, the new waiver will reduce expenditures while providing more appropriate services. However, while some participants are likely to be moving from an ICF/MR facility to a home-based care setting under this waiver, it is expected that many waiver applicants will not be from such facilities. These might include participants in the Elderly and Disabled Waiver, individuals who have sought placement in an ICF/MR but have been unable to find an open facility, and those who have preferred to live outside of an institutional setting. Many

of these individuals may have current Medicaid costs substantially under the average cost of waiver (\$30,000) and, once admitted to the DD Waiver will, therefore, result in an increase in overall expenditures. The 2000 Appropriation Act provided \$8 million in FY 2001 and \$11 million in FY 2002 in funding for the DD Waiver.

The benefits of this proposed regulation include providing appropriate community support services to enable individuals with development disabilities to live successfully in their homes and communities, as they may not have been able to before. The costs are the increased expenditures associated with providing additional services to Medicaid eligible individuals. These expenditures are limited at \$8 million in FY 2001 and \$11 million in FY 2002. Since participation in the waiver is voluntary, it can be expected that participants, or those making decisions on behalf of the participants, believe the services offered under the waiver to be preferable to other alternatives. If the cumulative benefits that program participants receive from being cared for in a home setting outweigh the costs to taxpayers, this regulation will result in a net economic benefit. However, valuation of the benefit of receiving services at home rather than in an institutional or other setting is a subjective matter. Thus, determining whether the cumulative benefit exceeds the costs (\$8 million in FY 2001 and \$11 million in FY 2002) is subjective as well.

Businesses and entities affected. Estimates gathered by DMAS of the number of people who might be eligible for participation in the DD Waiver range from 2,500 to 3,000 Virginia citizens. The current appropriation is sufficient to provide services for approximately 254 individuals in FY 2001 and 323 individuals in FY 2002. Some provider groups may also experience expansions in their patient loads in providing these new waiver services.

Localities particularly affected. The proposed regulation is not expected to uniquely affect any particular localities.

Projected impact on employment. By covering additional services for individuals in the DD Waiver, the proposed regulation may increase employment opportunities in businesses such as home health agencies, personal care agencies, and providers of family caregiver training, companion care, and respite services.

Effects on the use and value of private property. Since new expenditures will be directed toward providers of services for the developmentally disabled, the proposed regulation may increase the value of businesses that provide home health, personal or companion care, family caregiver training, and respite services. There could also potentially be an increase in sales of equipment and other products related to provision of these services.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning Individual and Family Developmental Disabilities Support Waiver.

Summary:

The proposed regulation establishes the policies and procedures for a new Medicaid home and community-based care waiver to serve individuals and families of individuals with developmental disabilities. The waiver is currently operating under emergency regulations that went into effect July 1, 2000.

Under the Individual and Family Developmental Disabilities Support Waiver, certain Medicaid eligible individuals may become eligible to receive a wide array of home and community-based services that are not otherwise available to Medicaid eligible individuals. These services include in-home residential supports, day support, supported employment, personal care (agency-directed), attendant care (consumer-directed), respite care (both agency-directed and consumer-directed), assistive technology, environmental modifications, nursing services, therapeutic consultation, crisis stabilization, personal emergency response systems, family and caregiver training, and companion care.

12 VAC 30-50-490. Case management (support coordination) for individuals with developmental disabilities, including autism.

A. Target group. Medicaid eligible recipients with related conditions who are six years of age and older and who are eligible to receive services under the Individual and Family Developmental Disabilities Support (IFDDS) Waiver.

B. Services will be provided in the entire state.

C. Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Social Security Act (Act) is invoked to provide services without regard to the requirements of § 1902(a)(10)(B) of the Act.

D. Definition of services. Support coordination services will be provided for recipients with related conditions who are participants in the home and community-based care IFDDS Waiver. Support coordination services to be provided include:

1. Assessment and planning services, to include developing a consumer service plan (does not include performing medical and psychiatric assessment but does include referral for such assessments);
2. Linking the recipient to services and supports specified in the consumer service plan;
3. Assisting the recipient directly for the purpose of locating, developing, or obtaining needed services and resources;
4. Coordinating services with other agencies and providers involved with the recipient;
5. Enhancing community integration by contacting other entities to arrange community access and involvement, including opportunities to learn community living skills, and use vocational, civic, and recreational services;
6. Making collateral contacts with the recipient's significant others to promote implementation of the service plan and community adjustment;

7. Following up and monitoring to assess ongoing progress and ensure services are delivered;

8. Education and counseling which guides the recipient and develops a supportive relationship that promotes the service plan; and

9. Benefits counseling.

E. Qualifications of providers. In addition to meeting the general conditions and requirements for home and community-based care participating providers as specified in 12 VAC 30-120-730 and 12 VAC 30-120-740, specific provider qualifications are:

1. To qualify as a provider of services through the DMAS for IFDDS Waiver support coordination, the service provider must meet these criteria:

a. Have the administrative and financial management capacity to meet state and federal requirements;

b. Have the ability to document and maintain recipient case records in accordance with state and federal requirements; and

c. Be certified as an IFDDS support coordination agency by DMAS.

2. Providers may bill for Medicaid support coordination only when the services are provided by qualified support coordinators. The support coordinator must possess a combination of developmental disability work experience or relevant education, which indicates that the individual possesses the following knowledge, skills, and abilities, at the entry level. These must be documented or observable in the application form or supporting documentation or in the interview (with appropriate documentation).

a. Knowledge of:

(1) The definition, causes, and program philosophy of developmental disabilities;

(2) Treatment modalities and intervention techniques, such as behavior management, independent living skills, training, supportive counseling, family education, crisis intervention, discharge planning and service coordination;

(3) Different types of assessments and their uses in program planning;

(4) Recipients' rights;

(5) Local service delivery systems, including support services;

(6) Types of developmental disability programs and services;

(7) Effective oral, written, and interpersonal communication principles and techniques;

(8) General principles of record documentation; and

(9) The service planning process and the major components of a service plan.

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b. Skills in:

- (1) Interviewing;
- (2) Negotiating with recipients and service providers;
- (3) Observing, recording, and reporting behaviors;
- (4) Identifying and documenting a recipient's needs for resources, services, and other assistance;
- (5) Identifying services within the established service system to meet the recipient's needs;
- (6) Coordinating the provision of services by diverse public and private providers;
- (7) Analyzing and planning for the service needs of developmentally disabled persons;
- (8) Formulating, writing, and implementing recipient-specific individual service plans to promote goal attainment for recipients with developmental disabilities; and
- (9) Using assessment tools.

c. Abilities to:

- (1) Demonstrate a positive regard for recipients and their families (e.g., treating recipients as individuals, allowing risk taking, avoiding stereotypes of developmentally disabled people, respecting recipients' and families' privacy, believing recipients can grow);
- (2) Be persistent and remain objective;
- (3) Work as a team member, maintaining effective inter- and intra-agency working relationships;
- (4) Work independently, performing positive duties under general supervision;
- (5) Communicate effectively, orally and in writing; and
- (6) Establish and maintain ongoing supportive relationships.

F. The state assures that the provision of case management (support coordination) services will not restrict an individual's free choice of providers in violation of §1902(a)(23) of the Act.

1. Eligible recipients will have free choice of the providers of support coordination services.
2. Eligible recipients will have free choice of the providers of other medical care under the plan.

G. Payment for case management (support coordination) services under the plan does not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

12 VAC 30-80-110. Fee-for-service: Case Management.

Targeted case management for high-risk pregnant women and infants up to age two and, for community mental health and mental retardation services, and for individuals who have

applied for or are participating in the Individual and Family Developmental Disability Support Waiver program (IFDDS Waiver) shall be reimbursed at the lowest of: state agency fee schedule, actual charge, or Medicare (Title XVIII) allowances.

PART XI. INDIVIDUAL AND FAMILY DEVELOPMENTAL DISABILITIES SUPPORT WAIVER.

Article 1. General Requirements.

12 VAC 30-120-700. Definitions.

"Activities of daily living (ADL)" means personal care tasks, e.g., bathing, dressing, toileting, transferring, and eating/feeding. A recipient's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Assistive technology" means specialized medical equipment and supplies including those devices, controls, or appliances specified in the consumer service plan but not available under the State Plan for Medical Assistance that enable recipients to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live or that are necessary to their proper functioning.

"Attendant care" means long-term maintenance or support services necessary to enable the mentally alert and competent recipient to remain at or return home rather than enter or remain in an Intermediate Care Facility for the Mentally Retarded (ICF/MR). The recipient will be responsible for hiring, training, supervising and firing the personal attendant. Recipients 18 years of age and older must be able to manage their own affairs without help, be mentally alert, have no cognitive impairments, and not have a legal guardian. If recipients receiving services are younger than 18 years of age, the legal guardians or parents will act on behalf of minor recipients.

"CARF" means Commission on Accreditation of Rehabilitation Facilities.

"Community-based care waiver services" or "waiver services" means the range of community support services approved by the Health Care Financing Administration (HCFA) pursuant to § 1915(c) of the Social Security Act to be offered to developmentally disabled recipients who would otherwise require the level of care provided in an ICF/MR.

"Companion services" means nonmedical care, supervision and socialization, provided to a functionally impaired adult. The provision of companion services does not entail hands-on nursing care and is provided in accordance with a therapeutic goal in the consumer service plan. This shall not be the sole service used to divert recipients from institutional care.

"Consumer-directed respite care" means services given to caretakers of eligible individuals who are unable to care for themselves that are provided on an episodic or routine basis because of the absence or need for relief of those persons residing with the recipient who normally provide the care. The recipient will be responsible for hiring, training, supervising, and firing the personal attendant. Recipients 18 years of age

and older must be able to manage their own affairs without help, be mentally alert, have no cognitive impairments, and not have a legal guardian. If a recipient receiving services is under 18 years of age, the legal guardian or parent will act on behalf of the minor.

"Consumer service plan" or "CSP" means that document addressing all needs of recipients of home and community-based care developmental disability services, in all life areas. Supporting documentation developed by service providers are to be incorporated in the CSP by the support coordinator. Factors to be considered when these plans are developed may include, but are not limited to, recipients' ages and levels of functioning.

"Crisis stabilization" means direct intervention to persons with developmental disabilities who are experiencing serious psychiatric or behavioral problems, or both, that jeopardize their current community living situation. This service must provide temporary intensive services and supports that avert emergency psychiatric hospitalization or institutional placement or prevent other out-of-home placement. This service shall be designed to stabilize recipients and strengthen the current living situations so that recipients can be maintained in the community during and beyond the crisis period.

"Current functional status" means recipients' degree of dependency in performing activities of daily living.

"DMAS" means the Department of Medical Assistance Services.

"DMAS staff" means individuals who perform utilization review, recommendation of preauthorization for service type and intensity, and review of recipient level of care criteria.

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

"DRS" means the Department of Rehabilitative Services. The DRS currently operates the Personal Assistance Services Program, which is a state-funded program that provides a limited amount of personal care services to Virginians.

"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, services and support activities.

"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 recipients' 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 recipients.

"EPSDT" means the Early Periodic Screening, Diagnosis and Treatment program administered by DMAS for children under the age of 21 according to federal guidelines which prescribe specific preventive and treatment services for Medicaid-eligible children.

"Family/caregiver training" means training and counseling services provided to families or caregivers of recipients receiving services in the IFDDS Waiver.

"Fiscal agent" means an agency or organization contracted by DMAS to handle employment, payroll, and tax responsibilities on behalf of recipients who are receiving consumer-directed attendant and respite services.

"Guardian" means a person who has been legally invested with the authority and charged with the duty to take care of, manage the property of, and protect the rights of a recipient who has been declared by the circuit court to be incapacitated and incapable of administering his own affairs. The powers and duties of the guardian are defined by the court and are limited to matters within the areas where the recipient has been determined to be incapacitated.

"Home" means, for purposes of the IFDDS Waiver, an apartment or single family dwelling in which no more than two individuals who require services live. This does not include an assisted living facility.

"Home and community-based care" means a variety of in-home and community-based services reimbursed by the DMAS as authorized under a § 1915(c) waiver designed to offer recipients an alternative to institutionalization. Recipients may be preauthorized to receive one or more of these services either solely or in combination, based on the documented need for the service or services to avoid ICF/MR placement.

"HCFA" means the Health Care Financing Administration, which is the unit of the federal Department of Health and Human Services which administers the Medicare and Medicaid programs.

"IFDDS Waiver" means the Individual and Family Developmental Disabilities Support Waiver.

"In-home residential support services" means support provided in the developmentally disabled recipient's home, which includes training, assistance, and supervision in enabling the recipient to maintain or improve his health; assisting in performing recipient care tasks; training in activities of daily living; training and use of community resources; providing life skills training; and adapting behavior to community and home-like environments.

"Instrumental activities of daily living (IADL)" means social tasks (e.g., meal preparation, shopping, housekeeping, laundry, money management). A recipient's degree of independence in performing these activities is part of determining appropriate level of care and services.

"Mental retardation" means, as defined by the American Association on Mental Retardation (AAMR), being substantially limited in present functioning as characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in two or more of the

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following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work. Mental retardation manifests itself before age 18. A diagnosis of mental retardation is made if the person's intellectual functioning level is approximately 70 to 75 or below, as diagnosed by a licensed clinical professional; and there are related limitations in two or more applicable adaptive skill areas; and the age of onset is 18 or below. If a valid IQ score is not possible, significantly subaverage intellectual capabilities means a level of performance that is less than that observed in the vast majority of persons of comparable background. In order to be valid, the assessment of the intellectual performance must be free of errors caused by motor, sensory, emotional, language, or cultural factors.

"Nursing services" means skilled nursing services listed in the consumer service plan which are ordered by a physician and required to prevent institutionalization, not otherwise available under the State Plan for Medical Assistance, are within the scope of the state's Nurse Practice Act (Chapters 30 (§ 54.1-3000 et seq.) and 34 (§ 54.1-3400 et seq.) of the Code of Virginia, and are provided by a registered professional nurse or by a licensed practical nurse under the supervision of a registered nurse who is licensed to practice in the state.

"Participating provider" means an institution, facility, agency, partnership, corporation, or association that meets the standards and requirements set forth by DMAS, and has a current, signed contract with DMAS.

"Personal attendant" means, for purposes of this regulation, a domestic servant who is also exempt from Workers' Compensation. Recipients shall be restricted from employing more than two personal attendants simultaneously at any given time.

"Personal care agency" means a participating provider that renders services designed to prevent or reduce inappropriate institutional care by providing eligible recipients with personal care aides who provide personal care services.

"Personal care services" means long-term maintenance or support services necessary to enable recipients to remain at or return home rather than enter an Intermediate Care Facility for the Mentally Retarded. Personal care services include assistance with activities of daily living, nutritional support, and the environmental maintenance necessary for recipients to remain in their homes and in the community.

"Personal emergency response system (PERS)" is an electronic device that enables certain recipients at high risk of institutionalization to secure help in an emergency. PERS services are limited to those recipients who live alone or are alone for significant parts of the day and who have no regular caregiver for extended periods of time, and who would otherwise require extensive routine supervision.

"Qualified mental health professional" means a professional having: (i) at least one year of documented experience working directly with recipients who have developmental disabilities; (ii) at least 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.

"Related conditions" means those persons who have autism or who have a severe chronic disability that meets all of the following conditions identified in 42 CFR 435.1009:

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.
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.

"Respite care" means services provided to caretakers of eligible recipients who are unable to care for themselves that is provided on an episodic or routine basis because of the absence of or need for relief of those persons residing with the recipient who normally provide the care.

"Respite care agency" means a participating provider that renders services designed to prevent or reduce inappropriate institutional care by providing respite care services to eligible recipients for their caregivers.

"Screening" means the process to evaluate the medical, nursing, and social needs of recipients referred for screening; determine Medicaid eligibility for an ICF/MR level of care; and authorize Medicaid-funded ICF/MR care or community-based care for those recipients who meet ICF/MR level of care eligibility and require that level of care.

"Screening team" means the entity contracted with the DMAS which is responsible for performing screening for the IFDDS Waiver.

"Service coordination provider" means the provider contracted by DMAS that is responsible for ensuring development and monitoring of the CSP, management training, and review activities as required by DMAS for attendant care and consumer-directed respite care services.

"State Plan for Medical Assistance" or "the Plan" means the document containing the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"Support coordination" means the assessment, planning, linking, and monitoring for recipients referred for the IFDDS community-based care waiver. Support coordination: (i) ensures the development, coordination, implementation, monitoring, and modification of consumer service plans; (ii) links recipients with appropriate community resources and supports; (iii) coordinates service providers; and (iv) monitors quality of care.

"Supporting documentation" means the specific service plan developed by the recipient service provider related solely to the specific tasks required of that service provider. Supporting documentation helps to comprise the overall CSP for the recipient.

"Supported employment" means training in specific skills related to paid employment and provision of ongoing or intermittent assistance and specialized supervision to enable a recipient to maintain paid employment.

"Therapeutic consultation" means consultation provided by members of psychology, social work, behavioral analysis, speech therapy, occupational therapy, therapeutic recreation, or physical therapy disciplines or behavior consultation to assist recipients, parents, family members, in-home residential support, day support and any other providers of support services in implementing a CSP.

12 VAC 30-120-710. General coverage and requirements for all home and community-based care waiver 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 recipients six years of age and older with related conditions as defined in 42 CFR 435.1009, including autism, who have been determined to require the level of care provided in an intermediate care facility for the mentally retarded. The individual must not also have a diagnosis of mental retardation as defined by the American Association on Mental Retardation (AAMR).

B. Coverage statement.

1. Covered services shall include in-home residential supports, day support, supported employment, personal care (agency-directed), attendant care (consumer-directed), respite care (both agency- and consumer-directed), assistive technology, environmental modifications, nursing services, therapeutic consultation, crisis stabilization, personal emergency response systems (PERS), family/caregiver training, and companion care.

2. These services shall be medically appropriate and necessary to maintain these recipients in the community. Federal waiver requirements provide that the average per capita fiscal year expenditures under the waiver must not exceed the average per capita expenditures for the level of care provided in Intermediate Care Facilities for the Mentally Retarded under the State Plan that would have been made had the waiver not been granted.

3. Under this § 1915(c) waiver, DMAS waives subsection (a)(10)(B) of § 1902 of the Social Security Act related to comparability.

C. Appeals. Recipient appeals shall be considered pursuant to 12 VAC 30-110-10 through 12 VAC 30-110-380. Provider appeals shall be considered pursuant to 12 VAC 30-10-1000 and 12 VAC 30-20-500 through 12 VAC 30-20-599.

12 VAC 30-120-720. Recipient qualification and eligibility requirements; intake process.

A. Recipients receiving services under this waiver must meet the following requirements. Virginia will apply the financial eligibility criteria contained in the State Plan for the categorically needy. Virginia has elected to cover the optional categorically needy groups under 42 CFR 435.121 and 435.217. The income level used for 42 CFR 435.121 and 435.217 is 300% of the current Supplemental Security Income payment standard for one person.

1. Under this waiver, the coverage groups authorized under § 1902(a)(10)(A)(ii)(VI) of the Social Security Act will be considered as if they were institutionalized for the purpose of applying institutional deeming rules. All recipients under the waiver must meet the financial and nonfinancial Medicaid eligibility criteria and meet the institutional level of care criteria. The deeming rules are applied to waiver eligible recipients as if the recipient were residing in an institution or would require that level of care.

2. Virginia shall reduce its payment for home and community-based services provided to an individual who is eligible for Medicaid services under 42 CFR 435.217 by that amount of the individual's total income (including amounts disregarded in determining eligibility) that remains after allowable deductions for personal maintenance needs, deductions for other dependents, and medical needs have been made, according to the guidelines in 42 CFR 435.735 and § 1915(c)(3) of the Social Security Act as amended by the Consolidated Omnibus Budget Reconciliation Act of 1986. The DMAS will reduce its payment for home and community-based waiver services by the amount that remains after the deductions listed below:

a. For recipients to whom § 1924(d) applies, and for whom Virginia waives the requirement for comparability pursuant to § 1902(a)(10)(B), deduct the following in the respective order:

(1) The basic maintenance needs for an individual, which is equal to the SSI payment for one person. Due to expenses of employment, a working individual shall have an additional income allowance. For an individual employed 20 hours or more per week, earned income shall be disregarded up to a maximum of 300% SSI; for an individual employed at least eight but less than 20 hours per week, earned income shall be disregarded up to a maximum of 200% of SSI. If the individual requires a guardian or conservator who charges a fee, the fee, not to exceed an amount greater than 5.0% of the individual's total monthly income, is added to the maintenance needs allowance. However, in no case shall the total amount of the maintenance needs allowance (basic allowance plus earned income

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allowance plus guardianship fees) for the individual exceed 300% of SSI.

(2) For an individual with a spouse at home, the community spousal income allowance determined in accordance with § 1924(d) of the Social Security Act.

(3) For an individual with a family at home, an additional amount for the maintenance needs of the family determined in accordance with § 1924(d) of the Social Security Act.

(4) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but not covered under the Plan.

b. For individuals to whom § 1924(d) does not apply and for whom Virginia waives the requirement for comparability pursuant to § 1902(a)(10)(B), deduct the following in the respective order:

(1) The basic maintenance needs for an individual, which is equal to the SSI payment for one person. Due to expenses of employment, a working individual shall have an additional income allowance. For an individual employed 20 hours or more per week, earned income shall be disregarded up to a maximum of 300% SSI; for an individual employed at least eight but less than 20 hours per week, earned income shall be disregarded up to a maximum of 200% of SSI. If the individual requires a guardian or conservator who charges a fee, the fee, not to exceed an amount greater than 5.0% of the individual's total monthly income, is added to the maintenance needs allowance. However, in no case shall the total amount of the maintenance needs allowance (basic allowance plus earned income allowance plus guardianship fees) for the individual exceed 300% of SSI.

(2) For an individual with a dependent child or children, an additional amount for the maintenance needs of the child or children which shall be equal to the medically needy income standard based on the number of dependent children.

(3) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but not covered under the state medical assistance plan.

B. Assessment and authorization of home and community-based care services.

1. To ensure that Virginia's home and community-based care waiver programs serve only recipients who would otherwise be placed in an ICF/MR, home and community-based care services shall be considered only for individuals who are eligible for admission to an

ICF/MR, absent a diagnosis of mental retardation. Home and community-based care services shall be the critical service that enables the individual to remain at home rather than being placed in an ICF/MR.

2. The recipient's status as an individual in need of IFDDS home and community-based care services shall be determined by the IFDDS screening team after completion of a thorough assessment of the recipient's needs and available support. Screening of home and community-based care services by the IFDDS screening team or DMAS staff is mandatory before Medicaid will assume payment responsibility of home and community-based care services.

3. The IFDDS screening team shall gather relevant medical, social, and psychological data and identify all services received by the recipient.

4. An essential part of the IFDDS screening team's assessment process is determining the level of care required by applying existing DMAS ICF/MR criteria (12 VAC 30-130-430 et seq.).

5. The team shall explore alternative settings and services to provide the care needed by the individual. If placement in an ICF/MR or a combination of other services is determined to be appropriate, the IFDDS screening team shall initiate a referral for service. If Medicaid-funded home and community-based care services are determined to be the critical service to delay or avoid placement in an ICF/MR or promote exiting from an institutional setting, the IFDDS screening team shall initiate a referral for service to a support coordinator of the recipient's choice.

6. Home and community-based care services shall not be provided to any individual who also resides in a nursing facility, an ICF/MR, a hospital, an adult family home licensed by the DSS, or an assisted living facility licensed by the DSS.

7. Medicaid will not pay for any home and community-based care services delivered prior to the authorization date approved by DMAS. Any Consumer Service Plan for home- and community-based care services must be pre-approved by DMAS prior to Medicaid reimbursement for waiver services.

8. The following five criteria shall apply to all IFDDS Waiver services:

a. Individuals qualifying for IFDDS Waiver services must have a demonstrated clinical need for the service resulting in significant functional limitations in major life activities. In order to be eligible, a person must have a related condition as defined in these regulations and cannot have a diagnosis of mental retardation, and 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;

b. The Consumer Service Plan and services which are delivered must be consistent with the Medicaid definition of each service;

c. Services must be approved by the support coordinator based on a current functional assessment tool approved by DMAS or other DMAS approved assessment and demonstrated need for each specific service;

d. Individuals qualifying for IFDDS Waiver services must meet the ICF/MR level of care criteria; and

e. The individual must be eligible for Medicaid as determined by the local office of DSS.

9. The IFDDS screening teams must submit the results of the comprehensive assessment and a recommendation to DMAS staff for final determination of ICF/MR level of care and authorization for community-based care services.

C. Screening for the IFDDS Waiver.

1. Individuals requesting IFDDS Waiver services will be screened and will receive services on a first-come, first-served basis in accordance with available funding based on the date the recipients' applications are received. Individuals who meet at least one of the emergency criteria pursuant to 12 VAC 30-120-790 shall be eligible for immediate access to waiver services if funding is available.

2. To be eligible for IFDDS Waiver services, the individual must:

a. Be determined to be eligible for the ICF/MR level of care;

b. Meet the related conditions definition as defined in 42 CFR 435.1009 or be diagnosed with autism; and

c. Not have a diagnosis of mental retardation as defined by the American Association on Mental Retardation (AAMR) as contained in 12 VAC 30-120-710.

D. Waiver approval process: available funding.

1. In order to ensure cost effectiveness of the IFDDS Waiver, the funding available for the waiver will be allocated between two budget levels. The budget will be the cost of waiver services only and will not include the costs of other Medicaid covered services. Other Medicaid services, however, must be counted toward cost effectiveness of the IFDDS Waiver. All services available under the waiver are available to both levels.

2. Level one will be for individuals whose comprehensive consumer service plan (CSP) is expected to cost less than \$25,000 per fiscal year. Level two will be for individuals whose CSP is expected to cost equal to or more than \$25,000. There will not be a threshold for budget level two; however, if the actual cost of waiver services exceeds the average annual cost of ICF/MR care for an individual, the recipient's care will be coordinated by DMAS staff.

3. Fifty-five percent of available waiver funds will be allocated to budget level one, and 40% of available waiver funds will be allocated to level two in order to

ensure that the waiver will be cost effective. The remaining 5.0% of available waiver funds will be allocated for emergencies as defined in 12 VAC 30-120-790. Recipients who have been placed in budget level one and who subsequently require additional services that would exceed \$25,000 per fiscal year must meet the emergency criteria as defined in 12 VAC 30-120-790 to receive additional funding for services.

E. Waiver approval process: accessing services.

1. Once the screening entity has determined that an individual meets the eligibility criteria for IFDDS Waiver services and the individual has chosen this service, the screening entity will provide the individual with a list of available support coordinators. The individual will choose a support coordinator within 10 calendar days and the screening entity will forward the screening materials within 10 calendar days to the selected support coordinator.

2. The support coordinator will contact the recipient within 10 calendar days of receipt of screening materials. The support coordinator and the recipient or recipient's family will meet within 30 calendar days to discuss the recipient's needs, existing supports and to develop a preliminary consumer service plan (CSP) which will identify services needed and will estimate the annual waiver cost of the recipient's CSP. If the recipient's annual waiver cost is expected to exceed the average annual cost of ICF/MR care for an individual, the recipient's support coordination will be managed by DMAS.

3. Once the CSP has been initially developed, the support coordinator will contact DMAS to receive prior authorization to enroll the recipient in the IFDDS Waiver. DMAS shall only authorize waiver services for the recipient if funding is available for the entire CSP. Once this authorization has been received, the support coordinator shall inform the recipient so that the recipient can begin choosing service providers for services listed in the CSP. If DMAS does not have the available funding for this recipient, the recipient will be held on the waiting list until such time as funds are available to cover the cost of the CSP.

4. Once the recipient has been authorized for the waiver, the recipient or support coordinator shall contact service providers and initiate services within 60 days. During this time, the consumer, support coordinator, and service providers will meet to complete the CSP. If services are not initiated within 60 days, the support coordinator must submit information to DMAS demonstrating why more time is needed to initiate services. DMAS has authority to approve or deny the request in 30-day extensions. The service providers will develop supporting documentation for each service and will submit a copy of these plans to the support coordinator. The support coordinator will monitor the service providers' supporting documentation to ensure that all providers are working toward the identified goals of recipients. The support coordinator will review and sign off on the supporting documentation and will contact DMAS for prior

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authorization of services and will notify the service providers when services are approved.

5. The support coordinator will contact the recipient at a minimum on a monthly basis and as needed to coordinate services and maintain the recipient's CSP. DMAS will conduct annual level of care reviews in which the recipient is assessed to ensure he continues to meet waiver criteria. DMAS will review recipients' CSPs and will review the services provided by support coordinators as well as service providers.

12 VAC 30-120-730. General requirements for home and community-based care participating providers.

A. Providers approved for participation shall, at a minimum, perform the following activities:

1. Immediately notify DMAS, in writing, of any change in the information that 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 service or services required and participating in the Medicaid Program at the time the service or services were performed.

3. Assure the recipient's freedom to reject medical care and treatment.

4. Accept referrals for services only when staff is available to initiate services and perform such services on an ongoing basis.

5. Provide services and supplies to recipients in full compliance with Title VI of the Civil Rights Act of 1964, as amended (42 USC §§ 2000d through 2000d-4a), which prohibits discrimination on the grounds of race, color, or national origin; the Virginians with Disabilities Act (Title 51.5, § 51.5-1 et seq. of the Code of Virginia); § 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794), which prohibits discrimination on the basis of a disability; and the Americans with Disabilities Act, as amended (42 USC §§ 12101 through 12213), which provides comprehensive civil rights protections to recipients with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

6. Provide services and supplies to recipients of the same quality and in the same mode of delivery as provided to the general public.

7. Submit charges to DMAS for the provision of services and supplies to recipients in amounts not to exceed the provider's usual and customary charges to the general public. The provider must accept as payment in full the amount established by DMAS payment methodology from the first day of eligibility for the waiver services.

8. Use program-designated billing forms for submission of charges.

9. Maintain and retain business and professional records sufficient to document fully and accurately the nature, scope, and details of the care provided.

a. In general, 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. However, if an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every exception resolved. Records of minors shall be kept for at least five years after such minor has reached the age of 18 years.

b. Policies regarding retention of records shall apply even if the provider discontinues operation. DMAS shall be notified in writing of storage, location, and procedures for obtaining records for review should the need arise. The location, agent, or trustee shall be within the Commonwealth of Virginia.

c. An attendance log or similar document must be maintained which indicates the date, type of services rendered, and number of hours/units provided (including specific time frame).

10. The provider agrees to furnish information on request and in the form requested to DMAS, the Attorney General of Virginia or his authorized representatives, federal personnel, and the State Medicaid Fraud Control Unit. The Commonwealth's right of access to provider agencies and records shall survive any termination of the provider agreement.

11. 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.

12. Hold confidential and use for DMAS authorized purposes only all medical assistance information regarding recipients served. A provider shall disclose information in his possession only when the information is used in conjunction with a claim for health benefits or the data is necessary for the functioning of the DMAS. DMAS shall not disclose medical information to the public.

13. Change of Ownership. When ownership of the provider agency changes, DMAS shall be notified at least 15 calendar days before the date of change.

14. For (ICF/MR) facilities covered by § 1616(e) of the Social Security Act in which respite care as a home and community-based care service will be provided, the facilities shall be in compliance with applicable standards that meet the requirements for board and care facilities. Health and safety standards shall be monitored through the DMHMRSAS' licensure standards, 12 VAC 35-102-10 et seq.

15. Suspected Abuse or Neglect. Pursuant to §§ 63.1-55.3 and 63.1-248.3 of the Code of Virginia, if a participating provider knows or suspects that a home and

community-based care recipient is being abused, neglected, or exploited, the party having knowledge or suspicion of the abuse, neglect, or exploitation shall report this immediately from first knowledge to the local DSS adult or child protective services worker and to DMAS.

16. Adherence to provider contract and the 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 manual.

12 VAC 30-120-740. Participation standards for home and community-based care participating providers.

A. Requests for participation. Requests will be screened to determine whether the provider applicant meets the basic requirements for participation.

B. Provider participation standards. For DMAS to approve contracts with home and community-based care providers, the following standards shall be met:

1. Licensure and certification requirements pursuant to 42 CFR 441.352.
2. Disclosure of ownership pursuant to 42 CFR 455.104 and 455.105.

C. Adherence to provider contract and special participation conditions. In addition to compliance with the general conditions and requirements, all providers enrolled by DMAS shall adhere to the conditions of participation outlined in their provider contracts.

D. Recipient choice of provider agencies. The recipient will have the option of selecting the provider agency of his choice.

E. Review of provider participation standards and renewal of contracts. DMAS is responsible for assuring continued adherence to provider participation standards. DMAS shall conduct ongoing monitoring of compliance with provider participation standards and DMAS policies and recertify each provider for contract renewal with DMAS to provide home and community-based services. A provider's noncompliance with DMAS policies and procedures, as required in the provider's contract, may result in a written request from DMAS for a corrective action plan which details the steps the provider must take and the length of time permitted to achieve full compliance with the plan to correct the deficiencies which have been cited.

F. Termination of provider participation. A participating provider may voluntarily terminate his participation in Medicaid by providing 30 days' written notification. DMAS shall be permitted to administratively terminate a provider from participation upon 30 days' written notification. DMAS may also cancel a contract immediately or may give notification in the event of a breach of the contract by the provider as specified in the DMAS contract. Such action precludes further payment by DMAS for services provided to recipients subsequent to the date specified in the termination notice.

G. Reconsideration of adverse actions. A provider shall have the right to appeal adverse action taken by DMAS. Adverse action includes, but shall not be limited to, termination of the provider agreement by DMAS, and retraction of payments from the provider by DMAS for noncompliance with applicable law, regulation, policy, or procedure. All disputes regarding provider reimbursement or termination of the agreement by DMAS for any reason shall be resolved through administrative proceedings conducted at the office of DMAS in Richmond, Virginia. These administrative proceedings and judicial review of such administrative proceedings shall be conducted pursuant to the Virginia Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia), the State Plan for Medical Assistance provided for in § 32.1-325 of the Code of Virginia, and duly promulgated regulations. Court review of final agency determinations concerning provider reimbursement shall be made in accordance with the Administrative Process Act.

H. Termination of a provider contract upon conviction of a felony. Section 32.1-325 C of the Code of Virginia mandates that "any such [Medicaid] agreement or contract shall terminate upon conviction of the provider of a felony." A provider convicted of a felony in Virginia or in any other of the 50 states or Washington, D.C., must, within 30 days, notify the Medicaid Program of this conviction and relinquish its provider agreement. Reinstatement will be contingent upon provisions of state law. In addition, termination of a provider contract will occur as may be required for federal financial participation.

I. Support coordinator's responsibility for the Recipient Information Form (DMAS-122). It is the responsibility of the support coordinator 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) that cause home and community-based care services to cease or be interrupted for more than 30 days.

J. Changes or termination of care. It is the DMAS staff's responsibility to authorize any changes to supporting documentation of a recipient's CSP based on the recommendations of the support coordinator. Agencies providing direct service are responsible for modifying the supporting documentation if the recipient or parent/legal guardian agrees. The provider will submit the supporting documentation to the support coordinator any time there is a change in the recipient's condition or circumstances that may warrant a change in the amount or type of service rendered. The support coordinator will review the need for a change and will sign the supporting documentation if he agrees to the changes. The support coordinator will submit the revised supporting documentation to the DMAS staff to receive approval for that change. The DMAS staff has the final authority to approve or deny the requested change to recipients' supporting documentation.

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1. *Nonemergency termination of home and community-based care services by the participating provider. The participating provider shall give the recipient and family and support coordinator 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.*

2. *Emergency termination of home and community-based care services by the participating provider. In an emergency situation when the health and safety of the recipient or provider agency personnel is endangered, the support coordinator and DMAS must be notified prior to termination. The 10-day written notification period shall not be required. If appropriate, the local DSS adult protective services or child protective services agency must be notified immediately.*

3. *The DMAS termination of eligibility to receive home and community-based care services. DMAS shall have the ultimate responsibility for assuring appropriate placement of the recipient in home and community-based care services and the authority to terminate such services to the recipient for the following reasons:*

- a. *The home and community-based care service is not the critical alternative to prevent or delay institutional (ICF/MR) placement;*
- b. *The recipient no longer meets the institutional level of care criteria;*
- c. *The recipient's environment does not provide for his health, safety, and welfare; or*
- d. *An appropriate and cost-effective CSP cannot be developed.*

Article 2.

Covered Services and Limitations and Related Provider Requirements.

12 VAC 30-120-750. In-home residential support services.

A. *Service description. In-home residential support services shall be based in the recipient's home. The service shall be designed to enable recipients qualifying for the IFDDS Waiver to be maintained in their homes 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 the recipient's health, nutrition, and physical condition; (iii) life skills training; (iv) cognitive rehabilitation; and (v) assistance with personal care activities of daily living and use of community resources. Service providers shall be reimbursed only for the amount and type of in-home residential support services included in the recipient's approved CSP. In-home residential support services shall not be authorized in the CSP unless the recipient requires these services and these services exceed services provided by the family or other caregiver. Services will not be provided for a continuous 24-hour period.*

1. *This service must be provided on a recipient-specific basis according to the CSP, supporting documentation, and service setting requirements.*

2. *This service may not be provided to any recipient who simultaneously receives personal care or attendant care services under the IFDDS Waiver or other residential program that provides a comparable level of care.*

3. *Room and board and general supervision shall not be components of this service.*

4. *This service shall not be used solely to provide routine or emergency respite care for the parent or parents or other caregivers with whom the recipient lives.*

B. Criteria.

1. *All recipients must meet the following criteria in order for Medicaid to reimburse for in-home residential support services. The recipient must meet the eligibility requirements for this waiver service as herein defined. The recipient shall have a demonstrated need for supports to be provided by staff who are paid by the in-home residential support provider.*

2. *A functional assessment must be conducted to evaluate each recipient in his home environment and community settings.*

3. *Routine supervision/oversight of direct care staff. To provide additional assurance for the protection or preservation of a recipient's health and safety, there are specific requirements for the supervision and oversight of direct care staff providing residential support as outlined below. For all in-home residential support services provided under a DMHMRSAS license:*

a. *An employee of the agency, typically by position, must be formally designated as the supervisor of each direct care staff person who is providing in-home residential support services.*

b. *The supervisor must have and document at least one supervisory contact per month with each staff person regarding service delivery and staff performance.*

c. *The supervisor must observe each staff person delivering services at least semi-annually. Staff performance and service delivery according to the CSP should be documented, along with evaluation and evidence of recipient satisfaction with service delivery by staff.*

d. *Providers of in-home residential supports must also have and document at least one monthly contact with the recipient regarding satisfaction with services delivered by each staff person. If the recipient has a guardian, the guardian should be contacted.*

4. *The in-home residential support supporting documentation must indicate the necessary amount and type of activities required by the recipient, the schedule of residential support services, the total number of hours per day, and the total number of hours per week of in-home residential support.*

5. Medicaid reimbursement is available only for in-home residential support services provided when the recipient is present and when a qualified provider is providing the services.

C. Service units and service limitations. In-home residential supports shall be reimbursed on an hourly basis for time the in-home residential support staff is working directly with the recipient. Total monthly billing cannot exceed the total hours authorized in the CSP. The provider must maintain documentation of the date and times that the services are provided, services that were provided, and specific circumstances which prevented provision of all of the scheduled services.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based care participating providers as specified in 12 VAC 30-120-730 and 12 VAC 30-120-740, each in-home residential support service provider must be licensed by DMHMRSAS as a provider of supportive residential services or have CARF certification. The provider must also have training in the characteristics of developmental disabilities and appropriate interventions, strategies, and support methods for persons with developmental disabilities and functional limitations.

1. For DMHMRSAS licensed programs, a CSP and ongoing documentation must be consistent with licensing regulations. For CARF certified programs, a CSP and ongoing documentation must be consistent with subdivisions 2 through 5 of this subsection.

2. Documentation must confirm attendance and the amount of time in services and provide specific information regarding the recipient's response to various settings and supports as agreed to in the supporting documentation objectives. Assessment results must be available in at least a daily note or a weekly summary. Data must be collected as described in the CSP, analyzed, summarized, and then clearly addressed in the regular supporting documentation.

3. The supporting documentation must be reviewed by the provider with the recipient, and this review submitted to the support coordinator, at least semi-annually, with goals, objectives, and activities modified as appropriate.

4. Documentation must be maintained for routine supervision and oversight of all in-home residential support staff. All significant contacts described in this section must be documented.

5. Documentation must be completed and signed by the staff person designated to perform the supervision and oversight and include:

- a. Date of contact or observation;
- b. Person or persons contacted or observed;
- c. A note regarding staff performance and supporting documentation service delivery for monthly contact and semi-annual home visits;

d. Semi-annual observation documentation must also address recipient satisfaction with service provision; and

e. Any action planned or taken to correct problems identified during supervision and oversight.

12 VAC 30-120-751. Reserved.

12 VAC 30-120-752. Day support services.

A. Service description. Day support services shall include a variety of training, support, and supervision offered in a setting (other than the home or recipient residence), which allows peer interactions and community integration. When services are provided through alternative payment sources, the consumer service plan shall not authorize them as a waiver funded expenditure. Service providers are reimbursed only for the amount and type of day support services included in the recipient's approved CSP based on the setting, intensity, and duration of the service to be delivered.

B. Criteria. For day support services, recipients must demonstrate the need for functional training, assistance, and specialized training offered in settings other than the recipient's own residence that allow an opportunity for being productive and contributing members of communities. In addition, day support services will be available for recipients who cannot benefit from supported employment services and who need the services for accessing in-home supported living services, increasing levels of independent skills within current daily living situations, or sustaining skills necessary for continuing the level of independence in current daily living situations.

1. A functional assessment should be conducted by the provider to evaluate each recipient in his home environment and community settings.

2. Levels of day support. The amount and type of day support included in the recipient's consumer service plan is determined according to the services required for that recipient. There are two types of day support: center-based, which is provided partly or entirely in a segregated setting; or noncenter-based, which is provided entirely in community settings. Both types of day support may be provided at either intensive or regular levels. To be authorized at the intensive level, the recipient must have extensive disability-related difficulties and require additional, ongoing support to fully participate in programming and to accomplish his service goals; or the recipient requires extensive constant supervision to reduce or eliminate behaviors that preclude full participation in the program. A formal, written behavioral program is required to address behaviors such as, but not limited to, withdrawal, self-injury, aggression, or self-stimulation.

C. Service units and service limitations. Day support cannot be regularly or temporarily (e.g., due to inclement weather or recipient illness) provided in a recipient's home or other residential setting without written prior approval from DMAS. Noncenter-based day support services must be separate and distinguishable from either in-home residential support services or personal care services. There must be

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separate supporting documentation for each service and each must be clearly differentiated in documentation and corresponding billing. The supporting documentation must provide an estimate of the amount of day support required by the recipient. The maximum is 780 units per calendar year. Transportation shall not be billable as a day support service.

1. One unit shall be 1 to 3.99 hours of service a day.
2. Two units are 4 to 6.99 hours of service a day.
3. Three units are 7 or more hours of service a day.

D. *Provider requirements.* In addition to meeting the general conditions and requirements for home and community-based care participating providers as specified in 12 VAC 30-120-730 and 12 VAC 30-120-740, day support providers need to meet additional requirements.

1. For DMHMRSAS programs licensed as day support programs, the CSP, supporting documentation, and ongoing documentation must be consistent with licensing regulations. For programs certified by CARF as day support programs, there must be supporting documentation, which contains at a minimum, the following elements:

- a. The recipient's strengths, desired outcomes, required or desired supports and training needs;
- b. The recipient's goals and, for a training goal, a sequence of measurable objectives to meet the above identified outcomes;
- c. Services to be rendered and the frequency of services to accomplish the above goals and objectives;
- d. All individuals or organizations that will provide the services specified in the statement of services;
- e. A timetable for the accomplishment of the recipient's goals and objectives;
- f. The estimated duration of the recipient's needs for services; and
- g. The individual or individuals responsible for the overall coordination and integration of the services specified in the CSP.

2. Documentation must confirm the recipient's attendance and amount of time in services and provide specific information regarding the recipient's response to various settings and supports as agreed to in the supporting documentation objectives. Assessment results shall be available in at least a daily note or a weekly summary.

- a. The supporting documentation must be reviewed by the provider with the recipient, and this review submitted to the support coordinator at least semi-annually with goals, objectives, and activities modified as appropriate.
- b. An attendance log or similar document must be maintained that indicates the date, type of services rendered, and the number of hours and units provided (including specific time frame).

c. Documentation must indicate whether the services were center-based or noncenter-based.

d. If intensive day support services are requested, in order to verify which of these criteria the recipient met, documentation must be present in the recipient's record to indicate the specific supports and the reasons they are needed. For reauthorization of intensive day support services, there must be clear documentation of the ongoing needs and associated staff supports.

12 VAC 30-120-753. Reserved.

12 VAC 30-120-754. Supported employment services.

A. *Service description.*

1. Supported employment services shall include training in specific skills related to paid employment and provision of ongoing or intermittent assistance or specialized training to enable a recipient to maintain paid employment. Each supporting documentation must contain documentation regarding whether supported employment services are available in vocational rehabilitation agencies through the Rehabilitation Act of 1973 or in special education services through 20 USC § 1401 of the Individuals with Disabilities Education Act (IDEA). Providers of these DRS and IDEA services cannot be reimbursed by Medicaid with the IFDDS Waiver funds. Waiver service providers are reimbursed only for the amount and type of habilitation services included in the recipient's approved CSP 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 recipient is in the supported employment environment.

2. Supported employment can be provided in one of two models. Recipient supported employment is defined as intermittent support, usually provided one on one by a job coach to a recipient in a supported employment position. Group supported employment is defined as continuous support provided by staff to eight or fewer recipients with disabilities in an enclave, work crew, or bench work/entrepreneurial model. The recipient's assessment and CSP must clearly reflect the recipient's need for training and supports.

B. *Criteria for receipt of services.*

1. Only job development tasks that specifically include the recipient are allowable job search activities under the IFDDS Waiver supported employment and only after determining this service is not available from DRS.

2. In order to qualify for these services, the recipient 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.

3. A functional assessment should be conducted to evaluate each recipient in his home environment and community settings.

4. The supporting documentation must provide the amount of supported employment required by the recipient. Service providers are reimbursed only for the amount and type of supported employment included in the recipient's CSP.

C. Service units and service limitations.

1. Supported employment for recipient job placement will be billed on an hourly basis. Transportation cannot be billable as a supported employment service.

2. Group models of supported employment (enclaves, work crews and entrepreneurial model of supported employment) will be billed at the unit rate.

a. One unit is 1 to 3.99 hours of service a day.

b. Two units are 4 to 6.99 or more hours of service a day.

c. Three units are 7 or more hours of service a day.

3. For the recipient job placement model, reimbursement of supported employment will be limited to actual documented interventions or collateral contacts by the provider, not the amount of time the recipient is in the supported employment situation.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based care participating providers as specified in 12 VAC 30-120-730 and 12 VAC 30-120-740, specific provider qualifications are as follows:

1. Supported employment services shall be provided by agencies that either are licensed by the DMHMRSAS as a day support service or are programs certified by CARF to provide supported employment services.

2. Recipient ineligibility for DRS or Special Education services must be documented in the recipient's record, as applicable. If the recipient is older than 22 years and, therefore, not eligible for Special Education funding, documentation is required only for lack of DRS funding. Acceptable documentation would include a copy of a letter from DRS or the local school system or a record of a phone call (name, date, person contacted) documented in the support coordinator's case notes, Consumer Profile/Social assessment or on the supported employment supporting documentation. Unless the recipient's circumstances change, the original verification can be forwarded into the current record or repeated on the supporting documentation or revised Consumer Profile/Social Assessment on an annual basis.

3. Supporting documentation and ongoing documentation consistent with licensing regulations, if a DMHMRSAS licensed program.

4. For non-DMHMRSAS programs licensed as supported employment programs, there must be

supporting documentation that contains, at a minimum, the following elements:

a. The recipient's strengths, desired outcomes, required/desired supports and training needs;

b. The recipient's goals and, for a training goal, a sequence of measurable objectives to meet the above identified outcomes;

c. Services to be rendered and the frequency of services to accomplish the above goals and objectives;

d. All individuals or organizations that will provide the services specified in the statement of services;

e. A timetable for the accomplishment of the recipient's goals and objectives;

f. The estimated duration of the recipient's needs for services; and

g. Individuals responsible for the overall coordination and integration of the services specified in the plan.

5. Documentation must confirm attendance and provide specific information regarding the recipient's response to various settings and supports as agreed to in the supporting documentation objectives. Assessment results should be available in at least a daily note or weekly summary.

6. The supporting documentation must be reviewed by the provider with the recipient, and this review submitted to the support coordinator, at least semi-annually, with goals, objectives and activities modified as appropriate.

12 VAC 30-120-755. Reserved.

12 VAC 30-120-756. Therapeutic consultation.

A. Service description. 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. Behavior consultation performed by these individuals may also be a covered waiver service. These services may be provided, based on the recipient's CSP, for those recipients for whom specialized consultation is clinically necessary to enable their utilization of waiver services. Therapeutic consultation services, other than behavior consultation, may be provided in in-home residential or day support settings or in office settings in conjunction with another waiver service. Only 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. Therapeutic consultation service providers are reimbursed according to the amount and type of service authorized in the CSP based on an hourly fee for service.

B. Criteria. In order to qualify for these services, the recipient shall have a demonstrated need for consultation in any of these services. Documented need must indicate that the CSP cannot be implemented effectively and efficiently without such consultation from this service.

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1. The recipient's CSP must clearly reflect the recipient's needs, as documented in the social assessment, for specialized consultation provided to caregivers in order to implement the CSP effectively.

2. Therapeutic consultation services may neither include direct therapy provided to waiver recipients nor duplicate the activities of other services that are available to the recipient through the State Plan of Medical Assistance.

C. Service units and service limitations. The unit of service shall equal one hour. The services must be explicitly detailed in the supporting documentation. Travel time, written preparation, and telephone communication are in-kind expenses within this service and are not billable as separate items. Therapeutic consultation may not be billed solely for purposes of monitoring.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based care participating providers as specified in 12 VAC 30-120-730 and 12 VAC 30-120-740, professionals rendering therapeutic consultation services, including behavior consultation services, shall meet all applicable state licensure or certification requirements. Persons providing rehabilitation engineering shall be contracted with DRS.

1. Supporting documentation for therapeutic consultation. The following information is required in the supporting documentation:

a. Identifying information: recipient's name and Medicaid number; provider name and provider number; responsible person and telephone number; effective dates for supporting documentation; and semi-annual review dates, if applicable;

b. Targeted objectives, time frames, and expected outcomes;

c. Specific consultation; and

d. The expected outcomes.

2. Monthly and contact notes shall include:

a. Summary of consultative activities for the month;

b. Dates, locations, and times of service delivery;

c. Supporting documentation objectives addressed;

d. Specific details of the activities conducted;

e. Services delivered as planned or modified; and

f. Effectiveness of the strategies and recipients' and caregivers' satisfaction with service.

3. Semi-annual reviews are required by the service provider if consultation extends three months or longer, are to be forwarded to the support coordinator, and must include:

a. Activities related to the therapeutic consultation supporting documentation;

b. Recipient status and satisfaction with services; and

c. Consultation outcomes and effectiveness of support plan.

4. If consultation services extend less than three months, the provider must forward monthly contact notes or a summary of them to the support coordinator for the semi-annual review.

5. A written support plan, detailing the interventions and strategies for staff, family, or caregivers to use to better support the recipient in the service.

6. A final disposition summary must be forwarded to the support coordinator within 30 days following the end of this service and must include:

a. Strategies utilized;

b. Objectives met;

c. Unresolved issues; and

d. Consultant recommendations.

12 VAC 30-120-757. Reserved.

12 VAC 30-120-758. Environmental modifications.

A. Service description. Environmental modifications shall be available to recipients who are receiving at least one other waiver service. Environmental modifications shall be defined as those physical adaptations to the home, required by the individual's CSP, that are necessary to ensure the health, welfare, and safety of the individual, or that enable the individual to function with greater independence in the home and, without which, the individual would require institutionalization. Such adaptations may include the installation of ramps and grab-bars, widening of doorways, modification of bathroom facilities, or installation of specialized electric and plumbing systems which are necessary to accommodate the medical equipment and supplies that are necessary for the welfare of the individual. Excluded are those adaptations or improvements to the home that are of general utility and are not of direct medical or remedial benefit to the individual, such as carpeting, roof repairs, central air conditioning, etc. Adaptations that add to the total square footage of the home shall be excluded from this benefit. All services shall be provided in accordance with applicable state or local building codes. Modifications can be made to a vehicle if it is the primary vehicle being used by the individual.

B. Criteria. In order to qualify for these services, the recipient must have a demonstrated need for equipment or modifications of a remedial or medical benefit offered primarily in a recipient's home, vehicle, community activity setting, or day program to specifically improve the recipient's personal functioning. This service shall encompass those items not otherwise covered in the State Plan for Medical Assistance or through another program (e.g., DRS or the Consumer Service Fund).

C. Service units and service limitations. A maximum limit of \$5,000 may be reimbursed per calendar year. Costs for environmental modifications shall not be carried over from year to year. All environmental modifications must be prior authorized by DMAS.

D. *Provider requirements.* In addition to meeting the general conditions and requirements for HCBC participating providers as specified in 12 VAC 30-120-730 and 12 VAC 30-120-740, environmental modifications must be provided in accordance with all applicable state or local building codes by contractors who have a provider agreement with DMAS.

12 VAC 30-120-759. Reserved.

12 VAC 30-120-760. Skilled nursing services.

A. *Service description.* Skilled nursing services shall be provided for recipients with serious medical conditions and complex health care needs who require specific skilled nursing services that cannot be provided by non-nursing personnel. Skilled nursing may be provided in the recipient's home or other community setting on a regularly scheduled or intermittent need basis.

B. *Criteria.* In order to qualify for these services, the recipient must demonstrate complex health care needs that require specific skilled nursing services ordered by a physician and that cannot be otherwise accessed under the Title XIX State Plan for Medical Assistance. The recipient's CSP must stipulate that this service is necessary in order to prevent institutionalization.

C. *Service units and service limitations.* Skilled nursing services to be rendered by either registered or licensed practical nurses are provided in hourly units.

D. *Provider requirements.* Skilled nursing services shall be provided by either a DMAS enrolled private duty nursing, a home health provider, or a licensed registered nurse or licensed practical nurse contracted or employed by a Community Services Board. In addition to meeting the general conditions and requirements for home and community-based care participating providers as specified in 12 VAC 30-120-730 and 12 VAC 30-120-740, in order to be approved for skilled nursing contracts, the provider must:

1. If a home health agency, be certified by the VDH for Medicaid participation and have a DMAS contract for private duty nursing;
2. Demonstrate a prior successful health care delivery business or practice;
3. Operate from a business office; and
4. If community services boards employ or subcontract with and directly supervise a registered nurse (RN) or a licensed practical nurse (LPN) with a current and valid license issued by the Virginia State Board of Nursing, the RN or LPN must have at least two years of related clinical nursing experience that may include work in an acute care hospital, public health clinic, home health agency, or nursing home.

12 VAC 30-120-761. Reserved.

12 VAC 30-120-762. Assistive technology.

A. *Service description.* Assistive technology is available to recipients who are receiving at least one other waiver service and may be provided in a residential or nonresidential setting.

B. *Criteria.* In order to qualify for these services, the recipient must have a demonstrated need for equipment or modification for remedial or medical benefit primarily in a recipient's home, vehicle, community activity setting, or day program to specifically serve to improve the recipient's personal functioning. This shall encompass those items not otherwise covered under the State Plan for Medical Assistance.

C. *Service units and service limitations.* A maximum limit of \$5,000 may be reimbursed per calendar year. Costs for assistive technology cannot be carried over from year to year.

D. *Provider requirements.* In addition to meeting the general conditions and requirements for home and community-based care participating providers as specified in 12 VAC 30-120-730 and 12 VAC 30-120-740, assistive technology shall be provided by agencies under contract with the DMAS as durable medical equipment and supply providers.

12 VAC 30-120-763. Reserved.

12 VAC 30-120-764. Crisis stabilization services.

A. *Service description.* Crisis stabilization services shall provide, as appropriate, neuropsychological, psychiatric, psychological and functional assessments and stabilization, medication management and behavior assessment and support, and intensive care coordination with other agencies and providers. These services shall be provided to:

1. Assist planning and delivery of services and supports to maintain community placement of the recipient;
2. Train family members and other care givers and service providers in positive behavioral supports to maintain the recipient in the community; and
3. Provide temporary crisis supervision to ensure the safety of the recipient and others;

B. *Criteria.*

1. In order to receive crisis stabilization services, the recipient must meet at least one of the following criteria:
 - a. The recipient is experiencing marked reduction in psychiatric, adaptive, or behavioral functioning;
 - b. The recipient is experiencing extreme increase in emotional distress;
 - c. The recipient needs continuous intervention to maintain stability; or
 - d. The recipient is causing harm to self or others.
2. The recipient must be at risk of at least one of the following:
 - a. Psychiatric hospitalization;
 - b. Emergency ICF/MR placement;
 - c. Disruption of community status (living arrangement, day placement, or school); or
 - d. Causing harm to self or others.

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C. *Service units and service limitations. Crisis stabilization services must be authorized following a documented face-to-face assessment conducted by a qualified mental health professional.*

1. *The unit for each component of the service is one hour. This service may be authorized in 15-day increments, but no more than 60 days in a calendar year may be used. The actual service units per episode shall be based on the documented clinical needs of the recipients being served. Extension of services beyond the 15-day limit per authorization must be authorized following a documented face-to-face reassessment conducted by a qualified professional.*

2. *Crisis stabilization services may be provided directly in the following settings (the examples below are not exclusive):*

- a. *The home of a recipient who lives with family or other primary caregiver or caregivers;*
- b. *The home of a recipient who lives independently or semi-independently to augment any current services and support;*
- 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. *Crisis supervision may be provided as a component of this service only if clinical or behavioral interventions allowed under this service are also provided during the authorized period. Crisis supervision must be provided face-to-face with the recipient.*

4. *Crisis stabilization services shall not be used for continuous long-term care. Room and board and general supervision are not components of this service.*

D. *Provider requirements. In addition to the general conditions and requirements for home and community-based care participating providers as specified in 12 VAC 30-120-730 and 12 VAC 30-120-740, the following specific provider qualifications apply:*

1. *Crisis stabilization services shall be provided by agencies licensed by DMHMRSAS as a provider of outpatient, residential, supportive residential services, or day support services. The provider agency must employ or utilize qualified licensed mental health professionals or other qualified personnel competent to provide crisis stabilization and related activities to recipients with developmental disabilities who are experiencing serious behavioral problems.*

2. *Crisis stabilization supporting documentation must be developed (or revised, in the case of a request for an extension) and submitted to the support coordinator for authorization within 72 hours of assessment or reassessment.*

3. *Documentation indicating the dates and times of crisis stabilization services and amount and type of service provided must be recorded in the recipient's record.*

4. *Documentation of qualifications of providers must be maintained for review by DMAS staff. This service 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.*

12 VAC 30-120-765. Reserved.

12 VAC 30-120-766. Personal care services.

A. *Service description. Personal care services may be offered to recipients in their homes and communities as an alternative to more costly institutional care. This service shall provide care to recipients with activities of daily living, medication or other medical needs or the monitoring of health status or physical condition.*

B. *Criteria. In order to qualify for these services, the individual must demonstrate a need for such personal care.*

C. *Service units and service limitations. Recipients can have personal care and in-home residential support services in their service plan but cannot receive in-home residential supports and personal care services at the same time. Each recipient must have an emergency back-up plan in case the personal care aide does not show up for work as expected.*

D. *Provider requirements. In addition to meeting the general conditions and requirements for home and community-based care participating providers as specified in 12 VAC 30-120-730 and 12 VAC 30-120-740, personal care providers must meet additional provider requirements.*

1. *Personal care services shall be provided by a DMAS certified personal care provider or by a DMHMRSAS licensed residential support provider.*

2. *The personal care provider must:*

- a. *Demonstrate a prior successful health care delivery business.*
- b. *Operate from a business office.*
- c. *Employ or subcontract with and directly supervise an RN or an LPN who will provide ongoing supervision of all personal care aides.*

(1) *The supervising RN and LPN must be currently licensed to practice in the Commonwealth and have at least two years of related clinical nursing experience that may include work in an acute care hospital, public health clinic, home health agency, or nursing facility.*

(2) *The RN supervisor must make an initial assessment comprehensive home visit prior to the start of care for all new recipients admitted to personal care. The RN supervisor must also perform any subsequent reassessments or changes to the supporting documentation.*

(3) The RN or LPN must make supervisory visits as often as needed to ensure both quality and appropriateness of services. The minimum frequency of these visits is every 30 to 90 days depending on recipient needs.

(4) The supervising RN or LPN summary must note:

- (a) Whether personal care services continue to be appropriate;
- (b) Whether the plan is adequate to meet the need or if changes are indicated in the plan;
- (c) Any special tasks performed by the aide and the aide's qualifications to perform these tasks;
- (d) Recipient's satisfaction with the service;
- (e) Hospitalization or change in medical condition or functioning status;
- (f) Other services received and their amount; and
- (g) The presence or absence of the aide in the home during the RN's or LPN's visit.

(5) Employ and directly supervise personal care aides who will provide direct care to personal care recipients. Each aide hired by the provider agency shall be evaluated by the provider agency to ensure compliance with minimum qualifications as required by the DMAS. Each aide must:

- (a) Be able to read and write;
- (b) Have completed 40 hours of training consistent with the DMAS standards. Prior to assigning an aide to a recipient, the provider agency must ensure that the aide has satisfactorily completed a training program consistent with DMAS standards;
- (c) Be physically able to do the work;
- (d) Have a satisfactory work record as evidenced by two references from prior job experiences, including no evidence of possible abuse, neglect, or exploitation of aged or incapacitated adults or children; and
- (e) Not be a member of the recipient's family (family is defined as parents, spouses, children, siblings, grandparents, legal guardian, and grandchildren).

3. Provider inability to render services and substitution of aides.

- a. When a personal care aide is absent and the agency has no other aide available to provide services, the provider agency is responsible for ensuring that services continue to recipients. The agency may either obtain a substitute aide from another agency if the lapse in coverage is to be less than two weeks in duration, or transfer the recipient to another agency.
- b. During temporary, short-term lapses in coverage not to exceed two weeks in duration, the following procedures must apply:

(1) The personal care agency having recipient responsibility must provide the RN or LPN supervision for the substitute aide.

(2) The agency providing the substitute aide must send a copy of the aide's signed daily records signed by the recipient to the personal care agency having recipient care responsibility.

(3) The provider agency having recipient responsibility must bill DMAS for services rendered by the substitute aide.

c. If a provider agency secures a substitute aide, the provider agency is responsible for ensuring that all DMAS requirements continue to be met including documentation of services rendered by the substitute aide and documentation that the substitute aide's qualifications meet DMAS' requirements.

4. Required documentation in recipients' records. The provider agency must maintain all records of each personal care recipient. At a minimum these records must contain:

- a. The most recently updated CSP and supporting documentation, all provider agency documentation, and all DMAS-122 forms;
- b. All the DMAS utilization review forms;
- c. Initial assessment by the RN supervisory nurse completed prior to or on the date services are initiated and subsequent reassessments and changes to supporting documentation by the RN supervisory nurse;
- d. Nurses notes recorded and dated during any contacts with the personal care aide and during supervisory visits to the recipient's home;
- e. All correspondence to the recipient and to DMAS;
- f. Reassessments made during the provision of services; and
- g. Contacts made with family, physicians, DMAS, formal and informal service providers, and all professionals concerning the recipient.
- h. All personal care aide records. The personal care aide record must contain:

(1) The specific services delivered to the recipient by the aide and the recipient's responses;

(2) The aide's arrival and departure times;

(3) The aide's weekly comments or observations about the recipient to include observations of the recipient's physical and emotional condition, daily activities, and responses to services rendered; and

(4) The aide's and recipient's weekly signatures to verify that personal care services during that week have been rendered.

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i. Signatures, times, and dates shall not be placed on the aide record prior to the last date of the week that the services are delivered.

12 VAC 30-120-767. Reserved.

12 VAC 30-120-768. Respite care services.

A. *Service description.* Respite care means services specifically designed to provide a temporary but periodic or routine relief to the primary caregiver of a recipient who is incapacitated or dependent due to physical disability. Respite care services include assistance with personal hygiene, nutritional support, and environmental maintenance authorized as either episodic, temporary relief, or as a routine periodic relief of the caregiver. Persons can have respite care and in-home residential support services in their service plan but cannot receive in-home residential supports and respite care services simultaneously.

B. *Criteria.* Respite care may only be offered to recipients who have a primary caregiver living in the home who requires temporary relief to avoid institutionalization of the recipient. Respite care is designed to focus on the need of the caregiver for temporary relief and to help prevent the breakdown of the caregiver due to the physical burden and emotional stress of providing continuous support and care to the dependent recipient.

C. *Service units and service limitations.* Respite care services are limited to a maximum of 30 days or 720 hours per year.

D. *Provider requirements.* In addition to meeting the general conditions and requirements for home and community-based care participating providers as specified in 12 VAC 30-120-730 and 12 VAC 30-120-740, providers must meet the following qualifications:

1. Respite care services shall be provided by a DMAS certified personal care provider, a DMHMRSAS licensed supportive in-home residential support provider, respite care services provider (ICF/MR), or in-home respite care provider.

2. The respite care provider must employ or subcontract with and directly supervise an RN or an LPN who will provide ongoing supervision of all respite care aides.

a. The RN and LPN must be currently licensed to practice in the Commonwealth and have at least two years of related clinical nursing experience, which may include work in an acute care hospital, public health clinic, home health agency, or nursing facility.

b. Based on continuing evaluations of the aides' performances and recipients' needs, the RN or LPN supervisor shall identify any gaps in the aides' abilities to function competently and shall provide training as indicated.

c. The RN supervisor must make an initial assessment visit prior to the start of care for any recipient admitted to respite care. The RN supervisor must also perform any subsequent reassessments or changes to the supporting documentation.

d. The RN or LPN must make supervisory visits as often as needed to ensure both quality and appropriateness of services.

(1) When respite care services are received on a routine basis, the minimum acceptable frequency of these supervisory visits shall be every 30 to 90 days.

(2) When respite care services are not received on a routine basis, but are episodic in nature, the RN or LPN is not required to conduct a supervisory visit every 30 to 90 days. Instead, the nurse supervisor must conduct the initial home visit with the respite care aide immediately preceding the start of care and make a second home visit within the respite care period.

(3) When respite care services are routine in nature and offered in conjunction with personal care, the 30 to 90 day supervisory visit conducted for personal care may serve as the RN or LPN visit for respite care. However, the RN or LPN supervisor must document supervision of respite care separately. For this purpose, the same recipient record can be used with a separate section for respite care documentation.

e. The RN or LPN must document in a summary note:

(1) Whether respite care services continue to be appropriate.

(2) Whether the supporting documentation is adequate to meet the recipient's needs or if changes need to be made.

(3) The recipient's satisfaction with the service.

(4) Any hospitalization or change in medical condition or functioning status.

(5) Other services received and the amount.

(6) The presence or absence of the aide in the home during the visit.

3. Employ and directly supervise respite care aides who provide direct care to respite care recipients. Each aide hired by the provider agency shall be evaluated by the provider agency to ensure compliance with minimum qualifications. Each aide must:

a. Be able to read and write;

b. Have completed 40 hours of training consistent with the DMAS standards. Prior to assigning an aide to a recipient, the provider agency must ensure that the aide has satisfactorily completed a training program consistent with the DMAS standards;

c. Be evaluated in his job performance by the RN or LPN supervisor;

d. Be physically able to do the work;

e. Have a satisfactory work record as evidenced by two references from prior job experiences, including no

evidence of possible abuse, neglect or exploitation of aged or incapacitated adults or children; and

f. Not be a member of a recipient's family (family is defined as parents, spouses, children, siblings, legal guardian, grandparents, and grandchildren).

4. Inability to provide services and substitution of aides. When a respite care aide is absent and the respite care provider agency has no other aide available to provide services, the provider agency is responsible for ensuring that services continue to recipients.

a. If a provider agency cannot supply a respite care aide to render authorized services, the agency may either obtain a substitute aide from another agency if the lapse in coverage is to be less than two weeks in duration, or may transfer the recipient's care to another agency.

b. If no other provider agency is available who can supply an aide, the provider agency shall notify the recipient or family so that they may contact the support coordinator to request a screening if ICF/MR placement is desired.

c. During temporary, short-term lapses in coverage, not to exceed two weeks in duration, a substitute aide may be secured from another respite care provider agency or other home care agency. Under these circumstances, the following requirements apply:

(1) The respite care agency having recipient responsibility is responsible for providing the RN or LPN supervision for the substitute aide.

(2) The respite care agency having recipient care responsibility must obtain a copy of the aide's daily records signed by the recipient and the substitute aide from the respite care agency providing the substitute aide. All documentation of services rendered by the substitute aide must be in the recipient's record. The documentation of the substitute aide's qualifications must also be obtained and recorded in the personnel files of the agency having recipient care responsibility. The two agencies involved are responsible for negotiating the financial arrangements of paying the substitute aide.

(3) Only the provider agency having recipient responsibility may bill DMAS for services rendered by the substitute aide.

d. Substitute aides obtained from other agencies may be used only in cases where no other arrangements can be made for recipient respite care services coverage and may be used only on a temporary basis. If a substitute aide is needed for more than two weeks, the case must be transferred to another respite care provider agency that has the aide capability to serve the recipient or recipients.

5. Required documentation for recipients' records. The provider agency must maintain all records of each respite care recipient. These records must be separated from those of other nonwaiver services, such as home health

services. These records will be reviewed periodically by the DMAS staff. At a minimum these records must contain:

a. The most recent CSP and supporting documentation, all respite care assessments, and all DMAS-122 forms;

b. All DMAS utilization review forms;

c. Initial assessment by the RN supervisory nurse completed prior to or on the date services are initiated and subsequent reassessments and changes to supporting documentation by the RN supervisory nurse;

d. Nurses' notes recorded and dated during significant contacts with the respite care aide and during supervisory visits to the recipient's home;

e. All correspondence to the recipient and to the DMAS;

f. Reassessments made during the provision of services; and

g. Significant contacts made with family, physicians, the DMAS, and all professionals concerning the recipient.

6. Respite care aide record of services rendered and recipient's responses. The aide record must contain:

a. The specific services delivered to the recipient by the respite care aide and the recipient's response.

b. The arrival and departure time of the aide for respite care services only.

c. Comments or observations recorded weekly about the recipient. Aide comments must include, at a minimum, observation of the recipient's physical and emotional condition, daily activities, and the recipient's response to services rendered.

d. The signature of the aide and the recipient once each week to verify that respite care services have been rendered.

e. Signatures, times, and dates shall not be placed on the aide record prior to the last date of the week that the services are delivered.

7. Copies of all aide records shall be subject to review by state and federal Medicaid representatives.

12 VAC 30-120-769. Reserved.

12 VAC 30-120-770. Consumer-directed services: attendant care and consumer-directed respite care.

A. Service definition.

1. Attendant services include hands-on care specific to the needs of a medically stable, physically disabled recipient. Attendant care includes assistance with ADLs, bowel/bladder programs, range of motion exercises, routine wound care that does not include sterile technique, and external catheter care. Supportive

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services are those that substitute for the absence, loss, diminution, or impairment of a physical function. When specified, supportive services may include assistance with instrumental activities of daily living (IADLs) that are incidental to the care furnished, or that are essential to the health and welfare of the recipient. Attendant care does not include either practical or professional nursing services or those practices regulated in Chapters 30 (§ 54.1-3000 et seq.) and 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia, as appropriate. Recipients can have attendant care and in-home residential support services in their service plan but cannot receive these two services simultaneously.

An additional component to attendant care will be work-related attendant services. This service will extend the ability of the personal attendant to provide assistance in the workplace. These services include filing, retrieving work materials that are out of reach, providing travel assistance for a consumer with a mobility impairment, helping a consumer with organizational skills, reading handwritten mail to a consumer with a visual impairment, or ensuring that a sign language interpreter is present during staff meetings to accommodate an employee with a hearing impairment.

2. Consumer-directed respite care means services specifically designed to provide a temporary but periodic or routine relief to the primary caregiver of a recipient who is incapacitated or dependent due to frailty or physical disability. Respite care services includes assistance with personal hygiene, nutritional support, and environmental maintenance authorized as either episodic, temporary relief, or as a routine periodic relief of the caregiver.

3. DMAS shall contract for the services of a fiscal agent for attendant care and consumer-directed respite care services. The fiscal agent will be reimbursed by DMAS to perform certain tasks as an agent for the recipient/employer who is receiving attendant care or consumer-directed respite care. The fiscal agent will handle responsibilities for the recipient for employment taxes. The fiscal agent will seek and obtain all necessary authorizations and approvals of the Internal Revenue Services in order to fulfill all of these duties.

B. Criteria.

1. In order to qualify for these services, the recipient must demonstrate a need for personal care in activities of daily living, medication or other medical needs, or monitoring health status or physical condition.

2. Consumer-directed respite care may only be offered to recipients who have a primary caregiver living in the home who requires temporary relief to avoid institutionalization of the recipient, and it is designed to focus on the need of the caregiver for temporary relief.

3. Attendant care and consumer-directed respite services are available to recipients who are mentally alert, have no cognitive impairments, and who would otherwise require the level of care provided in an ICF/MR. If 18 years of age or older, recipients must be

able to manage their own affairs without help and not have a legal guardian. If recipients receiving services are under 18 years of age, the legal guardian or parent will act on behalf of the minor. Recipients (and their parent or legal guardian, if minors) who are eligible for attendant care and consumer-directed respite care must have the capability to hire and train their own personal attendants and supervise the attendant's performance.

4. Responsibilities as employer. The recipient is the employer in this service and is responsible for hiring, training, supervising, and firing personal attendants. If the recipient is a minor, the recipient's parent or legal guardian will serve on behalf of the recipient and monitor the recipient's care. Specific duties include checking references of personal attendants, determining that personal attendants meet basic qualifications, training personal attendants, supervising the personal attendant's performance, and submitting timesheets to the service coordinator and fiscal agent on a consistent and timely basis. The recipient must have an emergency back-up plan in case the personal attendant does not show up for work as expected or terminates employment without prior notice.

C. Service units and service limitations.

1. Consumer-directed respite care services are limited to a maximum of 30 days or 720 hours per calendar year.

2. Recipients can have consumer-directed respite care and attendant care and in-home residential support services in their service plans but cannot receive these services simultaneously.

3. For attendant care and consumer-directed respite care services, recipients will hire their own personal attendants and manage and supervise the attendants' performances.

The attendant must meet the following requirements:

- a. Be 18 years of age or older;
- b. Have the required skills to perform attendant care services as specified in the recipient's supporting documentation;
- c. Possess basic math, reading, and writing skills;
- d. Possess a valid Social Security number;
- e. Submit to a criminal records check and, if the recipient is a minor, the child protective services registry. The personal attendant will not be compensated for services provided to the recipient if the records check verifies the personal attendant has been convicted of crimes described in § 32.1-162.9:1 of the Code of Virginia or if the personal attendant has a complaint confirmed by the DSS child protective services registry.
- f. Be willing to attend training at the recipient's or family's request;
- g. Understand and agree to comply with the DMAS IFDDS Waiver requirements;

h. Receive periodic TB screening, CPR training and an annual flu shot; and

i. Be willing to register in a personal attendant registry, which will be maintained by the service coordinator chosen by the recipient or recipient's parent or guardian.

4. Restrictions. Attendants cannot be members of the recipients' family. Family is defined as a parent or stepparent, spouse, children or stepchildren, legal guardian, siblings or stepsiblings, grandparents or stepgrandparents, grandchildren, or stepgrandchildren.

5. Retention, hiring, and substitution of attendants. Upon the recipient's request, the service coordination provider shall provide the recipient with a list of persons on the personal attendant registry who can provide temporary assistance until the attendant returns or the recipient or recipient's parent or legal guardian is able to select and hire a new personal attendant. If a recipient or recipient's parent or legal guardian is consistently unable to hire and retain the employment of an attendant to provide attendant or consumer-directed respite services, the service coordination provider must contact the support coordinator and DMAS to transfer the recipient, at the recipient's choice, to a provider that provides Medicaid-funded agency-directed personal care or respite care services. The service coordination provider will make arrangements with the support coordinator to have the recipient transferred.

D. Provider qualifications. In addition to meeting the general conditions and requirements for home and community-based care participating providers as specified in 12 VAC 30-120-730 and 12 VAC 30-120-740, provider must meet the following qualifications:

1. To be enrolled as a Medicaid service coordination provider and maintain provider status, the service coordination provider must operate from a business office and have sufficient qualified staff who will function as service coordinators to perform the needed plans of care development and monitoring, reassessments, service coordination, and support activities as required. It is preferred that the employee of the service coordination provider possess a minimum of an undergraduate degree in a human services field or be a registered nurse currently licensed to practice in the Commonwealth. In addition, it is preferable that the individual have two years of satisfactory experience in the human services field working with persons with severe physical disabilities or with the elderly. The individual must possess a combination of work experience and relevant education which indicates possession of the following knowledge, skills, and abilities. Such knowledge, skills and abilities must be documented on the application form, found in supporting documentation, or be observed during the job interview. Observations during the interview must be documented. The knowledge, skills, and abilities include:

a. Knowledge of:

(1) Types of functional limitations and health problems that are common to different disability

types and the aging process as well as strategies to reduce limitations and health problems;

(2) Physical assistance typically required by people with developmental disabilities, such as transferring, bathing techniques, bowel and bladder care, and the approximate time those activities normally take;

(3) Equipment and environmental modifications commonly used and required by people with developmental disabilities that reduce the need for human help and improves safety;

(4) Various long-term care program requirements, including nursing home and assisted living facility placement criteria, Medicaid waiver services, and other federal, state, and local resources that provide personal care services;

(5) IFDDS Waiver requirements, as well as the administrative duties for which the recipient will be responsible;

(6) Conducting assessments (including environmental, psychosocial, health, and functional factors) and their uses in care planning;

(7) Interviewing techniques;

(8) The recipient's right to make decisions about, direct the provisions of, and control his attendant care and consumer-directed respite care services, including hiring, training, managing, approving time sheets, and firing an attendant;

(9) The principles of human behavior and interpersonal relationships; and

(10) General principles of record documentation.

b. Skills in:

(1) Negotiating with recipients and service providers;

(2) Observing, recording, and reporting behaviors;

(3) Identifying, developing, or providing services to persons with developmental disabilities; and

(4) Identifying services within the established services system to meet the recipient's needs.

c. Abilities to:

(1) Report findings of the assessment or onsite visit, either in writing or an alternative format for persons who have visual impairments;

(2) Demonstrate a positive regard for recipients and their families;

(3) Be persistent and remain objective;

(4) Work independently, performing position duties under general supervision;

(5) Communicate effectively, orally and in writing; and

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- (6) Develop a rapport and communicate with different types of persons from diverse cultural backgrounds.
2. If the service coordination staff employed by the service coordination provider is not an RN, the service coordination provider must have RN consulting services available, either by a staffing arrangement or through a contracted consulting arrangement. The RN consultant is to be available as needed to consult with recipients and service coordination providers on issues related to the health needs of the recipient.
3. Initiation of services and service monitoring.
- a. Attendant care services. The service coordination provider must make an initial comprehensive home visit to develop the supporting documentation with the recipient and provide management training. After the initial visit, two routine onsite visits must occur in the recipient's home within 60 days of the initiation of care or the initial visit to monitor the supporting documentation. The service coordination provider will continue to monitor the supporting documentation on an as needed basis, not to exceed a maximum of one routine onsite visit every 30 days but no less than the minimum of one routine onsite visit every 90 days per recipient. The initial comprehensive visit is done only once upon the recipient's entry into the service. If a waiver recipient changes service coordination agencies, the new service coordination provider must bill for a reassessment in lieu of a comprehensive visit.
- b. Consumer-directed respite services. The service coordination provider must make an initial comprehensive home visit to develop the supporting documentation with the recipient or parent or legal guardian and will provide management training. After the initial visit, the service coordinator will periodically review the utilization of services at a minimum of every six months or upon the use of 300 respite care hours. The initial comprehensive visit is done only once upon the recipient's entry into the service. If a waiver recipient changes service coordination agencies, the new service coordination provider must bill for a reassessment in lieu of a comprehensive visit.
4. Service coordinator reassessments for consumer-directed respite and attendant care. A reassessment of the recipient's level of care will occur six months after initial entry into the program, and subsequent reevaluations will occur at a minimum of every six months. During visits to the recipient's home, the service coordination provider must observe, evaluate, and document the adequacy and appropriateness of personal attendant services with regard to the recipient's current functioning and cognitive status, medical, and social needs. The service coordination provider's summary must include, but not necessarily be limited to:
- a. Whether attendant care or consumer-directed respite care services continue to be appropriate and medically necessary to prevent institutionalization;
- b. Whether the service is adequate to meet the recipient's needs;
- c. Any special tasks performed by the attendant and the attendant's qualifications to perform these tasks;
- d. Recipient's satisfaction with the service;
- e. Hospitalization or change in medical condition, functioning, or cognitive status;
- f. Other services received and their amount; and
- g. The presence or absence of the attendant in the home during the service coordinator's visit.
5. The service coordination provider must be available to the recipient by telephone.
6. The service coordination provider must submit a criminal record check pertaining to the personal attendant on behalf of the recipient and report findings of the criminal record check to the recipient or the recipient's legal guardian or parent and the program's fiscal agent. Personal attendants will not be reimbursed for services provided to the recipient effective with the date the criminal record check confirms a personal attendant has been found to have been convicted of a crime as described in § 32.1-162.9:1 of the Code of Virginia. If the recipient is a minor, the personal attendant must also be screened through the DSS child protective services registry.
7. The service coordination provider shall verify bi-weekly timesheets signed by the recipient or the legal guardian or parent and the personal attendant to ensure that the number of CSP approved hours are not exceeded. If discrepancies are identified, the service coordination provider must contact the recipient to resolve discrepancies and must notify the fiscal agent. If a recipient is consistently being identified as having discrepancies in his timesheets, the service coordination provider must contact the support coordinator to resolve the situation. The service coordination provider cannot verify timesheets for personal attendants who have been convicted of crimes described in § 32.1-162.9:1 of the Code of Virginia and must notify the fiscal agent.
8. Personal attendant registry. The service coordination provider must maintain a personal attendant registry.
9. Required documentation in recipients' records. The service coordination provider must maintain all records of each recipient. At a minimum these records must contain:
- a. All copies of the CSP, all supporting documentation, and all DMAS-122 forms.
- b. All DMAS utilization review forms.
- c. Service coordination provider's notes contemporaneously recorded and dated during any contacts with the recipient and during visits to the recipient's home.
- d. All correspondence to the recipient and to DMAS.

e. Reassessments made during the provision of services.

f. Records of contacts made with family, physicians, DMAS, formal and informal service providers, and all professionals concerning the recipient.

g. All training provided to the personal attendant or attendants on behalf of the recipient.

h. All management training provided to the recipients, including the recipient's responsibility for the accuracy of the timesheets.

i. All documents signed by the recipient or the recipient's parent or legal guardian that acknowledge the responsibilities of the services.

12 VAC 30-120-771. Reserved.

12 VAC 30-120-772. Family/caregiver training.

A. Service description. Family or caregiver training is the provision of identified training and education related to disabilities, community integration, family dynamics, stress management, behavior interventions and mental health to a parent, other family members or primary caregiver. For purposes of this service, "family" is defined as the persons who live with or provide care to or support a waiver recipient, and may include a parent, spouse, children, relatives, a legal guardian, foster family, or in-laws. "Family" does not include individuals who are employed to care for the recipient. All family training must be included in the recipient's written CSP.

B. Criteria. The need for the training and the content of the training in order to assist family or caregivers with maintaining the recipient at home must be documented in the recipient's CSP. The training must be necessary in order to improve the family or caregiver's ability to give care and support.

C. Service units and service limitations. Services will be billed hourly and must be prior authorized. Recipients may receive up to 80 hours of family/caregiver training per calendar year.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based care participating providers as specified in 12 VAC 30-120-730 and 12 VAC 30-120-740, providers must meet the following qualifications:

1. Family/caregiver training must be provided on an individual basis, in small groups or through seminars and conferences provided by Medicaid-certified family and caregiver training providers.

2. Family/caregiver training must be provided by individuals with expertise who work for an agency with experience in or demonstrated knowledge of the training topic and who work for an agency or organization that has a provider agreement with DMAS to provide these services. Individuals must also have the appropriate licensure or certification as required for the specific professional field associated with the training area. Licensed practical counselors, licensed clinical social workers, and licensed psychologists can enroll as

individual practitioners with DMAS to provide family/caregiver training.

12 VAC 30-120-773. Reserved.

12 VAC 30-120-774. Personal Emergency Response System (PERS).

A. Service description. PERS is a service which electronically monitors recipient safety in the home and provides access to emergency crisis intervention for medical or environmental emergencies through the provision of a two-way voice communication system that dials a 24-hour response or monitoring center upon activation and via the recipient's home telephone line.

B. Criteria. PERS can be authorized when there is no one else in the home who is competent and continuously available to call for help in an emergency. If the recipient's caregiver has a business in the home, such as a day care center, PERS will only be approved if the recipient is evaluated as being dependent in orientation and behavior pattern.

C. Service units and service limitations.

1. A unit of service shall include administrative costs, time, labor, and supplies associated with the installation, maintenance, and monitoring of the PERS. A unit of service is one-month rental price set by DMAS. The one-time installation of the unit includes installation, account activation, recipient and caregiver instruction, and removal of equipment.

2. PERS services must be capable of being activated by a remote wireless device and be connected to the recipient's telephone line. The PERS console unit must provide hands-free voice-to-voice communication with the response center. The activating device must be waterproof, automatically transmit to the response center an activator low battery alert signal prior to the battery losing power, and be able to be worn by the recipient.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based care participating providers as specified in 12 VAC 30-120-730 and 12 VAC 30-120-740, providers must also meet the following qualifications:

1. A PERS provider is a certified home health or personal care agency, a durable medical equipment provider, a hospital or a PERS manufacturer that has the ability to provide PERS equipment, direct services (i.e., installation, equipment maintenance and service calls), and PERS monitoring.

2. The PERS provider must provide an emergency response center staff with fully trained operators that are capable of receiving signals for help from a recipient's PERS equipment 24 hours a day, 365, or 366 as appropriate, days per year; determining whether an emergency exists; and notifying an emergency response organization or an emergency responder that the PERS recipient needs emergency help.

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3. A PERS provider must comply with all applicable Virginia statutes and all applicable regulations of DMAS and all other governmental agencies having jurisdiction over the services to be performed.

4. The PERS provider has the primary responsibility to furnish, install, maintain, test, and service the PERS equipment, as required to keep it fully operational. The provider shall replace or repair the PERS device within 24 hours of the recipient's notification of a malfunction of the console unit, activating devices or medication-monitoring unit while the original equipment is being repaired.

5. The PERS provider must properly install all PERS equipment into a PERS recipient's functioning telephone line and must furnish all supplies necessary to ensure that the system is installed and working properly.

6. The PERS installation includes local seize line circuitry, which guarantees that the unit will have priority over the telephone connected to the console unit should the phone be off the hook or in use when the unit is activated.

7. A PERS provider must maintain all installed PERS equipment in proper working order.

8. A PERS provider must maintain a data record for each PERS recipient at no additional cost to DMAS. The record must document all of the following:

- a. Delivery date and installation date of the PERS;
- b. Enrollee/caregiver signature verifying receipt of PERS device;
- c. Verification by a test that the PERS device is operational, monthly or more frequently as needed;
- d. Updated and current recipient responder and contact information, as provided by the recipient or the recipient's care provider; and
- e. A case log documenting recipient system utilization and recipient or responder contacts and communications.

9. The PERS provider must have back-up monitoring capacity in case the primary system cannot handle incoming emergency signals.

10. All PERS equipment must be approved by the Federal Communications Commission and meet the Underwriters' Laboratories, Inc. (UL) safety standard Number 1635 for Digital Alarm Communicator System Units and Number 1637, which is the UL safety standard for home health care signaling equipment. The UL listing mark on the equipment will be accepted as evidence of the equipment's compliance with such standard. The PERS device must be automatically reset by the response center after each activation ensuring that subsequent signals can be transmitted without requiring manual reset by the recipient.

11. A PERS provider must furnish education, data, and ongoing assistance to DMAS to familiarize staff with the

service, allow for ongoing evaluation and refinement of the program, and must instruct the recipient, caregiver, and responders in the use of the PERS service.

12. The emergency response activator must be activated either by breath, by touch, or by some other means, and must be usable by persons who are visually or hearing impaired or physically disabled. The emergency response communicator must be capable of operating without external power during a power failure at the recipient's home for a minimum period of 24 hours and automatically transmit a low battery alert signal to the response center if the back-up battery is low. The emergency response console unit must also be able to self-disconnect and redial the back-up monitoring site without the recipient resetting the system in the event it cannot get its signal accepted at the response center.

13. Monitoring agencies must be capable of continuously monitoring and responding to emergencies under all conditions, including power failures and mechanical malfunctions. It is the PERS provider's responsibility to ensure that the monitoring agency and the agency's equipment meets the following requirements. The monitoring agency must be capable of simultaneously responding to multiple signals for help from recipients' PERS equipment. The monitoring agency's equipment must include the following:

- a. A primary receiver and a back-up receiver, which must be independent and interchangeable;
- b. A back-up information retrieval system;
- c. A clock printer, which must print out the time and date of the emergency signal, the PERS recipient's identification code, and the emergency code that indicates whether the signal is active, passive, or a responder test;
- d. A back-up power supply;
- e. A separate telephone service;
- f. A toll free number to be used by the PERS equipment in order to contact the primary or back-up response center; and
- g. A telephone line monitor, which must give visual and audible signals when the incoming telephone line is disconnected for more than 10 seconds.

14. The monitoring agency must maintain detailed technical and operations manuals that describe PERS elements, including the installation, functioning, and testing of PERS equipment; emergency response protocols; and recordkeeping and reporting procedures.

15. The PERS provider shall document and furnish a written report to the support coordinator each emergency signal that results in action being taken on behalf of the recipient. This excludes test signals or activations made in error.

12 VAC 30-120-775. Reserved.

12 VAC 30-120-776. Companion care.

A. *Service description.* Companion care is a covered service when its purpose is to supervise or monitor those individuals who require the physical presence of an aide to ensure their safety during times when no other supportive individuals are available.

B. *Criteria.*

1. *The inclusion of companion care in the CSP is appropriate only when the recipient cannot be left alone at any time due to mental or severe physical incapacitation. This includes recipients who cannot use a phone to call for help due to a physical or neurological disability. Recipients can only receive companion care due to their inability to call for help if PERS is not appropriate for them.*

2. *Recipients who have a current, uncontrolled medical condition which would make them unable to call for help during a rapid deterioration can be approved for companion care if there is documentation that the recipient has had recurring attacks during the two-month period prior to the authorization of companion care. Companion care shall not be covered if required only because the recipient does not have a telephone in the home or because the recipient does not speak English.*

3. *There must be a clear and present danger to the recipient as a result of being left unsupervised. Companion care cannot be authorized for persons whose only need for companion care is for assistance exiting the home in the event of an emergency.*

C. *Service units and service limitations.*

1. *The amount of companion care time included in the CSP must be no more than is necessary to prevent the physical deterioration or injury to the recipient. In no event may the amount of time relegated solely to companion care on the CSP exceed eight hours per day.*

2. *A companion care aide cannot provide supervision to recipients who are on ventilators or continuous tube feedings or those who require suctioning of their airways.*

3. *Companion care will be authorized for family members to sleep either during the day or during the night when the recipient cannot be left alone at any time due to the recipient's severe agitation and physically wandering behavior. Companion aide services must be necessary to ensure the recipient's safety if the recipient cannot be left unsupervised due to health and safety concerns.*

4. *Companion care can be authorized when no one else is in the home who is competent to call for help in an emergency. If the recipient's caregiver has his business in the home, such as a day care center, companion care will only be considered if the recipient is dependent in orientation and behavior pattern.*

D. *Provider requirements.* In addition to meeting the general conditions and requirements for home and

community-based care participating providers as specified in 12 VAC 30-120-730 and 12 VAC 30-120-740, providers must meet the following qualifications:

1. *Companion aide qualifications.* Agencies must employ individuals to provide companion care who meet the following requirements:

a. *Be at least 18 years of age;*

b. *Possess basic reading, writing, and math skills;*

c. *Be capable of following a care plan with minimal supervision;*

d. *Submit to a criminal history record check. The companion will not be compensated for services provided to the recipient if the records check verifies the companion has been convicted of crimes described in § 32.1-162.9:1 of the Code of Virginia;*

e. *Possess a valid Social Security number; and*

f. *Be capable of aiding in the activities of daily living or instrumental activities of daily living.*

2. *Companions will be employees of agencies that will contract with DMAS to provide companion services. Agencies will be required to have a companion care supervisor to monitor companion care services. The supervisor must be a certified Home Health Aide, an LPN, or an RN, and must have a current license or certification to practice in the Commonwealth.*

3. *The provider agency must conduct an initial home visit within the first three days of initiating companion care services to document the efficacy and appropriateness of services and to establish a service plan for the recipient. The agency must provide follow-up home visits to monitor the provision of services every four months or as often as needed. The recipient must be reassessed for services every six months.*

12 VAC 30-120-777 through 12 VAC 30-120-779. Reserved.

12 VAC 30-120-780. Reevaluation of service need and utilization review.

A. *The Consumer Service Plan (CSP).*

1. *The CSP shall be developed by the support coordinator mutually with other service providers, the recipient, the recipient's parents or legal guardians for minors, consultants, and other interested parties based on relevant, current assessment data. The CSP process determines the services to be rendered to recipients, the frequency of services, the type of service provider, and a description of the services to be offered. All CSPs developed by the support coordinators 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.*

2. *The support coordinator is responsible for continuous monitoring of the appropriateness of the recipient's supporting documentation and revisions to the CSP as indicated by the changing needs of the recipient. At a*

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minimum, the support coordinator must review the CSP every three months to determine whether service goals and objectives are being met and whether any modifications to the CSP are necessary.

3. The DMAS staff shall review the CSP every 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 DMAS.

B. Review of level of care.

1. The DMAS shall complete an annual comprehensive reassessment, in coordination with the recipient, family, and service providers. If warranted, the DMAS will coordinate a medical examination and a psychological evaluation for every waiver recipient. The reassessment must include an update of the assessment instrument and any other appropriate assessment data.

2. A medical examination must be completed for adults based on need identified by the provider, recipient, support coordinator, or DMAS staff. Medical examinations for children must be completed according to the recommended frequency and periodicity of the EPSDT program.

3. A psychological evaluation or standardized developmental assessment for children over six years of age must reflect the current psychological status (diagnosis), adaptive level of functioning, and cognitive abilities. A new psychological evaluation is required whenever the recipient's functioning has undergone significant change and is no longer reflective of the past psychological evaluation.

C. Documentation required.

1. The support coordination agency must maintain the following documentation for review by the DMAS staff for each waiver recipient:

a. All assessment summaries and all CSPs completed for the recipient and maintained for a period of not less than five years from recipients' start of care;

b. All individual providers' supporting documentation from any provider rendering waiver services to the recipient;

c. All supporting documentation related to any change in the CSP;

d. All related communication with the providers, recipient, consultants, DMHMRSAS, DMAS, DSS, DRS or other related parties; and

e. An ongoing log which documents all contacts made by the support coordinator related to the waiver recipient.

2. The recipient service providers must maintain the following documentation for review by the DMAS staff for each waiver recipient:

a. All supporting documentation developed for that recipient and maintained for a period of 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 services rendered; and

c. Appropriate progress notes reflecting recipient's status and, as appropriate, progress toward the goals on the supporting documentation.

12 VAC 30-120-790. Eligibility criteria for emergency access to the waiver.

A. Subject to available funding, individuals must meet at least one of the emergency criteria to be eligible for immediate access to waiver services without consideration to the length of time an individual has been waiting to access services. In the absence of waiver services, the individual would not be able to remain in his home.

B. The criteria are:

1. The primary caregiver has a serious illness, has been hospitalized, or has died;

2. The individual has been determined by the DSS to have been abused or neglected and is in need of immediate waiver services;

3. The individual has behaviors which present risk to personal or public safety; or

4. The individual presents extreme physical, emotional, or financial burden at home and the family or caregiver is unable to continue to provide care.

NOTICE: The forms used in administering the Individual and Family Developmental Disabilities Support Waiver regulations are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

12 VAC 30-50-10 et seq. Amount, Duration and Scope of Medical and Remedial Care Services.

Virginia Uniform Assessment Instrument, UAI, Virginia Long-Term Care Council, 1994.

I.V. Therapy Implementation Form, DMAS-354, eff. 6/1/98.

Health Insurance Claim Form, Form HCFA-1500, 12/90.

Virginia Uniform Assessment Instrument, UAI, Virginia Long-Term Care Council, 1994.

Certificate of Medical Necessity-Durable Medical Equipment and Supplies, DMAS-352 (rev. 8/95).

Questionnaire to Assess an Applicant's Ability to Independently Manage Personal Attendant Services in the CD-PAS Waiver or DD Waiver, DMAS-95 Addendum (eff. 8/00).

DD Waiver Enrollment Request, DMAS-453 (eff. 1/3/01).

DD Waiver Consumer Service Plan, DMAS-456 (eff. 1/3/01).

DD Medicaid Waiver--Level of Functioning Survey--Summary Sheet, DMAS-458 (eff. 1/01).

Documentation of Recipient Choice between Institutional Care or Home and Community-Based Services (eff. 8/00).

12 VAC 30-80-10 et seq. Methods and Standards for Establishing Payment Rates--Other Types of Care.

Pharmacy Claim Form (3/96).

Compound Prescription Pharmacy Claim Form (3/96).

I.V. Therapy Implementation Form, DMAS-354, eff. 6/1/98.

Questionnaire to Assess an Applicant's Ability to Independently Manage Personal Attendant Services in the CD-PAS Waiver or DD Waiver, DMAS-95 Addendum (eff. 8/00).

DD Waiver Enrollment Request, DMAS-453 (eff. 1/3/01).

DD Waiver Consumer Service Plan, DMAS-456 (eff. 1/3/01).

DD Medicaid Waiver--Level of Functioning Survey--Summary Sheet, DMAS-458 (eff. 1/01).

Documentation of Recipient Choice between Institutional Care or Home and Community-Based Services (eff. 8/00).

12 VAC 30-120-10 et seq. Waivered Services.

Virginia Uniform Assessment Instrument (UAI), 1994.

Medicaid Funded Long-Term Care Service Authorization Form, DMAS-96, revised 8/97.

Service Coordinator Plan of Care, DMAS-97B, revised 6/97.

Patient Information, DMAS-122, revised 4/84 12/98.

Questionnaire: Assessing a Recipient's Ability to Independently Manage Personal Attendant Services, 2/98.

Questionnaire to Assess an Applicant's Ability to Independently Manage Personal Attendant Services in the CD-PAS Waiver or DD Waiver, DMAS-95 Addendum (eff. 8/00).

DD Waiver Enrollment Request, DMAS-453 (eff. 1/3/01).

DD Waiver Consumer Service Plan, DMAS-456 (eff. 1/3/01).

DD Medicaid Waiver--Level of Functioning Survey--Summary Sheet, DMAS-458 (eff. 1/01).

Documentation of Recipient Choice between Institutional Care or Home and Community-Based Services (eff. 8/00).

VA.R. Doc. No. R00-231; Filed December 29, 2000, 12:09 p.m.

Title of Regulation: 12 VAC 30-90-10 et seq. **Methods and Standards for Establishing Payment Rates-Long Term Care (2000 Nursing Home Payment System) (amending 12 VAC 30-90-20, 12 VAC 30-90-30, 12 VAC 30-90-31, 12 VAC 30-90-34, 12 VAC 30-90-35, 12 VAC 30-90-36, 12 VAC 30-90-37, 12 VAC 30-90-38, 12 VAC 30-90-39, 12 VAC 30-90-40, 12 VAC 30-90-41, 12 VAC 30-90-50, 12 VAC 30-90-51, 12 VAC 30-90-60, 12 VAC 30-90-65, 12 VAC 30-90-70, 12 VAC 30-90-80, 12 VAC 30-90-120, 12 VAC 30-90-123, 12 VAC 30-90-160, 12 VAC 30-90-170, 12 VAC 30-90-221, 12 VAC 30-90-240, 12 VAC 30-90-250, 12 VAC 30-90-253, 12 VAC 30-90-264, 12 VAC 30-90-266, 12 VAC 30-90-270, 12 VAC 30-90-272, and 12 VAC 30-90-280; adding 12 VAC 30-90-29, 12 VAC 30-90-136, and 12 VAC 30-90-165; repealing 12 VAC 30-90-42, 12 VAC 30-90-43, 12 VAC 30-90-130, 12 VAC 30-90-131, 12 VAC 30-90-132, 12 VAC 30-90-133, 12 VAC 30-90-135, and 12 VAC 30-90-260).**

Statutory Authority: § 32.1-325 of the Code of Virginia and Item 319 (II) of Chapter 1073 of the 2000 Acts of Assembly.

Public Hearing Date: N/A -- Public comments may be submitted until March 30, 2001.

(See Calendar of Events section for additional information)

Agency Contact: Victoria Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, Virginia 23219, telephone (804) 786-7959 or FAX (804) 786-1680.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services (BMAS) the authority to administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of board action pursuant to the board's requirements.

Title 42 of the Code of Federal Regulations Part 447 Subpart C regulates the reimbursement of institutional providers of services, such as nursing homes and inpatient hospitals.

Purpose: The purpose of this proposal is to promulgate new permanent regulations, to supersede the existing permanent regulations and the currently operating emergency regulations, to provide for the reimbursement methodology for nursing facility services. These permanent regulations establish the Fair Market Value methodology by phasing out the previous plant cost reimbursement policies and by revising the direct and indirect care ceilings. This regulatory action is not expected to directly affect the public's health, safety, or welfare.

Substance: The existing nursing home payment system relies on direct and indirect cost ceilings that have not been updated, except for inflation, since 1991. Nursing home costs have increased faster than inflation and the 2000-2002 Appropriation Act (Chapter 1073) provided that:

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1. Direct care ceilings are to be recalculated effective July 1, 2000, and set at 112% of the median of base year cost per day.
2. The use of a direct care efficiency incentive payment is to be eliminated.
3. The department is to recalculate new ceilings, both direct and indirect, using a new base year at least every two years.
4. The department is to adjust rates to restore funding for the negative impact of case mix adjustment on aggregate payments.
5. The department is to adjust rates to incorporate the \$21,700,000 (adjusted for inflation) provided by the 1999 Appropriations Act.
6. Direct care rates are to be set without application of an occupancy standard.
7. Indirect and capital rates are to be set with an occupancy standard of 90%.
8. The department is to implement a revised capital payment policy. Furthermore, this was designated to a Fair Market Value system.

The appropriation act provided approximately \$28 million per year (total funds), in addition to the \$21.7 million per year (total funds) appropriated in 1999, to fund the implementation of these changes.

In addition, HB 2004 of the 1999 Session of the General Assembly provided that effective July 1, 2000, the recapture of depreciation expense payments by the Medicaid program is to be eliminated.

Issues: The proposed changes to operating reimbursement rules are beneficial to providers because they increase nursing home reimbursement rates. The higher rates necessarily commit the Commonwealth to a higher level of Medicaid expenditures; however, this has been addressed through the appropriation process. Furthermore, an advantage to the agency may be a reduction in the number of provider appeals of cost report adjustment issues during the cost settlement and review process. No disadvantages to the agency have been identified.

The proposed changes to capital reimbursement rules are expected to be generally beneficial to providers. They are anticipated to increase capital payments to providers beginning in SFY 2003. The estimated increase is based on the change in methodology is \$1.3 million per year from 2003 through 2012. This means that estimated payments in 2012 would be \$13 million higher than under the existing methodology. In addition, exceptions granted in the regulations to certain types of facilities are anticipated to cost another \$1.3 million per year. This amount is not cumulative, however, so the total combined impact of the change in reimbursement and the exceptions would be \$2.6 million in 2002, and \$14.3 million in 2012. In addition to increasing payments, the new methodology is expected to result in some providers receiving more and some less than under the existing methodology. Some of the changes, both plus and

minus, are expected to be significant. In order to prevent undue disruption resulting from these provider specific payment changes, the new methodology is being gradually phased in over 10 years (2003 through 2012). The proposed changes to capital reimbursement are not expected to significantly affect the public or the agency.

Fiscal Impact: The capital payment provisions in the proposed regulations will increase payments by \$2.6 million per year (total funds) in SFY 2003. Payments are projected to continue to increase by \$1.3 million per year for nine more years, so that in SFY 2012, payments are projected to be \$14.3 million higher as a result of these provisions. There are no localities that are uniquely affected by these regulations as they apply statewide.

This regulatory action has no impact on local departments of social services.

Funding Source/Cost to Localities/Affected Entities: The Department of Medical Assistance Services is established and receives federal financial participation pursuant to Title XIX of the Social Security Act (42 USC §§ 1396 through 1396v); and Title 32.1, Chapter 10, of the Code of Virginia. The Virginia Medicaid Program is funded with both federal and state funds. The current federal funding participation (FFP) for medical assistance expenditures is 51.67%, which became effective October 1, 1999. This rate increased to 51.85% on October 1, 2000.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 25 (98). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The Board of Medical Assistance Services proposes to permanently amend the existing methods and standards for long-term care payment rates for Medicaid patients. The proposed changes have been in effect since July 1, 2000, under the emergency regulations. The proposed new standards and methods set higher reimbursement rates to the regulated providers of long-term care. The proposed changes include:

1. Recalculating direct care ceilings effective July 1, 2000, and setting the ceilings at 112% of the median of the base year cost per day, and recalculating direct and indirect ceilings, using a new base year at least every two years.
2. Setting direct care rates without application of occupancy standards, and setting indirect and capital rates with an occupancy standard of 90%.

3. Adjusting rates to restore funding for the negative impact of case mix adjustment on aggregate payments.
4. Eliminating the direct care efficiency incentive payment effective July 1, 2000.
5. Adjusting rates to incorporate the \$21,700,000 (adjusted for inflation) provided by the 1999 Appropriations Act.
6. Eliminating the recapture of depreciation expense payments by the Medicaid program effective July 1, 2000.
7. Implementing a revised capital payment policy called "Fair Rental Value" system.

Changes 1 through 5 are due to the statutory requirements in Chapter 1073 of the 2000 Acts of Assembly. Chapter 1073 of the 2000 Acts of Assembly mandates that the Department of Medical Assistance Services (DMAS) develop a revised capital payment policy, but it does not specifically designate the Fair Rental Value system as the replacement system. Change 6 is due to House Bill 2004 of the 1999 General Assembly.

Estimated economic impact.

I. Background Information for Pre-Emergency Nursing Home Payment System: The nursing home payment system standards used in Virginia were first established in 1982 and were redesigned in 1990 to determine reimbursement of associated costs incurred by the long-term care providers. The two main categories of costs are capital costs and operating costs. Capital costs include depreciation, interest, taxes, and insurance payments. Operating costs are further divided into direct operating costs (nurse salaries and benefits, supplies, pharmacy payments etc.) and indirect operating costs (administrative, general, dietary, house keeping, laundry, maintenance payments etc.). Capital and operating cost reimbursement amounts are based on the actual costs incurred by the providers, as long as the actual costs are below the allowable payment ceiling. The determination of reimbursements for both capital and operating costs are somewhat complex, but mainly rely on five factors.

First, the payment ceiling is an integral factor in determining reimbursements. The payment ceiling provides cost containment incentives. Without the payment ceiling, all providers would be reimbursed all the costs they incur, regardless of how high the costs are. With the payment ceiling, the providers are reimbursed for either their actual costs if the costs are below the ceiling, or at the ceiling rate if the actual costs exceed the ceiling. The payment ceiling for costs is determined by: (1) calculating the per diem cost figures for all of the facilities, (2) finding the median per diem cost figure, and (3) applying a percentage limit to the median per diem cost figure. For example, if the median per diem cost is \$20 and the percentage limit is 110%, then the per diem cost ceiling would be \$22. In 1990, DMAS set the direct care ceiling at 106% of the median, and the indirect care ceiling at 105% of the median. The ceiling for the per diem capital cost was 100% of the median and the median was retrospectively adjusted every year.

Second, the inflation index is another factor that affects reimbursements. The inflation index was relatively more important in determining operating cost reimbursements than capital cost reimbursements during the last decade. This was due to the fact that the per diem capital cost reimbursements were being recalculated every year from current capital expenses and recapture of depreciation, whereas the per diem direct and indirect operating cost reimbursements were calculated once in 1990, and adjusted for inflation as the years passed, as opposed to being recalculated every year. Thus, the inflation index was a significant factor in determining the operating cost reimbursements. The inflation index employed was DRI/McGraw Hill Nursing Home Market Basket Index.

Third, the case mix index factor is employed in calculating per diem direct operating costs. The case mix index is used to account for the fact that the care needs of the residents vary and should be incorporated in reimbursements. Residents with light impairment levels do not require as much direct care as demanded by heavily impaired residents. In general, facilities serving residents requiring high levels of direct care will incur relatively high levels of direct operating costs. Thus, the reimbursement methodology utilizes a case mix index for each facility to recognize direct care cost differences due to varying needs of residents. This system is known as the Patient Intensity Rating System (PIRS). There exist three different case mix categories; light care, medium care, and heavy care. Similar to the inflation index, the higher the case mix index, the higher is the per diem direct operating cost reimbursement.

Fourth, the occupancy standard is another factor in determining per diem costs for reimbursement. It is used to determine the denominator when dividing the total allowable costs. Holding other factors constant, reducing the occupancy standard will increase the allowable per diem costs. The occupancy standard was 95% under the pre-emergency regulations for both capital and operating costs for facilities with more than 30 beds.

Fifth, the reimbursement system was equipped with an efficiency incentive factor. An efficiency incentive is an add-on reward to a facility's operating cost reimbursement rate for containing costs below the payment ceilings. Efficiency incentive payments could be up to 25% of the difference between allowable operating costs and the payment ceilings depending on a sliding scale.

Under the nursing home payment system described above, DMAS paid more than \$400 million to providers in fiscal year (FY) 1998 for 27,683 Medicaid residents. This amount was approximately 18% of Virginia's total Medicaid budget.

II. JLARC's Review of Pre-Emergency Nursing Home Payment System:

1. Recalculating direct care ceilings effective July 1, 2000, and setting the ceilings at 112% of the median of base year cost per day, and recalculating direct and indirect ceilings, using a new base year at least every two years.

Per diem operating cost ceilings have not been recalculated since 1990, but merely adjusted for inflation. Adjusting the rates only for inflation ignores the possibility that the real

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costs of care may have increased or decreased because of changes in the type of care deemed appropriate for residents over time. Adjusting reimbursements only for inflation raised legislative concerns on the appropriateness of the nursing home reimbursement methodology. Under the directives of the 1998 General Assembly, DMAS studied Medicaid nursing home reimbursement methodology. DMAS searched for improvements without increasing the reimbursement levels. The study did not address the adequacy of then current reimbursement levels. Thus, the outcome of DMAS' study was unsatisfactory to the nursing facility industry. At the time, the industry was requesting approximately \$105 million in additional funds per year. Consequently, the General Assembly directed the Joint Legislative Audit and Review Commission (JLARC) through Senate Joint Resolution 463 to examine a number of issues related to the reimbursement methodology, including its adequacy. In 2000, JLARC produced a study called *Virginia's Medicaid Reimbursement to Nursing Facilities*. The study found that Virginia's nationwide rank was about 38th in reimbursements, with a Medicaid per diem rate of \$78. A significant finding was that since the care needs of the residents at these facilities have increased over time, adjusting the rates only for inflation did not adequately increase the reimbursements to cover the providers' costs.

JLARC concluded that the reimbursement methodology was inadequate, outdated, and more restrictive than other states, recommended that the reimbursements be increased, and moreover, the ceilings be recalculated more frequently. JLARC determined that only 90% of actual direct care costs and 94% of actual indirect care costs were reimbursed to nursing facilities in 1997. One of the consequences of low reimbursement levels is believed to be that charges to private pay residents of nursing facilities subsidize Medicaid residents. JLARC estimates that these subsidies equal about \$6.50 to \$10 per Medicaid patient day.

In addition, the inflation adjusted 1990 ceilings for direct care costs were found to be below the 1997 actual costs, and the inflation adjusted ceilings for indirect costs are found to be above the 1997 actual costs. If the reimbursement rates were more frequently recalculated, this would have allowed a \$7.2 million increase in direct care reimbursements and allowed the transfer of \$23 million from eligible but unused indirect care costs to direct care costs. Thus, recalculating the reimbursement levels would increase direct care reimbursements and enable nursing homes to pay for nursing staff more adequately. The study also found that most states recognize costs up to a level above the median sometimes as high as 125% of the median cost.

2. Setting direct care rates without application of occupancy standards, and setting indirect and capital rates with an occupancy standard of 90%.

JLARC found that Virginia's 95% occupancy standard was higher than most states' occupancy standard. And, the actual occupancy level in Virginia was trending down since 1996 and was 91.1% in 1998. Thus, the 95% occupancy standard was concluded to be inappropriate and found to be contributing to lower reimbursement rates by about \$10.8 million. Because the 95% standard is more restrictive than in most other states,

the nursing home industry contended that the standard should not apply to direct care costs. These findings led JLARC to recommend a 90% occupancy standard for indirect and capital rates and exempt the direct care rates from the standard.

3. Adjusting rates to restore funding for the negative impact of case mix adjustment on aggregate payments.

JLARC identified several problems with the PIRS case mix methodology and concluded that the system is outdated. The conclusion is related in part to difficulties in classification into one of the three case mix categories, difficulties in monitoring the classifications done by the providers, applicability of the system, and the existence of more sophisticated alternative classification schemes. In general, the providers have incentives to exaggerate the care needs of the residents to qualify for higher reimbursement rates. JLARC has reported that in the fourth quarter of 1997, approximately 24% of Class C (heavy care) residents were found to be misclassified, and actually belonged to Class B (moderate care). Thus, JLARC recommended that DMAS replace PIRS case mix methodology by the federal case mix methodology (Resource Utilization Groups) that is more sophisticated. JLARC lends support to changing the case mix methodology in determining reimbursements. However, their study found that the case mix methodology reduced the overall funding by \$1.4 million for providers. The finding of this negative impact on the overall funding level prompted JLARC to suggest restoring available funding by the size of the impact.

4. Eliminating direct care efficiency incentive payment effective July 1, 2000.

In the JLARC study, both DMAS and the provider groups asserted that the efficiency incentive payments for the direct care costs may undermine the quality of care provided. However, when this hypothesis is assessed using actual data, JLARC states that the hypothesis may be unfounded; "facilities that were under their direct care ceiling were not cited as often for causing harm to their residents (12 percent) or providing substandard quality of care (4 percent) as those that were over the direct care ceiling (21 percent and 6 percent, respectively)". Based on the 1997 cost data, it is reported that DMAS paid \$1.6 million in direct care efficiency incentives.

III. Estimated Costs of Proposed Changes 1 through 5: Based on all of these findings, JLARC has made several recommendations and estimated the associated costs for implementation of these recommendations. Table 1 below summarizes the proposed changes to the methodology and the additional required funding estimated for FY 2001.

Table 1

Changes to the Medicaid Reimbursement Methodology	Additional Funding Required for FY 2001
A. Restore the case mix funding loss, reduce the occupancy standard to 90% for indirect and capital costs, remove the occupancy standard from direct care costs, and recalculate the upper payment ceilings for direct care so that all the costs are set at 110% over the median.	\$25.4 million
B. Restore the case mix funding loss, reduce the occupancy standard to 90% for indirect and capital costs, remove the occupancy standard from direct care costs, and recalculate the upper payment ceilings for direct care so that all the costs are set at 115% over the median.	\$28.4 million
<p>Note: The federal share of funding is 51.81%, the state share is 48.19%</p> <p>Source: JLARC, Virginia's Medicaid Reimbursement to Nursing Facilities, pp. 110.</p>	

Both options include all of the changes 1 through 4 reported in the summary section of this analysis.^{1 2} Options A and B vary only in the percentages applied to the direct care median to determine the ceiling. Since the proposed regulation establishes direct care cost ceiling at 112% over the median, the total costs of associated changes are expected to be between \$25.6 million and \$28.4 million annually. The General Assembly already increased the nursing home appropriations by \$28 million.

5. Adjusting rates to incorporate the \$21,700,000 (adjusted for inflation) provided by the 1999 Appropriations Act.

In addition to the \$28 million, the General Assembly appropriated an additional \$21.7 million annually in FY 1999 primarily to provide an increase in nurse and nurse aid salaries by \$1 per hour. This funding is permanent and will be provided annually after adjusting for inflation. The reimbursement rates have been already adjusted to incorporate this additional funding. Thus, the associated costs of changes 1 through 5 are approximately \$47.3 million to \$50.1 million annually.³

IV. Potential Benefits and Problems: Increased reimbursement rates for nursing homes are expected to eliminate the problems identified in the JLARC study and

¹ Recalculating indirect care ceilings as proposed would have resulted in a different funding level than estimated in Table 1. However, DMAS readjusted the indirect care ceiling at 106.9% of the median to hold the aggregate indirect care expenditures constant. Thus, the figures in the table are compatible with the recalculation of indirect care ceilings.

² JLARC study does not explicitly state that the elimination of direct care efficiency incentive payment was incorporated in the estimated costs. DMAS acknowledged that it is not clear in the study but the estimated costs were derived under the implicit assumption that the direct care incentive payments were eliminated.

³ Effective October 1, 2000, 51.85% of the estimated costs will be funded by federal government and the Commonwealth will fund the remaining portion.

produce benefits for the providers, and patients. These benefits may include: (1) more adequate reimbursement level for providers, (2) reduced pressure for increasing charges to private pay residents to subsidize Medicaid patients, (3) allowing appropriate allocation of funds between direct care costs and indirect care costs so that the providers can employ necessary direct care factors of production such as nurses, (4) a potential increase in quality of care because of increased funding, and (5) preventing potential bankruptcies of nursing homes that may be financially distressed due to inadequate Medicaid reimbursement.

The overall objective of the proposed changes is to provide adequate reimbursement levels and increase the quality of care. DPB believes that the proposed changes have the potential to reach these objectives and more. Although the pre-emergency reimbursement rates were found to be inadequate, cost containment and quality of care objectives have to be balanced in the future. In other words, the proposed changes are designed to bring the Medicaid funding to a more appropriate level. Given these changes, there lies the possibility of achieving this goal at the expense of unnecessarily high costs in the future. Especially, recalculating direct and indirect ceilings on biennial basis gives the regulated providers an ability and incentive to inflate reimbursement rates over time. Under the pre-emergency regulations the providers did not expect to receive higher rates because the rates were not being adjusted on a regular basis. Under the proposed changes, providers will know and expect that the rates will be readjusted biennially. The providers also know that the rate adjustments will be based on their reported costs just prior to the adjustment. Thus, the proposed changes provide incentives for nursing homes to increase their costs prior to the scheduled rate setting.⁴ Under the pre-emergency regulations, this incentive did not exist, since providers did not have reason to expect that cost increases just prior to a specific time would increase the reimbursement ceiling.

Moreover, recalculating direct care reimbursement rates on a biennial basis, when combined with eliminating direct care efficiency incentive payments, can create a snowball effect on increasing costs. DPB does not believe that the elimination of the direct care efficiency payment is well founded. JLARC's study indicates that direct care efficiency payments do not seem to encourage low quality of care. Residents of the facilities receiving direct care efficiency payments were not found worse off relative to the residents of the facilities not receiving these payments. However, this particular change removes incentives to keep costs below the ceiling. Removal of the direct care efficiency incentive payments encourages providers to produce and report costs equal to or above the ceiling.

⁴ DMAS indicated that if the providers increase their actual costs, they would be in the position to absorb the increase as a loss for one year until the rates are readjusted. This is due to one-year lag between the data used in calculating ceilings and the data used in calculating actual costs. Thus the incentives to increase costs will not be as much as it would if the same year's data were used in both calculations.

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VI. Other Changes:

6. Eliminating the recapture of depreciation expense payments by the Medicaid program effective July 1, 2000.

House Bill 2004 of the 1999 General Assembly eliminated the recapture of depreciation expense payments by Medicaid as of July 1, 2000. This issue significantly concerned DMAS. Under the pre-emergency regulations, nursing facilities could be reimbursed for depreciation as a capital expense. Also, pre-emergency regulations required a seller of a nursing home to pay some of the depreciation cost back to DMAS if the facility is sold above its net book value. The recapture of depreciation was not required only if the facility is sold at or below the net book value. Thus, in the absence of depreciation recapture, DMAS would be required to pay depreciation to the new owner for the same facility repeatedly if the facility is bought above its net book value. Thus, DMAS developed a new capital reimbursement methodology called "Fair Rental Value" system.

7. Implementing a revised capital payment policy called "Fair Rental Value" system.

The new capital reimbursement methodology determines capital per diem rates based on the rental value of capital, irrespective of the actual capital costs incurred. The proposed regulations will keep both pre and post emergency capital reimbursement methodologies during a 10-year transition period. During this period the new method will phase in gradually and the old method will phase out. During FY 2003, the per diem capital rate will be 100% of the per diem rate calculated according to the old methodology. During FY 2004, the per diem capital rate will be the sum of 90% of the per diem rate calculated according to the old methodology, and 10% of the per diem rate calculated according to the new methodology. In FY 2005, the relevant rates will be 80% and 20% respectively, and the new methodology will phase in to 100% by FY 2012.

According to DMAS, if the fair rental method were fully implemented, total capital reimbursements would increase by \$13 million annually. Since the new method will phase in gradually, the estimated costs will increase by \$1.3 million in FY 2002, \$2.6 million in FY 2003, and finally \$13 million in FY 2012.

Under the proposed changes, DMAS will be required to employ both methodologies for 10 years. However, DMAS does not know at this time whether there will be a significant change in administrative costs. Also, implementation of the new methodology will create differential impacts between new and old facilities. New and old facilities incur different actual capital costs. In general, depreciation and interest payments are much higher for the new facilities than they are for the old facilities. DMAS indicated that the capital per diem rate under the pre-emergency regulations could be as high as \$25 to \$30 per day for new facilities, and as low as \$2 to \$3 per day for old facilities. Under the fair rental value system, the range for per diem capital costs is expected to vary between \$6 and \$17 per day, with the newer facilities generally receiving higher rates. This means that a new facility might see its capital rate go from \$25 per day to \$17 per day, for a loss of \$8 per day. On the other hand, an old facility might see its

rate increase from \$2 per day to \$6 per day, for a gain of \$4 per day. Thus, in comparison to the pre-emergency methodology, the proposed capital reimbursement methodology will encourage the use of older facilities and discourage the use of newer facilities. If this proposed change more accurately reflects the true capital costs for owners, then it may provide a net benefit.

Additionally, DMAS indicated that some facilities that are sold in the future would be allowed to receive capital reimbursement that is based entirely on the fair rental value system, instead of staying on the phase-in schedule. This particular exemption is expected to cost a constant amount of about \$1.3 million annually.

Businesses and entities affected. The proposed changes will directly affect nursing home providers. In 1997, there were 268 nursing home facilities in Virginia. The Medicaid residents of the facilities will be indirectly affected and may experience some increase in the quality of care they receive. There are approximately 28,000 Medicaid residents in nursing homes in the Commonwealth. Private pay residents at these facilities are expected to benefit from the proposed changes also, since they would be less likely to be required to subsidize the Medicaid residents with the increased reimbursement rates. The businesses and entities that provide goods and services to the nursing homes are likely to see an increase in sales. Also, nurses are very likely to receive higher pay due to increased reimbursement rates.

Localities particularly affected. The proposed changes to the regulations apply throughout the Commonwealth.

Projected impact on employment. Higher reimbursement rates have the potential to foster the development of new nursing homes, encourage expansion at current nursing homes, and decrease the likelihood of bankruptcies at financially troubled nursing homes. This would likely increase net employment.

Effects on the use and value of private property. The value of businesses related to the nursing home industry may increase.

Summary of analysis. It appears that the pre-emergency nursing home payment methodology was inadequate to provide enough funds to providers to cover their costs. The proposed changes to the methodology are expected to bring the reimbursement levels to an adequate level, possibly improve the quality of care, and potentially increase the supply of nursing homes services. Recalculation of the reimbursement levels on the biennial basis combined with eliminating the direct care efficiency incentive may encourage providers to increase their costs. The expected costs of the proposed changes to the pre-emergency regulations are estimated to be between \$49.9 million and \$52.7 million in FY 2001 and reach \$61.6 million to \$64.4 million in FY 2012.⁵

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the

⁵ Cost estimates are in terms of calendar year 2000 dollars and the state share of the cost is expected to be 48.15% of the total.

Department of Planning and Budget regarding the regulations concerning 2000 Nursing Home Payment System. The agency raises no issues with this analysis.

Summary:

The proposed new standards and methods set higher reimbursement rates to the regulated providers of long-term care. Several of the changes are currently being implemented under emergency regulations. The proposed changes include:

- 1. Recalculating direct care ceilings and setting the ceilings at 112% of the median of the base year cost per day, and recalculating direct and indirect ceilings using a new base year at least every two years.*
- 2. Setting direct care rates without application of occupancy standards and setting indirect and capital rates with an occupancy standard of 90%.*
- 3. Adjusting rates to restore funding for the negative impact of case mix adjustment on aggregate payments.*
- 4. Eliminating the direct care efficiency incentive payment.*
- 5. Adjusting rates to incorporate into direct care payments the amount of \$21,700,000, adjusted for inflation to FY2001, appropriated by the 1999 Session of the General Assembly.*
- 6. Implementing a revised capital payment policy called "Fair Rental Value" system.*
- 7. Eliminating the recapture of depreciation expense payments by the Medicaid program.*

Changes described in items 1 through 6 are authorized by the 2000 Appropriation Act. The change identified in item 7 is proposed as a result of Chapter 728 of the 1999 Acts of Assembly, which eliminated the department's authority to recapture depreciation expense payments.

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

~~A. Effective ~~October 1, 1999~~ July 1, 2001, the payment methodology for nursing facility (NF) reimbursement by the Virginia Department of Medical Assistance Services (DMAS) is set forth in this part. ~~The formula provides for incentive payments to efficiently operated NFs and contains payment limitations for those nursing facilities operating less efficiently. A cost efficiency incentive encourages cost containment by allowing the provider to retain a percentage of the difference between the prospectively determined operating cost rate and the ceiling.~~~~

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

C. Effective July 1, 2001, in determining the ceiling limitations, there shall be direct patient care medians established for nursing facilities in the Virginia portion of the

Washington DC-MD-VA Metropolitan Statistical Area (MSA), the Richmond-Petersburg Metropolitan Statistical Area (MSA), and in the rest of the state. There shall be indirect patient care medians established for nursing facilities in the Virginia portion of the Washington DC-MD-VA MSA, ~~and for NFs with less than 61 beds in the rest of the state, and for NFs with more than 60 beds in the rest of the state.~~ The Washington DC-MD-VA MSA and the Richmond-Petersburg MSA shall include those cities and counties as listed and changed from time to time by the Health Care Financing Administration (HCFA). A nursing facility located in a jurisdiction which HCFA adds to or removes from the Washington DC-MD-VA MSA or the Richmond-Petersburg MSA shall be placed in its new peer group, for purposes of reimbursement, at the beginning of its next fiscal year following the effective date of HCFA's final rule.

D. Institutions for mental diseases providing nursing services for individuals age 65 and older shall be exempt from the prospective payment system as defined in 12 VAC 30-90-35, 12 VAC 30-90-40, 12 VAC 30-90-60, and 12 VAC 30-90-80, as are mental retardation facilities. All other sections of this payment system relating to reimbursable cost limitations shall apply. These facilities shall continue to be reimbursed retrospectively on the basis of reasonable costs in accordance with Medicare ~~and Medicaid~~ principles of reimbursement ~~and Medicaid principles of reimbursement in effect on June 30, 2000,~~ except that those that are defined as skilled nursing facilities (SNFs) and are operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services shall not be subject to the routine cost limits that are normally required and applicable under Medicare principles of reimbursement. Reimbursement to Intermediate Care Facilities for the Mentally Retarded (ICF/MR) shall be limited to the highest rate paid to a state ICF/MR institution, approved each July 1 by DMAS.

E. Except as specifically modified herein, Medicare principles of reimbursement, as amended from time to time, shall be used to establish the allowable costs in the rate calculations. Allowable costs must be classified in accordance with the DMAS uniform chart of accounts (see 12 VAC 30-90-270 ~~through 12 VAC 30-90-276~~) and must be identifiable and ~~verified~~ verifiable by contemporaneous documentation.

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

SUBPART II.

RATE DETERMINATION PROCEDURES.

Article 1.

Transition to New Capital Payment Methodology.

12 VAC 30-90-29. Transition to new capital payment methodology.

A. This section provides for a transition to a new capital payment methodology. The methodology that will be phased out for most facilities is described in Article 2 (12 VAC 30-90-

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30 et seq.) of this subpart. The methodology that will be phased in for most facilities is described in Article 3 (12 VAC 30-90-35 et seq.) of this subpart. The terms and timing of the transition are described in this section.

B. Nursing facilities enrolled in the Medicaid program prior to July 1, 2000, shall be paid for capital related costs under a transition policy from July 1, 2000, through June 30, 2012. Facilities and beds paid under the transition policy shall receive payments as follows:

1. During SFY 2001, each facility's capital per diem shall be the facility's capital per diem on June 30, 2000. The methodology under which this per diem is determined shall be the plant cost reimbursement methodology in effect as of June 30, 2000.

2. During SFY 2002, each facility subject to the transition policy shall be paid for capital costs under the methodology described in Article 2 (12 VAC 30-90-30 et seq.) of this subpart.

3. During SFY 2003 through SFY 2012, each facility subject to the transition policy shall have a capital per diem that is a percentage of the per diem described in Article 2 (12 VAC 30-90-30 et seq.) of this subpart plus a percentage of the per diem described in Article 3 (12 VAC 30-90-35 et seq.) of this subpart. The percentage associated with the per diem described in Article 2 shall be 90% for services provided in SFY 2003, 80% for services in SFY 2004, 70% for services in SFY 2005, and so on until the percentage is 0% for services in SFY 2012. The percentage associated with the per diem described in Article 3 shall be equal to 100% minus the percentage associated with the per diem described in Article 2. In SFY 2012, the capital per diem shall be based entirely on the per diem described in Article 3.

C. Effective July 1, 2001, there shall no longer be a payment for return on equity for leased nursing facilities.

D. Effective July 1, 2001, newly constructed facilities and new and replacement beds of previously enrolled facilities completed after July 1, 2000, shall be paid entirely under the methodology described in Article 3 (12 VAC 30-90-35 et seq.) of this subpart without application of the transition policy. However, facilities and beds with COPN applications submitted as of June 30, 2000, shall be subject to the transition policy. Facilities changing ownership after June 30, 2000, shall be paid, during the transition period, the lesser of the per diem described in Article 3 or the transition policy payment. An exception to the policy provided in this subsection shall be made for facilities changing ownership after June 30, 2000, if they are not part of a chain organization or if they are part of a chain organization consisting of no more than two facilities. The exception is that beginning July 1, 2002, facilities meeting this criterion shall be paid the per diem described in Article 3.

E. Emergency regulations effective July 1, 2000, provided for a facility specific fixed capital per diem applicable to services in SFY 2001 that is not to be adjusted at settlement. After SFY 2001, the per diem that would have been applicable to SFY 2001 under the methodology in Article 2 (12 VAC 30-90-30 et seq.) of this subpart shall be calculated.

If there are two provider fiscal years that overlap SFY 2001, this per diem shall be a combination of the two applicable per diem amounts. If the per diem provided in the emergency regulations is lower than the per diem based on Article 2, the difference, multiplied by the days in SFY 2001, shall be paid to the facility. If the per diem provided in the emergency regulations is higher, the difference, multiplied by the days, shall be collected from the facility in the settlement of the provider year settled after the difference is calculated.

Article 4 2.
Plant Cost Component.

12 VAC 30-90-30. Plant cost.

A. This article describes a capital payment methodology that will be phased out for most nursing facilities by SFY 2012. The terms and timing of the transition to a different methodology are described in 12 VAC 30-90-29. The methodology that will eventually replace this one for most facilities is described in Article 3 (12 VAC 30-90-35 et seq.) of this subpart.

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

~~B-~~ C. Effective July 1, 2001, to calculate the reimbursement rate, plant cost shall be converted to a per diem amount by dividing it by the greater of actual patient days or the number of patient days computed as ~~95%~~ 90% of the daily licensed bed complement during the applicable cost reporting period.

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

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

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

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

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

B. Reimbursable costs for building and fixed equipment shall be based upon the ~~3/4 (25% of the surveyed projects with costs above the median, 75% with costs below the median)~~ 75th percentile square foot costs for NFs published annually in the R.S. Means Building Construction Cost Data as adjusted by the appropriate R.S. Means Square Foot Costs "Location Factor" for Virginia for the locality in which the NF is located. Where the specific location is not listed in the R.S. Means Square Foot Costs "Location Factor" for

Virginia, the facility's zip code shall be used to determine the appropriate locality factor from the U.S. Postal Services National Five Digit Zip Code for Virginia and the R.S. Means Square Foot Costs "Location Factors." The provider shall have the option of selecting the construction cost limit which is effective on the date the Certificate of Public Need (COPN) is issued or the date the NF is licensed. Total cost shall be calculated by multiplying the above ~~3/4~~ 75th percentile square foot cost by 385 square feet (the average per bed square footage). Total costs for building additions shall be calculated by multiplying the square footage of the project by the applicable components of the construction cost in the R.S. Means Square Foot Costs, not to exceed the total per bed cost for a new NF. Reasonable limits for renovations shall be determined by the appropriate costs in the R.S. Means Repair and Remodeling Cost Data, not to exceed the total R.S. Means Building Construction Cost Data ~~3/4~~ 75th percentile square foot costs for nursing homes.

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

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

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

A. In the event of a sale of a NF, the purchaser must have a current license and certification to receive DMAS reimbursement as a provider; *and must notify DMAS of the sale within 30 days of the date legal title passes to the purchaser. The notification should include:*

1. *That a sale or transfer is about to be made or has already occurred;*
2. *The location and general description of the property; and*
3. *The names and addresses of the transferee and transferor and all such business names and addresses of the transferor for the last three years.*

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

1. ~~The allowable cost of a bona fide sale of a facility (whether or not the parties to the sale were, are, or will be providers of Medicaid services) shall be the lowest of the sales price, the replacement cost value determined by independent appraisal, or the limitations of Subpart XVI - Revaluation of Assets (12 VAC 30-90-260 et seq.). Revaluation of assets shall be permitted only when a bona fide sale of assets occurs.~~
2. ~~Notwithstanding the provisions of 12 VAC 30-90-51, where there is a sale between related parties (whether or not they were, are or will be providers of Medicaid~~

~~services), the buyer's allowable cost basis for the nursing facility shall be the seller's allowable depreciated historical cost (net book value), as determined for Medicaid reimbursement.~~

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

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

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

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

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

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

1. ~~Building; fixed equipment; movable equipment; land; land improvements.~~
2. ~~The estimated useful life computed in accordance with AHA guidelines of the three categories, building, fixed equipment, and movable equipment must be included in the appraisal. This information shall be utilized to compute depreciation schedules.~~

~~E. Depreciation recapture.~~

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

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within 30 days from the transfer of title (as defined below).

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

F. Reimbursable depreciation.

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

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

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

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

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

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

herein, the transferee shall be deemed to be notified of the requirements of this law.

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

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

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

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

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

1. The allowable cost of a purchase of an existing nursing facility (whether or not the parties to the sale are, were, or will be providers of Medicaid services and whether or not the parties are related at the time of the sale) shall be the seller's allowable depreciated historical cost (net book value) as determined for Medicaid reimbursement.
2. The useful life of the fixed assets of the facility shall be the seller's remaining depreciable lives as determined for Medicaid reimbursement.
3. The seller must file a final cost report within 150 days of the date of sale.

Article 3.

Fair Rental Value Capital Payment System.

12 VAC 30-90-35. [Reserved] General applicability.

This article describes a capital payment methodology that will be phased in for most nursing facilities by SFY 2012. The terms and timing of the transition to a different methodology

are described in 12 VAC 30-90-29. The methodology that this one will replace for most facilities is described in Article 2 (12 VAC 30-90-30 et seq.) of this subpart.

12 VAC 30-90-36. [Reserved] Nursing Facility Capital Payment Methodology.

A. *Applicability.* The capital payment methodology described in this article shall be applicable to freestanding nursing facilities but not to hospital-based facilities. Hospital-based facilities shall continue to be reimbursed under the methodology contained in Article 2 (12 VAC 30-90-30 et seq.) of this subpart.

B. *Definitions.* The following words and terms when used in this article shall have the following meaning unless the context clearly indicates otherwise:

“Capital costs” means costs that include the cost elements of depreciation, interest, financing costs, rent and lease costs for property, building and equipment, property insurance and property taxes.

“Date of acquisition” means the date legal title passed to the buyer. If a legal titling date is not determinable for a nursing facility building, date of acquisition shall be considered to be the date a certificate of occupancy was issued by the appropriate licensing or building inspection agency of the locality where the nursing facility is located.

“Facility average age” means for a facility the weighted average of the ages of all capitalized assets of the facility, with the weights equal to the expenditures for those assets. The calculation of average age shall take into account land improvements, building and fixed equipment, and major movable equipment. The basis for the calculation of average age shall be the schedule of assets submitted annually to the department in accordance with the provisions of this section.

“Facility imputed gross square feet” means a number that is determined by multiplying the facility’s number of nursing facility licensed beds licensed by the Virginia Department of Health by the imputed number of gross square feet per bed. The imputed number of gross square feet per bed shall be 461 for facilities of 90 or fewer beds, and 438 for facilities of more than 90 beds. The number of licensed nursing facility beds shall be the number on the last day of the provider’s most recent fiscal year end for which a cost report has been filed.

“Factor for land and soft costs” means a factor equaling 1.429 that adjusts the construction cost amount to recognize land and capitalized costs associated with construction of a facility that are not part of the RSMMeans construction cost amount.

“Fixed capital replacement value” means an amount equal to the RSMMeans 75th percentile nursing home construction cost per square foot, times the applicable RSMMeans historical cost index factor, times the factor for land and soft costs, times the applicable RSMMeans location factor, times facility imputed gross square feet.

“FRV depreciation rate” means a depreciation rate equal to 2.86% per year.

“Hospital-based facility” means one for which a single combined Medicaid cost report is filed that includes the costs of both the hospital and the nursing home.

“Movable capital replacement value” means a value equal to \$3,475 per bed in SFY 2001, and shall be increased each July 1 by the same RSMMeans historical cost index factor that is used to calculate the fixed capital replacement value. Each year’s updated movable capital replacement value shall be used in the calculation of each provider’s rate for the provider year beginning on or after the date the new value becomes effective.

“RSMMeans 75th percentile nursing construction cost per square foot” means the 75th percentile value published in the 59th Annual Edition of the RSMMeans Building Construction Cost Data, 2001. In the 2000 edition of the RSMMeans publication this value is \$110, which is reported as a January 2000 value.

“RSMMeans historical cost index factor” means the ratio of the two most recent RSMMeans Historical Cost Indexes published in the 59th Annual Edition of the RSMMeans Building Construction Cost Data, 2001. In the 2000 edition of this RSMMeans publication these two values are 117.6 (for 1999) and 115.1 (for 1998). The ratio of these values, and therefore the factor to be used, would be 1.022. This factor would be used to adjust the January 2000 value for the one year of change from January 2000 to January 2001, the mid-point of the prospective rate year (SFY 2001). The resulting cost value that would be used in SFY 2001 is \$112.42. The indexes used in this calculation do not match the time period for which a factor is needed. They relate to 1998 and 1999, while 2000 and 2001 would be ideal. However, RSMMeans does not publish index forecasts, so the most recent available indexes shall be used.

“RSMMeans location factors” means those published in the 22nd Annual Edition of the RSMMeans Square Foot Costs, 2001. The 2000 location factors are shown in the following Table 1. They will be updated annually and distributed to providers based upon the most recent available data.

TABLE 1
RSMMEANS COMMERCIAL CONSTRUCTION COST
LOCATION FACTORS (2000)

Zip Code	Principal City	Location Factor
220-221	Fairfax	0.90
222	Arlington	0.90
223	Alexandria	0.91
224-225	Fredericksburg	0.85
226	Winchester	0.80
227	Culpeper	0.80
228	Harrisonburg	0.77
229	Charlottesville	0.82
230-232	Richmond	0.85
233-235	Norfolk	0.82
236	Newport News	0.82
237	Portsmouth	0.81
238	Petersburg	0.84
239	Farmville	0.74

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240-241	Roanoke	0.77
242	Bristol	0.75
243	Pulaski	0.70
244	Staunton	0.76
245	Lynchburg	0.77
246	Grundey	0.70

“Rental rate” means for a prospective year a rate equal to two percentage points plus the yield on U.S. Treasury Bonds with maturity over 10 years, averaged over the most recent three calendar years for which data are available, as published by the Federal Reserve (Federal Reserve Statistical Release H.15 Selected Interest Rates (www.bog.frb.fed.us/releases/)). Rental rates may not fall below 9.0% or exceed 11% and will be updated annually on or about July 1 each year. The rate will be published and distributed to providers annually. Changes in the rental rate shall be effective for the providers’ fiscal year beginning on or after July 1.

“Required occupancy percentage” means an occupancy percentage of 90%.

“SFY” means State Fiscal Year (July 1 through June 30.)

1. Fair Rental Value Payment for Capital. Effective for dates of service on or after July 1, 2001, the state agency shall pay nursing facility capital related costs under a Fair Rental Value (FRV) methodology. The payment made under this methodology shall be the only payment for capital related costs, and no separate payment shall be made for depreciation or interest expense, lease costs, property taxes, insurance, or any other capital related cost, including home office capital costs. This payment is considered to cover costs related to land, buildings and fixed equipment, major movable equipment, and any other capital related item. This shall be the case regardless of whether the property is owned or leased by the operator. The department shall review the operation and performance of the FRV methodology every two years.

2. FRV Rate Year. The FRV payment rate shall be a per diem rate determined each year for each facility using the most recent available data from settled cost reports, or from other verified sources as specified herein. The per diem rate shall be determined prospectively and shall apply for the entire fiscal year. Each provider shall receive a new capital per diem rate each year effective at the start of the provider’s fiscal year. Data elements that are provider specific shall be revised at that time and shall rely on the filed cost report and schedule of assets of the previous year. Data elements that are not provider specific, including those published by RSMeans and the rental rate, shall be determined annually on or about July 1, and shall apply to provider fiscal years beginning on or after July 1. That is, each July 1 DMAS shall determine the RSMeans values and the rental rate, and these shall apply to all provider fiscal years beginning on or after July 1.

12 VAC 30-90-37. [Reserved] Calculation of FRV per diem rate for capital; calculation of FRV rental amount; change of ownership.

A. Calculation of FRV per diem rate for capital. The facility FRV per diem rate shall be equal to the sum of the facility FRV rental amount and the facility’s allowable property tax and insurance cost from the most recent settled cost report, divided by the greater of actual patient days or 90% of the potential patient days for all licensed beds throughout the cost reporting period.

B. Calculation of FRV rental amount. The facility FRV rental amount shall be equal to the facility prospective year total value times the rental rate.

1. The facility prospective year total value shall be equal to the facility prospective year replacement value minus FRV depreciation. FRV depreciation equals the prospective year replacement value multiplied by the product of facility average age and the depreciation rate. FRV depreciation cannot exceed 60% of the prospective year replacement value.

2. The facility prospective year replacement value shall be equal to the fixed capital replacement value plus the movable equipment replacement value.

C. Change of ownership. As provided in connection with schedule of assets reporting, the sale of nursing facility assets after June 30, 2000, shall not result in a change to the schedule of assets or to the calculation of average age for purposes of reimbursement under the FRV methodology. Therefore, any sale or transfer of assets after this date shall not affect the FRV per diem rate. Changes of ownership for purposes of determining the FRV payment shall occur if there is a sale of stock, assets, or sales between related or unrelated parties. For purposes of this section, change of ownership shall be deemed to have occurred if there is a sale of stock, assets, or sales between related or unrelated parties.

12 VAC 30-90-38. [Reserved] Schedule of assets reporting.

A. For the calculation of facility average age, the department shall use a “schedule of assets” that lists, by year of acquisition, the allowable acquisition cost of facilities’ assets, including land improvements, buildings and fixed equipment, and major movable equipment. This schedule shall be submitted annually by the provider on forms to be provided by the department, and shall be audited by the department. The principles of reimbursement for plant cost described in Article 2 (12 VAC 30-90-30 et seq.) of this subpart shall be used to determine allowable cost.

B. The schedule of assets used in the calculation of average age shall be submitted with the provider’s cost report.

C. Facilities failing to submit the schedule of assets timely shall have their nursing facility per diem rate set to zero.

D. Capital expenditures are to be included on the schedule of assets. These do not include land purchases, but do include land improvements, renovations, additions, upgrading

to new standards, and equipment purchases. Capital expenditures shall be capital related expenditures costing \$50,000 or more each, in aggregate for like items, or in aggregate for a particular project. These include purchases of similar type equipment or like items within a 12-month period. For facilities with 30 or fewer beds, an amount of \$25,000, rather than \$50,000, shall apply. The limits of \$50,000 and \$25,000 shall apply only to expenditures after July 1, 2000.

E. Items reportable on the schedule of assets may be removed only when disposed of.

F. Acquisition costs related to any sale or change in the ownership of a nursing facility or the assets of a nursing facility shall not be included in the schedule of assets if the transaction occurred after June 30, 2000. Whether such a transaction is the result of a sale of assets, acquisition of capital stock, merger, or any other type of change in ownership, related costs shall not be reported on the schedule of assets.

G. In addition to verifying the schedule of assets, audits of NF allowable capital costs shall continue to be performed in accordance with regulations described in Article 2.

12 VAC 30-90-39. [Reserved] Purchases of nursing facilities (NF).

A. In the event of a sale of a NF, the purchaser must have a current license and certification to receive DMAS reimbursement as a provider and must notify DMAS of the sale within 30 days of the date legal title passes to the purchaser. The notification should include:

1. That a sale or transfer is about to be made or has already occurred;
2. The location and general description of the property;
3. The names and addresses of the transferee and transferor and all such business names and addresses of the transferor for the last three years;

B. The seller must file a final cost report within 150 days of the date of the facility sale.

Article 2 4.

Operating Cost Component.

12 VAC 30-90-40. Operating cost.

A. Effective July 1, 2001, operating cost shall be the total allowable inpatient cost less plant cost or capital, as appropriate, and NATCEPs costs. See Part Subpart VII (12 VAC 30-90-170 et seq.) of this part for rate determination procedures for NATCEPs costs. ~~To calculate the reimbursement rate, operating cost shall be converted to a per diem amount by dividing it by the greater of actual patient days, or the number of patient days computed as 95% of the daily licensed bed complement during the applicable cost reporting period. Operating cost shall be made up of direct patient care operating cost and indirect patient care operating cost. Direct patient care operating cost is defined in Appendix I (12 VAC 30-90-271). Indirect patient care operating cost includes all operating costs not defined as direct patient care operating costs or NATCEPs costs in Appendix I (12 VAC 30-~~

~~90-272). For purposes of calculating the reimbursement rate, the direct patient care operating cost per day shall be the Medicaid portion of the direct patient care operating cost divided by the nursing facility's number of Medicaid patient days in the cost reporting period. The indirect patient care operating cost per day shall be the Medicaid portion of the indirect patient care operating cost divided by the greater of the actual number of Medicaid patient days in the cost reporting period, or 90% of the potential patient days for all licensed beds throughout the cost reporting period times the Medicaid utilization percentage.~~

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

12 VAC 30-90-41. Nursing facility reimbursement formula.

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

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

2. Direct and indirect group ceilings and rates.

a. In accordance with 12 VAC 30-90-20 C, direct patient care operating cost peer groups shall be established for the Virginia portion of the Washington DC-MD-VA MSA, the Richmond-Petersburg MSA and the rest of the state. Direct patient care operating costs shall be as defined in ~~12 VAC 30-90-270~~ 12 VAC 30-90-271.

b. Effective July 1, 2001, indirect patient care operating cost peer groups shall be established for the Virginia portion of the Washington DC-MD-VA MSA, for the rest of the state for facilities with less than 61 licensed beds, and for the rest of the state for facilities with more than 60 licensed beds. ~~Indirect patient care operating costs shall include all other operating costs, not defined in 12 VAC 30-90-270 as direct patient care operating costs and NATCEPs costs.~~

c. ~~Effective July 1, 1995, existing indirect peer group ceilings of nursing facilities shall be adjusted according to the schedule below. These adjustments shall be added to the ceiling in effect for each facility on July 1, 1995, and shall apply from that day until the end of the facility's fiscal year in progress at that time. Peer group ceilings for the subsequent fiscal year shall be calculated by adding the adjustments below to the existing interim ceiling. The resulting adjusted interim ceiling shall be increased by 100% of historical inflation to the beginning of the facility's next fiscal year to~~

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~~obtain the new "interim" ceiling, and by 50% of the forecast inflation to the end of the facility's next fiscal year. This action increases the number of indirect patient care operating cost peer groups to a total of eight, four peer groups for the area within the Washington DC MD VA MSA, and four for the rest of the state.~~

Licensed Bed Size	Ceiling Adjustment
1 to 30	add \$1.89
31 to 60	add \$1.28
61 to 90	add \$0.62
Over 90	add \$0.00

3. Each NFs Service Intensity Index (SII) shall be calculated for each semiannual period of a NFs fiscal year based upon data reported by that NF and entered into DMAS' Long Term Care Information System (LTCIS). Data will be reported on the multidimensional assessment form prescribed by DMAS (now *DMAS-95 DMAS-80*) at the time of admission and then twice a year for every Medicaid recipient in a NF. The NFs SII, derived from the assessment data, will be normalized by dividing it by the average for all NFs in the state.

See 2 VAC 30-90-300 for the PIRS class structure, the relative resource cost assigned to each class, the method of computing each NFs facility score and the methodology of computing the NFs semiannual SIIs.

4. ~~The normalized SII shall be used to calculate the initial direct patient care operating cost peer group medians. It shall also be used to calculate the direct patient care operating cost prospective ceilings and direct patient care operating cost prospective rates for each semiannual period of a NFs subsequent fiscal years.~~

~~a. The normalized SII, as determined during the quarter ended September 30, 1990, shall be used to calculate the initial direct patient care operating cost peer group medians.~~

~~b. a. A NFs direct patient care operating cost prospective ceiling shall be the product of the NFs peer group direct patient care ceiling and the NFs normalized SII for the previous semiannual period. A NFs direct patient care operating cost prospective ceiling will be calculated semiannually.~~

~~e. b. An ~~SSI~~ SII rate adjustment, if any, shall be applied to a NFs prospective direct patient care operating cost base rate for each semiannual period of a NFs fiscal year. The SII determined in the second semiannual period of the previous fiscal year shall be divided by the average of the previous fiscal year's SIIs to determine the SII rate adjustment, if any, to the first semiannual period of the subsequent fiscal year's prospective direct patient care operating cost base rate. The SII determined in the first semiannual period of the subsequent fiscal year shall be divided by the average of the previous fiscal year's SIIs to determine the SII rate adjustment, if any, to the second semiannual period of the subsequent fiscal year's~~

prospective direct patient care operating cost base rate.

~~d. c. See 12 VAC 30-90-300 for an illustration of how the SII is used to adjust direct patient care operating ceilings and the semiannual rate adjustments to the prospective direct patient care operating cost base rate.~~

5. ~~An adjustment factor shall be applied to both the direct patient care and indirect patient care peer group medians to determine the appropriate initial peer group ceilings.~~

~~a. The DMAS shall calculate the estimated gross NF reimbursement required for the forecasted number of NF bed days during fiscal year 1991 under the prospective payment system in effect through September 30, 1990, as modified to incorporate the estimated additional NF reimbursement mandated by the provisions of § 1902(a)(13)(A) of the Social Security Act as amended by § 4211(b)(1) of the Omnibus Budget Reconciliation Act of 1987.~~

~~b. The DMAS shall calculate the estimated gross NF reimbursement required for the forecasted number of NF bed days during FY 1991 under the PIRS prospective payment system.~~

~~c. The DMAS shall determine the differential between a and b above and shall adjust the peer group medians within the PIRS as appropriate to reduce the differential to zero.~~

~~d. The adjusted PIRS peer group medians shall become the initial peer group ceilings.~~

5. *Effective for services on and after July 1, 2001, the following change shall be made to the direct and indirect payment methods.*

a. The direct patient care operating ceiling shall be set at 112% of the median of facility specific direct cost per day. The calculation of the median shall be based on cost reports from freestanding nursing homes for provider fiscal years ending in calendar year 1998. The median used to set the direct ceiling shall be revised every two years using more recent data. In addition, for ceilings effective during July 1, 2000, through June 30, 2002, the ceiling calculated as described herein shall be increased by two per diem amounts. The first per diem amount shall equal \$21,716,649, increased for inflation from SFY 2000 to SFY 2001, divided by Medicaid days in SFY 2000. The second per diem amount shall equal \$1,400,000 divided by Medicaid days in SFY 2000. When this ceiling calculation is completed for services after June 30, 2002, the per diem amount related to the amount of \$21,716,649 shall not be added.

b. Facility specific direct cost per day amounts used to calculate direct reimbursement rates for dates of service on and after July 1, 2000, shall be increased by the two per diem amounts described in subdivision 5 a of this subsection. However, the per diem related to the amount of \$21,716,649 shall be included only in proportion to the number of calendar days in the

provider fiscal year the data are taken from that do not fall after July 1, 1999. That is, for a cost report from a provider fiscal year ending December 31, 1999, the specified increase would apply to about half of the year.

c. The indirect patient care operating ceiling shall be set at 106.9% of the median of facility specific indirect cost per day. The calculation of the median shall be based on cost reports from freestanding nursing homes for provider fiscal years ending in calendar year 1998.

B. The allowance for inflation shall be based on the percentage of change in the moving average of the Skilled Nursing Facility Market Basket of Routine Service Costs, as developed by Data Resources, Incorporated, adjusted for Virginia, determined in the quarter in which the NFs most recent fiscal year ended. NFs shall have their prospective operating cost ceilings and prospective operating cost rates established in accordance with the following methodology:

1. The initial peer group ceilings established under ~~subsection A~~ of this section shall be the final peer group ceilings for a NF's first full or partial *cost reporting* fiscal year under PIRS and shall be considered as the initial "interim ceilings" for calculating the subsequent fiscal year's peer group ceilings. Peer group ceilings for subsequent fiscal years shall be calculated by ~~adjusting the initial "interim" ceilings by a "percentage factor" which shall eliminate any allowances for inflation after September 30, 1990, calculated in both subdivisions A 5 a and A 5 c of this section. The adjusted initial "interim" ceilings shall be considered as the final "interim ceiling."~~ Peer group ceilings for subsequent fiscal years shall be calculated by adjusting the final "interim" ceiling, as determined above, by 100% of historical inflation from ~~October 1, 1990 use of the adjusted medians determined at June 30, 2000, for direct and indirect cost. These adjusted medians shall be considered the final interim ceilings for subsequent fiscal years. The final interim ceilings determined above shall be adjusted by adding 100% of historical inflation from June 30, 2000, to the beginning of the NFs next fiscal year to obtain the new "interim" ceilings, and 50% of the forecasted inflation to the end of the NFs next fiscal year.~~

2. A NFs average allowable operating cost rates, as determined from its most recent fiscal year's cost report, shall be adjusted by 50% of historical inflation and 50% of the forecasted inflation to calculate its prospective operating cost base rates.

C. The PIRS method shall still require comparison of the prospective operating cost rates to the prospective operating ceilings. The provider shall be reimbursed the lower of the prospective operating cost rates or prospective operating ceilings.

D. Nonoperating costs. Allowable Plant or capital, as appropriate, costs shall be reimbursed in accordance with ~~this article~~ Articles 1, 2, and 3 of this subpart. Plant costs shall not include the component of cost related to making or producing a supply or service.

NATCEPs cost shall be reimbursed in accordance with 12 VAC 30-90-170.

E. The prospective rate for each NF shall be based upon operating cost and plant/capital cost components or charges, whichever is lower, plus NATCEPs costs. The disallowance of nonreimbursable operating costs in any current fiscal year shall be reflected in a subsequent year's prospective rate determination. Disallowances of nonreimbursable plant or capital, as appropriate, costs and NATCEPs costs shall be reflected in the year in which the nonreimbursable costs are included.

F. Effective July 1, 2001, for those NFs whose indirect operating cost rates are below the ceilings, an incentive plan shall be established whereby a NF shall be paid, on a sliding scale, up to 25% of the difference between its allowable indirect operating cost rates and the indirect peer group ceilings ~~under the PIRS.~~

1. The following table presents four incentive examples ~~under the PIRS:~~

Peer Group Ceilings	Allowable Cost Per Day	Difference	% of Ceiling	Sliding Scale	Scale % Difference
\$30.00	\$27.00	\$ 3.00	10%	\$.30	10%
30.00	22.50	7.50	25%	1.88	25%
30.00	20.00	10.00	33%	2.50	25%
30.00	30.00	0	0		

2. ~~Separate~~ Efficiency incentives shall be calculated only for both the direct and indirect patient care operating ceilings and costs. Effective July 1, 2001, a direct care efficiency incentive shall no longer be paid.

G. Quality of care requirement. A cost efficiency incentive shall not be paid to a NF for the prorated period of time that it is not in conformance with substantive, nonwaived life, safety, or quality of care standards.

H. Sale of facility. In the event of the sale of a NF, the prospective base operating cost rates for the new owner's first fiscal period shall be the seller's prospective base operating cost rates before the sale.

I. Public notice. To comply with the requirements of § 1902(a)(28)(c) of the Social Security Act, DMAS shall make available to the public the data and methodology used in establishing Medicaid payment rates for nursing facilities. Copies may be obtained by request under the existing procedures of the Virginia Freedom of Information Act.

12 VAC 30-90-42. Phase-in period. (Repealed.)

~~A. To assist NFs in converting to the PIRS methodology, a phase-in period shall be provided until June 30, 1992.~~

~~B. From October 1, 1990, through June 30, 1991, a NF's prospective operating cost rate shall be a blended rate calculated at 33% of the PIRS operating cost rates determined by 12 VAC 30-90-41 and 67% of the "current" operating rate determined by subsection D below.~~

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~~C. From July 1, 1991, through June 30, 1992, a NF's prospective operating cost rate shall be a blended rate calculated at 67% of the PIRS operating cost rates determined by 12 VAC 30-90-41 and 33% of the "current" operating rate determined by subsection D below.~~

~~D. The following methodology shall be applied to calculate a NF's "current" operating rate:~~

~~1. Each NF shall receive as its base "current" operating rate, the weighted average prospective operating cost per diems and efficiency incentive per diems if applicable, calculated by DMAS to be effective September 30, 1990.~~

~~2. The base "current" operating rate established above shall be the "current" operating rate for the NF's first partial fiscal year under PIRS. The base "current" operating rate shall be adjusted by appropriate allowance for historical inflation and 50% of the forecasted inflation based on the methodology contained in 12 VAC 30-90-41 B at the beginning of each of the NF's fiscal years which starts during the phase-in period, October 1, 1990, through June 30, 1992, to determine the NF's prospective "current" operating rate. See 12 VAC 30-90-300 for example calculations.~~

12 VAC 30-90-43. Nursing facility rate change. (Repealed.)

~~For the period beginning July 1, 1991, and ending June 30, 1992, the per diem operating rate for each NF shall be adjusted. This shall be accomplished by applying a uniform adjustment factor to the rate of each NF.~~

Article 3 5.

Allowable Cost Identification.

12 VAC 30-90-50. Allowable costs.

A. Costs which are included in rate determination procedures and final settlement shall be only those allowable, reasonable costs which are acceptable under the Medicare principles of reimbursement, except as specifically modified in the Plan and as may be subject to individual or ceiling cost limitations and which are classified in accordance with the DMAS uniform chart of accounts (see *Appendix I* (12 VAC 30-90-270 through 12 VAC 30-90-276) of Part III of this chapter).

B. Certification. The cost of meeting all certification standards for NF requirements as required by the appropriate state agencies, by state laws, or by federal legislation or regulations.

C. Operating costs.

1. Direct patient care operating costs shall be defined in *Appendix I* (12 VAC 30-90-270 through 12 VAC 30-90-276) of Part III of this chapter.

2. Allowable direct patient care operating costs shall exclude (i) personal physician fees, and (ii) pharmacy services and prescribed legend and nonlegend drugs provided by nursing facilities which operate licensed in-house pharmacies. These services shall be billed directly to DMAS through separate provider agreements

and DMAS shall pay directly in accordance with 12 VAC 30-80-10 et seq.

3. Indirect patient care operating costs include all other operating costs, not identified as direct patient care operating costs and NATCEPs costs in *Appendix I* (12 VAC 30-90-270 through 12 VAC 30-90-276) of Part III of this chapter, which are allowable under the Medicare principles of reimbursement, except as specifically modified herein and as may be subject to individual cost or ceiling limitations.

D. Allowances/goodwill. Bad debts, goodwill, charity, courtesy, and all other contractual allowances shall not be recognized as an allowable cost.

~~E. Cost of protecting employees from blood borne pathogens. Effective July 1, 1994, reimbursement of allowable costs shall be adjusted in the following way to recognize the costs of complying with requirements of the Occupational Safety and Health Administration (OSHA) for protecting employees against exposure to blood borne pathogens.~~

~~1. Hepatitis B immunization. The statewide median of the reasonable acquisition cost per unit of immunization times the number of immunizations provided to eligible employees during facility fiscal years ending during SFY 1994, divided by Medicaid days in the same fiscal period, shall be added to the indirect peer group ceiling effective July 1, 1994. This increase to the ceilings shall not exceed \$.09 per day for SFY 1995.~~

~~2. Other OSHA compliance costs. The indirect peer group ceilings shall be increased by \$.07, effective July 1, 1994, to recognize continuing OSHA compliance costs other than immunization.~~

~~3. Data submission by nursing facilities. Nursing facilities shall provide for fiscal years ending during SFY 1994, on forms provided by DMAS, (i) the names, job titles and social security numbers of individuals immunized, the number of immunizations provided to each and the dates of immunization; and (ii) the acquisition cost of immunization.~~

12 VAC 30-90-51. Purchases/related organizations.

A. Costs applicable to services, facilities, and supplies furnished to the provider by organizations related to the provider by common ownership or control shall be included in the allowable cost of the provider at the cost to the related organization, provided that such costs do not exceed the price of comparable services, facilities or supplies. Purchases of existing NFs by related parties shall be governed by the provisions of 12 VAC 30-90-34 B 2.

Allowable cost applicable to management services furnished to the provider by organizations related to the provider by common ownership or control shall be lesser of the cost to the related organization or the per patient day ceiling limitation established for management services cost. (See 12 VAC 30-90-290.)

B. "Related to the provider" shall mean that the provider is related by reasons of common ownership or control by the organization furnishing the services, facilities, or supplies.

C. Common ownership exists when an individual or individuals or entity or entities possess significant ownership or equity in the parties to the transaction. Control exists where an individual or individuals or entity or entities have the power, directly or indirectly, significantly to influence or direct the actions or policies of the parties to the transaction. Significant ownership or control shall be deemed to exist where an individual is a "person with an ownership or control interest" within the meaning of 42 CFR 455.101. If the parties to the transaction are members of an immediate family, as defined below, the transaction shall be presumed to be between related parties if the ownership or control by immediate family members, when aggregated together, meets the definitions of "common ownership" or "control," as set forth above. Immediate family shall be defined to include, but not be limited to, the following: (i) husband and wife, (ii) natural parent, child and sibling, (iii) adopted child and adoptive parent, (iv) step-parent, step-child, step-sister, and step-brother, (v) father-in-law, mother-in-law, sister-in-law, brother-in-law, son-in-law and daughter-in-law, and (vi) grandparent and grandchild.

D. Exception to the related organization principle.

1. Effective with cost reports having fiscal years beginning on or after July 1, 1986, an exception to the related organization principle shall be allowed. Under this exception, charges by a related organization to a provider for goods or services shall be allowable cost to the provider if all four of the conditions set out below are met.

2. The exception applies if the provider demonstrates by convincing evidence to the satisfaction of DMAS that the following criteria have been met:

a. The supplying organization is a bona fide separate organization. This means that the supplier is a separate sole proprietorship, partnership, joint venture, association or corporation and not merely an operating division of the provider organization.

b. A substantial part of the supplying organization's business activity of the type carried on with the provider is transacted with other organizations not related to the provider and the supplier by common ownership or control and there is an open, competitive market for the type of goods or services furnished by the organization. In determining whether the activities are of similar type, it is important to also consider the scope of the activity.

For example, a full service management contract would not be considered the same type of business activity as a minor data processing contract. The requirement that there be an open, competitive market is merely intended to assure that the item supplied has a readily discernible price that is established through arms-length bargaining by well informed buyers and sellers.

c. The goods or services shall be those which commonly are obtained by institutions such as the provider from other organizations and are not a basic element of patient care ordinarily furnished directly to patients by such institutions. This requirement means that institutions such as the provider typically obtain the good or services from outside sources rather than producing the item internally.

d. The charge to the provider is in line with the charge for such services, or supplies in the open market and no more than the charge made under comparable circumstances to others by the organization for such goods or services. The phrase "open market" takes the same meaning as "open, competitive market" in subdivision b above.

3. Where all of the conditions of this exception are met, the charges by the supplier to the provider for such goods or services shall be allowable as costs.

4. This exception does not apply to the purchase, lease or construction of assets such as property, buildings, fixed equipment or major movable equipment. The terms "goods and services" may not be interpreted or construed to mean capital costs associated with such purchases, leases, or construction.

~~E. Three competitive bids shall not be required for the building and fixed equipment components of a construction project outlined in 12 VAC 30-90-31. Reimbursement shall be in accordance with subsection A of this section with the limitations stated in 12 VAC 30-90-31 B.~~

Article 4 6.
New Nursing Facilities.

12 VAC 30-90-60. Interim rate.

A. A new facility shall be defined as follows:

1. A facility that is newly enrolled and new construction has taken place through the COPN process; or

2. A facility that is newly enrolled which was previously denied payments for new admissions and was subsequently terminated from the program.

B. Upon a showing of good cause, and approval of the DMAS, an existing NF that expands its bed capacity by 50% or more shall have the option of retaining its prospective rate or being treated as a new NF.

C. A replacement facility or one that has changed location may not be considered a new facility if it serves the same inpatient population. An exception may be granted by DMAS if the provider can demonstrate that the occupancy substantially changed as a result of the facility being replaced or changing location. A change in total occupancy of 20% shall be considered to indicate a substantial change when compared to the previous two prior cost reporting periods.

D. A change in either ownership or adverse financial conditions (e.g., bankruptcy), or both, of a provider does not change a nursing facility's status to be considered a new facility.

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~~A. E. Effective July 1, 2001, for all new or expanded NFs the 95% 90% occupancy requirement for indirect and capital costs shall be waived for establishing the first cost reporting period interim rate. This first cost reporting period shall not exceed 42 13 months from the date of the NFs certification.~~

~~B. Upon a showing of good cause, and approval of the DMAS, an existing NF that expands its bed capacity by 50% or more shall have the option of retaining its prospective rate, or being treated as a new NF.~~

~~C. F. The 95% 90% occupancy requirement for indirect and capital costs shall be applied to the first and subsequent cost reporting periods' actual indirect and capital costs for establishing such NFs second and future cost reporting periods' prospective reimbursement rates. The 95% 90% occupancy requirement shall be considered as having been satisfied if the new NF achieved a 95% 90% occupancy at any point in time during the first cost reporting period.~~

~~D. G. A new NFs interim rate for the first cost reporting period shall be determined based upon the lower of its anticipated allowable cost determined from a detailed budget (or pro forma cost report) prepared by the provider and accepted by the DMAS, or the appropriate operating ceilings or charges.~~

~~E. H. Effective July 1, 2001, on the first day of its second cost reporting period, a new nursing facility's interim plant or capital, as appropriate, rate shall be converted to a per diem amount by dividing its allowable plant/capital costs for its first cost reporting period by 90% of the potential number of patient days computed as 95% of the daily for all licensed bed complement beds during the first cost reporting period.~~

~~F. Any NF receiving reimbursement under new NF status shall not be eligible to receive the blended phase-in period rate under 12 VAC 30-90-42.~~

~~G. I. During its first semiannual period of operation, a newly constructed or newly enrolled NF shall have an assigned SII based upon its peer group's average SII for direct patient care. An expanded NF receiving new NF treatment shall receive the SII calculated for its last semiannual period prior to obtaining new NF status.~~

12 VAC 30-90-65. Final rate.

The DMAS shall reimburse the lower of the appropriate operating ceilings, charges or actual allowable cost for a new NF's first cost reporting period of operation, subject to the procedures outlined above in 12 VAC 30-90-60 ~~A, C, E, and F, and H.~~

Upon determination of the actual allowable operating cost for direct patient care and indirect patient care the per diem amounts shall be used to determine if the provider is below the peer group ceiling used to set its interim rate. If indirect costs are below ~~those ceilings~~ the ceiling, an efficiency incentive shall be paid at settlement of the first year cost report.

This incentive will allow a NF to be paid up to 25% of the difference between its actual allowable indirect operating cost and the peer group ceiling used to set the interim rate. (Refer to 12 VAC 30-90-41 F.)

Article 5 7.
Cost Reports.

12 VAC 30-90-70. Cost report submission.

A. Cost reports are due not later than 150 days after the provider's fiscal year end. If a complete cost report is not received within 150 days after the end of the provider's fiscal year, it is considered delinquent. The cost report shall be deemed complete for the purpose of cost settlement when DMAS has received all of the following (note that if the audited financial statements required by subdivisions 3 a and 6 7 b of this subsection are received not later than 120 days after the provider's fiscal year end and all other items listed are received not later than 90 days after the provider's fiscal year end, the cost report shall be considered to have been filed at 90 days):

1. Completed cost reporting form(s) provided by DMAS, with signed certification(s);
2. The provider's trial balance showing adjusting journal entries;
3. a. The provider's audited financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), a statement of cash flows, the auditor's report in which he expresses his opinion or, if circumstances require, disclaims an opinion based on generally accepted auditing standards, footnotes to the financial statements, and the management report. Multi-facility providers shall be governed by subdivision 6 7 of this subsection;
- b. Schedule of restricted cash funds that identify the purpose of each fund and the amount;
- c. Schedule of investments by type (stock, bond, etc.), amount, and current market value;
4. Schedules which reconcile financial statements and trial balance to expenses claimed in the cost report;
5. Depreciation schedule;
6. Schedule of assets as defined in 12 VAC 30-90-37;
7. Nursing facilities which are part of a chain organization must also file:
 - a. Home office cost report;
 - b. Audited consolidated financial statements of the chain organization including the auditor's report in which he expresses his opinion or, if circumstances require, disclaims an opinion based on generally accepted auditing standards, the management report and footnotes to the financial statements;
 - c. The nursing facility's financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), and a statement of cash flows;
 - d. Schedule of restricted cash funds that identify the purpose of each fund and the amount;

e. Schedule of investments by type (stock, bond, etc.), amount, and current market value; and

~~7.~~ 8. Such other analytical information or supporting documentation that may be required by DMAS.

B. When cost reports are delinquent, the provider's interim rate shall be reduced to zero. For example, for a September 30 fiscal year end, payments will be reduced starting with the payment on and after March 1.

C. After the overdue cost report is received, desk reviewed, and a new prospective rate established, the amounts withheld shall be computed and paid. If the provider fails to submit a complete cost report within 180 days after the fiscal year end, a penalty in the amount of 10% of the balance withheld shall be forfeited to DMAS.

Article 6 8.
Prospective Rates.

12 VAC 30-90-80. Time frames.

A. For cost reports filed on or after August 1, 1992, a prospective rate shall be determined by DMAS within ~~90~~ 180 days of the receipt of a complete cost report. (See 12 VAC 30-90-70 A.) ~~The 180-day time frame shall similarly apply to cost reports filed but for which a prospective rate has not been set as of August 1, 1992.~~ Rate adjustments shall be made retroactive to the first day of the provider's new cost reporting year. Where a field audit is necessary to set a prospective rate, the DMAS shall have an additional ~~90~~ 120 days to determine any appropriate adjustments to the prospective rate as a result of such field audit. This time period shall be extended if delays are attributed to the provider.

B. Subsequent to establishing the prospective rate DMAS shall conclude the desk audit of a providers' cost report and determine if further field audit activity is necessary. The DMAS will seek repayment or make retroactive settlements when audit adjustments are made to costs claimed for reimbursement.

Article 7 9.
Retrospective Rates.

Article 8 10.
Record Retention.

Article 9 11.
Audits.

12 VAC 30-90-120. Audit overview; scope of audit.

A. Desk audits shall be performed to verify the completeness and accuracy of the cost report, and reasonableness of costs claimed for reimbursement. Field audits, as determined necessary by the DMAS, shall be performed on the records of each participating provider to determine that costs included for reimbursement were accurately determined and reasonable, and do not exceed the ceilings or other reimbursement limitations established by the DMAS.

B. The scope of the audit includes, but shall not be limited to: trial balance verification, analysis of fixed assets, *schedule*

of assets, indebtedness, selected revenues, leases and the underlying cost of ownership, rentals and other contractual obligations, and costs to related organizations. The audit scope may also include various other analyses and studies relating to issues and questions unique to the NF and identified by the DMAS. Census and related statistics, patient trust funds, and billing procedures are also subject to audit.

12 VAC 30-90-123. Field audit exit conference.

A. The provider shall be offered an exit conference to be executed within 15 days following completion of the on-site audit activities, unless other time frames are mutually agreed to by the DMAS and provider. Where two or more providers are part of a chain organization or under common ownership, DMAS shall have up to 90 days after completion of all related on-site audit activities to offer an exit conference for all such NFs. The exit conference shall be conducted at the site of the audit or at a location mutually agreeable to the DMAS and the provider.

B. The purpose of the exit conference shall be to enable the DMAS auditor to discuss such matters as the auditor deems necessary, to review the proposed field audit adjustments, and to present supportive references. The provider will be given an opportunity during the exit conference to present additional documentation and agreement or disagreement with the audit adjustments.

C. All remaining adjustments, including those for which additional documentation is insufficient or not accepted by the DMAS, shall be applied to the applicable cost report or reports regardless of the provider's approval or disapproval.

D. The provider shall sign an exit conference form that acknowledges the review of proposed adjustments.

E. After the exit conference the DMAS shall perform a review of all remaining field audit adjustments. Within a reasonable time and after all documents have been submitted by the provider, the DMAS shall transmit in writing to the provider a final field audit adjustment report (FAAR), *if revised*, which will include all remaining adjustments not resolved during the exit conference. The provider shall have 15 days from the date of the letter which transmits the FAAR, to submit any additional documentation which may affect adjustments in the FAAR.

12 VAC 30-90-130. Dispute resolution for nonstate operated nursing facilities. (Repealed.)

~~A. NF's have the right to appeal the DMAS's interpretation and application of state and federal Medicaid and applicable Medicare principles of reimbursement in accordance with the Administrative Process Act, § 9-6.14:1 et seq. and § 32.1-325.1 of the Code of Virginia.~~

~~B. Nonappealable issues are identified below:~~

~~1. The use of state and federal Medicaid and applicable Medicare principles of reimbursement.~~

~~2. The organization of participating NF's into peer groups according to location as a proxy for cost variation across facilities with similar operating characteristics. The use of~~

Proposed Regulations

~~individual ceilings as a proxy for determining efficient operation within each peer group.~~

~~3. Calculation of the initial peer group ceilings using the most recent cost settled data available to DMAS that reflects NF operating costs inflated to September 30, 1990.~~

~~4. The use of the moving average of the Skilled Nursing Facility market basket of routine service costs, as developed by Data Resources, Incorporated, adjusted for Virginia, as the prospective escalator.~~

~~5. The establishment of separate ceilings for direct operating costs and indirect operating costs.~~

~~6. The use of Service Intensity Indexes to identify the resource needs of given NFs patient mix relative to the needs present in other NFs.~~

~~7. The development of Service Intensity Indexes based on:~~

~~a. Determination of resource indexes for each patient class that measures relative resource cost.~~

~~b. Determination of each NF's average relative resource cost index across all patients.~~

~~c. Standardizing the average relative resource cost indexes of each NF across all NF's.~~

~~8. The use of the DMAS Long Term Care Information System (LTCIS), assessment form (currently DMAS-95), Virginia Center on Aging Study, the State of Maryland Time and Motion Study of the Provision of Nursing Service in Long Term Care Facilities, and the KPMG Peat Marwick Survey of Virginia long-term care NF's nursing wages to determine the patient class system and resource indexes for each patient class.~~

~~9. The establishment of payment rates based on service intensity indexes.~~

12 VAC 30-90-131. Conditions for appeal. (Repealed.)

~~An appeal shall not be heard until the following conditions are met:~~

~~1. Where appeals result from desk or field audit adjustments, the provider shall have received a notification of program reimbursement (NPR) in writing from the DMAS.~~

~~2. Any and all moneys due to DMAS shall be paid in full, unless a repayment plan has been agreed to by DMAS.~~

~~3. All first level appeal requests shall be filed in writing with the DMAS within 90 business days following the date of a DMAS notice of program reimbursement that adjustments have been made to a specific cost report.~~

12 VAC 30-90-132. Appeal procedure. (Repealed.)

~~A. There shall be two levels of administrative appeal.~~

~~B. Informal appeals shall be decided by the Director of the Appeals Division after an informal fact finding conference is held. The decision of the Director of the Appeals Division shall~~

~~be sent in writing to the provider within 90 business days following conclusion of the informal fact finding conference.~~

~~C. If the provider disagrees with such initial decision the provider may, at its discretion, file a notice of appeal to the Director of the DMAS. Such notice shall be in writing and filed within 30 business days of the date of the initial decision.~~

~~D. Within 30 business days of the date of such notice of appeal, the director shall appoint a hearing officer to conduct the proceedings, to review the issues and the evidence presented, and to make a written recommendation.~~

~~E. The director shall notify the provider of his final decision within the time frames set for disposition of appeals in this subpart and the Administrative Process Act, § 9-6.14:1 et seq. of the Code of Virginia.~~

~~F. The director's final written decision shall conclude the provider's administrative appeal.~~

~~G. Formal hearing procedures, as developed by DMAS, shall control the conduct of the formal administrative proceedings.~~

12 VAC 30-90-133. Appeals time frames. (Repealed.)

~~Appeal time frames noted throughout this section may be extended for the following reasons:~~

~~1. The provider submits a written request prior to the due date requesting an extension for good cause and the DMAS approves the extension.~~

~~2. Delays on the part of the NF documented by the DMAS shall automatically extend DMAS's time frame to the extent of the time delayed.~~

~~3. Extensions of time frames shall be granted to the DMAS for good cause shown.~~

~~4. When appeals for multiple years are submitted by a NF or a chain organization or common owners are coordinating appeals for more than one NF, the time frames shall be reasonably extended for the benefit of the DMAS.~~

~~5. Disputes relating to the time lines established in 12 VAC 30-90-132 B or to the grant of extensions to the DMAS shall be resolved by application to the Director of the DMAS or his designee.~~

12 VAC 30-90-135. Reimbursement of legal fees associated with appeals having substantial merit. (Repealed.)

~~A. The Department of Medical Assistance Services shall reimburse a nursing facility for reasonable and necessary legal fees associated with an informal or formal appeal brought pursuant to the Administrative Process Act, only if the nursing facility substantially prevails on the merit of the appeal. The term "substantially prevails" is defined as being successful on more than 50% of the issue as appealed and on more than 50% of the amount under appeal. The reimbursement of legal fees remains subject to the State Plan for Medical Assistance and all existing ceilings. Any legal fees claimed must be supported by adequate, detailed, and verifiable documentation.~~

~~B. Subject to the requirements of subsection A of this section, the reimbursable legal fees will be included in the calculation of total allowable costs in the fiscal year the appeal process is concluded and Medicaid will reimburse the nursing facility for its Medicaid proportionate share.~~

12 VAC30-90-136. Elements of capital payment methodology not subject to appeal.

Elements of the capital payment methodology that shall not be subject to appeal shall be:

1. The definitions provided in Article 3 (12 VAC 30-90-35 et seq.) of Subpart II of this chapter, and the application of those definitions to the FRV rate calculation.
2. The transition policy described in 12 VAC 30-90-29.
3. The formula for determining the FRV per diem rate described in Article 3 of Subpart II of this chapter.
4. The calculation of the FRV rental amount described in Article 3 of Subpart II of this chapter.
5. The exclusion of certain beds from the transition policy as provided in Article 3 of Subpart II of this chapter.

SUBPART VI.
STOCK TRANSACTIONS.

Article 1.
Plant Cost Applicable.

12 VAC 30-90-160. Stock acquisition; merger of unrelated and related parties.

~~A. The acquisition of the capital stock of a provider does not constitute a basis for revaluation of the provider's assets. Any cost associated with such an acquisition of capital stock shall not be an allowable cost. The provider selling its stock continues as a provider after the sale, and the purchaser is only a stockholder of the provider.~~

B. In the case of a merger which combines two or more unrelated corporations under the regulations of the Code of Virginia, there will be only one surviving corporation. If the surviving corporation, which will own the assets and liabilities of the merged corporation, is not a provider, a Certificate of Public Need, if applicable, must be issued to the surviving corporation.

The nonsurviving corporation shall be subject to the policies applicable to terminated providers, including those relating to gain or loss on sales of NFs.

C. The statutory merger of two or more related parties or the consolidation of two or more related providers resulting in a new corporate entity shall be treated as a transaction between related parties. No revaluation shall be permitted for the surviving corporation.

Article 2.
Capital Cost Applicable.

12 VAC 30-90-165. Stock acquisition; merger of unrelated and related parties.

A. The acquisition of the capital stock of a provider does not constitute a basis for revaluation of the provider's assets.

Any cost associated with an acquisition of capital stock shall not be an allowable cost. The provider selling its stock continues as a provider after the sale, and the purchaser is only a stockholder of the provider.

B. In the case of a merger that combines two or more unrelated corporations under the Code of Virginia, there will be only one surviving corporation. If the surviving corporation that will own the assets and liabilities of the merged corporation is not a provider, a Certificate of Public Need, if applicable, must be issued to the surviving corporation.

The nonsurviving corporation shall be subject to the policies applicable to terminated providers, including those relating to gain or loss on sales of NFs.

C. The statutory merger of two or more related parties or the consolidation of two or more related providers resulting in a new corporate entity shall be treated as a transaction between related parties. No revaluation shall be permitted for the surviving corporation.

12 VAC 30-90-170. NATCEPs costs.

A. The Omnibus Budget Reconciliation Act of 1989 (OBRA 89) amended § 1903(a)(2)(B) of the Social Security Act to fund actual NATCEPs costs incurred by NFs separately from the NF's medical assistance services reimbursement rates.

B. NATCEPs costs shall be as defined in Appendix I (12 VAC 30-90-270 through 12 VAC 30-90-276).

C. To calculate the reimbursement rate, NATCEPs costs contained in the most recently filed cost report shall be converted to a per diem amount by dividing allowable NATCEPs costs by the actual number of NF's patient days.

D. The NATCEPs interim reimbursement rate determined in subsection C of this section shall be added to the prospective operating cost and plant cost components or charges, whichever is lower, to determine the NF's prospective rate. The NATCEPs interim reimbursement rate shall not be adjusted for inflation.

E. Reimbursement of NF costs for training and competency evaluation of nurse aides must take into account the NF's use of trained nurse aides in caring for Medicaid, Medicare and private pay patients. Medicaid shall not be charged for that portion of NATCEPs costs which are properly charged to Medicare or private pay services. The final retrospective reimbursement for NATCEPs costs shall be the reimbursement rate as calculated from the most recently filed cost report by the methodology in subsection C of this section times the Medicaid patient days from the DMAS MMR-240.

F. Disallowance of nonreimbursable NATCEPs costs shall be reflected in the year in which the nonreimbursable costs were claimed.

G. Payments to providers for allowable NATCEPs costs shall not be considered in the comparison of the lower allowable reimbursement or charges for covered services, as outlined in 12 VAC 30-90-55 A.

12 VAC 30-90-221. Time frames.

~~A. Start-up cost time frames.~~

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~~1-~~ A. Start-up costs are incurred from the time preparation begins on a newly constructed or purchased building, wing, floor, unit, or expansion thereof to the time the first patient (whether Medicaid or non-Medicaid) is admitted for treatment, or where the start-up costs apply only to nonrevenue producing patient care functions or nonallowable functions, to the time the areas are used for their intended purposes.

~~2-~~ B. If a provider intends to prepare all portions of its entire facility at the same time, start-up costs for all portions of the facility shall be accumulated in a single deferred charge account and shall be amortized when the first patient is admitted for treatment.

~~3-~~ C. If a provider intends to prepare portions of its facility on a piecemeal basis (i.e., preparation of a floor or wing of a provider's facility is delayed), start-up costs shall be capitalized and amortized separately for the portion or portions of the provider's facility prepared during different time periods.

4. D. Moreover, if a provider expands its NF by constructing or purchasing additional buildings or wings, start-up costs shall be capitalized and amortized separately for these areas.

~~B-~~ E. Depreciation time frames.

1. Costs of the provider's facility and building equipment shall be depreciated using the straight line method over the lives of these assets starting with the month the first patient is admitted for treatment.

2. Where portions of the provider's NF are prepared for patient care services after the initial start-up period, those asset costs applicable to each portion shall be depreciated over the remaining lives of the applicable assets. If the portion of the NF is a nonrevenue-producing patient care area or nonallowable area, depreciation shall begin when the area is opened for its intended purpose. Costs of major movable equipment, however, shall be depreciated over the useful life of each item starting with the month the item is placed into operation.

12 VAC 30-90-240. Home office operating costs.

A. Home office *operating* costs shall be allowable to the extent they are reasonable, relate to patient care, and provide cost savings to the provider.

B. Provider purchases from related organizations, whether for services, or supplies, shall be limited to the lower of the related organizations actual cost or the price of comparable purchases made elsewhere.

C. Home office *operating* costs shall be allocated in accordance with § 2150.3, PRM-15.

D. Home office costs associated with providing management services to nonrelated entities shall not be recognized as allowable reimbursable cost.

E. Allowable and nonallowable home office costs shall be recognized in accordance with § 2150.2, PRM-15.

F. Item 398 D Chapter 723 of 1987 Acts of Assembly (as amended), effective April 8, 1987, eliminated reimbursement

of return on equity capital to proprietary providers for periods or portions thereof on or after July 1, 1987.

12 VAC 30-90-250. Lump sum payment.

When the provider files a cost report indicating that an overpayment has occurred, full refund shall be remitted with the cost report. In cases where DMAS discovers an overpayment during desk audit, field audit, or final settlement, DMAS shall promptly send the first demand letter requesting a lump sum refund. ~~Recovery shall be undertaken even though the provider disputes in whole or in part DMAS' determination of the overpayment.~~

12 VAC 30-90-253. Extension request documentation.

In the written request for an extended repayment schedule, the provider shall document the need for an extended (beyond 30 days) repayment and submit a written proposal scheduling the dates and amounts of repayments. *The provider must make payments in accordance with the proposed schedule while the schedule is pending approval.* If DMAS approves the schedule, DMAS shall send the provider written notification of the approved repayment schedule, which shall be effective retroactive to the date the provider submitted the proposal.

12 VAC 30-90-260. Change of ownership. (Repealed.)

~~A. Under the Consolidated Omnibus Budget Reconciliation Act of 1985, Public Law 99-272, reimbursement for capital upon the change of ownership of a NF is restricted to the lesser of:~~

~~1. One-half of the percentage increase (as measured from the date of acquisition by the seller to the date of the change of ownership), in the Dodge Construction Cost Index applied in the aggregate with respect to these facilities that have undergone a change of ownership during the fiscal year, or~~

~~2. One-half of the percentage increase (as measured from the date of acquisition by the seller to the date of the change of ownership) in the Consumer Price Index for All Urban Consumers (CPI-U) applied in the aggregate with respect to those facilities that have undergone a change of ownership during the fiscal year.~~

~~B. To comply with the provisions of COBRA 1985, effective October 1, 1986, the DMAS shall separately apply the following computations to the capital assets of each facility which has undergone a change of ownership:~~

~~1. One-half of the percentage increase (as measured from the date of acquisition by the seller to the date of the change of ownership), in the Dodge Construction Cost Index, or~~

~~2. One-half of the percentage increase (as measured from the date of acquisition by the seller to the date of the change of ownership) in the Consumer Price Index for All Urban Consumers (CPI-U).~~

~~C. Change of ownership is deemed to have occurred only when there has been a bona fide sale of assets of a NF (See 12 VAC 30-90-34 B 3 for the definition of "bona fide" sale).~~

~~D. Reimbursement for capital assets which have been revalued when a facility has undergone a change of ownership shall be limited to the lesser of:~~

- ~~1. The amounts computed in subsection B above;~~
- ~~2. Appraised replacement cost value; or~~
- ~~3. Purchase price.~~

~~E. Date of acquisition is deemed to have occurred on the date legal title passed to the seller. If a legal titling date is not determinable, date of acquisition shall be considered to be the date a certificate of occupancy was issued by the appropriate licensing or building inspection agency of the locality where the nursing facility is located.~~

12 VAC 30-90-264. Specialized care services.

Specialized care services provided in conformance with 12 VAC 30-60-40 E and H, 12 VAC 30-60-320 and 12 VAC 30-60-340 shall be reimbursed under the following methodology. The nursing facilities that provide adult specialized care for the categories of Ventilator Dependent Care, Comprehensive Rehabilitation Care, and Complex Health Care will be placed in one group for rate determination. The nursing facilities that provide pediatric specialized care in a dedicated pediatric unit of eight beds or more will be placed in a second group for rate determination.

1. Routine operating cost. Routine operating cost shall be defined as in 12 VAC 30-90-271 and 12 VAC 30-90-272. To calculate the routine operating cost reimbursement rate, routine operating cost shall be converted to a per diem amount by dividing it by actual patient days.
2. Allowable cost identification and cost reimbursement limitations. The provisions of Article 3 5 (12 VAC 30-90-50 et seq.) of *Subpart II* of Part II of this chapter and of Appendix III (12 VAC 30-90-290) of Part III of this chapter shall apply to specialized care cost and reimbursement.
3. Routine operating cost rates. Each facility shall be reimbursed a prospective rate for routine operating costs. This rate will be the lesser of the facility-specific prospective routine operating ceiling, or the facility-specific prospective routine operating cost per day plus an efficiency incentive. This efficiency incentive shall be calculated by the same method as in 12 VAC 30-90-41.
4. Facility-specific prospective routine operating ceiling. Each nursing facility's prospective routine operating ceiling shall be calculated as:
 - a. Statewide ceiling. The statewide routine operating ceiling shall be the weighted average (weighted by 1994 days) of specialized care rates in effect on July 1, 1996, reduced by statewide weighted average ancillary and capital cost per day amounts based on audited 1994 cost data from the 12 facilities whose 1994 FY specialized care costs were audited during 1996. This routine operating ceiling amount shall be adjusted for inflation by the percentage of change in the moving

average of the Virginia specific Skilled Nursing Facility Market Basket of Routine Service Costs, as developed by DRI/McGraw-Hill, using the second quarter 1996 DRI table. The respective statewide operating ceilings will be adjusted each quarter in which the provider's most recent fiscal year ends, by adjusting the most recent interim ceiling by 100% of historical inflation and 50% of forecasted inflation to the end of the provider's next fiscal year.

b. The portion of the statewide routine operating ceiling relating to nursing salaries (as determined by the 1994 audited cost report data, or 67.22%) will be wage adjusted using a normalized wage index. The normalized wage index shall be the wage index applicable to the individual provider's geographic location under Medicare rules of reimbursement for skilled nursing facilities, divided by the statewide average of such wage indices across the state. This normalization of wage indices shall be updated January 1, after each time the Health Care Financing Administration (HCFA) publishes wage indices for skilled nursing facilities. Updated normalization shall be effective for fiscal years starting on and after the January 1 for which the normalization is calculated.

c. The percentage of the statewide routine operating ceiling relating to the nursing labor and nonlabor costs (as determined by the 1994 audited cost report data or 71.05%) will be adjusted by the nursing facility's specialized care average Resource Utilization Groups, Version III (RUG-III) Nursing-Only Normalized Case Mix Index (NCMI). The NCMI for each nursing facility will be based on all specialized care patient days rendered during the six-month period prior to that in which the ceiling applies (see subdivision 6 below).

5. Normalized case mix index (NCMI). Case mix shall be measured by RUG-III nursing-only index scores based on Minimum Data Set (MDS) data. The RUG-III nursing-only weights developed at the national level by the Health Care Financing Administration (HCFA) (see 12 VAC 30-90-320) shall be used to calculate a facility-specific case mix index (CMI). The facility-specific CMI, divided by the statewide CMI shall be the facility's NCMI. The steps in the calculation are as follows:

a. The facility-specific CMI for purposes of this rate calculation shall be the average of the national RUG-III Nursing-Only weights calculated across all patient days in the facility during the six months prior to the six-month period to which the NCMI shall be applied to the facility's routine operating cost and ceiling.

b. The statewide CMI for purposes of this rate calculation shall be the average of the national RUG-III Nursing-Only weights calculated across all specialized care patient days in all Specialized Care Nursing facilities in the state during the six months prior to the six-month period to which the NCMI shall be applied. A new statewide CMI shall be calculated for each six-month period for which a provider-specific rate must be set.

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- c. The facility-specific NCMI for purposes of this rate calculation shall be the facility-specific CMI from (a) above divided by the statewide CMI from (b) above.
- d. Each facility's NCMI shall be updated semiannually, at the start and the midpoint of the facility's fiscal year.
- e. Patient days for which the lowest RUG-III weight is imputed, as provided in subdivision 14 c of this section, shall not be included in the calculation of the NCMI.

6. Facility-specific prospective routine operating base cost per day: The facility-specific routine operating cost per day to be used in the calculation of the routine operating rate and the efficiency incentive shall be the actual routine cost per day from the most recent fiscal year's cost report, adjusted (using DRI-Virginia inflation factors) by 50% of historical inflation and 50% of the forecasted inflation, and adjusted for case mix as described below:

- a. An NCMI rate adjustment shall be applied to each facility's prospective routine nursing labor and nonlabor operating base cost per day for each semiannual period of the facility's fiscal year.
- b. The NCMI calculated for the second semiannual period of the previous fiscal year shall be divided by the average of that (previous) fiscal year's two semiannual NCMI's to yield an "NCMI cost rate adjustment" to the prospective nursing labor and nonlabor operating cost base rate in the first semiannual period of the subsequent fiscal year.
- c. The NCMI determined in the first semiannual period of the subsequent fiscal year shall be divided by the average of the previous fiscal year's two semiannual NCMI's to determine the NCMI cost rate adjustment to the prospective nursing labor and nonlabor operating base cost per day in the second semiannual period of the subsequent fiscal year.

See 12 VAC 30-90-310 for an illustration of how the NCMI is used to adjust routine operating cost ceilings and semiannual NCMI adjustments to the prospective routine operating base cost rates.

7. Interim rates. Interim rates, for processing claims during the year, shall be calculated from the most recent settled cost report and Minimum Data Set (MDS) data available at the time the interim rates must be set, except that failure to submit cost and MDS data timely may result in adjustment to interim rates as provided elsewhere.

8. Ancillary costs. Specialized care ancillary costs will be paid on a pass-through basis for those Medicaid specialized care patients who do not have Medicare or any other sufficient third-party insurance coverage. Ancillary costs will be reimbursed as follows:

- a. All covered ancillary services, except kinetic therapy devices, will be reimbursed for reasonable costs as defined in the current NHPS. See 12 VAC 30-90-290 for the cost reimbursement limitations.

b. Kinetic therapy devices will have a limit per day (based on 1994 audited cost report data inflated to the rate period). See 12 VAC 30-90-290 for the cost reimbursement limitations.

c. Kinetic therapy devices will be reimbursed only if a resident is being treated for wounds that meet specialized care Complex Health Care Category wound care criteria. Residents receiving this wound care must require kinetic bed therapy (that is, low air loss mattresses, fluidized beds, and/or rotating/turning beds) and require treatment for a grade (stage) IV decubitus, a large surgical wound that cannot be closed, or second to third degree burns covering more than 10% of the body.

9. Covered ancillary services are defined as follows: laboratory, X-ray, medical supplies (e.g., infusion pumps, incontinence supplies), physical therapy, occupational therapy, speech therapy, inhalation therapy, IV therapy, enteral feedings, and kinetic therapy. The following are not specialized care ancillary services and are excluded from specialized care reimbursement: physician services, psychologist services, total parenteral nutrition (TPN), and drugs. These services must be separately billed to DMAS. An interim rate for the covered ancillary services will be determined (using data from the most recent settled cost report) by dividing allowable ancillary costs by the number of patient days for the same cost reporting period. The interim rate will be retroactively cost settled based on the specialized care nursing facility cost reporting period.

10. Capital costs ~~(excluding pediatric specialized care units)~~. Effective July 1, 2000, capital cost reimbursement shall be in accordance with 12 VAC 30-90-35 through 12 VAC 30-90-37 inclusive ~~the current NHPS~~, except that the ~~95% (85% if applicable)~~ 90% occupancy requirement shall not be separately applied to specialized care. Capital cost related to specialized care patients will be cost settled on the respective nursing facility's cost reporting period. In this cost settlement the ~~95% (85% if applicable)~~ 90% occupancy requirement shall be applied to all the nursing facility's licensed nursing facility beds inclusive of specialized care. ~~An occupancy requirement of 70% shall be applied to distinct part pediatric specialized care units.~~

11. Nurse aide training and competency evaluation programs and competency evaluation programs (NATCEP) costs. NATCEPS costs will be paid on a pass-through basis in accordance with the current NHPS.

12. Pediatric routine operating cost rate. For pediatric specialized care in a distinct part pediatric specialized care unit, one routine operating cost ceiling will be developed. The routine operating cost ceiling will be computed as follows:

- a. The Complex Health Care Payment Rate effective July 1, 1996, and updated for inflation, will be reduced by (i) the weighted average capital cost per day developed from the 1994 audit data and (ii) the weighted average ancillary cost per day from the 1994

audit data updated for inflation in the same manner as described in subdivision 4 a of this subsection.

b. The statewide operating ceiling shall be adjusted for each nursing facility in the same manner as described in subdivisions 4 and 5 of this section.

c. The final routine operating cost reimbursement rate shall be computed as described for other than pediatric units in subdivision 3 of this section.

13. Pediatric unit capital cost. Pediatric unit capital costs will be reimbursed in accordance with the current NHPS, except that the occupancy requirement shall be 70% rather than ~~95% or 85%~~ 90%. ~~An interim capital rate will be calculated from the latest cost report and retrospectively cost settled on the respective specialized care provider's cost reporting period.~~

14. MDS data submission. MDS data relating to specialized care patients must be submitted to the department in a submission separate from that which applies to all nursing facility patients.

a. Within 30 days of the end of each month, each specialized care nursing facility shall submit to the department, separately from its submission of MDS data for all patients, a copy of each MDS Version 2.0 which has been completed in the month for a Medicaid specialized care patient in the nursing facility. This shall include (i) the MDS required within 14 days of admission to the nursing facility (if the patient is admitted as a specialized care patient), (ii) the one required by the department upon admission to specialized care, (iii) the one required within 12 months of the most recent full assessment, and (iv) the one required whenever there is a significant change of status.

b. In addition to the monthly data submission required in (a) above, the same categories of MDS data required in (a) above shall be submitted for all patients receiving specialized care from January 1, 1996, through December 31, 1996, and shall be due February 28, 1997.

c. If a provider does not submit a complete MDS record for any patient within the required timeframe, the department shall assume that the RUG-III weight for that patient, for any time period for which a complete record is not provided, is the lowest RUG-III weight in use for specialized care patients. A complete MDS record is one that is complete for purposes of transmission and acceptance by the Health Care Financing Administration.

15. Case mix measures in the initial semiannual periods. In any semiannual periods for which calculations in 12 VAC 39-90-310 requires an NCMI from a semiannual period beginning before January 1996, the case mix used shall be the case mix applicable to the first semiannual period beginning after January 1, 1996, that is a semiannual period in the respective provider's fiscal period. For example, December year-end providers' rates applicable to the month of December 1996, would

normally require (in Appendix I (12 VAC 30-90-270 et seq.) of Part III of this chapter) an NCMI from July to December 1995, and one from January to June 1996, to calculate a rate for July to December 1996. However, because this calculation requires an NCMI from a period before January 1996, the NCMI's that shall be used will be those applicable to the next semiannual period. The NCMI from January to June 1996, and from July to December 1996, shall be applied to December 1996, as well as to January to June 1997. Similarly, a provider with a March year end would have its rate in December 1996, through March 1997, calculated based on an NCMI from April through September 1996, and October 1996, through March 1997.

16. Cost reports of specialized care providers are due not later than 150 days after the end of the provider's fiscal year. Except for this provision, the requirements of 12 VAC 30-90-70 and 12 VAC 30-90-80 shall apply.

12 VAC 30-90-266. Traumatic Brain Injury (TBI) payment.

DMAS shall provide a fixed per day payment for nursing facility residents with TBI served in the program in accordance with resident and provider criteria, in addition to the reimbursement otherwise payable under the provisions of the Nursing Home Payment System. Effective for dates of service on and after August 19, 1998, a per day rate add-on shall be paid for recipients who meet the eligibility criteria for these TBI payments and who are residents in a designated nursing facility TBI unit of 20 beds or more that meets the provider eligibility criteria. ~~The value of the rate add-on shall be \$22 on August 19, 1998, and thereafter.~~ The rate add-on for any qualifying provider's fiscal year shall be reviewed annually to determine the appropriateness of the amount, *not to exceed \$50 per patient day*, and any changes will be published and distributed to the providers. (Refer to 12 VAC 30-90-330, Traumatic brain injury diagnoses, for related resident and provider requirements.)

PART III. NURSING HOME PAYMENT SYSTEM APPENDICES.

Appendix I. Uniform Expense Classification.

12 VAC 30-90-270. Uniform Expense Classification.

This appendix describes the classification of expenses applicable to the Nursing Facility Payment System.

Allowable expenses shall meet all of the following requirements: necessity, reasonableness, nonduplication, related to patient care, not exceeding the limits and/or ceilings established in the Payment System and meet applicable Medicare principles of reimbursement. *All of the references to 12 VAC 30-90-270 occurring in previous Part II shall be understood to include 12 VAC 30-90-270 through 12 VAC 30-90-276.*

12 VAC 30-90-272. Indirect patient care operating costs.

A. Administrative and general.

1. Administrator/owner assistant administrator.
Compensation of individuals responsible for

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administering the operations of the nursing facility. (See 12 VAC 30-90-50 and Appendix III (12 VAC 30-90-290) for limitations.)

2. Other administrative and fiscal services. Gross salaries of all personnel in administrative, personnel, fiscal, billing and admitting, communications and purchasing departments.

3. Management fees. Cost of fees for providing necessary management services related to nursing facility operations. (See Appendix III (12 VAC 30-90-290) for limitations.)

4. Professional fees--accounting. Fees paid to independent outside auditors and accountants.

5. Professional fees--legal. Fees paid to attorneys. (See Appendix III (12 VAC 30-90-290) for limitations.)

6. Professional fees--other. Fees, other than accounting or legal, for professional services related to nursing facility patient care.

7. Director's fees. Fees paid for attendance at scheduled meetings which serve as reimbursement for time, travel, and services provided. (See Appendix III (12 VAC 30-90-290) for limitations.)

8. Membership fees. Fees related to membership in health care organizations which promote objectives in the providers' field of health care activities. (See Appendix III (12 VAC 30-90-290) for limitations.)

9. Advertising (classified). Cost of advertising to recruit new employees and yellow pages advertising.

10. Public relations. Cost of promotional expenses including brochures and other informational documents regarding the nursing facility.

11. Telephone. Cost of telephone service used by employees of the nursing facility.

12. Subscriptions. Cost of subscribing to newspapers, magazines, and periodicals.

13. Office supplies. Cost of supplies used in administrative departments (e.g., pencils, papers, erasers, staples).

14. Minor furniture and equipment. Cost of furniture and equipment which does not qualify as a capital asset.

15. Printing and postage. Cost of reproducing documents which are reasonable, necessary and related to nursing facility patient care and cost of postage and freight charges.

16. Travel. Cost of travel (airfare, auto mileage, lodging, meals, etc. by administrator or other authorized personnel on official nursing facility business). (See 12 VAC 30-90-290 for limitations.)

17. Auto. All costs of maintaining nursing facility vehicles, including gas, oil, tires, licenses, maintenance of such vehicles.

18. License fees. Fees for licenses, including state, county, and local business licenses, and VHSCRC filing fees.

19. Liability insurance. Cost of insuring the facility against liability claims, *including malpractice*.

20. Interest. Other than mortgage and equipment.

21. Amortization/start-up costs. Amortization of allowable Start-Up Costs (See 12 VAC 30-90-220).

22. Amortization/organizational costs. Amortization of allowable organization costs (See 12 VAC 30-90-220).

B. Employee benefits.

1. FICA (Social Security). Cost of employer's portion of Social Security Tax.

2. State unemployment. State unemployment insurance costs.

3. Federal unemployment. Federal unemployment insurance costs.

4. Workers' compensation. Cost of workers' compensation insurance.

5. Health insurance. Cost of employer's contribution to employee health insurance.

6. Group life insurance. Cost of employer's contribution to employee group life insurance.

7. Pension plan. Employer's cost of providing pension program for employees.

8. Other employee benefits. Cost of awards and recognition ceremonies for recognition and incentive programs, disability insurance, child care, and other commonly offered employee benefits which are nondiscriminatory.

C. Dietary expenses.

1. Salaries. Gross salary of kitchen personnel, including dietary supervisor, cooks, helpers and dishwashers.

2. Supplies. Cost of items such as soap, detergent, napkins, paper cups, and straws.

3. Dishes and utensils. Cost of knives, forks, spoons, plates, cups, saucers, bowls and glasses.

4. Consultants. Fees paid to consulting dietitians.

5. Purchased services. Costs of dietary services performed on a contract basis.

6. Food. Cost of raw food.

7. Nutrient oral feedings. Cost of nutrients in oral feedings.

D. Housekeeping expenses.

1. Salaries. Gross salary of housekeeping personnel, including housekeepers, maids and janitors.

2. Supplies. Cost of cleaners, soap, detergents, brooms, and lavatory supplies.

3. Purchased services. Cost of housekeeping services performed on a contract basis.
- E. Laundry expenses.
1. Salaries. Gross salary of laundry personnel.
 2. Linen. Cost of sheets, blankets, and pillows.
 3. Supplies. Cost of such items as soap, detergent, starch and bleach.
 4. Purchased services. Cost of other services, including commercial laundry service.
- F. Maintenance and operation of plant.
1. Salaries. Gross salary of personnel involved in operating and maintaining the physical plant, including maintenance men or plant engineer and security services.
 2. Supplies. Cost of supplies used in maintaining the physical plant, including light bulbs, nails, lumber, glass.
 3. Painting. Supplies and contract services.
 4. Gardening. Supplies and contract services.
 5. Heating. Cost of heating oil, natural gas, or coal.
 6. Electricity. Self-explanatory.
 7. Water, sewer, and trash removal. Self-explanatory.
 8. Purchased services. Cost of maintaining the physical plant, fixed equipment, movable equipment and furniture and fixtures on a contract basis.
 9. Repairs and maintenance. Supplies and contract services involved with repairing the facility's capital assets.
- G. Medical records expenses.
1. Salaries--medical records. Gross salary of licensed medical records personnel and other department personnel.
 2. Utilization review. Fees paid to physicians attending utilization review committee meetings.
 3. Supplies. All supplies used in the department.
 4. Purchased services. Medical records services provided on a contract basis.
- H. Quality assurance services.
1. Salaries. Gross salary of personnel providing quality assessment and assurance activities.
 2. Purchased services. Cost of quality assessment and assurance services provided on a contract basis.
 3. Supplies. Cost of all supplies used in the department or activity.
- I. Social service expenses.
1. Salaries. Salary of personnel providing medically-related social services. A facility with more than 120 beds must employ a full-time qualified social worker.
- J. Patient activity expenses.
1. Salaries. Gross salary of personnel providing recreational programs to patients, such as arts and crafts, church services and other social activities.
 2. Supplies. Cost of items used in the activities program (i.e., games, art and craft supplies and puzzles).
 3. Purchased services. Cost of services provided on a contract basis.
- K. Educational activities expenses. (Other than NATCEPs costs, see 12 VAC 30-90-270.)
1. Salaries. Gross salaries of training personnel.
 2. Supplies. Cost of all supplies used in this activity.
 3. Purchased services. Cost of training programs provided on a contract basis.
- L. Other nursing Administrative costs.
1. Salaries--other nursing administration. Gross salaries of ward clerks and nursing administration support staff.
 2. Subscriptions. Cost of subscribing to newspapers, magazines and periodicals.
 3. Office supplies. Cost of supplies used in nursing administrative departments (e.g., pencils, papers, erasers, staples).
 4. Purchased services. Cost of nursing administrative consultants, ward clerks, nursing administration support staff performed on a contract basis.
 5. Advertising (classified). Cost of advertising to recruit all nursing service personnel.
- M. Home office costs. Allowable operating costs incurred by a home office which are directly assigned to the nursing facility or pooled operating costs that are allocated to the nursing facility in accordance with 12 VAC 30-90-240.

Appendix II.
Leasing of Facilities.

12 VAC 30-90-280. Leasing of facilities.

The substance of this appendix shall apply only to Article 2 (12 VAC 30-90-30 et seq.) of Subpart II of Part II of this chapter.

I. Determination of allowable lease costs.

A. The provisions of this ~~Part~~(appendix II) shall apply to all lease agreements, including sales and leaseback agreements and lease purchase agreements, and including whether or not such agreements are between parties which are related (as defined in 12 VAC 30-90-50 of the Nursing Home Payment System (NHPS)).

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B. Reimbursement of lease costs pursuant to a lease between parties which are not related shall be limited to the DMAS allowable cost of ownership as determined in *subsection E* below. Reimbursement of lease costs pursuant to a lease between parties which are related (as defined in 12 VAC 30-90-50) shall be limited to the DMAS allowable cost of ownership. Whether the lease is between parties which are or are not related, the computation of the allowable annual lease expense shall be subject to DMAS audit.

C. The DMAS allowable cost of ownership shall be determined by the historical cost of the facility to the owner of record at the date the lease becomes effective. When a lease agreement is in effect, whether during the original term or a subsequent renewal, no increase in the reimbursement shall be allowed as a result of a subsequent sale of the facility.

D. When a bona fide sale has taken place, the facility must have been held by the seller for a period of no less than five years for a lease effected subsequent to the sale date to be compared to the buyer's cost of ownership. Where the facility has been held for less than 5 years, the allowable lease cost shall be computed using the seller's historical cost.

E. Reimbursement of lease costs pursuant to a lease between parties which are not related (as defined in 12 VAC 30-90-50) shall be limited to the DMAS allowable cost of ownership. The following reimbursement principles shall apply to leases, other than those covered in 12 VAC 30-90-50 and ~~subdivision~~ *subsection IV* (of this appendix H), entered into on or after October 1, 1990:

1. An "Allowable Cost of Ownership" schedule shall be created for the lease period to compare the total lease expense to the allowable cost of ownership.
2. If the lease cost for any cost reporting period is below the cost of ownership for that period, no adjustment shall be made to the lease cost, and a "carryover credit" to the extent of the amount allowable for that period under the "Allowable Cost of Ownership" schedule shall be created but not paid.
3. If the lease cost for a future cost reporting period is greater than the "Cost of Ownership" for that period, the provider shall be paid this "carryover credit" from prior period(s), not to exceed the cumulative carryover credit or his actual lease cost, whichever is less. At no time during the lease period shall DMAS reimbursement exceed the actual cumulative "Cost of Ownership."
4. Once DMAS has determined the allowable cost of ownership, the provider shall be responsible for preparing a verifiable and auditable schedule to support cumulative computations of cost of ownership vs. lease cost to support the "carryover credit" as reported in the "Allowable Cost of Ownership" schedule, and shall submit such a schedule with each cost report.

II. Documentation of costs of ownership.

A. Leases shall provide that the lessee or DMAS shall have access to any and all documents required to establish the underlying cost of ownership.

B. In those instances where the lessor will not share this information with the lessee, the lessor can forward this information direct to DMAS for confidential review.

III. Computation of cost of ownership.

A. Before any rate determination for allowable lease costs is made, the lessee must supply a schedule comparing lease expense to the underlying cost of ownership for the life of the lease. Supporting documentation, including but not limited to, the lease and the actual cost of ownership (mortgage instruments, financial statements, purchase agreements, etc.) must be included with this schedule.

B. The underlying straight-line depreciation, interest, property taxes, insurance, and amortization of legal and commitment fees shall be used to determine the cost of ownership for comparison to the lease costs. Any cost associated with the acquisition of a lease other than those outlined herein shall not be considered allowable unless specifically approved by the Department of Medical Assistance Services.

1. Straight line depreciation.

- a. Depreciation shall be computed on a straight line basis only.
- b. New or additions facilities shall be depreciated in accordance with AHA Guidelines.
- c. Allowable depreciation for on-going facilities shall be computed on the historical cost of the facility determined in accordance with limits on allowable building and fixed equipment cost.
- d. The limits contained in 12 VAC 30-90-30, and Part VI (12 VAC 30-90-160) shall apply, as appropriate, whether the facility is newly constructed or an on-going facility.

2. Interest. Interest expense shall be limited to actual expense incurred by the owner of the facility in servicing long-term debt and shall be subject to the interest rate limitations stated in 12 VAC 30-90-30.

3. Taxes and insurance. Taxes are limited to actual incurred real estate and property taxes. Insurance is limited to the actual cost of mortgage insurance, fire and property liability insurance. When included in the lease as the direct responsibility of the lessee, such taxes and insurance shall not be a part of the computation of the cost of ownership.

4. Legal and commitment fees. Amortization of actual incurred closing costs paid by the owner, such as attorney's fees, recording fees, transfer taxes and service or "finance" charges from the lending institution may be included in the comparison of the cost of ownership computation. Such fees shall be subject to limitations and tests of reasonableness stated in these regulations. These costs shall be amortized over the life of the mortgage.

5. Return on Equity.

a. Return on equity will be limited to the equity of the facility's owner when determining allowable lease expense. Return on equity will be limited to 10%. For the purpose of determining allowable lease expense, equity will be computed in accordance with PRM-15 principles. The allowable base will be determined by monthly averaging of the annual equity balances. The base will be increased by the amount of paid up principal in a period but will be reduced by depreciation expense in that period.

b. Item 398D of the 1987 Appropriations Act (as amended), effective April 8, 1987 eliminated reimbursement of return on equity capital to proprietary providers for periods or portions thereof on or after July 1, 1987.

c. *This elimination of return on equity capital effective July 1, 2001, applies to all computations of allowable plant or capital cost under the methodology in effect on June 30, 2000.*

IV. Leases approved prior to August 18, 1975.

A. Leases approved prior to August 18, 1975, shall have the terms of those leases honored for reimbursement throughout the duration of the lease.

B. Renewals and extensions to these leases shall be honored for reimbursement purposes only when the dollar amount negotiated at the time of renewal does not exceed the amount in effect at the termination date of the existing lease. No escalation clauses shall be approved.

C. Payments of rental costs for leases reimbursed pursuant to subsection A above shall be allowed whether the provider occupies the premises as a lessee, sublessee, assignee, or otherwise. Regardless of the terms of any present or future document creating a provider's tenancy or right of possession, and regardless of whether the terms thereof or the parties thereto may change from time to time, future reimbursement shall be limited to the lesser of (1) the amount actually paid by the provider, or (2) the amount reimbursable by DMAS under these regulations as of the effective date this amendment. In the event extensions or renewals are approved pursuant to subsection B of this section, no escalation clauses shall be approved or honored for reimbursement purposes.

V. Nothing in this (appendix H) shall be construed as assuring providers that reimbursement for rental costs will continue to be reimbursable under any further revisions of or amendment to these regulations.

NOTICE: The forms used in administering 12 VAC 30-90-10 et seq., Methods and Standards for Establishing Payment Rates-Long Term Care, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Certificate of Medical Necessity--Durable Medical Equipment and Supplies, DMAS-352, Revised August 1995.

Cost Reporting Forms for Nursing Facility with Multiple Level of Care or Hospital-Based Nursing Facilities (PIRS 1090 Series).

~~Facility Description and Statistical Data, Schedule A-1, eff. 7/1/93.~~

~~Certification by Officer or Administrator of Provider, Schedule A-2, eff. 7/1/93.~~

~~Computation of Patient Intensity Reimbursement System Base Operating Costs, Schedule A-3, eff. 7/1/93.~~

~~Computation of Direct Patient Care Nursing Service Costs, Schedule A-4, eff. 7/1/99.~~

~~Reclassification and Adjustment of Trial Balance of Expenses, Schedule B, eff. 7/1/93.~~

~~Reclassifications, Schedule B-1, eff. 7/1/93.~~

~~Analysis of Administrative and General Other, Schedule B-2, eff. 7/1/93.~~

~~Adjustment to Expenses, Schedule B-4, eff. 7/1/93.~~

~~Cost Allocation--Employee Benefits, Schedule B-5, Part I, eff. 7/1/93.~~

~~Cost Allocation--Employee Benefits--Statistical Basis, Schedule B-5, Part II, eff. 7/1/93.~~

~~Computation of Title XIX Direct Patient Care Ancillary Service Costs, Schedule C, eff. 7/1/93.~~

~~Statement of Cost of Services from Related Organizations, Schedule D, eff. 7/1/93.~~

~~Statement of Compensation of Owners, Schedule E, eff. 7/1/93 10/1/90.~~

~~Statement of Compensation of Administrators and/or Assistant Administrators, Schedule F, eff. 7/1/93 10/1/90.~~

~~Balance Sheet, Schedule G, eff. 7/1/93.~~

~~Statement of Patient Revenues, Schedule G-1, eff. 7/1/93.~~

~~Statement of Operations, Schedule G-2, eff. 7/1/93.~~

~~Computation of Title XIX (Medicaid) Base Costs and Prospective Reimbursement Rate/PIRS, Schedule H, Part I, eff. 7/1/93 7/1/99.~~

~~Computation of Prospective Direct and Indirect Patient Care Profit Incentive Rates, Schedule H-1, eff. 7/1/93 10/1/90.~~

~~Calculation of Medical Service Reimbursement Settlement, Schedule J, eff. 7/1/93 7/1/99.~~

~~Computation of Nursing Facility Medical Service Potential Prospective Reimbursement, Schedule J, Part II, eff. 7/1/93.~~

~~Settlement Computations, Schedule J, Part III, eff. 7/1/93.~~

~~Analysis of Nursing Facility Interim Payments for Title XIX Services, Schedule J, Part IV, eff. 7/1/93.~~

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~~Analysis of Quarterly Title XIX Patient Days, Schedule J, Part V, eff. 7/1/93.~~

~~Accumulation of Title XIX Charges, Schedule J, Part VI, eff. 7/1/93.~~

Calculation of NATCEPs Reimbursement Settlement, Schedule J-1, eff. ~~7/1/93~~ 7/1/92.

Calculation of Criminal Record Check Costs Reimbursement, Schedule J-2, eff. 7/1/93.

Debt and Interest Expense, Schedule K, eff. 7/1/93.

~~Limitation on Federal Participation for Capital Expenditures Questionnaire, Schedule L, eff. 7/1/93.~~

Nurse Aide Training and Competency Evaluation Program Costs and Competency Evaluation Programs (NATCEPs), Schedule N, eff. ~~7/1/93~~ 10/1/90.

Computation of Nursing Salaries and Benefits Cost Increase Related to July 1, 1999 PIRS Rate Modification, Schedule S, rev. 11/30/99.

Cost Reporting Forms for Nursing Facility (Single Level of Care) (PIRS 1090 Series).

Facility Description and Statistical Data, Schedule A, eff. 10/1/90.

Certification by Officer or Administrator of Provider, Schedule A-2, eff. 10/1/90.

Reclassification and Adjustment of Trial Balance of Expenses, Schedule B, not dated.

Reclassifications, Schedule B-1, not dated.

Analysis of Administrative and General--Other, Schedule B-2, eff. 10/1/90.

Adjustment to Expenses, Schedule B-4, eff. 10/1/90.

Cost Allocation--Employee Benefits, Schedule B-5, Part I, eff. 7/1/93.

Cost Allocation--Employee Benefits Statistical Basis, Schedule B-5, Part II, eff. 7/1/93.

Computation of Title XIX Direct Patient Care Ancillary Service Costs, Schedule C, eff. 7/1/93.

Statement of Cost of Services from Related Organizations, Schedule D, eff. 10/1/90.

Statement of Compensation of Owners, Schedule E, eff. 10/1/90.

Statement of Compensation of Administrators and/or Assistant Administrators, Schedule F, eff. 10/1/90.

Balance Sheet, Schedule G, not dated.

Statement of Patient Revenues, Schedule G-1, eff. 10/1/90.

Statement of Operations, Schedule G-2, eff. 10/1/90.

Computation of Title XIX (Medicaid) Base Costs and Prospective Reimbursement Rate, Schedule H, eff. 7/1/99.

Computation of Prospective Direct and Indirect Patient Care Profit Incentive Rates, Schedule H-1, eff. 10/1/90.

Calculation of Medical Service Reimbursement Settlement, Schedule J, eff. 7/1/99.

Calculation of NATCEPs Reimbursement Settlement, Schedule J-1, eff. 7/1/92.

Calculation of Criminal Record Check Costs Reimbursement, Schedule J-2, eff. 7/1/93.

Debt and Interest Expense, Schedule K, eff. 7/1/93.

Limitation on Federal Participation for Capital Expenditures Questionnaire, Schedule L, eff. 10/1/90.

Nurse Aide Training and Competency Evaluation Program Costs and Competency Evaluation Programs (NATCEPs), Schedule N, eff. 10/1/90.

Computation of Nursing Salaries and Benefits Cost Increase Related to July 1, 1999 PIRS Rate Modification, Schedule S, rev. 11/30/99.

Computation of Specialized Care Base Operating Costs, Pediatric, Schedule SC-3, ~~eff. 12/1/96~~ rev. 7/98.

Computation of Specialized Care Direct Patient Care Nursing Service Costs, Pediatric, Schedule SC-4, ~~eff. 12/1/96~~ rev. 7/98.

Computation of Specialized Care Kinetic Therapy Ancillary Service Costs, Pediatric, Schedule SC-5, ~~eff. 12/1/96~~ rev. 7/98.

Computation of Specialized Care Direct Patient Care Ancillary Service Costs, Pediatric, Schedule SC-6, ~~eff. 12/1/96~~ rev. 7/98.

Computation of Specialized Care Base Costs and Prospective Rate, Pediatric, Schedule SC-7P, ~~eff. 12/1/96~~ rev. 7/00.

Computation of Prospective Specialized Care Operating Efficiency Incentive Rates, Pediatric, Schedule SC-8P, ~~eff. 12/1/96~~ rev. 7/98.

Part I Computation of Nursing Facility Specialized Care Settlement, Part II Analysis of Nursing Facility Specialized Care Interim Payments for Title XIX Services, Part III Analysis of Quarterly Title XIX (Medicaid) Specialized Care Patient Days, Pediatric, Schedule SC-9, ~~eff. 12/1/96~~ rev. 7/00.

Computation of Specialized Care Base Operating Costs, Adult, Schedule SC-3, ~~eff. 12/1/96~~ rev. 7/98.

Computation of Specialized Care Direct Patient Care Nursing Service Costs, Adult, Schedule SC-4, ~~eff. 12/1/96~~ rev. 7/98.

Computation of Specialized Care Kinetic Therapy Ancillary Service Costs, Adult, Schedule SC-5, ~~eff. 12/1/96~~ rev. 7/98.

Computation of Specialized Care Direct Patient Care Ancillary Service Costs, Adult, Schedule SC-6, ~~eff. 12/1/96~~ rev. 7/98.

Computation of Specialized Care Base Costs and Prospective Rate, Adult, Schedule SC-7, ~~eff. 12/1/96~~ rev. 7/98.

Computation of Prospective Specialized Care Operating Efficiency Incentive Rates, Adult, Schedule SC-8, *eff. 12/1/96 rev. 7/98.*

Part I Computation of Nursing Facility Specialized Care Settlement, Part II Analysis of Nursing Facility Specialized Care Interim Payments for Title XIX Services, Part III Analysis of Quarterly Title XIX (Medicaid) Specialized Care Patient Days, Adult, Schedule SC-9, *eff. 12/1/96 rev. 1/00.*

Cost Reporting Forms for Nursing Facilities with Other Long-Term Care Services, HCPA-2540-96 Worksheets, *eff. 7/96.*

DOCUMENTS INCORPORATED BY REFERENCE

R.S. Means Building Construction Cost Data, "Location Factor," *59th Annual Edition, 2001.*

R.S. Means Square Foot Costs, *22nd Annual Edition, 2001.*

R.S. Means Repair and Remodeling Cost Data, *22nd Annual Edition, 2001.*

Estimated Useful Lives of Depreciable Assets, *rev. 1993 Edition*, American Hospital Association.

~~Cragie Incorporated Municipal Finance Newsletter.~~

Federal Reserve Statistical Release (H. 15), *updated daily.*

Provider Reimbursement Manual, HCFA-Pub. 15 (PRM-15), Health Care Financing Administration.

Skilled Nursing Facility Market Basket of Routine Service Costs, ~~Data Resources~~ *updated quarterly, DRI/McGraw Hill.*

Nursing Facility Reimbursement Report, MMR-240, *updated monthly*, Department of Medical Assistance Services.

V.A.R. Doc. No. R00-281; Filed December 29, 2000, 12:12 p.m.



TITLE 13. HOUSING

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

REGISTRAR'S NOTICE: The Virginia Housing Development Authority is exempt from the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) pursuant to § 9-6.14:4.1 A 4; however, under the provisions of § 9-6.14:22, it is required to publish all proposed and final regulations.

Title of Regulation: 13 VAC 10-20-10 et seq. **Rules and Regulations for Multi-Family Housing Developments (amending 13 VAC 10-20-20).**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Summary:

The proposed amendments to the rules and regulations for multi-family housing developments will limit the amount of the authority's annual tax exempt bond allocation that may be used for financing a mortgage loan or loans to any mortgagor or to any mortgagors having

one or more of the principals who are the same or are related persons or entities. The limit is equal to 16% of the tax exempt private activity bond allocation that the authority receives annually under § 15.2-5002 of the Code of Virginia commencing in calendar year 2002 and thereafter. In determining compliance with the above 16% limitation for any principal and persons and entities related to such principal, the board shall include a mortgage loan to a mortgagor in which such principal is not a principal only if such principal has been or will be substantially participating in matters relating to the ownership of the development financed or to be financed by the mortgage loan. Limited partners and similar investors whose control over the mortgagor and participation in ownership matters are usual and customary will not be considered to be principals or to be substantially participating in ownership matters.

13 VAC 10-20-20. Income limits and general restrictions.

All of the units in each development financed under this chapter shall be occupied or held available for occupancy by persons and families whose adjusted family incomes, as of the date of their initial occupancy of such units, do not exceed 150% of the area median gross income as determined by the authority; provided, however, that in the case of any development which is subject as of April 30, 1998, to the income limit of seven times the rents, including utilities except telephone, applicable to the units therein (or the lesser of such income limit and any other income limit), all of the units in such development shall be occupied or held available for occupancy by persons and families whose adjusted family incomes, as of the date of their initial occupancy of such units, do not exceed seven times the rents, including utilities except telephone, applicable to the units therein, unless the authority and the mortgagor shall agree to apply the income limit of 150% of the area median gross income as described above. The applicable income limit set forth in the preceding sentence shall also apply to persons and families at the time of reexamination and redetermination of their adjusted family incomes and eligibility subsequent to their initial occupancy. The foregoing income limits shall apply to all developments for which the board approves mortgage loans on or after May 1, 1998, and all developments for which the board has approved mortgage loans prior to May 1, 1998, notwithstanding the inclusion of other income limits in the resolutions authorizing such mortgage loans or in any agreements executed prior to May 1, 1998, by and between the authority and the mortgagors of such developments.

The board may establish, in the resolution authorizing any mortgage loan to finance a development under this chapter, income limits lower than those provided herein or in the authority's rules and regulations for the occupants of the units in such development.

Furthermore, in the case of developments which are subject to federal mortgage insurance or assistance or are financed by notes or bonds exempt from federal income taxation, federal regulations may establish lower income limitations which in effect supersede the authority's income limits as described above.

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If federal law or rules and regulations impose limitations on the incomes of the persons or families who may occupy all or any of the units in a development, the adjusted family incomes of applicants for occupancy of all of the units in the development shall be computed, for the purpose of determining eligibility for occupancy thereof hereunder and under the authority's rules and regulations, in the manner specified in such federal law and rules and regulations, subject to such modifications as the executive director shall require or approve in order to facilitate processing, review and approval of such applications.

A mortgage loan which is to be funded in whole or in part by private activity bonds allocated to the authority for calendar year 2002 or for any calendar year thereafter in accordance with § 15.2-5002 of the Code of Virginia shall not be approved by the board if, upon and as a result of such approval, any principal (i.e., a person or entity who is determined by the board to exercise, directly or indirectly, substantial control over the mortgagor) in any mortgagor to whom a mortgage loan is approved for financing by such private activity bonds and any and all persons and entities related to such principal would, collectively, be a principal or principals (whether jointly or individually) in one or more mortgagors to whom mortgage loans would be approved by the board for funding, in the aggregate, by the issuance of more than 16% of the private activity bonds allocated to the authority for such calendar year; provided that in the case of any mortgage loan the board may waive the foregoing 16% limitation for the purpose of making full, fair or effective use of the authority's allocation of private activity bonds or for other good cause. In determining compliance with the foregoing 16% limitation for any principal and persons and entities related to such principal, the board shall include a mortgage loan to a mortgagor in which such principal is not a principal (but in which any such related person or entity is a principal) only if such principal has been or will be substantially participating, directly or indirectly, in matters relating to the ownership of the development financed or to be financed by the mortgage loan. A limited partner or other similar investor shall not be determined to be a principal or to be substantially participating, directly or indirectly, in matters relating to the ownership of a development unless the board shall determine that such limited partner or investor will, directly or indirectly, exercise control over the mortgagor or participate in matters relating to the ownership of the development substantially beyond the degree of control or participation that is usual and customary for limited partners or other similar investors with respect to developments financed by the authority. For the purpose of the foregoing, persons or entities shall be deemed to be related if the board determines that any of the following relationships existed, directly or indirectly, between them or through one or more of such relationships at any time within three years of the filing of the application for such mortgage loan being considered for approval (in each of the following relationships, the persons or entities involved in the relationship are deemed to be related to each other): (i) the persons are in the same immediate family, which shall include a spouse, children, parents, brothers, and sisters and shall also include any person living in the same household; (ii) the entities have one or more common general partners, officers, directors, members, or substantial (10% or more)

shareholders; (iii) the entities are under the common control of one or more persons or entities; (iv) the person is a general partner, officer, director, employee, member, or substantial (10% or more) shareholder in the entity; (v) the entity is a general partner, member, or substantial (10% or more) shareholder in the other entity; or (vi) the person or entity is otherwise controlled, in whole or in part, by the other person or entity.

Notwithstanding anything to the contrary herein, all developments and the processing thereof under the terms hereof must comply with (i) the Act; (ii) the applicable federal laws and regulations governing the federal tax exemption of the notes or bonds issued by the authority to finance such developments; (iii) in the case of developments subject to federal mortgage insurance or other assistance, all applicable federal laws and regulations relating thereto; and (iv) the requirements set forth in the resolutions pursuant to which the notes or bonds are issued by the authority to finance the developments. Copies of the authority's note and bond resolutions are available upon request.

VA.R. Doc. No. R01-81; Filed January 9, 2001, 9:50 a.m.

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TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF COUNSELING

Title of Regulation: 18 VAC 115-60-10 et seq. Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners (amending 18 VAC 115-60-20, 18 VAC 115-60-40, 18 VAC 115-60-50, 18 VAC 115-60-120, and 18 VAC 115-60-150).

Statutory Authority: § 54.1-2400 and Chapter 35 (§ 54.1-3500 et seq.) of Title 54.1 of the Code of Virginia.

Public Hearing Date: February 1, 2001 - noon.

Public comments may be submitted until March 30, 2001.
(See Calendar of Events section for additional information)

Agency Contact: Evelyn Brown, Executive Director, Board of Counseling, 6606 West Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9967, FAX (804) 662-9943 or (804) 662-7191/TDD.

Basis: Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations and levy fees.

The proposed regulation is mandated by § 54.1-113 of the Code of Virginia, which requires boards to have sufficient revenues to cover expenses. However, the board must exercise some discretion in the amount and type of fees that will be increased in order to comply with the statute.

Purpose: Because of the increased expenditures and reduced revenues, the board is compelled to increase renewal fees and application fees according to the Principles

for Fee Development. As a specially funded agency, renewal fees pay the vast majority of the expenses of board operations, which include investigation of complaints against licensees, adjudication of disciplinary cases, verification of licensure to other jurisdictions and entities, and communications with licensees about current practice and regulation. Adequate funding is essential to carry out the investigative and disciplinary activities of the board in order to protect the public health, safety and welfare.

Substance: The proposed amendment will increase the renewal fee by \$15 per year. The proposed application fee more accurately reflects the cost of staff time, reviewer time, mailing and copying costs, data processing and telephone costs for each applicant, and includes an initial licensure fee based on the average time from issuance of the initial license to the first renewal. This will increase the cost to applicants by \$40. The proposed fee to register an additional supervisor or change a supervisor will reduce the cost to the applicant by \$10 per registration.

The proposal increases the fee for renewal of a license lapsed less than one year by \$10. A new reinstatement requirement for licenses which have lapsed one renewal period is proposed in accordance with that for other licensure categories, and is based on a credential review fee, the late fee, and one-half of the current renewal fee, since the reissue is likely to take place after part of the renewal period has already passed.

A new fee is proposed for reinstatement of a license which has been suspended or revoked to cover the estimated cost of a hearing, including board member per diems, staff time and associated expenses.

The board is proposing fees for replacement of a duplicate license, duplicate certificate, and processing and collecting on a bad check based on cost estimates provided by the Deputy Director for Finance of the department that will be standardized among all boards in the agency.

Issues: An analysis of revenues and expenditures conducted at the end of the 1996-1998 biennium projected that under the current fee structure, the board would face a deficit of \$467,806 (46% deficit) at the end of the 1998-2000 biennium, a deficit of \$979,161 (84% deficit) at the close of the 2000-2002 biennium, and a deficit of \$1,513,721 (123% deficit) at the close of the 2000-2004 biennium. In order to remain in compliance with § 54.1-113 of the Code of Virginia, the board adopted a proposal for fee increases for all of its licensure and certification categories that will offset the projected deficit through 2004. At the time the proposal was adopted, 18 VAC 115-60-10 et seq. existed only as a proposed regulation, and a fee change could not be proposed.

Several factors have contributed to this projected deficit. At the end of the 1992-1994 biennium, the agency's finance office identified a 50% surplus in the board's revenue, which resulted in action by the board to reduce renewal fees. The board reduced renewal fees from \$85 annually to \$75 biennially for professional counselor licensure, and from \$40 annually to \$40 biennially for substance abuse counselor certification. These reductions took effect in January 1997 and were the lowest renewal fees for these credentials since

1982. During the 1996-1998 biennium, the board's projected budget increased by 33% due primarily to a doubling in the board size and increased board meeting activities for two new licensure programs, salary and fringe increases due to position reallocations, and increases in data processing costs. In addition, due to the increased number of occupations established under the board, an increased proportion of staff time in the Behavioral Sciences Unit was being devoted to the board, resulting in a shift of limited allocations for the Executive Director and Deputy Executive Director from 30% to 50%. Also, one staff member whose time was split evenly among three boards was shifted to 100% devoted to the Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Professionals. At the same time, the board's revenue decreased primarily due to the decreased renewal fees and the loss of renewal fees from 1,000 certified rehabilitation providers who declined to renew their certification after a statute change in 1997 made them ineligible for certification beyond July 2000. Further reductions in revenue are projected in future biennia due to an unexpected lack of interest in the marriage and family therapist licensure category following the initial "grandfathering" year. The board has also experienced reductions in the numbers of applicants for substance abuse counselor certification, probably due to anticipation of the new license for substance abuse treatment practitioners.

At the time the proposed regulation for the new license was adopted in November 1998, the board was aware of the upcoming deficit, but the agency's finance office had not yet completed the details of the fee changes for all licensure and certification programs that would be necessary for the board to achieve a balanced budget through 2004. The fees proposed for the new license were based on the best estimates the finance office could make at the time. Subsequently, the board adopted proposals to increase fees for all of its categories of licensure and certification in 1999. The fee changes being proposed for the substance abuse treatment practitioner license are identical to the fees that will take effect for its other two licensure categories, and have been established based on the same principles.

In developing the fee proposal for this and all of its regulations, the agency's finance office used a new set of principles by which all boards are guided in the development of regulations. The Principles for Fee Development are intended to provide structure, consistency, and equity for all professionals regulated within the department. In consideration of various alternatives and issues surrounding the adoption of fees, the Principles served to guide the board in the development of appropriate and necessary fees.

ISSUE 1. Uniformity in renewal and application fees across professions. As is stated in the Principles, renewal fees for all occupations regulated by a board should be consistent across occupations unless there is clear evidence to indicate otherwise. Professional counselors, marriage and family therapists and substance abuse treatment practitioners are all licensed for the independent delivery of mental health services. As a result, the relative numbers and kinds of disciplinary problems encountered by these professions is similar, and the cost of administering the disciplinary programs is also similar. Therefore, the board is proposing

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the same renewal fee as will soon take effect for the other two licensure categories. Likewise, the education and experience requirements for the three licensure categories are similar, resulting in a comparable amount of work to process and review applications. The board is proposing that \$75 of the initial licensure fee be attributed to credentials review for substance abuse treatment practitioner applicants, based on the cost of staff time, reviewer time, mailing and copying costs, data processing and telephone costs for each applicant. Likewise, the board is proposing a \$50 review fee for initial registrations of supervision and a \$25 fee for subsequent registrations for substance abuse treatment practitioner applicants.

Advantages and disadvantages to the licensees. All substance abuse treatment practitioners will experience increased renewal fees under the proposed regulations. While that is a disadvantage to the licensees, the alternative of reduced services for the board would be unacceptable to applicants, licensees and the general public. As a specially funded agency, renewal fees pay the vast majority of the expenses of board operations, which include investigation of complaints against licensees and certificate holders, adjudication of disciplinary cases, verification of licensure and education to other jurisdictions and entities, and communications with licensees and certificate holders about current practice and regulation.

ISSUE 2: Establishment of initial licensure fees. For all professions governed by the board, the initial licensure fee has historically been considered part of the application fee. This allowed for immediate processing of the license following notification of a passing exam score for an applicant. However, the fee was not developed according to any set formula consistent among boards in the agency. Under the new Principles for Fee Development, the initial application fees should include the cost of credentials review, an appropriate portion of the license fees, and cost of the wall certificate.

One method of assessing an initial licensure fee is prorating the fee based on the amount of time remaining in the renewal period. The board is not proposing prorated fees because other boards in the agency have determined that the additional steps involved (assessing fee, notifying applicant, processing check, notifying applicant again if check is not mailed until the next fee period begins, etc.) result in delays in licensure processing and can create more burden and lost income for the applicant than any benefit from the prorated fees. In the proposed regulations, applicants will be assessed a fee to cover one-half of the renewal period, which is the average initial licensure period.

Advantages and disadvantages to the licensees. As is stated above, the advantage of not prorating fees is that initial licensure can occur in a more timely manner. For those who are applying for licensure by examination, the license is issued as soon as examination results are forwarded to the board, usually within one or two working days. For those applying for licensure by endorsement, a license is typically issued within one or two days of receipt of all verifying documentation.

ISSUE 3. Establishment of different fees for renewing an expired license versus reinstating a lapsed license. Currently, the board's regulations allow for late renewal for up to one year with a \$25 penalty, after which the licensee has to reapply according to the regulations in effect at the time. In conformance with the Principles for Fee Development, the board is proposing a penalty fee assessed at 35% of the renewal fee for licenses that have lapsed one renewal period, and a reinstatement application requirement for individuals whose licenses have lapsed beyond one renewal period. Since a reinstatement application is required for a licensee to reinstate a lapsed license, the proposed reinstatement fee includes the current renewal fee, the late fee, and a credential review fee.

Advantages and disadvantages to the licensees. The penalty fee for late renewal within the first renewal period will increase, which is a disadvantage to licensees. However, the proposal presents an advantage for individuals whose licenses have lapsed more than one renewal period.

Under the current regulations, individuals whose licenses have lapsed more than one renewal cycle must reapply according to the current regulations. If the requirements for licensure change significantly, an individual returning to Virginia after a lengthy absence may find that he is no longer eligible for the category of licensure or certification he once held. The proposed change will allow the board to use discretion as to whether an individual has maintained competency to perform the functions within the scope of practice of the license. For individuals who hold multiple licenses under the board, the proposal establishes a consistent policy for each license held.

ISSUE 4. Reinstatement after revocation. Reinstatement of a license which has been suspended or revoked necessitates an additional cost of a hearing before a panel of the board. The estimated cost of a hearing, including board member per diems, staff time and associated expenses is approximately \$500. The board is proposing that individuals whose licenses have been suspended or revoked incur the cost of the reinstatement hearing.

ISSUE 5. Uniformity among boards for setting miscellaneous fees. In setting proposed fees for miscellaneous activities of the board, the Principles call for uniformity among boards and regulated entities. The board is proposing fees for replacement of a duplicate license, duplicate certificate, and processing and collecting on a bad check based on cost estimates provided by the Deputy Director for Finance of the department that will be standardized among all boards in the agency.

Advantages and disadvantages to the licensees. The advantage of proposed regulations is that all persons licensed or certified by a board under the Department of Health Professions will consistently pay a fee for miscellaneous activities determined by actual costs for that activity. There will not be inconsistent fees for licensees regulated under different boards.

Advantage or disadvantages to the public. Fee increases proposed by the board should present no disadvantage to the consuming public. The increase in renewal fees is not

substantial. The proposed fees are based on the equivalency to the board's other two licenses in terms of costs to administer the licensure programs. There would be considerable disadvantages to the public if the board took no action to address its deficit and increase fees to cover its expenses. The only alternative currently available under the Code of Virginia would be a reduction in services and staff, which would result in delays in licensing applicants who would be unable to work and delays in approval or disapproval of education programs. Potentially, the most serious consequence would be a reduction in or reprioritization of the investigation of complaints against regulated individuals. In addition, there may be delays in adjudicating cases of violations of the standards of practice, resulting in potential danger to clients who are often emotionally vulnerable to unscrupulous practitioners.

Fiscal Impact:

Fiscal impact prepared by the agency: New regulations establishing this license became effective on January 19, 2000. It is anticipated that 750 individuals will apply for this license within the first year. As of February 15, 2000, approximately 125 applications were requested and mailed to individuals seeking the license. The first few licenses will be issued after the board review scheduled for February 17, 2000.

Projected cost to the agency: The agency will incur some costs (approximately \$1,000) for mailings to the Public Participation Guidelines mailing list, conducting a public hearing, and sending copies of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and board meetings already scheduled.

Projected costs to the affected entities: For most applicants and regulated entities, the costs of acquiring and maintaining licensure will increase. The increased cost for application review and the assessment of initial licensure and wall certificate fees will increase the cost of initial licensure from \$100 to \$140. Licensees will pay an additional \$15 per year to maintain their licenses.

For licensees who submit their renewal fee late within one renewal period, the late renewal penalty will increase by \$10. The fee for reinstatement will increase above the simple cost of reapplication by the cost of the penalty fee minus the cost of the wall certificate, which is \$25.

Miscellaneous costs, such as replacement of a duplicate license or wall certificate, verification of a license or transcript, and returned check charges are uniformly proposed at amounts consistent with the actual costs incurred by the department for those activities.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 25 (98). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and

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

Summary of the proposed regulation. The proposed regulations revise the schedule of fees paid by licensed substance abuse treatment professionals to the Board of Counseling. The purpose of these fee changes is to bring the board into compliance with the board's interpretation of § 54.1-113 of the Code of Virginia. Section 54.1-113 requires all regulatory boards under the Department of Health Professions to revise their fee schedules if, after the close of any biennium, there is more than a 10% difference between revenues and expenditures. The proposed fee changes are as follows:

1. The fee for review of a new or additional supervision contract is reduced from \$35 to \$25;
2. Application for licensure as a substance abuse treatment practitioner is increased from \$100 to \$140;
3. Licensure renewal will increase from \$90 to \$105;
4. The penalty for late renewal of a license is raised from \$25 to \$35 (approximately 35% of the annual renewal);
5. Reinstatement of a lapsed license (a license not renewed within one renewal cycle) will cost \$165;
6. Reinstatement of a suspended or revoked license will cost \$500;
7. The cost of obtaining a duplicate license would be reduced from \$15 to \$5;
8. Verification of licensure to another jurisdiction will increase from \$10 to \$25; and
9. The returned check charge will increase from \$15 to \$25.

Estimated economic impact. These regulatory amendments are part of a broader set of fee changes proposed for the Board of Counseling. Fee increases for other professions regulated by the board become effective on April 12, 2000. The primary effect of the proposed fee changes will be to increase compliance costs for practitioners under the board by approximately \$736,250 biannually.¹ Specifically, fees paid by licensed substance abuse treatment professionals will increase by approximately \$15,000 per year.

Under the current fee structure, the board projects a biennial deficit of \$511,000 for the 2000-2002 biennium.² The proposed fee increases would substantially reduce the projected deficits during the 2000-2002 biennium and

¹ This figure reflects the difference between projected revenue for the Board of Licensed Professional Counselors, Marriage and Family Therapists, and Substance Abuse Treatment Professionals under the current fee structure and estimated revenue under the proposed fee schedule (\$647,655 and \$1,383,905).

² This figure reflects the difference of the projected budget through 6/30/2002 (\$1,159,010) and the projected revenue under the current fee structure (\$647,655).

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thereafter would begin to generate a modest surplus, thereby bringing the board into compliance with the Code. According to the board, several factors have contributed to the projected deficit. Such factors include increases in the board size, addition of two new licensure programs, increases in data processing costs, staff pay raises and related benefit increases, Y2K compliance, installation of a new computer system, and relocation of the Department of Health Professions (DHP), which have all increased expenditures. On the other side, the board has also experienced lower revenues due to significant declines in renewals for certified rehabilitation providers and applications for marriage and family therapist licensure. These circumstances have increased costs despite other efforts to improve efficiency (i.e., the privatization of certain functions, reductions in staff, etc...) undertaken by the department and the board during the past five years.

According to DHP, the proposed fee increases are necessary so that the Board of Counseling can continue to perform its essential functions of licensing, certification, investigations of complaints, and adjudication of disciplinary cases. These functions sustain the supply of mental health care providers in Virginia and protect the public from continued practice by incompetent or unethical practitioners.

The proposed fees for licensed substance abuse treatment professionals are consistent with fee increases initiated last year by the board for its other two licensure programs: professional counselors and marriage and family therapists. The level of the proposed fee increases, specifically the renewal fees, are based on revenue and expenditure projections prepared by DHP for the board. The proposed amounts were selected such that projected revenues would be sufficient to cover projected expenditures but would not result in anything more than a modest surplus. The changes in fee structures are largely based on DHP's Principles for Fee Development and are discussed below.³

Application Fees

The proposed regulation increases the application fees for licensure as a substance abuse treatment professional. The existing fee does not accurately represent the true costs of initial application as applicants receive their first renewal cycle and their wall certificate at no cost. Renewal fees currently cover these costs. The new application fee will cover the costs of application processing and credential review, approximately half of a renewal cycle, and a wall certificate.

By charging individuals for the full costs of their application, the proposed fee is more efficient and equitable. It will also provide consistency across professions regulated by the board. Though the proposed application fee is higher than the existing fees, it represents a very small portion of the total cost of entry into the profession, which includes all education and training expenses. Therefore, this fee increase is unlikely to have a significant effect on the decision of individuals to enter this profession and consequently, should not affect the

number of applicants or the supply of substance abuse treatment professionals in Virginia.

Reinstatement and Late Renewal Fees

The existing regulations require all individuals who do not renew their licenses by the expiration date to reapply for licensure. This policy does not differentiate between persons who are merely a day late in renewing their license from persons who have chosen to let their license lapse for a lengthy period of time (i.e., someone who had left the state to practice in another jurisdiction, and then has returned to Virginia).

The proposed regulation establishes a late fee, equal to approximately 35% of the renewal fee, for licensees renewing within one renewal cycle of the expiration date and require reinstatement for the renewal of any licenses (now lapsed) beyond that time. The proposed reinstatement fee of \$165 covers the costs of application processing and document review, and a portion of the license renewal fee. According to DHP, the \$35 late renewal fee more accurately reflects the costs incurred by the department for processing late renewals, which cannot be processed through the automated system but must be manually entered.

The application fee for reinstatement of a revoked license will be \$500. The level of the proposed fee is based on the board's determination of the actual costs involved, including a pre-hearing investigation, preparation of legal documents, and a hearing before the board (including per diem for members, travel expenses, and Attorney General office time). DHP estimates that one to two individuals will request reinstatement of revoked or suspended licenses each year.

In addition to charging individuals for the full costs incurred on their behalf, which is both more efficient and equitable, the proposed reinstatement and late fees will provide consistency across professions regulated by the board and should have a positive net economic benefit.

Miscellaneous Fees

Almost all of the other proposed fee changes are intended to represent more accurately the actual cost of service. For example, the fee charged for a duplicate license is reduced from \$15 to \$5, the returned check charge is set at \$25, and the fee for a verification of licensure to another jurisdiction \$25. These fees are set uniformly across all professions under the Board of Counseling and will provide consistency and equity for members.

Summary

While the proposed regulations reduce fees for certain services, the net effect of the new fee schedule will be an increase in application and licensure costs for all for substance abuse treatment professionals licensed in Virginia. According to DHP, the proposed fee increases are necessary to prevent a delay in the performance of or the elimination of investigations and disciplinary proceedings, application processing, and license renewals, a delay which could negatively affect public health and safety and reduce the supply of mental health care in Virginia.

³ This document, dated May 20, 1999, outlines the principles by which DHP sets its licensing fees. The principles are intended to provide structure, consistency, and equity for all the professionals regulated within the department.

Although the total increase in compliance costs is substantial, from an individual perspective, these fees represent a very small portion of the total cost of entry into the mental health care profession (e.g., the total cost of entry includes all education and training expenses). The proposed fee changes, therefore, are unlikely to have a significant effect on the decision of individuals to enter or exit this profession. For this reason, the proposed regulatory changes should have no economic consequences beyond the anticipated increase in licensing costs.

Businesses and entities affected. The regulations establishing this licensure category became effective January 19, 2000. DHP anticipates 750 individuals will apply for licensure within the first year.

Localities particularly affected. The proposed fee changes will not affect any particular localities since they apply statewide.

Projected impact on employment. Since the application and licensure renewal fees represent a very small portion of the total cost of entry into this profession, no significant impact on employment in Virginia is expected.

Effects on the use and value of private property. The proposed fee changes are not expected to have any significant effects on the use and value of private property in Virginia.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the analysis of the Department of Planning and Budget.

Summary:

The board is proposing fee changes in compliance with a statutory requirement for the board to collect sufficient revenue to cover the expenditures of administering the regulatory program. The proposed fees are equivalent to those recently adopted by the board as final regulations for its other two licensure categories and have been developed in accordance with the agency's Principles for Fee Development.

Overall, this proposal will result in an increase in fees for services provided by the board. For example, the proposed renewal fee will increase the cost of renewal by \$15 per year. The proposal includes an initial licensure fee with the licensure application fee that will increase the cost of applying for licensure from \$100 to \$140. A new flat fee of \$165 for reinstatement of a license lapsed more than one year is proposed to replace the current requirement to reapply under the current regulations. The proposal also includes a fee of \$500 for reinstatement of a license following disciplinary action which resulted in revocation or suspension of a license.

18 VAC 115-60-20. Fees required by the board.

A. The board has established the following fees applicable to licensure as a substance abuse treatment practitioner:

Registration of supervision (initial)	\$50
Add/change supervisor	\$ 35 25

Licensure application	\$100
Initial licensure by examination: Processing and initial licensure	\$140
Initial licensure by endorsement: Processing and initial licensure	\$140
Annual license renewal	\$ 90 105
Duplicate license	\$ 45 5
Verification of license to another jurisdiction	\$ 40 25
Late renewal	\$ 25 35
Reinstatement of a lapsed license	\$165
Replacement of or additional wall certificate	\$15
Returned check	\$ 45 25
Reinstatement following revocation or suspension	\$500

B. Fees shall be paid ~~by check or money order made payable to the Treasurer of Virginia and forwarded to the board or its contractor, or both, in appropriate amounts as specified in the application instructions.~~ All fees are nonrefundable.

C. Examination fees shall be ~~paid directly to the examination service according to its requirements determined and made payable as determined by the board.~~

18 VAC 115-60-40. Application for licensure by examination.

Every applicant for examination for licensure by the board shall:

1. Meet the degree program, course work and experience requirements prescribed in 18 VAC 115-60-60, 18 VAC 115-60-70 and 18 VAC 115-60-80; and
2. Submit the following items to the board office in one package not less than 90 days prior to the date of the examination:
 - a. A completed application;
 - b. Official transcripts documenting the applicant's completion of the degree program and course work requirements prescribed in 18 VAC 115-60-60 and 18 VAC 115-60-70;
 - c. Verification of supervision forms documenting fulfillment of the experience requirements of 18 VAC 115-60-80 and copies of all required evaluation forms;
 - d. Documentation of any other professional license or certificate ever held in another jurisdiction; and
 - e. The ~~licensure~~ application processing and initial licensure fee.

18 VAC 115-60-50. Prerequisites for licensure by endorsement.

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

1. A completed application;

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2. The licensure application *processing and initial licensure* fee;

3. Verification of all professional licenses or certificates ever held in any other jurisdiction. In order to qualify for endorsement, the applicant shall have no unresolved disciplinary action against a license or certificate. The board will consider history of disciplinary action on a case-by-case basis;

4. Further documentation of one of the following:

a. A current substance abuse treatment license in good standing in another jurisdiction obtained by meeting requirements substantially equivalent to those set forth in this chapter; or

b. A mental health license in good standing in a category acceptable to the board which required completion of a master's degree in mental health to include 60 graduate semester hours in mental health; and

(1) Board-recognized national certification in substance abuse treatment;

(2) If the master's degree was in substance abuse treatment, two years of post-licensure experience in providing substance abuse treatment;

(3) If the master's degree was not in substance abuse treatment, five years of post-licensure experience in substance abuse treatment plus 12 credit hours of didactic training in the substance abuse treatment competencies set forth in 18 VAC 115-60-70 C; or

(4) Current substance abuse counselor certification in Virginia in good standing or a Virginia substance abuse treatment specialty licensure designation with two years of post-licensure or certification substance abuse treatment experience;

5. Verification of a passing score on a licensure examination as established by the jurisdiction in which licensure was obtained;

6. Official transcripts documenting the applicant's completion of the education requirements prescribed in 18 VAC 115-60-60 and 18 VAC 115-60-70; and

7. An affidavit of having read and understood the regulations and laws governing the practice of substance abuse treatment in Virginia.

18 VAC 115-60-120. Late renewal; reinstatement.

A. A person whose license has expired may renew it within one year after its expiration date by paying the ~~penalty~~ *late renewal* fee prescribed in 18 VAC 115-60-20, as well as the license fee prescribed for ~~each~~ *the* year the license was not renewed.

B. A person who fails to renew a license ~~for~~ *after* one year or more and wishes to resume practice shall ~~reapply~~ *apply* according to the requirements set forth in 18 VAC 115-60-40 or 18 VAC 115-60-50 *apply for reinstatement, pay the reinstatement fee for a lapsed license and submit evidence*

regarding the continued ability to perform the functions within the scope of practice of the license.

18 VAC 115-60-150. Reinstatement following disciplinary action.

A. Any person whose license has been revoked, *suspended* or denied renewal by the board under the provisions of 18 VAC 115-60-140 may, two years subsequent to such board action, submit a new application to the board for *reinstatement* of licensure.

B. The board in its discretion may, after a hearing, grant the reinstatement sought in subsection A of this section.

C. *The applicant for such reinstatement, if approved, shall be licensed upon payment of the appropriate fee applicable at the time of reinstatement.*

NOTICE: The forms used in administering 18 VAC 115-60-10 et seq., Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Board of Counseling, Southern States Building, 6606 W. Broad Street, 4th Floor, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Substance Abuse Treatment Practitioner Licensure Application, ~~SATPAPP Form 1 (eff. 8/99 rev. 1/01).~~

Licensure Verification of Applicant, SATPAPP 2 (eff. 8/99).

Verification of Supervision for Substance Abuse Treatment Practitioner License, SATPAPP 3 (eff. 8/99).

Supervisor's Experience and Education, SATPAPP 3A (eff. 8/99).

Licensure Verification of Out-of-State Supervisor, SATPAPP 4 (eff. 8/99).

Courses Outline Form for Substance Abuse Treatment Practitioner Licensure, SATPAPP 5 (eff. 8/99).

Verification of Internship, SATPAPP 6 (eff. 8/99).

Verification of Internship Hours Toward the Residency, SATPAPP 7 (eff. 8/99).

Registration of Supervision for Substance Abuse Treatment Practitioner Licensure, ~~SATPREG Form A (eff. 8/99 rev. 1/01).~~

Licensure Verification of Out-of-State Supervisor, SATPREG B (eff. 8/99).

Quarterly Evaluation Form, SATPREG C (eff. 8/99).

Supervision Outline Form for Substance Abuse Treatment Practitioner Endorsement Applicants, SATPAPP8 (eff. 12/99).

Renewal Notice and Application, ~~C-45128 (rev. 7/97 1/01).~~

Substance Abuse Treatment Practitioner Application for Reinstatement of a Lapsed License, SATPREIN (eff. 1/01).

Substance Abuse Treatment Practitioner Application for Reinstatement Following Disciplinary Action, SATPREDISC (eff. 1/01).

VA.R. Doc. No. R00-65; Filed January 10, 2001, 11:40 a.m.

BOARD OF PSYCHOLOGY

Title of Regulation: 18 VAC 125-20-10 et seq. Regulations Governing the Practice of Psychology (amending 18 VAC 125-20-30, 18 VAC 125-20-120, 18 VAC 125-20-130, and 18 VAC 125-20-160; adding 18 VAC 125-20-121, 18 VAC 125-20-122, and 18 VAC 125-20-123).

Statutory Authority: §§ 54.1-2400 and 54.1-3606.1 of the Code of Virginia.

Public Hearing Date: February 8, 2001 - 3:30 p.m.

Public comments may be submitted until March 30, 2001.
(See Calendar of Events section for additional information)

Agency Contact: Evelyn Brown, Executive Director, Board of Psychology, 6606 West Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9967 or FAX (804) 662-9943.

Basis: The board is mandated under § 54.1-3606.1 of the Code of Virginia to establish requirements for continuing education of psychologists.

Purpose: By enacting the new mandate for continuing education, the 2000 Session of the General Assembly determined that such a requirement is essential to protect the health, safety and welfare of the public. The statute stipulates that the regulations require 14 hours per year of board-approved continuing education, that the education be in the form of courses, and that the courses relate directly to the respective license and scope of practice of the three licenses issued by the board. It also stipulates that the courses for clinical psychologists emphasize the diagnosis, treatment and care of patients with moderate and severe disorders. In compliance with this mandate, the board adopted a proposed regulation that includes the 14-hour requirement set forth in statute, lists categories of course providers that will have automatic approval, establishes requirements and a fee for becoming a board-approved course provider, and includes instructions for documentation of compliance. The board has included a provision for an inactive licensure status to allow practitioners who are not actively practicing psychology in Virginia to defer the continuing education requirement until they reactivate the license.

Substance: The board is proposing new sections outlining continuing education requirements, requirements for approved course providers and instructions for documentation of satisfaction of the requirements. The board is also proposing amendments to existing sections covering licensure renewal and late renewal to provide for inactive licensure status. Proposed amendments also set forth the requirements for documenting continuing education hours in the event of late renewal or reinstatement.

Issues: During discussion of the upcoming legislation, it was the board's intention to establish a variety of acceptable

activities and include a category for independent self-study to alleviate some of the financial and geographic burdens that the requirement would place on licensees. However, the legislation specifically mandates that the education be presented in the form of "courses." The board considered the unavailability of university coursework to individuals who are not enrolled in a degree program and the expense and difficulty of attending a professional association conference. Although independent self-study is precluded by the law, the board developed a definition of the word "course" to include supervised training under a board-approved provider. To further increase the accessibility of courses, the board also provided for half of the hours to come from activities that are not face-to-face, such as Internet courses, as long as the other requirements are met.

The second problem the board addressed was the mechanism for approving providers of continuing education courses. The board considered the administrative burden of having to approve the provider for every continuing education credit documented by its licensees. To resolve the problem, the board developed a list of institutions and organizations which are recognized as providers of education for psychologists, such as universities, hospitals and government agencies. These institutions commonly have established training mechanisms in place with standards for content and quality. The board also plans to develop a list of established professional organizations such as the American Psychological Association, the Virginia Academy of School Psychologists and the American Medical Association which will be recognized by the board as continuing education providers. Such a list could be placed on the internet for easy access by licensees and updated as additional organizations are included. The board will still have to consider private providers individually, and to that end has proposed criteria for approval in the regulation.

The implementation of continuing education requirements creates difficulties for individuals who choose to maintain the license but are no longer practicing due to retirement, illness, or relocation to another jurisdiction. To accommodate these individuals, the board proposes developing an inactive licensure status to waive the continuing education requirement for individuals who are not practicing. The board proposes establishing a fee that is half that for active licensure renewal. Individuals who wish to reactivate their licenses will be required to pay the active licensure renewal fee and document completion of the continuing education hours for each inactive year, not to exceed four years.

Advantages to licensees: Licensees will benefit from exposure to advances in psychological theory and methods. Individuals who practice in isolation with little peer interaction will benefit from expanding their network of colleagues and learning different approaches to treatment issues. Training in ethics will reinforce awareness of situations that may lead to disciplinary actions.

Disadvantages to the licensees: Although some licensees will be able to count the hours already provided by their agency or institution, clinical psychologists, which constitute the greatest number of licensees, primarily work in private practice settings and will have to bear the expense of the training.

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The cost will range from \$10 to \$20 per contact hour, but could be more costly if the licensee chooses continuing education activities which require travel and hotel expenses. Although half of the required hours must be face-to-face, the board members will accept distance learning with an interactive component, such as teleconferencing, as meeting the requirement. The cost to the board to monitor compliance with the requirement will be borne by licensees in their renewal fees. Additionally, licensees who do not comply with the requirement will be subject to disciplinary action by the board.

Advantages to the public: The public will have the advantage of knowing that the practitioners who treat them are staying abreast of advances in the profession. Reinforcement of training in professional ethics and skills in handling difficult situations may avert potential problems for clients. Some individuals and organizations will benefit financially by becoming providers of continuing education programs.

Disadvantages to the public: Employers may incur additional costs if they provide continuing education or reimburse expenses for their staff.

Advantages or disadvantages to government agencies: Employees of government agencies are exempted by law from the licensure requirement. Those agencies that employ licensed psychologists may incur additional costs if they choose to bear the expense of sending staff to conferences, pay for courses, or hire private individuals to present courses on site. The board will incur additional costs to monitor compliance of licensees and to hold disciplinary hearings for individuals who do not comply with the requirement.

Fiscal Impact: Estimated Impact of the Regulations.

A. Projected cost to the state to implement and enforce:

Fund source: As a special fund agency, the Board of Psychology must generate sufficient revenue to cover its expenditures from nongeneral funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation.

Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this program.

One-time versus ongoing expenditures: The agency will incur some costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing list, conducting a public hearing, and sending copies of final regulations to regulated entities.

There will be some additional on-going costs for review and approval of individual providers and for monitoring compliance of licensees with the requirements. The proposed fee for review and approval of providers was based on the estimated cost of staff time, per diems and travel expenses for board members, and data processing costs. Compliance monitoring will result in additional costs for the board, depending on the number of licensees audited each year. Generally, less than 5.0% of licensees are audited for other boards within the Department of Health Professions. For an auditing range of 2.0% to 5.0% of licensees at an estimate of 15 minutes per file reviewed at \$50 per hour, the cost to the board could

range from \$500 to \$1,250 per renewal period, plus \$100 to \$350 in mailing costs to notify applicants that they are being audited. Additional costs will be incurred to hold disciplinary hearings for individuals who are not in compliance with the requirement. Each hearing will cost approximately \$550. It is likely that there will also be an increase in disciplinary hearings to individuals who are found not to comply with the regulations. There is no estimate of what percentage of licensees will not comply with the requirement.

B. Projected cost on localities: Employees of government agencies are exempted by law from the licensure requirement. Agencies may elect to provide continuing education programs for their licensed staff. However, this would depend on the policy of individual agencies and is not influenced by the Board of Psychology.

C. Description of entities that are likely to be affected by regulation: Licensed applied psychologists, clinical psychologists, and school psychologists will be affected by the regulation.

D. Estimate of number of entities to be affected: There are approximately 1,918 licensed clinical psychologists, 105 licensed school psychologists and 56 licensed applied psychologists who will be affected by these regulations.

E. Projected cost of the regulation for affected individuals. Individuals employed by agencies and institutions will be more likely to have their education provided at the work site or have the opportunity to be reimbursed for their educational expenses. Licensees who are employed in private practice settings where free training is not likely to be offered will be required to pay for their own courses. The cost per contact hour for workshops offered by professional associations or college courses ranges from approximately \$10 to \$20 per contact hour, which would range from \$300 to \$600 each biennium to cover the full 28-hour requirement. Individuals who attend professional association meetings are sometimes able to have all or part of the cost covered by their employers. The board addressed other training venues which would not involve travel, such as distance learning, internet courses and interactive tele-training, and developed the regulation to allow for a variety of course settings. These types of training range from \$15 to several hundred dollars per course, depending on length and complexity of the material.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 25 (98). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The Board of Psychology proposes the following changes to the Regulations Governing the Practice of Psychology:

1. Addition of continuing education requirements (28 hours per biennium) for the renewal of an active license and for the reactivation of an inactive or lapsed license;
2. A provision for recognizing conventional providers of continuing education (such as universities, hospitals, and established professional organizations) and approving private providers; and
3. Establishment of an inactive license.

Estimated economic impact.

Continuing Education Requirements. The most significant change proposed to the current regulations is the addition of continuing education (CE) requirements for the renewal of an active license and for the reactivation of an inactive or lapsed license. The economic costs of this provision are the costs of any courses offered for the purposes of meeting the requirements of this regulation (whether paid for by the practitioner, his employer or professional association).

Compliance costs for meeting the CE requirements will differ across licensees. Some licensees may already be obtaining CE hours during academic or professional activities or for professional credentialing. For these individuals, the proposed requirements will not result in any additional costs aside from those associated with the documentation and maintenance of records. For other practitioners, however, the proposed CE requirements can be expected to represent a significant personal cost. Individuals employed by agencies and institutions will be more likely to have their education provided at their work site or have the opportunity to be reimbursed for their educational expenses. Licensees who are employed in private practice settings will likely pay for their own courses. Based on information provided by the Board of Psychology, the cost for workshops offered by professional associations or college courses range from approximately \$10 to \$20 per contact hour which would lead to costs of \$300 to \$600 each biennium to cover the 28-hour requirement. Other types of venues, such as distance learning or Internet courses, range from \$15 to several hundred dollars per course, depending on length and complexity of the material. Additionally, practitioners would incur the cost of the time spent on pursuing such activities, whether in lost income or lost leisure time, and any costs associated with the documentation and maintenance of the records.

Inactive Licenses and Reactivation Criteria. In light of the additional CE requirements for licensure renewal, the Board of Psychology proposes to establish an inactive license for those practitioners who are either retired, on family leave, or out of state, and do not intend to engage in active practice in Virginia, which would be exempt from on-going CE requirements. Since this would be a voluntary action, it can be expected that the associated renewal costs would not exceed the perceived benefits for any practitioner who chose to obtain an inactive license.

Requirements are set forth that the reactivation of an inactive license or reinstatement of a lapsed license include documentation of having completed continued competency hours equal to the requirement for the length of time, not to exceed four years, that the license has been inactive.

Recognition of Providers. The Board of Psychology developed a list of institutions and organizations that the board will recognize as approved providers of education for psychologists, such as universities, hospitals, government agencies, and established professional associations. A provision is included that allows individual providers to apply for approval as continuing education providers by submitting documentation of an instructional plan and payment of a provider review fee of \$200. Approval of private providers is valid for two years and must be renewed by submission of documentation and the provider review fee. This two-year time limit is intended to allow the board to periodically monitor the content and quality of courses offered by private providers.

Conclusion. The proposed CE requirements and license reactivation criteria can be expected to provide some beneficial results. The proposed rules would provide some assurance to the public that psychologists licensed by the board are maintaining their knowledge, skills, and competencies and keeping up to date with advances in psychological theory and methods. While there is no empirical evidence currently available with which to estimate the potential benefits resulting from the proposed requirements, any reduction in sub-standard care due to additional safeguards to assure the competency of practitioners would justify the anticipated costs of this regulation. In addition, some individuals and organizations will benefit financially by becoming providers of continuing education programs.

The Board of Psychology will also incur costs related to enforcement of the proposed CE requirements and approval of private providers. Based on the experience of other professions, the board estimates that total costs for enforcement of the continued competency requirements could range from \$600 to \$1,500 per biennium plus approximately \$550 for each disciplinary hearing required. These costs will be able to be absorbed into the existing budget without any fee increases at this time. Enforcement of the proposed requirements will increase compliance, and if the requirements themselves result in a net economic benefit, then the enforcement costs are also justified. The proposed fee for review and approval of providers was based to cover the estimated costs of staff time, per diems and travel expenses for board members, and data processing costs.

Businesses and entities affected. There are 1,918 clinical psychologists, 105 school psychologists, and 56 applied psychologists currently licensed in Virginia who would be affected by the proposed changes to this regulation.

Localities particularly affected. The proposed changes to this regulation should not disproportionately affect any particular locality.

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Projected impact on employment. The proposed changes to this regulation are not expected to have any significant impact on employment in Virginia.

Effects on the use and value of private property. The proposed changes to this regulation are not expected to have any significant effects on the use and value of private property in Virginia.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Psychology agrees with the economic impact analysis performed by the Department of Planning and Budget on 18 VAC 125-20-10 et seq.

Summary:

The proposed amendments establish continuing education requirements for the renewal of psychologist licensure. As required by the statute, the proposal includes a requirement of 14 contact hours of continuing education courses each year, for a total of 28 hours for each biennial licensure renewal. The proposal includes a provision for an inactive licensure status to accommodate individuals who are not actively practicing psychology and who may be unable to meet the continuing education requirements.

18 VAC 125-20-30. Fees required by the board.

- A. The board has established fees for the following:
- | | |
|---|-------|
| 1. Registration of residency (per residency request) | \$50 |
| 2. Add or change supervisor | \$25 |
| 3. Application processing and initial licensure | \$200 |
| 4. Biennial renewal of active license | \$225 |
| 5. Biennial renewal of inactive license | \$115 |
| 6. 6. Late renewal | \$80 |
| 7. 7. Verification of license to another jurisdiction | \$25 |
| 8. 8. Duplicate license | \$5 |
| 9. 9. Additional or replacement wall certificate | \$15 |
| 10. 10. Returned check | \$25 |
| 11. 11. Reinstatement of a lapsed license | \$270 |
| 12. 12. Reinstatement following revocation or suspension | \$500 |
| 13. Continuing education provider review fee | \$200 |

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

C. Examination fees shall be established and made payable as determined by the board.

18 VAC 125-20-120. Biennial renewal of licensure.

Every license issued by the board shall expire on the last day of the licensee's birth month of each even-numbered year.

1. Every licensee who intends to continue to practice shall, on or before the expiration date of the license, submit to the board a license renewal application on forms supplied by the board and the renewal fee prescribed in 18 VAC 125-20-30.

2. *Beginning with the 2004 renewal, licensees who wish to maintain an active license shall pay the appropriate fee and document on the renewal form compliance with the continuing education requirements prescribed in 18 VAC 125-20-121. First-time licensees are not required to document continuing education on the first renewal date following initial licensure.*

3. *A licensee who wishes to place his license in inactive status may do so upon payment of the fee prescribed in 18 VAC 125-20-30. No person shall practice psychology in Virginia unless he holds a current active license. An inactive licensee may activate his license by fulfilling the reactivation requirements set forth in 18 VAC 125-20-130.*

4. Licensees shall notify the board office in writing of any change of address. Failure of a licensee to receive a renewal notice and application forms from the board shall not excuse the licensee from the renewal requirement.

18 VAC 125-20-121. Continuing education course requirements for renewal of an active license.

A. After January 1, 2004, licensed psychologists shall be required to have completed a minimum of 14 hours of board-approved continuing education courses each year for a total of 28 hours for each biennial licensure renewal. A minimum of three of these hours shall be in courses that emphasize the ethics, standards of practice or laws governing the profession of psychology in Virginia.

B. For the purpose of this section, "course" means an organized program of study, classroom experience or similar educational experience that is directly related to the practice of psychology and is provided by a board-approved provider that meets the criteria specified in 18 VAC 125-20-122. At least half of the required hours shall be earned in face-to-face educational experiences.

C. Courses must be directly related to the scope of practice in the category of licensure held. Continuing education courses for clinical psychologists shall emphasize, but not be limited to, the diagnosis, treatment and care of patients with moderate and severe mental disorders.

D. The board may grant an extension for good cause of up to one year for the completion of continuing education requirements upon written request from the licensee prior to the renewal date. Such extension shall not relieve the licensee of the continuing education requirement.

E. The board may grant an exemption for all or part of the continuing education requirements for one renewal cycle due to circumstances determined by the board to be beyond the control of the licensee.

18 VAC 125-20-122. Continuing education providers.

A. The following organizations are recognized by the board as providers of continuing education:

1. Any board-approved psychological association.
2. Any board-approved association or organization of mental health, health or psychoeducational providers.
3. Any board-approved association or organization providing courses related to forensic psychology.
4. Any regionally accredited institution of higher learning.
5. Any governmental agency or facility that offers mental health, health or psychoeducational services.
6. Any licensed hospital or facility that offers mental health, health or psychoeducational services.

B. Course providers not listed in subsection A of this section may apply for approval by the board as continuing education providers.

1. To be considered for board approval, a continuing education provider shall submit:
 - a. Documentation of an instructional plan for continuing education courses that are primarily psychological in nature with systematized instruction provided by licensed psychologists or other licensed mental health service providers; and
 - b. The provider review fee set forth under 18 VAC 125-20-30.

2. Board approval of continuing education providers under this subsection shall expire two years from the date of issuance, and may be renewed upon submission of documentation and provider review fee as required by the board.

C. Continuing education providers approved under subsection A or B of this section shall:

1. Document and maintain records of licensee attendance and completion of courses for a period of four years.
2. Monitor attendance at classroom or similar face-to-face educational experiences.
3. Provide a certificate of completion for licensees who successfully complete a course.

18 VAC 125-20-123. Documenting compliance with continuing education requirements.

A. All licensees in active status are required to maintain original documentation for a period of four years.

B. After the end of each renewal period, the board may conduct a random audit of licensees to verify compliance with the requirement for that renewal period.

C. Upon request, a licensee shall provide documentation as follows:

1. Official transcripts showing credit hours earned from an accredited institution; or

2. Certificates of completion from approved providers.

D. Compliance with continuing education requirements, including the maintenance of records and the relevance of the courses to the category of licensure, is the responsibility of the licensee. The board may request additional information if such compliance is not clear from the transcripts or certificates.

E. Continuing education hours required by disciplinary order shall not be used to satisfy renewal requirements.

18 VAC 125-20-130. Late renewal; reinstatement; reactivation.

A. A person whose license has expired may renew it within two years after its expiration date by paying the penalty fee prescribed in 18 VAC 125-20-30 and the license renewal fee for the biennium the license was not renewed.

B. A person whose license has not been renewed for two years or more and who wishes to resume practice shall:

1. Present evidence satisfactory to the board regarding ~~continued competency to perform the duties regulated by the board of having met all applicable continuing education requirements equal to the number of years the license has lapsed, not to exceed four years;~~

2. ~~Upon approval for reinstatement,~~ Pay the reinstatement fee as prescribed in 18 VAC 125-20-30; and

3. Submit verification of any professional certification or licensure obtained in any other jurisdiction subsequent to the initial application for licensure.

C. A psychologist wishing to reactivate an inactive license shall submit the renewal fee for active licensure minus any fee already paid for inactive licensure renewal, and document completion of continued competency hours equal to the number of years the license has been inactive, not to exceed four years.

18 VAC 125-20-160. Grounds for disciplinary action or denial of licensure.

The board may take disciplinary action or deny a license for any of the following causes:

1. Conviction of a felony, or a misdemeanor involving moral turpitude;
2. Procuring of a license by fraud or misrepresentation;
3. Misuse of drugs or alcohol to the extent that it interferes with professional functioning;
4. Negligence in professional conduct or violation of practice standards including but not limited to this chapter;
5. Performing functions outside areas of competency;
6. Mental, emotional, or physical incompetence to practice the profession; or
7. Failure to comply with the continued competency requirements set forth in this chapter; or

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7- 8. Violating or aiding and abetting another to violate any statute applicable to the practice of the profession regulated or any provision of this chapter.

NOTICE: The forms used in administering 18 VAC 125-20-10 et seq., Regulations Governing the Practice of Psychology, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

FORMS

Psychologist Application for Licensure by Examination, PSYEX1 (rev. 2/00).

Registration of Residency - Post-Graduate Degree Supervised Experience, PSY2 (rev. 2/00).

Psychologist Application for Licensure by Endorsement, PSYEN1 (rev. 2/00).

Psychologist Application for Reinstatement of a Lapsed License, PSYREIN (eff. 2/00).

Psychologist Application for Reinstatement Following Disciplinary Action, PSYREDISC (eff. 2/00).

Verification of Post-Degree Supervision, PSY3 (rev. 6/99).

Internship Verification, PSY4 (rev. 6/99).

Licensure/Certification Verification, PSY5 (rev. 6/99).

Areas of Graduate Study, PSY6 (rev. 6/99).

Renewal Notice and Application (rev. ~~2/00~~ 1/01).

Department of Health Professions
 6606 West Broad Street, Fourth Floor
 Richmond, Virginia 23230-1717

Presorted
 First-Class Mail
 US Postage Paid
 Richmond, VA
 Permit No. 1902

«License_No»

LICENSE RENEWAL NOTICE AND APPLICATION

«First_Name» «Last_Name»
 «L_Address_Line_1»
 «L_Address_Line_2»
 «L_Address_Line_3»

RECEIPT—KEEP THIS PORTION FOR YOUR RECORDS—DO NOT RETURN

«First_Name» «Last_Name»	Renewal Fee—Amount	«renewal_fee»
«License_Type» - «License_No»		
Renewal Period: «begin_period» to «end_period»	Current Expiration Date: «L_Expiration_Date»	
1. For name changes, cross out any incorrect information on the front of the renewal form, write the correct name and check the box on return envelope. Enclose a copy of your marriage license or court order for name changes. 2. Address changes, cross out any incorrect information on the front of the renewal form, write the correct address and check the box on return envelope. 3. Detach "renewal form" portion and return completed form with your check in attached return envelope. 4. Make checks payable to "Treasurer of Virginia." Visit our website at www.dhp.state.va.us		

Please fold and tear on perforated line

Renewal Form for «License_Type»		Amount Due:
«License_No»	Renewal Period: «begin_period» to «end_period»	«renewal_fee»
«First_Name» «Middle_Name» «Last_Name»		
«L_Address_Line_1», «L_Address_Line_2», «L_Address_Line_3»		
<input type="checkbox"/> I wish to renew and I certify that I have met all continuing education requirements to renew this active license at a fee of \$225.00 <input type="checkbox"/> I wish to renew in an inactive status and enclose fee of \$115.00 (No practice authorized)		
Signature _____		
More detailed information on inactive licensure is provided at our website www.dhp.state.va.us or call the board office at 804-682-9913.		
If Payment Is Received by Board After «L_Expiration_Date», Amount Due «combined_date_fee»		
Do not staple check to renewal form or fold renewal form.		

- Name/Address Change Enclosed
- Licensure Status Change Enclosed

Place
 Postage
 Stamp
 Here

Department of Health Professions
 P.O. Box 26566
 Richmond, VA 23261-6566



VA.R. Doc. No. R00-212; Filed January 10, 2001, 11:40 a.m.

FINAL REGULATIONS

For information concerning Final Regulations, see Information Page.

Symbol Key

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

TITLE 3. ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGE CONTROL BOARD

Title of Regulation: **3 VAC 5-10-10 et seq. Procedural Rules for the Conduct of Hearings before the Board and Its Hearing Officers and the Adoption or Amendment of Regulations (amending 3 VAC 5-10-70 and 3 VAC 5-10-240).**

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

Effective Date: February 28, 2001.

Summary:

The amendments require that notices of initial decisions of the board's hearing officers be sent to interested parties by both certified mail, return receipt requested, and regular mail. The amendments extend the present 10-day period for appealing such decisions to 30 days.

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 W. Curtis Coleburn, III, Department of Alcoholic Beverage Control, 2901 Hermitage Road, P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4409.

3 VAC 5-10-70. Decisions.

A. Initial decisions. The decision of the hearing officer shall be deemed the initial decision, shall be a part of the record and shall include:

1. A statement of the hearing officer's findings of fact and conclusions, as well as the reasons or bases therefor, upon all the material issues of fact, law or discretion presented on the record; and
2. The appropriate rule, order, sanction, relief or denial thereof as to each such issue.

B. Summary decisions. At the conclusion of a hearing, the hearing officer, in his discretion, may announce the initial decision to the interested parties.

C. Notice. At the conclusion of any hearing, the hearing officer shall advise interested parties that the initial decision will be reduced to writing and the notice of such decision, along with notice of the right to appeal to the board, will be mailed to them or their representative and filed with the board in due course. (See 3 VAC 5-10-240 for Appeals).

D. Prompt filing. The initial decision shall be reduced to writing, mailed to interested parties *at the address on record*

with the board by certified mail, return receipt requested, and by regular mail, and filed with the board as promptly as possible after the conclusion of the hearing or the expiration of the time allowed for the receipt of additional evidence.

E. Request for early or immediate decision. Where the initial decision is deemed to be acceptable, an interested party may file, either orally before the hearing officer or in writing, a waiver of his right of appeal to the board and request early or immediate implementation of the initial decision. The board or hearing officer may grant the request for early or immediate implementation of the decision by causing issuance or surrender of the license and prompt entry of the appropriate order.

F. Timely review. The board shall review the initial decision and may render a proposed decision, which may adopt, modify or reject the initial decision unless immediate implementation is ordered. In any event, the board shall issue notice of any proposed decision, along with notice of right to appeal, within the time provided for appeals as stated in 3 VAC 5-10-240.

3 VAC 5-10-240. Appeals.

A. An interested party may appeal to the board an adverse initial decision, including the findings of fact and the conclusions, of a hearing officer or a proposed decision, or any portion thereof, of the board provided a request therefor in writing is received within ~~40~~ 30 days after the date of mailing of the initial decision or the proposed decision, whichever is later.

B. At his option, an interested party may submit written exceptions to the initial or proposed decision within the ~~40~~ 30-day period and waive further hearing proceedings.

C. If an interested party fails to appear at a hearing, the board may proceed in his absence and render a decision.

VA.R. Doc. No. R99-211; Filed January 10, 2001, 11:22 a.m.

* * * * *

Title of Regulation: **3 VAC 5-70-10 et seq. Other Provisions (adding 3 VAC 5-70-210).**

Statutory Authority: §§ 4.1-103 and 4.1-227 of the Code of Virginia.

Effective Date: February 28, 2001.

Summary:

The regulation lists a number of administrative violations for which a licensee may waive administrative hearing and serve a predetermined term of license suspension or pay a predetermined monetary penalty in lieu of such suspension if the licensee has not had any substantiated

violations of regulation or statute within the three years immediately preceding the date of the violation. The regulation also provides for the procedure of notifying violators of their options and the time frame within which such options must be exercised.

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 W. Curtis Coleburn, III, Department of Alcoholic Beverage Control, 2901 Hermitage Road, P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4409.

3 VAC 5-70-210. Schedule of penalties for first-offense violations.

Any licensee charged with any violation of board regulations or statutes listed below, if the licensee has not had any substantiated violations of regulation or statute within the three years immediately preceding the date of the violation, may enter a written waiver of hearing and (i) accept the period of license suspension set forth below for the violation, or (ii) pay the civil charge set forth below for the violation in lieu of suspension. Any notice of hearing served on a licensee for a violation covered by this section shall contain a notice of the licensee's options under this section. Any licensee who fails to notify the board of its intent to exercise one of the options provided for under this section within 20 days after the date of mailing of the notice of hearing shall be deemed to have waived the right to exercise such options and the case shall proceed to hearing. For good cause shown, the board may, in its discretion, allow a licensee to exercise the options provided for under this section beyond the 20-day period.

VIOLATION	SUSPENSION	CIVIL CHARGE
Sale of beer, wine or mixed beverages to a person at least 18 but under 21 years of age.	25 days	\$2,000
Allowing consumption of beer, wine, or mixed beverages by a person at least 18 but under 21 years of age.	25 days	\$2,000
Aiding and abetting the purchase of alcoholic beverages by a person at least 18 but under 21 years of age.	10 days	\$1,000
Keeping unauthorized alcoholic beverages on the premises, upon which appropriate taxes have not been paid.	10 days	\$1,000

Keeping unauthorized alcoholic beverages on the premises, upon which appropriate taxes have been paid.	7 days	\$500
Allow gambling on the premises, if licensee, agent, or employee is participant, but is not conducting the gambling event or operation.	10 days	\$1,000
Allow gambling on the premises, if licensee, agent, or employee is not participant nor conducting the gambling event or operation.	7 days	\$500
Allow an intoxicated person to loiter on the premises.	7 days	\$500
Sale to an intoxicated person.	25 days	\$2,000
Allow consumption by an intoxicated person.	25 days	\$2,000
After hours sales or consumption of alcoholic beverages.	10 days	\$1,000
No designated manager on premises.	7 days	\$500
Invalid check to wholesaler or board.	7 days	\$250
Failure to keep records.	7 days	\$500
Failure to maintain mixed beverage food ratio required by statute (not applicable if ratio falls below 30%).	10 days	\$1,000
Inadequate illumination.	7 days	\$500
ABC license not posted.	7 days	\$500
Not timely submitting report required by statute or regulation.	7 days	\$500
Designated manager not posted.	7 days	\$500
Person less than 18 serving alcoholic beverages; less than 21 acting as bartender.	7 days	\$500
Sale of alcoholic beverages in unauthorized place or manner.	10 days	\$1,000
Consumption of alcoholic beverages in unauthorized area.	7 days	\$500
Removal of alcoholic beverages from authorized area.	7 days	\$500
Failure to obliterate mixed beverage stamps.	7 days	\$500
Employee on duty consuming alcoholic beverages.	7 days	\$500
Conducting illegal happy hour.	7 days	\$500
Illegally advertising happy hour.	7 days	\$500

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Unauthorized advertising.	7 days	\$500
Failure to remit state beer/wine tax (if deficiency has been corrected).	10 days	\$1,000
Wholesaler sale of wine/beer in unauthorized manner.	10 days	\$1,000
Wholesaler sale of wine/beer to unauthorized person.	10 days	\$1,000

VA.R. Doc. No. R99-212; Filed January 10, 2001, 11:23 a.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

REGISTRAR'S NOTICE: The following regulations filed by the Marine Resources Commission are exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 F of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: 4 VAC 20-620-10 et seq. Pertaining to Summer Flounder (amending 4 VAC 20-620-30 and 4 VAC 20-620-40).

Statutory Authority: §§ 28.2-201 and 28.2-204 of the Code of Virginia.

Effective Date: January 1, 2001.

Summary:

The amendments (i) establish the opening date for the first quarter summer flounder fishery; (ii) modify first quarter possession and landing limits; and (iii) modify the responsibilities of seafood buyers in reporting summer flounder landings.

Agency Contact: Copies of the regulation may be obtained from Deborah R. Cawthon, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248.

4 VAC 20-620-30. Commercial harvest quotas.

A. During each calendar year, commercial landings of Summer Flounder shall be limited to the total pounds calculated pursuant to the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Summer Flounder Fishery Management Plan, as approved by the National Marine Fisheries Service on August 6, 1992 (50 CFR Part 625); and shall be distributed as described in subsections B through H of this section:

B. The commercial harvest of Summer Flounder from Virginia tidal waters for each calendar year shall be limited to 300,000 pounds.

C. ~~During the period of~~ From the first Monday following January 4 1 through March 31 of each calendar year, landings of Summer Flounder harvested outside of Virginia shall be limited to an amount of pounds equal to 64.3% of the total specified in subsection A of this section after deducting the amount specified in subsection B of this section.

D. During the period of April 1 through June 30 of each calendar year, landings of Summer Flounder harvested outside of Virginia shall be limited to an amount of pounds equal to 6.4% of the total specified in subsection A of this section after deducting the amount specified in subsection B, except as modified by 4 VAC 20-620-40.

E. During the period of November 1 through December 31 of each calendar year, landings of Summer Flounder

◆ ----- ◆

Title of Regulation: 3 VAC 5-70-10 et seq. Other Provisions (amending 3 VAC 5-70-170).

Statutory Authority: §§ 4.1-103, 4.1-111, and 4.1-119 of the Code of Virginia.

Effective Date: February 28, 2001.

Summary:

The amendment allows for the acceptance of credit or debit cards from licensees for the purchase of alcoholic beverages at government stores.

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 W. Curtis Coleburn, III, Department of Alcoholic Beverage Control, 2901 Hermitage Road, P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4409.

3 VAC 5-70-170. Credit and debit cards.

Government stores may accept credit or debit cards from consumers and licensees for the retail purchase of alcoholic beverages. The board may establish policies to set purchase requirements, determine the credit or debit cards that will be accepted, provide for the collection of related fees, penalties or service charges where appropriate, establish credit procedures for returned merchandise and make any other decisions to carry out the purpose of this chapter.

VA.R. Doc. No. R99-213; Filed January 10, 2001, 11:23 a.m.

harvested outside of Virginia shall be limited to an amount of pounds equal to 29.3% of the total specified in subsection A of this section after deducting the amount specified in subsection B of this section and as may be further modified by subsection F.

F. During the periods set forth in subsections C and D of this section, should landings exceed or fall short of the quota specified for that period any such excess shall be deducted from, and any such shortage shall be added to, the quota for the period set forth in subsection E of this section. During the period specified in subsection B of this section, should landings be projected to fall short of the quota specified for that period, any such shortage shall be added to the quota for the period set forth in subsection E of this section. A projection of harvest under this subsection will be made on or about November 1.

G. For each of the time periods and quotas set forth in subsections C, D, and E of this section, the Marine Resources Commission will give timely notice to the industry of the calculated poundages and any adjustments thereto. It shall be unlawful for any person to harvest or to land Summer Flounder for commercial purposes after the commercial harvest or landing quota as described in this section has been attained and announced as such. If a person lands Summer Flounder after the harvest or landing quota has been attained and announced as such, the entire amount of Summer Flounder in that person's possession shall be confiscated.

H. It shall be unlawful for any buyer of seafood to receive any Summer Flounder after any commercial harvest or landing quota as described in this section has been attained and announced as such.

4 VAC 20-620-40. Commercial vessel possession limitations.

~~A. During the period of January 4 through March 31 of each calendar year, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to possess aboard any vessel in Virginia any amount of Summer Flounder in excess of 5,000 pounds except that when it is projected and announced that 85% of the quota for this period has been taken, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to possess aboard any vessel in Virginia any amount of Summer Flounder in excess of 10% by weight of all other landed species on board the vessel. From the first Monday following January 1 through March 31 of each year, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia waters to do any of the following:~~

- ~~1. Possess aboard any vessel in Virginia waters an amount of Summer Flounder in excess of 10,000 pounds,~~
- ~~2. Land Summer Flounder in Virginia for commercial purposes more than twice within each consecutive 10-day period, with the first 10-day period beginning on the first Monday following January 1,~~
- ~~3. Land in Virginia more than a total of 10,000 pounds of Summer Flounder during each consecutive 10-day period, with the first 10-day period beginning on the first Monday following January 1.~~

B. When it is projected and announced that 85% of the quota for the period from the first Monday following January 1 through March 31 has been taken, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to possess aboard any vessel in Virginia any amount of Summer Flounder in excess of 10% by weight of all other landed species on board the vessel.

~~B. C. During the period of April 1 through June 30 of each calendar year, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to possess aboard any vessel in Virginia any amount of Summer Flounder in excess of 2,500 pounds, except that when it is projected and announced that 85% of the quota for this period has been taken, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to possess aboard any vessel in Virginia any amount of Summer Flounder in excess of 10% by weight of all other landed species on board the vessel.~~

~~C. During the period of April 26, 2000, through June 30, 2000, a bycatch only quota of 90,912 pounds shall be established from a transfer of quota allocated to the November 1, 2000, through December 31, 2000, period. During the April 26, 2000, through June 30, 2000, period, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia waters to possess aboard any vessel in Virginia any amount of Summer Flounder in excess of 10% by weight of all other species on board the vessel.~~

D. During the period of July 1 through October 31 of each calendar year, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to possess aboard any vessel in Virginia any amount of Summer Flounder in excess of 10% by weight of all other landed species on board the vessel.

E. During the period November 1 through December 31 of each calendar year, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to possess aboard any vessel in Virginia any amount of Summer Flounder in excess of 7,500 pounds, except that when it is projected and announced that 85% of the quota for this period has been taken, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to possess aboard any vessel in Virginia any amount of Summer Flounder in excess of 10% by weight of all other landed species on board the vessel.

F. For each of the time periods set forth in subsections A, B, C and E of this section, the Marine Resources Commission will give timely notice of any changes in possession limits.

G. Each possession limit described in subsections A, B, C, D and E of this section shall be determined by the net weight of Summer Flounder as customarily packed, boxed and weighed by the seafood buyer or processor. The net weight of any Summer Flounder found in excess of this possession limit described in subsections A, B, C, D and E of this section shall be prima facie evidence of violation of this chapter. Persons in possession of Summer Flounder, aboard any vessel, in excess of the possession limit shall be in violation of this chapter. Any buyer or processor offloading or accepting any quantity of Summer Flounder from any vessel

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in excess of the possession limit shall be in violation of this chapter.

H. If a person violates the possession limits described in this section, the entire amount of Summer Flounder in that person's possession shall be confiscated. Any confiscated Summer Flounder shall be considered as a removal from the appropriate commercial harvest or landings quota. Upon confiscation, the marine patrol officer shall inventory the confiscated Summer Flounder and, at a minimum, secure two bids for purchase of the confiscated Summer Flounder from approved and licensed seafood buyers. The confiscated fish will be sold to the highest bidder and all funds derived from such sale shall be deposited for the Commonwealth pending court resolution of the charge of violating the possession limits established by this chapter. All of the collected funds will be returned to the accused upon a finding of innocence or forfeited to the Commonwealth upon a finding of guilty.

I. It shall be unlawful for a licensed seafood buyer or federally permitted seafood buyer to fail to contact the Marine Resources Commission Operation Station prior to a vessel offloading Summer Flounder harvested outside of Virginia. The buyer shall provide to the *Marine Resources Commission* the name of the vessel and its captain and the anticipated or approximate offloading time. *Once offloading of any vessel is complete and the weight of the landed Summer Flounder has been determined, the buyer shall contact the Marine Resources Commission Operations Station and report the vessel name and corresponding weight of Summer Flounder landed.* It shall be unlawful for any person to offload from a boat or vessel for commercial purposes any Summer Flounder during the period of 10 p.m. to 7 a.m.

J. Any boat or vessel possessing more than the lawful limit of Summer Flounder that has entered Virginia waters for safe harbor shall not offload any Summer Flounder.

K. After any commercial harvest or landing quota as described in 4 VAC 20-620-30 has been attained and announced as such, any boat or vessel possessing Summer Flounder on board may enter Virginia waters for safe harbor but shall contact the Marine Resources Commission Operation Center in advance of such entry into Virginia waters.

VA.R. Doc. No. R01-75; Filed December 28, 2000, 8:46 a.m.

* * * * *

Title of Regulation: 4 VAC 20-670-10 et seq. **Pertaining to Recreational Gear Licenses (amending 4 VAC 20-670-30 and 4 VAC 20-670-40).**

Statutory Authority: §§ 28.2-201, 28.2-226.1 and 28.2-226.2 of the Code of Virginia.

Effective Date: January 1, 2001.

Summary:

The amendments (i) provide that certain commercial gear used for recreational purposes shall be marked and (ii) specify the marking system to be used by recreational

licensees who set and fish certain commercial gear for recreational purposes.

Agency Contact: Copies of the regulation may be obtained from Deborah R. Cawthon, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248.

4 VAC 20-670-30. Gear restrictions.

A. It shall be unlawful for any person to use any gill net greater than 300 feet in length when licensed for recreational purposes under this chapter. Any person licensed to use a recreational gill net shall stay within 100 yards of such net when it is overboard. Failure to attend such net in this fashion is a violation of this chapter.

B. It shall be unlawful for any person to use more than five crab pots when licensed for recreational purposes under this chapter.

C. Any law or chapter applying to the setting or fishing of commercial gill nets, cast nets, dip nets, crab pots, crab traps, or crab trot lines shall also apply to these gear when set or fished for recreational purposes, *except that certain commercial gear used for recreational purposes shall be marked in accordance with the provisions described in 4 VAC 20-670-40.*

D. It shall be unlawful for any person to use any recreational gill net, fish cast net, or fish dip net to catch and possess any species of fish whose commercial fishery is regulated by an annual harvest quota.

E. It shall be unlawful for any person using a recreational gill net, fish cast net, or fish dip net to take and possess more than the recreational possession limit for any species regulated by such a limit. When fishing from any boat, using gear licensed under this chapter, the total possession limit shall be equal to the number of persons on board legally eligible to fish multiplied by the individual possession limit for the regulated species, and the captain or operator of the boat shall be responsible for adherence to the possession limit.

F. It shall be unlawful for any person using a recreational gill net, fish cast net, or fish dip net to take and possess any fish which is less than the lawful minimum size established for that species. When the taking of any fish is regulated by different size limits for commercial and recreational fishermen, that size limit applicable to recreational fishermen or to hook-and-line fishermen shall apply to the taking of that species by persons licensed under this chapter.

G. It shall be unlawful for any person licensed to use five crab pots under this chapter to fish these crab pots on Sunday.

H. It shall be unlawful for any person to use any ordinary crab trot line greater than 300 feet in length when licensed for recreational purposes under this chapter.

4 VAC 20-670-40. Gear marking requirements.

~~In addition to the requirements for marking commercial gill nets, crab pots and crab traps, each licensee shall mark the end flags, poles or buoys of their gear with the letter "R."~~

A. Buoys of any crab pot, gill net or ordinary crab trotline used for recreational purposes shall be marked with the licensee's last four numbers of his social security number or driver's license number, preceded by the letter "R."

B. An offshore stake of any crab trap used for recreational purposes shall be marked with the licensee's last four numbers of his social security number or driver's license number, preceded by the letter "R."

C. In accordance with subsections A and B of this section, licensees shall mark their gear in a legible and visible manner and in figures of not less than one inch in height.

VA.R. Doc. No. R01-76; Filed December 28, 2000, 8:46 a.m.

Title of Regulation: 4 VAC 20-900-10 et seq. Pertaining to Horseshoe Crab (amending 4 VAC 20-900-25, 4 VAC 20-900-30 and 4 VAC 20-900-35).

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

Effective Date: January 1, 2001.

Summary:

The amendments (i) specify how the Virginia horseshoe crab quota shall be partitioned among those who hold a horseshoe crab endorsement license; (ii) establish vessel and landing possession limits; (iii) set the hours for offloading horseshoe crabs in Virginia; and (iv) modify the no-possession restriction.

Agency Contact: Copies of the regulation may be obtained from Deborah R. Cawthon, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248.

4 VAC 20-900-25. Commercial fisheries management measures.

A. It shall be unlawful for any person to harvest horseshoe crabs from any shore or tidal waters of Virginia within 1,000 feet in any direction of the mean low water line from May 1 through June 7. The harvests of horseshoe crabs for biomedical use shall not be subject to this limitation.

B. Harvests for biomedical purposes shall require a special permit issued by the Commissioner of Marine Resources, and all crabs taken pursuant to such permit shall be returned to the same waters from which they were collected.

C. The commercial landings quota of horseshoe crab for each calendar year shall be 152,495 horseshoe crabs. Additional quantities of horseshoe crab may be transferred to Virginia by other jurisdictions in accordance with the provisions of Addendum I to the Atlantic States Marine Fisheries Commission Fishery Management Plan for Horseshoe Crab, April 2000, provided that the combined total of the landings quota and transfer from other jurisdictions shall not exceed 355,000 horseshoe crabs.

D. During each calendar year, 85% of Virginia's horseshoe crab quota shall be divided equally between semiannual periods of January 1 through June 30 and July 1 through

December 31. This portion of the annual quota and any and all transfers from other jurisdictions shall be allocated to those individuals who hold a valid horseshoe crab endorsement license as established in 4 VAC 20-900-30 C. It shall be unlawful for any person who holds a valid horseshoe crab endorsement license to possess aboard any vessel or to land any number of horseshoe crabs in excess of 4,000, except that when it is projected and announced that 85% of any semiannual quota is taken it shall be unlawful for any person who holds a valid horseshoe crab endorsement license to possess aboard any vessel in Virginia any number of horseshoe crabs in excess of 2,000.

E. During each calendar year, 15% of Virginia's horseshoe crab quota shall be reserved for bycatch. This portion of the annual quota shall be allocated to those individuals who do not qualify for a horseshoe crab endorsement license as established in 4 VAC 20-900-30 C. It shall be unlawful for any person who does not hold a valid horseshoe crab endorsement license to possess aboard any vessel or to land any number of horseshoe crabs in excess of 100.

F. It shall be unlawful for any fisherman issued a horseshoe crab endorsement license to offload any horseshoe crabs between the hours of 10 p.m. and 7 a.m.

~~D~~ G. It shall be unlawful for any person to harvest from Virginia waters, to possess aboard any vessel, or to land in Virginia any horseshoe crab for commercial purposes after the landing quota described in subsection C, D or E of this section has been attained and announced as such.

H. It shall be unlawful for any buyer of seafood to receive any horseshoe crab after any commercial harvest or landing quota as described in this section has been attained and announced as such.

~~E~~ I. It shall be unlawful for any person to take, catch, harvest or attempt to take, catch or harvest horseshoe crabs with a dredge from the tidal waters of Virginia from May 1 through June 7.

~~F~~ J. It shall be unlawful for any person to possess horseshoe crabs taken by dredge from the tidal waters of Virginia from May 1 through June 7.

4 VAC 20-900-30. License requirement requirements and exemption.

A. It shall be unlawful for any person to harvest horseshoe crabs by hand for commercial purposes without first obtaining a commercial fisherman registration license and a horseshoe crab hand harvester license. The fee for the horseshoe crab hand harvester license shall be \$15.

B. The taking by hand of as many as five horseshoe crabs in any one day for personal use only shall be exempt from the above licensing requirement.

C. It shall be unlawful for any boat or vessel to land horseshoe crabs in Virginia for commercial purposes without first obtaining a horseshoe crab endorsement license as described in this section. The horseshoe crab endorsement license shall be required of each boat or vessel used to land horseshoe crabs for commercial purposes. Possession of any quantity of horseshoe crabs that exceeds the limit

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described in subsection B of this section shall be presumed for commercial purposes. There shall be no fee for the license.

D. To be eligible for a horseshoe crab endorsement license, the boat or vessel shall have landed and sold at least 500 horseshoe crabs in Virginia in at least one year during the period 1998-2000.

1. The owner shall complete an application for each boat or vessel by providing to the Marine Resources Commission a notarized and signed statement of applicant's name, address, telephone number, boat or vessel name and its registration or documentation number.

2. The owner shall complete a notarized authorization to allow the Marine Resources Commission to obtain copies of landings data from the National Marine Fisheries Service.

4 VAC 20-900-35. Monitoring requirements.

A. Any person harvesting or landing horseshoe crabs in Virginia shall report monthly on forms provided by the Marine Resources Commission all harvests of horseshoe crabs including, but not limited to, bait fisheries, bycatch, biomedical industry, and scientific and educational research harvests. Reporting requirements shall consist of numbers and pounds landed by sex, harvest method and harvest location.

B. It shall be unlawful for a horseshoe crab endorsement license holder to fail to contact the Marine Resources Operations Station prior to the vessel issued a horseshoe crab endorsement license offloading horseshoe crabs. The horseshoe crab endorsement license holder shall provide the Marine Resources Commission the name of the vessel and its captain and the anticipated or approximate offloading time and site. Following offloading, the horseshoe crab endorsement license holder shall contact the Virginia Marine Resources Commission Interactive-Voice-Response (IVR) System within 24 hours of landing and provide his horseshoe crab endorsement license number; the time, date and location of offloading; and the number of horseshoe crabs landed.

~~B.~~ C. Persons harvesting horseshoe crabs for biomedical use and owners of facilities using horseshoe crabs for biomedical purposes shall monitor and report monthly to the commission all harvests or purchases of horseshoe crabs and the percentage of mortality up to the point of release including that mortality which occurs during harvest, shipping, handling, and bleeding.

~~C.~~ D. Owners of biomedical facilities using horseshoe crabs shall participate in the tagging program of the commission to evaluate the post-release mortality of horseshoe crabs.

~~D.~~ E. Monthly reports shall be due to the commission no later than the fifth day of the following month.

VA.R. Doc. No. R01-74; Filed December 28, 2000, 8:45 a.m.

TITLE 8. EDUCATION

GEORGE MASON UNIVERSITY

REGISTRAR'S NOTICE: George Mason University is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 A 6 of the Code of Virginia, which exempts educational institutions operated by the Commonwealth.
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Title of Regulation: 8 VAC 35-10-10 et seq. **Parking Citation Appeals (amending 8 VAC 35-10-20, 8 VAC 35-10-30, 8 VAC 35-10-50, 8 VAC 35-10-60, 8 VAC 35-10-80, and 8 VAC 35-10-90).**

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

Effective Date: December 22, 2000.

Summary:

This regulation outlines the university's appeals procedures utilized for parking citations applicable to university faculty, staff, students, university contractors and visitors who use university owned or leased parking facilities.

Contact: Jeffrey A. Brandwine, George Mason University, 4400 University Drive, MSN 2A3, Fairfax, VA 22030-4444, telephone (703) 993-2619.

8 VAC 35-10-20. General provisions.

This procedure is designed to assist the university administration in evaluating the parking program, to highlight problem areas, to provide a learning experience to those who receive citations while using George Mason University parking facilities, and to provide an avenue to correct enforcement errors.

Requests for an appeal must be submitted in writing within 10 calendar days of the citation date, and must be submitted on the Parking Citation Appeal form. Any appeal not filed within this time is automatically denied. While the citation is under review, fines are held in abeyance. Each request for appeal will be carefully reviewed by the ~~hearing~~ Appeals Review Officer. The ~~hearing~~ [Appeals] Review Officer will base his decision on the George Mason University Motor Vehicle Regulations (~~8 VAC 35-20-10~~ 8 VAC 35-21-10 et seq.) and on the information presented in the written request. The ~~hearing~~ [Appeals] Review Officer may uphold the appeal, deny the appeal, or reduce the violation to an appropriate lesser violation. The [~~decision~~ decisions] of the ~~hearing officer~~ together with comments are reported to the appellant by mail.

The appellant can appeal the decision of the ~~hearing~~ [Appeals] Review Officer as set forth in ~~8 VAC 35-10-60~~ 8 VAC 35-10- [40] of this chapter with the exception of an expedited hearing in which all decisions are final. Fines due after the appeal is decided must be paid within 10 calendar days of the decision date. Failure to pay citations or appealed citations by a faculty or staff member will result in the individual's outstanding account being turned over to a collection agency. Students will be placed on financial suspension.

Information submitted in support of appeals *and/or* appeals ~~or both~~ is received at face value and is subject to validation by the university.

8 VAC 35-10-30. Responsibilities.

The Associate Vice President for ~~Operational~~ *University Services* has the responsibilities for monitoring the Parking Citation Appeals policy and recommending new *and/or* revised policies and procedures.

8 VAC 35-10-50. General appeals procedures.

A. All faculty, staff, student, and visitor appeals will be considered by an Appeals ~~hearing~~ *Review Officer*, who may uphold the appeal, deny the appeal, or reduce the regulation violated to a lesser offense. The results of the appeal will be reported to the appellant by United States mail *or at the conclusion of an expedited hearing*. Payment of fines on appealed citations are due within 10 calendar days after the decision date. ~~The appeals hearing officer serves the Judicial and Advisory Board and the Student Parking Appeals Review Board for the Associate Vice President for Operational Services and is not affiliated with the Parking Services Office. Student appeals are considered by the Student Parking Appeals Review Board. All student appeals are considered by the Student Appeals Board unless the expedited hearing process is selected. An expedited hearing process is available for the convenience of the individual who receives a ticket and wishes to have an immediate review and decision of the matter. All decisions are final.~~

Neither the members of the Faculty/Staff Appeals Board or the Student Parking Appeals Review Board are affiliated with the Parking Services Office or are compensated for their services. The appeals review/expedited hearing officer is a paid member of the University Services staff and hears appeals upon request three days each week from 9 a.m. to 2 p.m. All decisions are final.

B. Appeals guidelines are described in this subsection.

1. The citation is presumed valid. It is the obligation of the appellant to present information that would invalidate the ticket.
2. Reasons that might warrant invalidation of the ticket are: evidence of illness that necessitated the violation, mechanical breakdowns that were handled in a reasonable expeditious manner, documented erroneous information given by a parking services employee, or other circumstances that are unusual enough to warrant special consideration.
3. Reasons to warrant a downgrade of the ticket are: when further information that was not readily available to the marshal is provided to the reviewer as a justification for the downgrade (e.g., a ticket for "no decal" given to a car that has been issued a valid decal, but not displaying the decal), valid misunderstandings regarding ambiguous parking areas, judgment of the reviewer, etc.
4. A specific reason for denial need not be given. A general statement can be made that a sufficient reason for reversal was not contained in the written appeal. The appeals process sheet states that decisions are made

based on the George Mason University Motor Vehicle Regulations (~~8 VAC 35-20-10~~ *8 VAC 35-21-10* et seq.), on information presented in the written request and on any further comments made by the appellant in case of a re-appeal.

8 VAC 35-10-60. Reconsideration.

Requests for reconsideration of denied appeals may be made to the Parking Services Office. The request for reconsideration must be made within 10 calendar days from the date stamped on the Appeal Board decision sent to the appellant. One or more of the following criteria must be met for the appeal to be reconsidered.

1. No university parking regulation appears to have been violated.
2. Citation, as written, contains a material error.
3. Additional information of a material nature and not included on the original appeal form, warrants reconsideration.
4. Unusual circumstances in mitigation or extenuation appear to exist.
5. Parking regulations appear sufficiently vague or misleading to warrant reconsideration.

For an appeal to be reconsidered by the ~~Judicial and Advisory Faculty/Staff~~ [*Hearing Appeals*] Board or the Student Parking Appeals Review Board, the appellant must be present at the scheduled hearing. The appellant will be accorded an opportunity to present succinct comments bearing directly on the case being considered. All balloting will be conducted in closed session; the university's decision is final.

8 VAC 35-10-80. Appeal Board membership and term of membership; ~~Judicial and Advisory Faculty/Staff Hearing Board; Student Parking Appeals Review Board.~~

A. The ~~Judicial and Advisory Faculty/Staff~~ [*Hearing Appeals*] Board has been appointed to hear parking citation appeals and advise the Associate Vice President for ~~Operational~~ *University Services* on parking related matters. The board consists of three faculty members and three staff members appointed by the Associate Vice President for ~~Operational~~ *University Services*.

Appointments to the board are for two-year renewable terms and run from September 1 through August 31. The chairman is selected for a three-year renewable term by board members and must have served at least one year on the board.

When a member's two-year term ends, the Director of Parking Services will submit additional names to the Associate Vice President for ~~Operational~~ *University Services* for consideration. The Associate Vice President will either renew the member's term or appoint a new member to the board for those nominated.

The chairman will contact the new nominee to further explain the workings of the group and to discuss their specific responsibilities.

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The ~~Judicial and Advisory Faculty/Staff~~ [*Hearing Appeals*] Board shall meet each month to hear appeals from faculty, staff and visitors to the George Mason University campus. The hearings are scheduled by the Parking Services Office from September through May. At least one hearing should be scheduled during the summer months.

The board shall ~~inform and~~ advise the Parking Services Office of parking regulations which *that* appear vague or misleading and advise about areas on campus not having appropriate signage and ambiguous parking areas.

When a new chairman is elected by the board, the Associate Vice President for ~~Operational~~ University Services and the Director of Parking Services will meet with the new appointee and previous chairman to go over the appeals process, rules, and regulations.

B. The Student Parking Appeals Review Board is constituted under the regulations of the University Judicial Board as set forth in the George Mason University Judicial System for Student Conduct. The membership of the board is to be comprised of current members of the Court of General Sessions of the University Judicial Board. The terms of each member is established in accordance with the regulations set forth in Section X, Article X-B of the Judicial System for Student Conduct.

8 VAC 35-10-90. Amendments, additions, and review.

A. All amendments and additions to the Parking Citation Appeals policy are to be reviewed and approved by the Office of the ~~Executive~~ Vice President for ~~Administration~~ Operations and the Office of the ~~Executive Senior~~ Vice President for ~~Finance and Planning~~.

B. This policy shall be reviewed and revised, if necessary, annually.

VA.R. Doc. No. R01-30; Filed December 22, 2000, 10:18 a.m.

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Title of Regulation: **8 VAC 35-20-10 et seq. Motor Vehicle Regulations (REPEALED).**

Title of Regulation: **8 VAC 35-21-10 et seq. Motor Vehicle Parking Policies and Regulations.**

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

Effective Date: December 22, 2000.

Summary:

The regulation outlines the proper parking policies and procedures for faculty, staff, students, and visitors.

Contact: Jeffrey A. Brandwine, George Mason University, 4400 University Drive, MSN 2A3, Fairfax, VA 22030-4444, telephone (703) 993-2619.

CHAPTER 21. MOTOR VEHICLE PARKING POLICIES AND REGULATIONS.

PART I. GENERAL.

8 VAC 35-21-10. Purpose and applicability; parking lot locations and designations.

A. *The purpose of this chapter is to set forth the proper parking policies and procedures for faculty, staff, students, and visitors at all George Mason University locations, both owned and leased.*

B. *This chapter applies to all motor vehicles and vehicle operators, including motorcycles, operated on University-owned or leased property, regardless of whether the vehicle is operated by the registered owner.*

C. *A map illustrating parking lot locations and designations is available from Parking Services.*

8 VAC 35-21-20. Definitions.

The following words and terms when used in this chapter shall have the following meanings, unless the context requires a different meaning:

"Administrative faculty" means individuals under contract with the University as administrative faculty whose positions are primarily administrative in nature. Said individuals receive benefits and may also teach part time.

"Affiliate faculty" means individuals who teach a course or courses or who do research without salary or benefits.

"Emeritus faculty" means retired faculty named to emeritus status by deans and the provost and approved by the Board of Visitors.

"Full-time classified staff" means individuals hired to work 40 hours per week with benefits under the state classification system. These individuals may take an unlimited class load and still maintain full-time staff status.

"Full-time faculty" means instructional faculty members who teach four courses or who teach and do research to full-time equivalency and receive benefits.

"Long-term parking for persons with disabilities" means individuals with disabilities requiring disability parking for more than six weeks.

"NOVA" means Northern Virginia Community College.

"Online information" means parking information is available online at <http://www.gmu.edu/univserv/parking/index.html>.

"Parking Services" means the George Mason University Office of Parking Services.

"Parking space" means designated areas for parking motor vehicles where each space is designated by painted control lines.

"Part-time classified staff" means individuals hired under the state classification system with limited benefits to work 20-39 hours per week. These individuals may take an unlimited

class load and still qualify for a faculty/staff parking decal or permit.

"Part-time or adjunct faculty" means instructional faculty members who teach up to three courses without benefits.

"Persons with disabilities" means anyone with short-term or long-term disabilities who is a George Mason University student, faculty or staff member.

"Student" means an individual enrolled in a class offered by George Mason University. This includes graduate teaching assistants, graduate research assistants, and graduate staff assistants. Full-time faculty and staff members attending classes are not considered students.

"Temporary or short term parking for persons with disabilities" means individuals requiring disability parking from one day to six weeks.

"Vendor" means those individuals using vehicles to deliver supplies in support of University departments and contractors.

"Visitor" means any person who is not a faculty or staff member or a student at George Mason University and includes individuals invited to campus by faculty, staff, or students.

"Wage employees" means individuals employed on an hourly basis without benefits and limited to working a maximum of 1,500 hours per year. These employees may be eligible for faculty/staff parking provided they carry less than one hour per term and are not classified as full-time students.

PART II.

PARKING REGULATIONS; PARKING FACILITIES.

8 VAC 35-21-30. Faculty and staff parking.

A. The following faculty and staff members, as defined in 8 VAC 35-21-20, are eligible to purchase faculty/staff parking decals and permits and park in spaces restricted for faculty/staff use:

1. Full-time faculty.
2. Part-time or adjunct faculty.
3. Administrative faculty.
4. Affiliate faculty.
5. Emeritus faculty.
6. Full-time classified staff.
7. Part-time classified staff.
8. Wage employees.

B. The following employees are not eligible for faculty/staff parking privileges:

1. Graduate research assistants and graduate teaching assistants who maintain student status and are eligible to purchase student decals only.
2. Full-time undergraduate students taking three credit hours or are working as waged employees.

3. Temporary employees hired directly as contract employees of the University or through a temporary agency to work on temporary assignments. Parking permits may be issued to temporary employees at prevailing rates on a daily, weekly, monthly, semester or annual basis upon written request from the Human Resources Department.

C. Faculty and staff parking is restricted to employees displaying a valid George Mason University or NOVA faculty/staff parking decal. The following rules apply to faculty/staff parking:

1. Parking deck reserved permits are validated for faculty/staff use and will be honored in all faculty/staff designated spaces.

2. Decals and permits must be displayed as directed in 8 VAC 35-21-200 and be in clear view. Failure to do so may result in a citation for "no permit," "restricted area," or "improper display."

3. Faculty/staff members displaying a valid George Mason University or NOVA faculty/staff decal or permit may park in the following locations:

a. Faculty/staff parking is permitted in any designated spaces within surface lots restricted to faculty/staff use.

b. Faculty/staff parking is permitted in designated spaces within surface lots restricted to faculty/staff use.

c. Faculty/staff parking is permitted in surface lots not restricted to student decal parking, or other restricted use posted by signage.

d. Faculty/staff parking is permitted in meter and deck parking at prevailing rates.

4. Parking Services will monitor the faculty/staff decal requirements in restricted areas during normal hours of surface lot enforcement operations. Nondecal and student parking is permitted at all other times. Refer to 8 VAC 35-21-230 D for enforcement hours.

5. A reciprocal agreement between George Mason University and Northern Virginia Community College allows vehicles displaying NOVA faculty/staff decals to have the same parking privileges and responsibilities afforded to vehicles displaying valid George Mason University faculty/staff permits.

6. Reserved surface lot parking spaces are approved by the Vice President for Operational Services and are allocated by Parking Services. Reserved surface lot parking spaces are approved for full-time faculty and staff whose position responsibilities require the use of personal vehicles for frequent travel off campus for University business. Such spaces are reserved Monday through Friday from 7 a.m. to 6 p.m.

7. A limited number of spaces are allocated for reserved subscription parking in the parking deck. Deck reserved space is available on a first-come, first-served basis to faculty, staff and students at prevailing published rates. Annual rates begin on September 1 of each academic

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year and are prorated and charged in accordance with the schedule cited in 8 VAC 35-21-190.

8. Administrative parking is approved by the Associate Vice President of University Services and is allocated by the Office of Parking Services. Administrative parking permits are approved for full-time faculty and staff whose positions require them to travel between campuses. Such individuals may park in the designated administrative parking spaces. Such spaces are reserved for administrative permit holders Monday through Friday from 7 a.m. to 6 p.m.

9. Faculty members duly appointed to emeritus status by the George Mason University Board of Visitors are eligible to receive one free parking decal upon proof of status.

8 VAC 35-21-40. Student parking.

A. Students carrying one or more credits and presenting valid George Mason University identifications are eligible to purchase annual, semester, and summer decals and weekly and monthly permits at prevailing rates. An official class schedule and driver's license proving identity may also be used as valid identification. Students on financial suspension may be denied decal purchase. Decals are not transferable to other persons.

B. Students displaying a valid George Mason University parking decal may park between painted control lines in surface lots restricted for student-only use and in nonrestricted areas of surface lots. Students may also use the parking deck at prevailing rates.

8 VAC 35-21-50. Vendor parking.

A. Vendors are divided into the following categories:

1. Daily vendors are individuals who deliver supplies in support of permanent University contractors and shall not be required to purchase permits. These deliveries constitute a portion of their contractual agreement and directly support University revenue-generating entities.

2. Regular and occasional vendors are delivery vehicles, media vehicles, or regular vendors who do not directly support permanent contractors.

3. Short-term delivery vehicles are delivery vehicles that provide services to departments or faculty/staff on a short-term basis, generally less than 15 minutes.

B. The following rules apply to vendors, delivery vehicles, and media parking:

1. Daily vendors are not required to purchase permits.

2. Regular and occasional vendors are required to purchase annual, monthly, or daily service and repair permits from Parking Services at the prevailing rates. See 8 VAC 35-21-90.

3. Short-term delivery vehicles are not required to have permits provided their vehicles display identifying signs and provided they are not required to park for more than 15 minutes to deliver.

8 VAC 35-21-60. Visitor parking.

A. The following rules apply to visitor parking:

1. Family of faculty, staff, or students must prominently display a valid decal on their vehicle when parked in nonmetered areas of surface lots. Family members of faculty, staff, or students are subject to citation if parked illegally on campus. The George Mason University faculty, staff, or student purchaser of the decal may be held responsible for any citations issued and payment for them.

2. Visitor parking is restricted to the parking deck and metered surface parking spaces during hours of surface lot enforcement unless otherwise directed by Parking Services or in printed literature provided by sponsoring departments/activities with the approval of Parking Services.

a. Deck parking is available to visitors on a first-come, first-served basis. Rates and hours are as provided in 8 VAC 35-21-330 and are posted at deck entrances.

b. Metered parking is available to visitors at several locations on campus. Hours of enforcement are posted on meters, near metered areas, and are transmitted on the 1610 AM radio information channel.

3. Visitors may not park in restricted areas or spaces reserved for special permit holders.

4. Visitors may be assigned parking for special events. In such instances, Parking Services may designate specific parking areas or issue special permits to visitors or to a sponsoring University program/activity for distribution.

8 VAC 35-21-70. Parking for persons with disabilities.

The following rules apply to parking for persons with disabilities:

1. Valid George Mason University permits for campus parking for persons with disabilities are issued only by Parking Services and only to students, faculty and staff. (Visitors with disabilities should refer to 8 VAC 35-21-60 and subdivision 6 of this section.)

2. The George Mason University-issued permit must be prominently displayed at all times on the rearview mirror or front dash. DMV-issued parking permits for persons with disabilities are not in themselves valid for parking in designated parking spaces for the disabled at George Mason University-owned or -operated facilities. Permit rates for parking for persons with disabilities are the same as all other George Mason University parking permits issued for comparable periods of time. Decals are not transferable to other persons.

3. Long-term parking for persons with disabilities. Faculty, staff and students requiring permits for long-term parking for persons with disabilities must provide a copy of a valid DMV-issued parking permit for person with disabilities or vehicle registration to Parking Services and also purchase and prominently display a George Mason

University parking permit for persons with disabilities when using facilities on campus.

4. *Temporary or short-term parking for persons with disabilities.* Faculty, staff and students requiring permits for short-term parking for persons with disabilities on the George Mason University campus must provide a copy of a valid DMV-issued parking permit for persons with disabilities to Parking Services in order to be issued a temporary GMU parking permit for persons with disabilities. The DMV and GMU parking permits for persons with disabilities must then be displayed in full view with a valid George Mason University permit. Refer to subdivision 5 of this section for proof of disability information.

5. *Proof of disability.* Persons with disabilities requiring a parking permit must provide Parking Services proof of long-term disability, which may consist of a copy of both sides of a valid DMV hang tag or a copy of the vehicle registration showing DMV disability license tags. Such proof will be photocopied and kept on file in the Office of Parking Services.

6. *Visitor parking for persons with disabilities.* A DMV-issued license plate, hang tag or other permit is not a valid permit for persons with disabilities when parked at any disabled-designated space on property owned or operated by George Mason University. Visitors with disabilities may use designated parking for persons with disabilities as follows:

a. *Deck parking.* Visitors may pay for deck parking at prevailing rates and use designated spaces in the parking deck. The elevator enables easy access to campus and to the Center for the Arts. These individuals may also opt to park near the lower-level deck entrance.

b. *Meter parking.* Visitors displaying a valid parking permit for persons with disabilities issued by a state or the District of Columbia Department of Motor Vehicles and a valid GMU permit may park at the meters for up to twice the maximum allowable time shown on the meter, but not to exceed a maximum of four hours, providing no other parking is available for persons with disabilities.

c. *Lift-equipped vehicle parking.* Van lift designated parking for persons with disabilities is available to persons with lift-equipped vehicles only.

7. *Parking applications for persons with disabilities.* All permit applications for persons with disabilities are subject to approval by Parking Services. The Disability Support Services Office may be consulted and submit recommendations, if necessary.

8. *Disabled parking designation.* All parking spaces reserved for the use of persons with disabilities are identified by above-grade signs. Parking for persons with disabilities is available to students, faculty and staff whose vehicles display a valid George Mason University parking permit for persons with disabilities as follows:

a. *Surface lots.* Parking for persons with disabilities is available in surface lot spaces marked with above-grade signs. Only those with lift-equipped vans may park in van lift designated spaces.

b. *Parking deck.* Parking for persons with disabilities is available in the parking deck with a valid George Mason University decal at no additional charge. Those without a decal may use disabled-designated spaces but must pay prevailing rates.

9. *Van lift designated parking.* Several campus locations have accommodations for lift-equipped vans or wheelchair users. Individuals requiring such facilities should contact Parking Services or the Disability Support Services Office for specific locations. Depending on need and the recommendations of the Disability Support Services Office, additional space may be created, as circumstances require.

10. *Use restrictions for permits for persons with disabilities.* Permits for persons with disabilities may only be used for or by the persons to whom they were issued. When individuals no longer require the permit, they must return the permit to Parking Services immediately.

11. *Parking for persons with disabilities is not permitted where stopping, standing, or parking is prohibited to all vehicles, or which is reserved for special types of vehicles; Neither does it apply where parking would clearly present a traffic or safety hazard. Parking for persons with disabilities is used only in Disabled Parking designated spaces, meters or the deck.*

12. *Photocopied parking permits for persons with disabilities are not valid.*

13. *Individuals are limited to one permit for persons with disabilities. The permit may be displayed in any vehicle they use provided the parking permit holder is a passenger.*

14. *Decals for persons with disabilities will be replaced at the same rate as regular decals.*

8 VAC 35-21-80. Metered spaces.

A. *Metered parking is intended for short-term, quick turnover use of parking spaces.*

B. *The following rules apply to metered parking:*

1. *Meters are enforced 7 a.m. to 11 p.m., seven days a week.*

2. *Meter rates vary depending on location. See 8 VAC 35-21-360 for rate schedule. The rate schedule is available from Parking Services. A George Mason University parking decal is not valid as payment at a meter except for situations involving persons with disabilities.*

3. *Only United States currency may be used in parking meters. Federal law prohibits the use of other currency, altered U.S. currency, or other objects.*

4. *Meters are deemed inoperable when coins cannot be inserted or the violation sign remains visible, or both.*

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The space will remain closed until the meter is repaired or replaced. Missing and inoperable meters should be reported to Parking Services immediately for replacement or repair.

5. Vehicles remaining parked in expired metered spaces are subject to multiple citations. Multiple citations may be issued one hour after the previous citation was written. Additional meter citations carry a lesser fine than the initial citation. Refer to 8 VAC 35-21-340 for parking fine rate schedule.

6. Cases of meter vandalism may be tried in a Virginia court of law as destruction of property and/or larceny.

8 VAC 35-21-90. Service and repair spaces.

A. Service and repair parking is designed to accommodate vehicles providing a variety of services in support of University buildings, equipment and activities. Service and repair vehicles may be owned and operated by University or non-University personnel. Valid George Mason University service and repair permits are required.

B. Service and repair parking is governed as follows:

1. Service and repair vehicles may not park in prohibited zones, restricted areas, spaces designated for persons with disabilities, fire lanes, on grassy landscapes or sidewalk area. These areas are strictly enforced and vehicles are subject to citation.

2. Permit requirements. Non-University vehicles parked in a service and repair space must purchase and prominently display a valid George Mason University permit at all times. Valid service and repair permits are issued only by Parking Services. Vehicles without permits are subject to citation and towing.

3. Permit costs. Service and repair costs are based on the prevailing rate charged for annual, semester, monthly, weekly or daily permits.

4. Special circumstances. Vehicle operators requiring service and repair access to campus locations where no space has been allocated should contact the Operations Manager at Parking Services for direction.

5. University/state service vehicles. Service vehicles with state tags registered to the Commonwealth of Virginia do not need to pay for or display a service and repair permit.

PART III.

DECALS AND PERMITS; PURCHASES; REPLACEMENTS; REFUNDS.

8 VAC 35-21-100. Decals and permits.

A. All vehicles parked on property owned or operated by the University are required to display a valid George Mason University decal or permit. Visitors are required to park in designated areas with the appropriate permit or pass.

B. The registered owner of a motor vehicle is responsible for all violations issued to the vehicle regardless of who is operating the vehicle. If the vehicle is displaying a valid decal and incurs a citation for violation of this chapter, the

registered owner of the decal will be held responsible for all citations issued to vehicles displaying that decal.

8 VAC 35-21-110. Decal sales; decal payment.

A. All faculty, staff, and student decals are sold by Parking Services located in Student Union Building II, Room 1014 or other designated locations.

B. Decal purchase applications are mailed to all registered students and faculty and staff members of record at the end of each academic year.

C. Decals may be purchased by telephone. Decals may be purchased 24 hours a day by calling (703) 993-4GMU.

D. Individuals may purchase decals in person from the Parking Services sales office or designated sales office. The sales office is located in Student Union Building II, Room 1014.

E. Acceptable payment for decals is as follows:

1. Applicants applying by mail may pay by check, money order, MasterCard or Visa. Faculty/staff members may select the payroll deduction method, which begins in September and consists of eight deductions for the annual decal. Sending cash by mail is discouraged.

2. Applicants applying by telephone may pay by Mason Money, MasterCard, or Visa. Full-time faculty and classified staff may select the payroll deduction method.

3. Applicants applying in person may pay by cash, check, money order, MasterCard or Visa. Faculty/staff may select the payroll deduction method.

4. Payment by coin, whether rolled or unrolled, is not an acceptable form of payment.

5. Lost or stolen decals will be replaced for a fee. Refer to 8 VAC 35-21-330 for fee schedule and 8 VAC 35-21-140 for stolen decal replacement.

6. Full-time faculty and classified staff may choose payroll deduction to purchase an annual, semester or summer decal. Equal amounts will be deducted from each pay period until the total amount due is satisfied. The last payment may be adjusted slightly depending on the balance remaining. Any balance due will be deducted from leave pay upon termination of employment. The employee is responsible for requesting a refund from Parking Services based on the refund policy outlined in 8 VAC 35-21-150.

7. Current faculty or staff identification or proof of employment is needed to purchase a faculty/staff decal. Faculty and staff members may purchase decals only for their vehicle or use. Decals are not transferable to other persons. Faculty/staff status is defined in 8 VAC 35-21-20.

8. To purchase a decal, individuals must comply with George Mason University and associated state regulations and not have any outstanding citations. Individuals must provide the following:

a. A valid George Mason University identification, a class schedule with printed name and accompanying driver's license, or a letter from Human Resources confirming employment.

b. A valid state motor vehicle registration or other proof of permanent address.

8 VAC 35-21-120. Decal and parking rates; free student decals; volunteers, temporary employees, contractors and vendors.

A. Decal and other parking rates are subject to change. Refer to 8 VAC 35-21-330 for current fee schedule.

B. Qualifications for free student decals are governed as follows:

1. Senior citizen students who qualify for free tuition or course audits, or both, as outlined in the George Mason University catalog and presented in University administrative policy number 21, Senior Citizens Higher Education Act of 1974, shall be entitled to a free parking decal for the duration of their enrollment under said status. Only one free permit will be issued per waiver period. Valid proof of age and tuition waiver from the Registrar's Office is required to qualify.

2. The terms applicable to campus parking situations as defined in the Senior Citizen Higher Education Act of 1974 are as follows:

a. Under the terms of the Senior Citizens Higher Education Act of 1974, "eligible Virginia residents over 60 years of age with a taxable income of less than \$10,000 are entitled to enroll in courses offered for academic credit on a space-available basis without payment of tuition fees." (See George Mason University Catalog.)

b. The act also covers auditing and noncredit courses on a space-available basis regardless of income.

c. "Tuition, however, may be charged for courses designed exclusively for senior citizen groups."

d. "No senior citizen may change registration status in any given semester once he has initially registered for classes."

C. University volunteers and temporary employees must observe all decal requirements and parking regulations when using University-operated facilities. Decals and special permits will be sold and issued only upon written request to Parking Services by a sponsoring department. Departments may underwrite the cost of parking for volunteers and temporary employees. Valid proof of age such as a driver's license is required to qualify for senior citizen rates. Refer to 8 VAC 35-21-330 for rate structure.

D. Employees and volunteers of contractors and vendors must observe all decal requirements and parking regulations when using University-operated facilities. Contractors and vendors must submit written verification of an individual's employment or volunteer status to Parking Services. Said contractors and vendors may underwrite parking costs for

their employees or volunteers. Valid proof of age such as a driver's license is required to qualify for senior citizen rates.

8 VAC 35-21-130. Replacement of lost decals.

A. Any replacement decals will be issued at the discretion of the Director of Parking Services.

B. Before a replacement decal is issued, the purchaser must acknowledge in writing that the decal is lost and that he understands that the registered owners of any vehicle displaying or using a decal verified as lost by the purchaser will be cited for fraudulent display and subject to any and all fines and legal ramifications imposed by the University or the Commonwealth of Virginia, or both.

C. Replacements for lost decals shall be issued only to the original purchaser.

D. All outstanding citations and accrued late fees must be paid or the purchaser must enter into a contractual agreement to pay said fines before a replacement decal is issued.

E. Only one reduced-rate replacement decal shall be issued per academic year. All other replacements will be at the prevailing sales rate.

8 VAC 35-21-140. Replacement of stolen decals.

Regulations applicable to nonforcible and forcible entry stolen decals are as follows:

1. All stolen decals must be reported to a law-enforcement agency/official on the date of the theft and in the jurisdiction in which the theft occurred.

2. A copy of the police report or number, or both, must be submitted with the request for a replacement of a stolen decal by nonforcible or forcible entry.

3. Parking Services shall base any determination of nonforcible or forcible entry upon an official police report.

4. The purchaser may obtain his lost decal numbers from Parking Services by presenting valid George Mason University identification.

5. Nonforcible or forcible entry stolen decal replacement costs will be based on a written fee schedule posted in the Parking Services office. The fee schedule and dates will be based on the prevailing rates for annual, semester and summer decals as well as the add/drop dates for tuition liability.

6. The purchaser must sign an acknowledgment indicating that the decal was stolen and that the purchaser understands that the registered owner of any vehicle displaying or using a decal verified as lost by the purchaser will be cited for fraudulent display and subject to any and all fines and legal ramifications imposed by the University or the Commonwealth of Virginia.

7. Replacements for stolen decals shall be issued only to the original purchaser upon presentation of George Mason University identification. In addition, all outstanding citations and accrued late fees must be paid or the purchaser must enter into a contractual agreement to pay said fines before a replacement decal is issued.

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8 VAC 35-21-150. Parking fee refunds.

A. Only the original purchaser of a decal may receive a refund of the purchase price of a decal in accordance with the refund schedule and conditions.

B. The decal purchaser must present a valid George Mason University identification and surrender the decal before a refund can be processed. Refunds are issued from the Commonwealth of Virginia and take approximately six weeks to process, with the exception of credit card refunds, which are refunded in accordance with the specific credit card company policy.

C. All outstanding citations and accrued fees will be deducted from the decal refund due.

D. Students must provide official proof of class withdrawal before a refund is issued.

E. Faculty/staff must provide official proof of employment termination obtained from Human Resources before a refund is processed.

F. Student decal refunds will be handled as follows:

1. A full refund will be given up to and including the last published drop date where no tuition liability is incurred for the semester in which the decal was purchased.
2. Partial refunds are prorated according to 8 VAC 35-21-350.
3. Students who purchased an annual decal and who do not plan to attend spring semester are eligible to receive a 40% refund provided they apply on or before the last add/drop date of the spring semester.
4. Summer students will receive a full refund up to and including the last add/drop day of the session in which they registered upon proof of withdrawal. No other prorated refund will be given.
5. No refund will be given for what might be considered the "unused" summer portion of an annual decal.

G. Faculty/staff refunds are processed following the same schedule as student refunds.

H. All outstanding parking fees will be deducted from any refund due.

8 VAC 35-21-160. Decal sales restrictions.

Decal sales restrictions are as follows:

1. Decals may not be resold or transferred from one individual to another. Decals are the property of the original purchaser.
2. Individuals displaying a resold or transferred decal may be cited for fraudulent display.
3. Only George Mason University Parking Services or its authorized agent may sell parking decals or permits.

8 VAC 35-21-170. Multiple decal purchases.

All decals, except those issued to senior citizens, carry an equal monetary value. No discount rate is given for multiple decal purchases.

8 VAC 35-21-180. Motorcycle decals.

Motorcycles must display a valid George Mason University motorcycle decal. Parking of motorcycles is restricted to areas designated for motorcycle use. Citations will be issued to motorcycles parking in spaces intended for four-wheel vehicles.

8 VAC 35-21-190. Decal sales schedule.

The following parking decals are sold and prorated according to the following schedule:

1. Full-price annual decals are valid from the date of issue to August 31 of the following year.
2. Semester decals, valid from December 1 through August 31 of the following year, are sold from December 1 to April 30.
3. Summer decals, valid from May 1 through August 31 of the same calendar year, are sold from May 1 to August 31.
4. Faculty members duly appointed to emeritus status by George Mason University Board of Visitors are eligible to receive one free parking decal upon proof of status.
5. Annual decals may be sold or distributed earlier in the summer depending upon a vendor's delivery schedule. Early decal purchasers should verify the date the permit becomes valid for use to avoid citation.

8 VAC 35-21-200. Decal placement.

A. All transferable decals must be displayed in clear view on the inside, lower left corner of the rear window of the vehicle.

B. Bumper decals must be displayed on the left side of the rear bumper.

C. Motorcycle adhesive decals must be displayed in clear view on the motorcycle.

D. Failure to display a decal properly may result in a citation.

8 VAC 35-21-210. Citation responsibility.

The registered owner of a vehicle is ultimately responsible for any citations issued to said vehicle. The decal owner is also responsible for all citations issued to his decal.

8 VAC 35-21-220. Special parking permits.

A. University faculty, staff, and students with special parking needs must make prior arrangements to obtain the necessary permit through Parking Services during normal hours of operation.

B. Applications for parking permits for persons with disabilities are available at the Parking Services office. See 8

VAC 35-21-70 for specific parking information and regulations.

C. Service and repair permits may be purchased from the Parking Services Administrative Office during normal hours of operation. See 8 VAC 35-21-90 for specific service and repair parking information and regulations.

D. Contractor, subcontractor, and contractor employee permits are available through Parking Services. Permit parking for contractors, subcontractors, and contractor employees is governed as follows:

1. All contractors, subcontractors, and contractor employees must purchase and prominently display valid permits issued by Parking Services.
2. Arrangements for contractor-related permits are available through Parking Services in conjunction with the respective University department and the appropriate representative of the contractor.
3. Contractors, subcontractors, and contractor employees are responsible for adhering to and advising all of their employees concerning George Mason University parking regulations as outlined in their contractual agreement with the University.
4. Contractors, subcontractors, and contractor employees are responsible for any citations issued to their vehicles.
5. Permits issued to contractors or commercial firms may be restricted as to date, time, duration, and parking area. Contractor permits are not to be used for any other parking purposes.

E. Members of the George Mason University Board of Visitors are issued parking permits. The permits are valid at all times in both the surface lots and the parking deck. Students' representative privileges are limited to scheduled Board of Visitors meetings and official functions. Board of Visitor parking permits are issued by the President's office and charged at the prevailing University rate for each permit. A list of the permit holders is to be submitted to Parking Services.

F. Members of the George Mason University Foundation Board of Trustees are issued parking permits. The permits are valid for use in nonrestricted areas of surface lots only. The permits are issued by the foundation and charged at the University prevailing rate for each permit. A list of the permit holders is to be submitted to Parking Services.

G. Members of the George Mason University Alumni Board of Directors are issued parking permits for use in nonrestricted areas of surface lots. The permits are issued by the Alumni Office and charged at the University prevailing rates for each permit. A list of the permit holders is to be submitted to Parking Services.

H. Members of the Krasnow Institute Board of Directors are issued parking permits valid for use at the Krasnow Institute parking lot and GMU nonrestricted areas of surface lots for board meetings or official institute functions. The permits are issued by the institute director and charged at the University

prevailing rate for each permit. A list of the permit holders is to be submitted to Parking Services.

I. The Patriot Club is provided parking permits for distribution to Patriot Club members and guests. The Patriot Club executive director distributes the permits. The permits are charged at the University prevailing rate and are valid only at the field hours in Lots O, M, and P and in the designated parking area for the Aquatic Center.

J. Health Education Program (HEP) participants shall purchase and prominently display parking permits. The permits are valid in nonrestricted areas of surface lots. HEP participants must observe all parking rules and regulations when using University-operated facilities. Participants are subject to citation for parking without a permit or other regulation infractions. See 8 VAC 35-21-330 for permit rate schedule.

PART IV. ENFORCEMENT.

8 VAC 35-21-230. Enforcement; hours of enforcement; parking space designation; restricted areas.

A. All regulations enacted by the Commonwealth of Virginia and George Mason University are duly enforced. Vehicles in violation of this chapter may be subject to citation, immobilization, impoundment or towing at the owner's expense.

B. No motor vehicle operator, including University personnel, shall park a motor vehicle in such a manner that it violates any of these rules and regulations.

C. All vehicles parked in surface lots owned and operated by the University must prominently display a valid decal or parking permit and observe all parking space restrictive signage during hours of enforcement at the risk of citation. Exceptions to the permit display requirement are as follows:

1. Parking fees are included in the cost of Patriot Center tickets. Parking permit display is not required for scheduled Patriot Center events. Event parking is limited to Lots A, C, K, and L or as otherwise approved by Parking Services.
2. Parking for Center for the Arts events is limited to Lot K and the parking deck unless otherwise approved by Parking Services. Parking permit display is not required for scheduled events. Refer to 8 VAC 35-21-330 for parking deck rates.
3. Parking for intercollegiate and club sports events is limited to Lot K or the Field House lots (M, O, and P) unless otherwise approved by Parking Services. Parking permit display is not required for scheduled events.

D. Hours of enforcement are as follows when the University is in session:

1. Decal parking is enforced in surface lots Monday through Friday from 7 a.m. to 11 p.m. and on Saturday and Sunday from 8 a.m. to 2 p.m.
2. Metered parking is monitored seven days a week from 7 a.m. to 11 p.m.

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3. *Parking for persons with disabilities is enforced 24 hours a day, seven days a week. Parking in, or blocking access to, parking spaces designated for persons with disabilities is prohibited and subject to citation. Refer to 8 VAC 35-21-70 for details on parking for persons with disabilities.*

4. *Load/unload parking is subject to time limitations and is enforced from Monday through Friday from 7 a.m. to 11 p.m. and Saturday from 7 a.m. to 2 p.m. See 8 VAC 35-21-90.*

5. *Service and repair parking is enforced Monday through Friday from 8 a.m. to 6 p.m. and Saturday from 8 a.m. to 2 p.m.*

6. *Reserved surface parking spaces are enforced Monday through Friday from 7 a.m. to 6 p.m.*

7. *Reserved spaces in the parking deck are enforced Monday through Friday from 7 a.m. until the time posted on such spaces.*

8. *Parking is prohibited in the following locations:*

a. *Areas posted as "no parking."*

b. *At painted yellow curbs; on crosswalks, sidewalks, and landscaped areas; and at access areas leading to dumpsters or barricaded areas. Parking in these areas constitutes parking in a prohibited zone.*

c. *Within 15 feet of fire hydrants, where curbs are painted yellow, or in areas posted as fire lanes. Parking in these areas constitutes parking in a fire lane. Vehicles parked in these areas will be subject to citation or towing, or both, at the owner's expense.*

d. *Restricted or reserved spaces without a proper permit.*

9. *Parking is permitted only between painted control lines in surface lots and the parking deck.*

10. *As indicated in Part II (8 VAC 35-21-30 et seq.) of this chapter, certain University lots and areas are restricted as to the type of permit required. In addition, vehicles without proper permits as follows are subject to a restricted areas citation.*

a. *Reserved spaces are enforced Monday through Friday from 7 a.m. to 6 p.m. Violators may be ticketed and towed.*

b. *Parking in spaces reserved for persons with disabilities without an appropriate pass is subject to enforcement 24 hours a day. This includes persons with disabilities passes who do not park in the appropriate spaces.*

c. *Load/unload zones are subject to time limitations. Vehicles exceeding the posted or 30-minute time limit are subject to citation.*

d. *Displaying a previously issued citation as a decoy is subject to citation. The fine and rationale for the citation depend upon the violation at the time the ticket was issued. Any alteration of a parking permit or decal*

subjects the vehicle owner to citation for fraudulent display or no permit.

e. *Parking in a metered space after a citation has been issued may result in multiple citations.*

PART V. FINES.

8 VAC 35-21-240. Parking fines.

A. *Current parking fines and corresponding fees charged for such fines are listed in 8 VAC 35-21-340.*

B. *Parking fines must be paid or appealed within 10 calendar days of issue. See Part VI (8 VAC 35-21-270 et seq.) of this chapter for appeal information.*

C. *Payment must be made by mail, in person, or by facsimile (FAX) as follows:*

1. *Fine payment by mail may be made by check, money order, MasterCard or Visa. Checks and money orders should be made out to George Mason University Parking Services. The ticket or ticket number and the individual's identification number should be included with payment for proper credit. Credit card payment must include amount to be charged and must include a signed authorization. Cash by mail is discouraged. The Parking Services mailing address is: George Mason University Parking Services, George Mason University, MSN 1G4, 4400 University Drive, Fairfax, Virginia 22030-4444.*

2. *Fine payment in person may be by check, money order, MasterCard or Visa. Checks and money orders should be made out to George Mason University Parking Services. The ticket or ticket number and the individual's identification number should be presented with payment for proper credit to the outstanding account.*

3. *Fine payment by FAX may be made by MasterCard or Visa by faxing the appropriate information to Parking Services. The FAX number is (703) 993-2719. A signed credit card authorization statement is required that includes the amount to be charged. A copy of the ticket or the ticket number and the individual's identification number is required for proper credit to the outstanding account.*

8 VAC 35-21-250. Decal and fine payment information.

A. *The telephone number for phone-in decal purchase and fine payment is (703) 993-4GMU. The general parking information number is (703) 993-2710. For special events, call (703) 993-2716.*

B. *The Parking Services FAX number is (703) 993-2719.*

C. *The Parking Services sales office is open from 8:30 a.m. to 7 p.m. Monday through Thursday and 8:30 a.m. to 5 p.m. on Friday. The sales office is located in Student Union II, Room 1014.*

D. *Fine Payment by coin, whether rolled or unrolled, is not an acceptable form of payment.*

E. *The citation or the citation number must be included with all methods of payment for proper credit.*

8 VAC 35-21-260. Fine payment requirements and penalties.

A. Fines are to be paid within 10 calendar days of receipt of citation. All fines not paid or appealed by the tenth calendar day will be assessed a \$10 late fee. Fines not paid within 30 calendar days of issuance will be assessed an additional \$10 late fee. Refer to 8 VAC 35-10-10 et seq. for appeal information and procedures.

B. Parking Services mails three late-reminder letters to individuals who have outstanding parking fines. The first letter is mailed to the address of record 10 days after a citation was issued. The second letter is sent 20 days after a citation was issued. The third and final letter is sent 30 days after a citation was issued.

C. Students who fail to pay or appeal citations will be placed on financial suspension. As stated in the George Mason University catalog, financial suspension "means that no transcripts or records are issued, no diplomas are released, and no registrations are permitted until outstanding obligations, including the reinstatement fee, have been paid in full." Said delinquencies are also referred to a collection agency, the Virginia Department of Taxation Division of Set-Off Debt Collection, and credit bureaus. If the account remains unpaid, the individual becomes responsible for the payment of all additional agency costs. Collection costs may be as much as one-third of the balance due referred by the University.

D. Faculty, staff and visitor accounts are considered delinquent 30 days after the fine was levied. Delinquencies are referred to a collection agency, the Virginia Department of Taxation Division of Set-Off Debt Collection, and credit bureaus. If the account remains unpaid, the individual becomes responsible for the payment of all additional agency costs. Collection costs may be as much as one-third of the balance due referred by the University.

E. Parking fines outstanding for 45 days or longer and chargeable to a resident of the Commonwealth of Virginia will be reported to the Virginia Department of Taxation. The balance of the unpaid account will be deducted from the individual's Virginia state income tax refund. The amount deducted will be forwarded to George Mason University, an agency of the Commonwealth of Virginia. Delinquent accounts will also be forwarded to the University collection agency.

F. Vehicles with outstanding fines more than 10 days late in excess of \$300 are subject to towing, immobilization and impoundment on the University campus. All outstanding fines must be paid in full or the ticket holder/vehicle owner must enter into a contractual payment agreement with the University before the vehicle will be released.

G. Immobilized or impounded vehicles will be released only to the registered owner. The registered owner must prove ownership by producing the original vehicle title or registration together with a photo identification proving the claimant's identity. If the claimant is not the registered owner of the vehicle, he must produce a written and notarized letter with embossed seal from the owner permitting the University to release the vehicle to the claimant. The original title and

registration or copies thereof must accompany the letter of release.

H. Faculty, staff and students who have incurred parking fines more than \$300 and who are unable to pay such fines in full may opt to enter into a contractual payment plan agreement with the University to satisfy their indebtedness. A one-third initial payment is required before the payer can be released from financial suspension or have the boot removed from an immobilized vehicle. These individuals are responsible for making a maximum of three additional timely payments without benefit of a reminder. Any default by the payer as outlined in the contract will negate the agreement.

I. As an agency of the Commonwealth of Virginia, the University has access to certain DMV computer files. Such access enables the University to determine the name and address of a vehicle owner by license tag or vehicle identification number.

J. Ultimately, the registered owner of a vehicle is responsible for all citations issued to said vehicle. In addition to the registered owner of the vehicle, the holder of a University parking sticker may also be held financially responsible for citations issued to the vehicle for which the University parking sticker is registered or assigned. Vehicle owners who believe they were not the registered owner of a vehicle at the time a parking fine was levied may contact the Customer Service Department, Department of Motor Vehicles, at (703) 761-4655 or (804) 367-0538 and ask that DMV send verification to Parking Services that the license number belonged to another party on the date the citation was issued.

PART VI. APPEALS.

8 VAC 35-21-270. Deadline for appealing parking tickets.

Parking tickets must be appealed within 10 calendar days of the date of issue.

8 VAC 35-21-280. Appeal forms.

Appeal forms are available from the Parking Services administrative offices. Appeal forms will also be mailed or faxed to individuals upon request. Both sides of the appeal form must be completed and the agreement section signed before the form will be processed. A self-addressed postcard and the citation should be attached to the appeal form and returned in person or by mail to the Parking Services administrative office located in Student Union II, Room 1014. Appeals will be handled in accordance with 8 VAC 35-10-10 et seq.

PART VII. ARLINGTON CAMPUS PARKING DECAL REGULATIONS.

8 VAC 35-21-290. Arlington Campus decals.

A. Arlington Campus decals may be purchased at either the Arlington or Fairfax Campus sales locations or by mail-in or phone-in application. See 8 VAC 35-21-30 and 8 VAC 35-21-40.

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B. Arlington Campus decals will be sold only to those students, faculty or staff members who show valid proof of course registration or employment at Arlington Campus.

C. Arlington Campus decals are valid at all parking locations owned and operated by George Mason University. Fairfax and Prince William decals are not valid at Arlington Campus.

D. Arlington Campus decals shall be sold at the same rates as all other George Mason University decals unless otherwise stated in 8 VAC 35-21-330.

E. Arlington Campus decals, presented with valid George Mason University identification, will be honored without additional charge in allocated space at designated off-campus locations during hours scheduled and posted by the University.

8 VAC 35-21-300. Visitors to Arlington Campus.

Visitors to the Arlington Campus may not park at Arlington Campus parking locations without prior approval of the department sponsoring the visit. Parking Services must be contacted to make arrangements in these cases.

8 VAC 35-21-310. Faculty/staff visitors to Arlington Campus.

GMU faculty/staff attending to official business at Arlington Campus should contact the sponsoring department to inquire about or make parking arrangements.

PART VIII.

PRINCE WILLIAM CAMPUS PARKING REGULATIONS.

8 VAC 35-21-320. Prince William Campus parking regulations.

All provisions of this chapter are applicable to Prince William Campus except the following:

1. Prince William Campus decals may be purchased at either the Prince William, Arlington or Fairfax Campus sales locations or by mail-in or phone-in application. See Part III (8 VAC 35-21-110 et seq.) of this chapter for decal purchase information.
2. Prince William Campus decals can be sold only to those students, staff, faculty and affiliated faculty who show valid proof of course registration or employment at Prince William Campus.
3. Prince William decals are valid for George Mason University at the Fairfax and Prince William Campuses. They are not valid at the Arlington Campus.
4. Prince William Campus decals are sold at the rate indicated in 8 VAC 35-21-330.
5. Visitors to Prince William Campus may inquire at the campus information desk for directions about parking. Signage will direct visitors to take note of the parking space number and follow the instructions to pay at the electronic parking meter located in the lobby of each building.

PART IX. PARKING FEES, REFUNDS AND FINES.

8 VAC 35-21-330. Decal and parking rates.

Decal and parking rates are as follows:

TYPE OF DECAL	AMOUNT
Full-Year Decal	\$140
Semester Decal	\$75
Summer Decal	\$40
Senior Citizen Annual	\$60
Senior Citizen Semester	\$35
Senior Citizen Summer	\$20
Motorcycle	\$25
Administrative – Annual	\$140
Administrative – Semester	\$75
Service and Repair	\$140
Weekly Rate ¹	\$10
Monthly Rate ¹	\$25
Reserved Space - Surface	\$350
Reserved Parking Deck - Annual	\$425
Reserved Parking Deck - Semester	\$225
Meter Rate (Hourly)	\$1.50
Reserved Parking Deck - Summer	\$115
Deck Rate (Hourly)	\$1.25
Maximum Daily Rate (Per Entry)	\$6
Special Event Deck Rate (Per Entry) ²	\$4
Lost or Stolen Decals (See 8 VAC 35-21-370 for schedule.)	
Proof of Theft by Forcible Entry Replacement	N/C
Board of Visitors Permit	\$5
GMU Foundation Board Of Trustees	\$5
Alumni Board Of Trustees	\$5
Patriot Club	\$5
Krasnow Institute Board Of Directors	\$5
Health Education Program Permit	\$5

¹Sales limited to special classes and programs and to temporary faculty/staff.

²Pricing is subject to adjustments as defined by the University.

8 VAC 35-21-340. Schedule of fine rates.

Parking fines and corresponding fees are as follows:

TYPE OF FINE OR FEE	AMOUNT
Improper Display	\$15
Parking Over the Designated Lines	\$15
Overtime Meter Parking (One Citation Per Day)	\$25
Restricted Parking	\$30
Parking In Prohibited Zone	\$30
Parking In Loading Zone	\$30
Fraudulent Registration	\$75
No Decal	\$65
Double Parking	\$15
Parking Left/Wrong Side of Curb	\$15
Unauthorized Parking in Area Designated for Persons with Disabilities	\$125

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Blocking Access to Parking Area Designated for Persons with Disabilities	\$125
Impound	\$50
Towing	\$35
Parking in a Fire Lane	\$75
Parking in a Reserved Space	\$75
Not Transferring Decal (Associated with the Appeals Process When an Individual Does Not Transfer Decal to Second Car)	\$10

8 VAC 35-21-350. Faculty/staff and student decal refund and replacement fee schedule.

The following are the parking decal refund and replacement fee schedules for FY00 and FY01. Students must provide proof of class withdrawal and faculty/staff must provide proof of employment termination from the Human Resources Department before a refund is issued. All fees are subject to administrative approval.

Annual decal refund fee schedule:

TRANSACTION	DATE SPAN	DOLLAR AMOUNT
Refund	July 3 - September 8	\$140
Refund	September 9 - September 15	\$108.25
Refund	September 16 - October 2	\$83.75
Refund	October 3 - February 1	\$50
No Refund	February 2 - June 30	\$0

*Refunds on annual decals are intended for students who purchased said decal with the intent of attending fall, spring and/or summer sessions.

Fall semester decal refund fee schedule:

TRANSACTION	DATE SPAN	DOLLAR AMOUNT
Refund	July 3 - September 8	\$75
Refund	September 9 - September 15	\$50.25
Refund	September 16 - October 2	\$24.75
No Semester Decal Refund	October 3 - December 31	\$0
Replacement Fee	October 3 - December 31	\$20

Spring semester decal refund fee schedule:

TRANSACTION	DATE SPAN	DOLLAR AMOUNT
Refund	December 1 - January 29	\$75
Refund	January 30 - February 5	\$50.25
Refund	February 6 - February 12	\$24.75
No Refund	February 13 - June 30	\$0

Motorcycle decal refund schedule:

TRANSACTION	DATE SPAN	DOLLAR AMOUNT
Refund	July 1 - September 8	\$25
Refund	September 9 - September 15	\$21.65
Refund	September 16 - October 2	\$16.75
No Refund	October 3 - June 30	\$0

Decal rate sales calendar:

TRANSACTION	DATE SPAN	DOLLAR AMOUNT
Annual & Fall Semester Decals	July 1 - November 30	\$140
Spring Semester Decals	December 1 - April 30	\$75
Summer Decals	May 1 - June 30	\$40

8 VAC 35-21-360. Summer decal refund and replacement policy.

A. A summer decal is specifically purchased for summer use. No refunds will be issued on what may be considered the summer portion of an annual decal.

B. A full refund or replacement of a summer decal is available up to and including the last drop date with no tuition liability of the session in which enrolled.

C. A 50% charge or refund will be issued up to and including the last drop date without dean's approval.

D. No refund will be given from the day after the published last drop date without dean's approval. The last drop date refers to the session in which the student was enrolled.

E. A \$10 replacement fee will be charged the date after the last drop date without the dean's approval of the session in which the student is enrolled. Proof of session enrollment and withdrawal is required.

VA.R. Doc. No. R01-31; Filed December 22, 2000, 10:19 a.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Title of Regulation: 9 VAC 25-640-10 et seq. Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements.

Statutory Authority: §§ 62.1-44.15 and 62.1-44.34:16 of the Code of Virginia.

Effective Date: March 2, 2001.

Summary:

The regulation provides the criteria by which operators of aboveground storage tank and pipeline facilities can demonstrate that they have adequate financial resources to perform their responsibility to contain and clean up any

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oil discharges which may occur at their facilities. The regulation provides six methods of financial responsibility demonstration: (i) financial test of self-insurance; (ii) guarantee; (iii) insurance; (iv) surety bond; (v) letter of credit; and (vi) trust fund. Forms for each method are included as appendices to the regulation. The regulation sets the amount of financial responsibility required at (i) five cents per gallon multiplied by the operator's statewide aboveground storage tank facility capacity as the amount of the annual demonstration requirement for aboveground storage tank facility operators and (ii) \$5 million as the amount of the annual demonstration requirement for pipeline facility operators.

Summary of Public Comments and Agency's Response: A summary of comments made by the public 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 Mary-Ellen Kendall, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4499.

CHAPTER 640.

ABOVEGROUND STORAGE TANK AND PIPELINE FACILITY FINANCIAL RESPONSIBILITY REQUIREMENTS.

9 VAC 25-640-10. Definitions.

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

"Aboveground storage tank" or "AST" means any one or combination of tanks, including pipes, used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than 90% above the surface of the ground. This term does not include line pipe and breakout tanks of an interstate pipeline regulated under the federal Accountable Pipeline Safety and Partnership Act of 1996 (49 USC § 60101 et seq.).

"Accidental discharge" means any sudden or nonsudden discharge of oil from a facility that results in a need for containment and clean up which was neither expected nor intended by the operator.

"Annual aggregate" means the maximum financial responsibility requirement that an owner or operator is required to demonstrate annually.

"Board" means the State Water Control Board.

"Change in service" means change in operation, conditions of the stored product, specific gravity, corrosivity, temperature or pressure that has occurred from the original that may affect the tank's suitability for service.

"Containment and clean up" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.

"Controlling interest" means direct ownership of at least 50% of the voting stock of another entity.

"Department" or "DEQ" means the Department of Environmental Quality.

"Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

"Facility" means any development or installation within the Commonwealth that deals in, stores or handles oil, and includes a pipeline.

"Financial reporting year" means the latest consecutive 12-month period for which any of the following reports used to support a financial test is prepared: (i) a 10-K report submitted to the U.S. Securities & Exchange Commission (SEC); (ii) an annual report of tangible net worth submitted to Dun and Bradstreet; (iii) annual reports submitted to the Energy Information Administration or the Rural Electrification Administration; or (iv) a year-end financial statement authorized under 9 VAC 25-640-70 B or C. "Financial reporting year" may thus comprise a fiscal or calendar year period.

"Legal defense cost" means any expense that an operator or provider of financial assurance incurs in defending against claims or actions brought (i) by the federal government or the board to require containment or clean up or to recover the costs of containment and clean up, or to collect civil penalties under federal or state law or to assert any claim on behalf of the Virginia Petroleum Storage Tank Fund; or (ii) by any person to enforce the terms of a financial assurance mechanism.

"Local government entity" means a municipality, county, town, commission, separately chartered and operated special district, school board, political subdivision of a state or other special purpose government which provides essential services.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, that results in a discharge from an AST. Note: This definition is intended to assist in the understanding of this chapter and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence."

"Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum byproducts, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oil and all other liquid hydrocarbons regardless of specific gravity.

"Operator" means any person who owns, operates, charters by demise, rents or otherwise exercises control over or responsibility for a facility or a vehicle or a vessel.

"Person" means an individual; trust; firm; joint stock company; corporation, including a government corporation; partnership; association; any state or agency thereof; municipality; county; town; commission; political subdivision of a state; any interstate body; consortium; joint venture; commercial entity; the government of the United States or any unit or agency thereof.

"Pipeline" means all new and existing pipe, rights of way, and any equipment, facility, or building used in the

transportation of oil, including, but not limited to, line pipe, valves and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks.

"Provider of financial assurance" means a person that provides financial assurance to an operator of an aboveground storage tank through one of the mechanisms listed in 9 VAC 25-640-70 through 9 VAC 25-640-120, including a guarantor, insurer, group self-insurance pool, surety, or issuer of a letter of credit.

"Storage capacity" means the total capacity of an AST or a container, whether filled in whole or in part with oil, a mixture of oil, or mixtures of oil with nonhazardous substances, or empty. An AST that has been permanently closed in accordance with the requirements of 9 VAC 25-91-10 et seq. has no storage capacity.

"Substantial business relationship" means the extent of a business relationship necessary under Virginia law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the operator.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

"Tank" means a device designed to contain an accumulation of oil and constructed of nonearthen materials, such as concrete, steel, or plastic, that provides structural support. This term does not include flow-through process tanks as defined in 40 CFR Part 280.

"Termination" under Appendix III and Appendix IV means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

"Underground storage tank" means any one or combination of tanks, including connecting pipes, used to contain an accumulation of regulated substances, and the volume of which, including the volume of underground connecting pipes, is 10% or more beneath the surface of the ground. This term does not include any:

1. Farm or residential tanks having a capacity of 1,100 gallons or less and used for storing motor fuel for noncommercial purposes;
2. Tanks used for storing heating oil for consumption on the premises where stored;
3. Septic tanks;
4. Pipeline facilities (including gathering lines) regulated under:

a. The Natural Gas Pipeline Safety Act of 1968 (49 USC App. 1671 et seq.),

b. The Hazardous Liquid Pipeline Safety Act of 1979 (49 USC App. 2001 et seq.), or

c. Any intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in subdivision 4 a or 4 b of this definition;

5. Surface impoundments, pits, ponds, or lagoons;

6. Storm water or wastewater collection systems;

7. Flow-through process tanks;

8. Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; or

9. Storage tanks situated in an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor.

The term "underground storage tank" does not include any pipes connected to any tank which is described in subdivisions 1 through 9 of this definition.

"Vehicle" means any motor vehicle, rolling stock, or other artificial contrivance for transport whether self-propelled or otherwise, except vessels.

"Vessel" means every description of watercraft or other contrivance used as a means of transporting on water, whether self-propelled or otherwise, and shall include barges and tugs.

9 VAC 25-640-20. Applicability.

A. Unless otherwise exempted in this section or excluded in 9 VAC 25-640-30, operators of aboveground storage tank facilities having a maximum storage capacity of 25,000 gallons or greater of oil must demonstrate financial responsibility in accordance with the requirements of this chapter as a condition of operation.

B. Unless otherwise exempted in this section or excluded in 9 VAC 25-640-30, operators of pipelines must demonstrate financial responsibility in accordance with the requirements of this chapter as a condition of operation.

C. State and federal government entities whose debts and liabilities are the debts and liabilities of the Commonwealth of Virginia or the United States have the requisite financial strength and stability to fulfill their financial assurance requirements and are relieved of the requirements to further demonstrate an ability to provide financial responsibility under this chapter.

D. Local government entities are not required to comply with the requirements of this chapter.

E. If there is more than one operator for a facility, only one operator is required to demonstrate financial responsibility; however, all operators are jointly responsible for ensuring compliance with financial responsibility requirements.

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9 VAC 25-640-30. Exclusions.

The requirements of this chapter do not apply to:

1. Vessels;
2. Licensed motor vehicles, unless used solely for the storage of oil;
3. An AST with a storage capacity of 660 gallons or less of oil;
4. An AST containing petroleum, including crude oil or any fraction thereof, which is liquid at standard temperature and pressure (60°F at 14.7 pounds per square inch absolute) subject to and specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of § 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USC § 9601 et seq.);
5. A wastewater treatment tank system that is part of a wastewater treatment facility regulated under § 402 or § 307(b) of the federal Clean Water Act (33 USC § 1251 et seq.);
6. An AST that is regulated by the Department of Mines, Minerals and Energy under Chapter 22.1 (§ 45.1-361.1 et seq. of the Code of Virginia);
7. An AST used for the storage of products that are regulated pursuant to the federal Food, Drug and Cosmetic Act (21 USC § 301 et seq.);
8. An AST that is used to store hazardous wastes listed or identified under Subtitle C of the Resource Conservation and Recovery Act (RCRA) (Solid Waste Disposal Act) (42 USC § 6901 et seq.);
9. An AST that is used to store propane gas, butane gas or other liquid petroleum gases;
10. An AST used to store nonpetroleum hydrocarbon-based animal and vegetable oils;
11. A liquid trap or associated gathering lines directly related to oil or gas production, or gathering operations;
12. A surface impoundment, pit, pond, or lagoon;
13. A storm water or wastewater collection system;
14. Equipment or machinery that contains oil for operational purposes, including but not limited to lubricating systems, hydraulic systems, and heat transfer systems;
15. An AST used to contain oil for less than 120 days when: (i) used in connection with activities related to the containment and clean up of oil; (ii) used by a federal, state or local entity in responding to an emergency; or (iii) used temporarily on site to replace permanent storage capacity;
16. Oil-filled electrical equipment, including, but not limited to, transformers, circuit breakers or capacitors;
17. A flow-through process tank;

18. Oily water separators;
19. An AST containing dredge spoils;
20. An AST located on a farm or residence used for storing motor fuel for noncommercial purposes with an aggregated storage capacity of 1,100 gallons or less;
21. Pipes or piping beyond the first valve from the AST that connects an AST with production process tanks or production process equipment;
22. An AST storing asphalt and asphalt compounds which are not liquid at standard conditions of temperature and pressure (60°F at 14.7 pounds per square inch absolute);
23. Underground storage tanks regulated under a state program;
24. An AST with a capacity of 5,000 gallons or less used for storing heating oil for consumptive use on the premises where stored.

9 VAC 25-640-40. Compliance dates.

Operators of existing facilities are required to comply with the requirements of this chapter [~~within 60 days of the effective date of this chapter~~ by June 30, 2001]. Operators of new facilities shall comply with the requirements of this chapter by the date the facility begins operation.

9 VAC 25-640-50. Amount and scope of required financial responsibility.

A. Operators shall demonstrate per occurrence and annual aggregate financial responsibility for containment and clean up of discharges of oil in an amount equal to (i) five cents per gallon of the aggregate aboveground storage capacity for ASTs in all Virginia facilities up to a maximum of \$1 million, and (ii) \$5 million for pipelines.

B. If the operator uses separate mechanisms or combinations of mechanisms to demonstrate financial responsibility for the containment and clean up of oil, (i) the amount of assurance provided by the combination of mechanisms shall be in the full amount specified in subsection A of this section, and (ii) the operator shall demonstrate financial responsibility in the appropriate amount of annual aggregate assurance specified in subsection A of this section by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.

C. The amounts of assurance required under this section exclude legal defense costs.

D. The required demonstration of financial responsibility does not in any way limit the liability of the operator under § 62.1-44.34:18 of the Code of Virginia.

E. Operators which demonstrate financial responsibility shall maintain copies of those records on which the determination is based. The following documents may be used by operators to support a financial responsibility requirement determination:

1. Copies of the registration form required under 9 VAC 25-91-10 et seq.

2. Any other form of documentation that the board may deem to be acceptable evidence to support the financial responsibility requirement determination.

9 VAC 25-640-60. Allowable mechanisms and combinations of mechanisms.

A. Subject to the limitations of subsection B of this section, an operator may use any one or combination of the mechanisms listed in 9 VAC 25-640-70 through 9 VAC 25-640-120 to demonstrate financial responsibility under this chapter for one or more aboveground storage tanks or pipelines.

B. An operator may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this regulation, the financial statements of the operator are not consolidated with the financial statements of the guarantor.

9 VAC 25-640-70. Financial test of self-insurance.

A. An operator and/or guarantor, may satisfy the requirements of 9 VAC 25-640-50 by passing a financial test as specified in this section. To pass the financial test of self-insurance, the operator and/or guarantor shall meet the requirements of subsection B or C and subsection D of this section based on year-end financial statements for the latest completed financial reporting year.

B. 1. The operator and/or guarantor shall have a tangible net worth at least equal to the total of the applicable amount required by 9 VAC 25-640-50 for which a financial test is used to demonstrate financial responsibility.

2. The operator and/or guarantor shall comply with either subdivision a or b below:

a. (1) The financial reporting year-end financial statements of the operator and/or guarantor shall be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination; and

(2) The financial reporting year-end financial statements of the operator and/or guarantor cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

b. (1) (a) File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration; or

(b) Report annually the tangible net worth of the operator and/or guarantor to Dun and Bradstreet, and Dun and Bradstreet must have assigned a financial strength rating which at least equals the amount of financial responsibility required by the operator in 9 VAC 25-640-50.

(2) The financial reporting year-end financial statements of the operator and/or guarantor, if

independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

3. The operator and/or guarantor, shall have a letter signed by the chief financial officer worded identically as specified in Appendix I/Alternative I.

C. 1. The operator and/or guarantor shall have a tangible net worth at least equal to the total of the applicable amount required by 9 VAC 25-640-50 for which a financial test is used to demonstrate financial responsibility.

2. The financial reporting year-end financial statements of the operator and/or guarantor shall be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.

3. The financial reporting year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

4. If the financial statements of the operator and/or guarantor are not submitted annually to the U.S. Securities and Exchange Commission, the Energy Information Administration or the Rural Electrification Administration, the operator and/or guarantor shall obtain a special report by an independent certified public accountant stating that:

a. The accountant has compared the data that the letter from the chief financial officer specified as having been derived from the latest financial reporting year-end financial statements of the operator and/or guarantor with the amounts in such financial statements; and

b. In connection with that comparison, no matters came to the accountant's attention that caused him to believe that the specified data should be adjusted.

5. The operator and/or guarantor shall have a letter signed by the chief financial officer, worded identically as specified in Appendix I/Alternative II.

D. To meet the financial demonstration test under subsections B or C of this section, the chief financial officer of the operator and/or guarantor shall sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded identically as specified in Appendix I with the appropriate alternative, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.

E. If an operator using the test to provide financial assurance finds that he no longer meets the requirements of the financial test based on the financial reporting year-end financial statements, the operator shall obtain alternative coverage and submit to the board the appropriate original forms listed in 9 VAC 25-640-170 B within 150 days of the end of the year for which financial statements have been prepared.

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F. The board may require reports of financial condition at any time from the operator and/or guarantor. If the board finds, on the basis of such reports or other information, that the operator and/or guarantor no longer meets the financial test requirements of subsection B or C and D of this section, the operator shall obtain alternate coverage and submit to the board the appropriate original forms listed in 9 VAC 25-640-170 B within 30 days after notification of such finding.

G. If the operator fails to obtain alternate assurance within 150 days of finding that he no longer meets the requirements of the financial test based on the financial reporting year-end financial statements, or within 30 days of notification by the board that he no longer meets the requirements of the financial test, the operator shall notify the board of such failure within 10 days.

9 VAC 25-640-80. Guarantee.

A. An operator may satisfy the requirements of 9 VAC 25-640-50 by obtaining a guarantee that conforms to the requirements of this section. The guarantor shall be:

1. A firm that:
 - a. Possesses a controlling interest in the operator;
 - b. Possesses a controlling interest in a firm described under subdivision A 1 a of this section; or
 - c. Is controlled through stock ownership by a common parent firm that possesses a controlling interest in the operator; or
2. A firm engaged in a substantial business relationship with the operator and issuing the guarantee as an act incident to that business relationship.

B. Within 120 days of the close of each financial reporting year the guarantor shall demonstrate that it meets the financial test criteria of 9 VAC 25-640-70 B or C and D based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in Appendix I and shall deliver the letter to the operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the operator. If the board notifies the guarantor that he no longer meets the requirements of the financial test of 9 VAC 25-640-70 B or C and D, the guarantor shall notify the operator within 10 days of receiving such notification from the board. In both cases, the guarantee will terminate no less than 120 days after the date the operator receives the notification, as evidenced by the return receipt. The operator shall obtain alternate coverage as specified in 9 VAC 25-640-200.

C. The guarantee shall be worded identically as specified in Appendix II, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

D. An operator who uses a guarantee to satisfy the requirements of 9 VAC 25-640-50 shall establish a standby

trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the board under 9 VAC 25-640-180. This standby trust fund shall meet the requirements specified in 9 VAC 25-640-130.

9 VAC 25-640-90. Insurance and group self-insurance pool coverage.

A. 1. An operator may satisfy the requirements of 9 VAC 25-640-50 by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or group self-insurance pool.

2. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

3. Group self-insurance pools shall comply with § 62.1-44.34:16 of the Code of Virginia and applicable State Corporation Commission Bureau of Insurance regulations.

B. Each insurance policy shall be amended by an endorsement worded in no respect less favorable than the coverage as specified in Appendix III, or evidenced by a certificate of insurance worded identically as specified in Appendix IV, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

C. Each insurance policy shall be issued by an insurer or a group self-insurance pool that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or approved surplus lines insurer in the Commonwealth of Virginia.

D. Each insurance policy shall provide first dollar coverage. The insurer or group self-insurance pool shall be liable for the payment of all amounts within any deductible applicable to the policy to the provider of containment and clean up as provided in this chapter, with a right of reimbursement by the insured for any such payment made by the insurer or group. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 9 VAC 25-640-70 through 9 VAC 25-640-120.

9 VAC 25-640-100. Surety bond.

A. An operator may satisfy the requirements of 9 VAC 25-640-50 by obtaining a surety bond that conforms to the requirements of this section. The surety company issuing the bond shall be licensed to operate as a surety in the Commonwealth of Virginia and be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

B. The surety bond shall be worded identically as specified in Appendix V, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

C. Under the terms of the bond, the surety will become liable on the bond obligation when the operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.

D. The operator who uses a surety bond to satisfy the requirements of 9 VAC 25-640-50 shall establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the board under 9 VAC 25-640-180. This standby trust fund shall meet the requirements specified in 9 VAC 25-640-130.

9 VAC 25-640-110. Letter of credit.

A. An operator may satisfy the requirements of 9 VAC 25-640-50 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution shall be an entity that has the authority to issue letters of credit in the Commonwealth of Virginia and whose letter-of-credit operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The letter of credit shall be worded identically as specified in Appendix VI, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

C. An operator who uses a letter of credit to satisfy the requirements of 9 VAC 25-640-50 also shall establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the board will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the board under 9 VAC 25-640-180. This standby trust fund shall meet the requirements specified in 9 VAC 25-640-130.

D. The letter of credit shall be irrevocable with a term specified by the issuing institution. The letter of credit shall provide that credit will be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution notifies the operator by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the 120 days will begin on the date when the operator receives the notice, as evidenced by the return receipt.

9 VAC 25-640-120. Trust fund.

A. An operator may satisfy the requirements of 9 VAC 25-640-50 by establishing an irrevocable trust fund that conforms to the requirements of this section. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The trust fund shall be irrevocable and shall continue until terminated at the written direction of the grantor and the trustee, or by the trustee and the State Water Control Board, if the grantor ceases to exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, shall be delivered to the operator. The wording of the trust agreement shall be identical to the wording specified

in Appendix VII and shall be accompanied by a formal certification of acknowledgment as specified in Appendix VIII.

C. The irrevocable trust fund, when established, shall be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanisms that provide the remaining required coverage.

D. If the value of the trust fund is greater than the required amount of coverage, the operator may submit a written request to the board for release of the excess.

E. If other financial assurance as specified in this chapter is substituted for all or part of the trust fund, the operator may submit a written request to the board for release of the excess.

F. Within 60 days after receiving a request from the operator for release of funds as specified in subsection D or E of this section, the board will instruct the trustee to release to the operator such funds as the board specifies in writing.

9 VAC 25-640-130. Standby trust fund.

A. An operator using any one of the mechanisms authorized by 9 VAC 25-640-80, 9 VAC 25-640-100, and 9 VAC 25-640-110 shall establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The standby trust agreement or trust agreement shall be worded identically as specified in Appendix VII, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted, and accompanied by a formal certification of acknowledgment as specified in Appendix VIII.

C. The board will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the board determines that no additional containment and clean up costs will occur as a result of a discharge covered by the financial assurance mechanism for which the standby trust fund was established.

D. An operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule.

9 VAC 25-640-140. Substitution of financial assurance mechanisms by operator.

A. An operator may substitute any alternate financial assurance mechanisms as specified in this chapter, provided that at all times he maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of 9 VAC 25-640-50.

B. After obtaining alternate financial assurance as specified in this chapter, an operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance.

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9 VAC 25-640-150. Cancellation or nonrenewal by a provider of financial assurance.

A. Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the operator.

Termination of a guarantee, a surety bond, or a letter of credit may not occur until 120 days after the date on which the operator receives the notice of termination, as evidenced by the return receipt.

Termination of insurance or group self-insurance pool coverage, except for nonpayment or misrepresentation by the insured, may not occur until 60 days after the date on which the operator receives the notice of termination, as evidenced by the return receipt. Termination for nonpayment of premium or misrepresentation by the insured may not occur until a minimum of 15 days after the date on which the operator receives the notice of termination, as evidenced by the return receipt.

B. If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in 9 VAC 25-640-200, the operator shall obtain alternate coverage as specified in this section and shall submit to the board the appropriate original forms listed in 9 VAC 25-640-170 B documenting the alternate coverage within 60 days after receipt of the notice of termination. If the operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the operator shall immediately notify the board of such failure and submit:

1. The name and address of the provider of financial assurance;
2. The effective date of termination; and
3. A copy of the financial assurance mechanism subject to the termination maintained in accordance with 9 VAC 25-640-170.

9 VAC 25-640-160. Reporting by operator.

A. Except as specified in 9 VAC 25-640-170 B 7, an operator of a facility existing as of [~~the effective date of this chapter shall submit the appropriate original forms listed in 9 VAC 25-640-170 B documenting current evidence of financial responsibility to the board within 60 days after the effective date of this chapter and shall submit new original forms 30 days before the anniversary date for each year thereafter~~ March 2, 2001, shall comply with the requirements of this chapter by June 30, 2001].

B. Except as specified in 9 VAC 25-640-170 B 7, an operator of a facility which does not exist as of [~~the effective date of this chapter shall submit the appropriate original forms listed in 9 VAC 25-640-170 B documenting current evidence of financial responsibility to the board~~ March 2, 2001, shall comply with the requirements of this chapter] at least 30 days before the facility commences operation or [~~60 days after the effective date of this chapter, whichever is later, and shall submit new original forms 30 days before the anniversary date for each year thereafter~~ by May 1, 2001, whichever is later].

C. An operator shall notify the board if the operator fails to obtain alternate coverage as required by this chapter within 30 days after the operator receives notice of:

1. Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor,
2. Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism,
3. Failure of a guarantor to meet the requirements of the financial test,
4. Other incapacity of a provider of financial assurance.

D. An operator shall submit the appropriate original forms listed in 9 VAC 25-640-170 B documenting current evidence of financial responsibility to the board as required by 9 VAC 25-640-70 E and F and 9 VAC 25-640-150 B.

E. An operator shall submit to the board the appropriate original forms listed in 9 VAC 25-640-170 B documenting current evidence of financial responsibility upon substitution of its financial assurance mechanisms as provided by 9 VAC 25-640-140.

F. The board may require an operator to submit evidence of financial assurance as described in 9 VAC 25-640-170 B or other information relevant to compliance with this chapter at any time. The board may require submission of originals or copies at its sole discretion.

9 VAC 25-640-170. Recordkeeping.

A. Operators shall maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this chapter for an aboveground storage tank or pipeline, or both, until released from the requirements of this regulation under 9 VAC 25-640-190. An operator shall maintain such evidence [~~by filing original evidence of financial responsibility with the department at the aboveground storage tank site or the operator's place of work in this Commonwealth. Records maintained off-site shall be made available upon request of the board~~].

B. Operators shall maintain the following types of evidence of financial responsibility:

1. An operator using an assurance mechanism specified in 9 VAC 25-640-70 through 9 VAC 25-640-120 shall maintain the original instrument worded as specified.
2. An operator using a financial test or guarantee shall maintain (i) the chief financial officer's letter, and (ii) year-end financial statements for the most recent completed financial reporting year or the Dun and Bradstreet rating on which the chief financial officer's letter was based. Such evidence shall be on file no later than 120 days after the close of the financial reporting year.
3. An operator using a guarantee, surety bond, or letter of credit shall maintain the signed standby trust fund agreement and any amendments to the agreement.
4. An operator using an insurance policy or group self-insurance pool coverage shall maintain a copy of the

signed insurance policy or group self-insurance pool coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

5. a. An operator using an assurance mechanism specified in 9 VAC 25-640-70 through 9 VAC 25-640-120 shall maintain an original certification of financial responsibility worded identically as specified in Appendix IX, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

b. The operator shall [~~submit~~ maintain] a new original certification at or before the time specified in 9 VAC 25-640-160 or whenever the financial assurance mechanisms used to demonstrate financial responsibility changes.

6. An operator using a trust agreement or who is required to prepare a standby trust agreement pursuant to 9 VAC 25-640-130 shall maintain a certification of acknowledgment worded identically as specified in Appendix VIII, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

7. For subsequent annual [~~submissions~~ updates] required under 9 VAC 25-640-160:

a. The operator may [~~submit~~ maintain] an endorsement, a rider or a notice of extension from the provider of financial assurance evidencing continuation of coverage in lieu of a new original surety bond or letter of credit or insurance policy, provided the form of the endorsement, rider or notice of extension is approved by the board;

b. The operator need not [~~submit~~ obtain] a new original guarantee or trust fund, provided the same mechanism is to continue to act as the operator's demonstration mechanism for the subsequent year or years;

c. The operator need not [~~submit~~ obtain] a new standby trust agreement, provided the financial assurance mechanism remains the same;

d. The operator must [~~submit~~ maintain] a new original mechanism as specified in subdivision 2 of this subsection;

e. The operator need not [~~submit~~ obtain] a new original certification of acknowledgment, provided the associated trust agreement has not changed;

f. The operator must [~~submit~~ maintain] a new original certification of financial responsibility.

9 VAC 25-640-180. Drawing on financial assurance mechanisms.

A. The board shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the board, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

1. a. The operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit; and

b. The board determines or suspects that a discharge from an aboveground storage tank or pipeline covered by the mechanism has occurred and so notifies the operator, or the operator has notified the board pursuant to 9 VAC 25-91-10 et seq. of a discharge from an aboveground storage tank or pipeline covered by the mechanism; or

2. The conditions of subsection B of this section are satisfied.

B. The board may draw on a standby trust fund when the board makes a final determination that a discharge has occurred and immediate or long-term containment and/or clean up for the discharge is needed, and the operator, after appropriate notice and opportunity to comply, has not conducted containment and clean up as required under 9 VAC 25-91-10 et seq.

9 VAC 25-640-190. Release from the requirements.

An operator is no longer required to maintain financial responsibility under this chapter for an aboveground storage tank or pipeline after the tank or pipeline has been permanently closed pursuant to the requirements of 9 VAC 25-91-10 et seq., except when the board determines clean up of a discharge from the aboveground storage tank or pipeline is required.

9 VAC 25-640-200. Bankruptcy or other incapacity of operator provider of financial assurance.

A. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an operator as debtor, the operator shall notify the board by certified mail of such commencement.

B. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor shall notify the operator by certified mail of such commencement as required under the terms of the guarantee specified in 9 VAC 25-640-80.

C. An operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, group self-insurance pool coverage policy, surety bond, or letter of credit. The operator shall obtain alternate financial assurance as specified in this chapter and submit to the board the appropriate original forms specified in 9 VAC 25-640-170 B within 30 days after receiving notice of such an event. If the operator does not obtain alternate coverage within 30 days after such notification, he shall immediately notify the board in writing.

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9 VAC 25-640-210. Replenishment of guarantees, letters of credit or surety bonds.

A. If at any time after a standby trust is funded upon the instruction of the board with funds drawn from a guarantee, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the operator shall by the anniversary date of the financial mechanism from which the funds were drawn:

1. Replenish the value of financial assurance to equal the full amount of coverage required, or
2. Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

B. For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by 9 VAC 25-640-50. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

9 VAC 25-640-220. Virginia Petroleum Storage Tank Fund.

The fund may be used for all uses authorized by § 62.1-44.34:11 of the Code of Virginia in accordance with the requirements specified in 9 VAC 25-590-210.

9 VAC 25-640-230. Notices to the State Water Control Board.

All requirements of this chapter for notification to the State Water Control Board shall be addressed as follows:

Director
Department of Environmental Quality
629 E. Main Street
P.O. Box 10009
Richmond, Virginia 23240-0009.

9 VAC 25-640-240. Delegation of authority.

The Director of the Department of Environmental Quality or a designee acting for him may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

9 VAC 25-640-250. Evaluation of chapter.

A. [~~Within three years after the effective date of this chapter~~ No later than March 2, 2004], the department shall perform an analysis on this chapter and provide the board with a report on the results. The analysis shall include (i) the purpose and need for the chapter; (ii) alternatives that would achieve the stated purpose of this chapter in a less burdensome and less intrusive manner; (iii) an assessment of the effectiveness of this chapter; (iv) the results of a review of current state and federal statutory and regulatory requirements, including identification and justification of requirements of this chapter which are more stringent than federal requirements; and (v) the results of a review as to whether this chapter is clearly written and easily understandable by affected entities.

B. Upon review of the department's analysis, the board shall confirm the need to (i) continue this chapter without amendments, (ii) repeal this chapter or (iii) amend this chapter. If the board's decision is to repeal or amend this chapter, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.

APPENDIX I - LETTER FROM CHIEF FINANCIAL OFFICER

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

I am the chief financial officer of [insert: name and address of the operator or guarantor]. This letter is in support of the use of [insert: "the financial test of self-insurance," and/or "Guarantee"] to demonstrate financial responsibility for the containment and clean up of discharges of oil in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating [insert: "(an) aboveground storage tank(s)" and/or "(a) pipeline(s)"].

Aboveground storage tanks at the following facilities and/or pipelines are assured by this financial test by this [insert: "operator" and/or "guarantor"]:

[List for each facility: the name and address of the facility where tanks assured by this financial test are located, either the registration identification number assigned by the Department or the Oil Discharge Contingency Plan facility identification number, and whether tanks are assured by this financial test. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test.

List for each pipeline: the home office address and the names of the cities and counties in the Commonwealth where the pipeline is located.]

This [insert: "operator " or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on the financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of 9 VAC 25-640-70 B are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of 9 VAC 25-640-70 C are being used to demonstrate compliance with the financial test requirements.]

ALTERNATIVE I

1. Amount of AST annual aggregate coverage being assured by a financial test, and/or guarantee \$ _____
2. Amount of pipeline annual aggregate coverage covered by a financial test, and/or guarantee \$ _____
3. Sum of lines 1 and 2 \$ _____
4. Total tangible assets \$ _____

5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line or add that amount to line 6]
\$ _____

6. Tangible net worth [subtract line 5 from line 4]
\$ _____

Yes No

7. Is line 6 at least equal to line 3 above? _____

8. Have financial statements for the latest financial reporting year been filed with the Securities and Exchange Commission? _____

9. Have financial statements for the latest financial reporting year been filed with the Energy Information Administration? _____

10. Have financial statements for the latest financial reporting year been filed with the Rural Electrification Administration? _____

11. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of at least equal to the amount of annual AST/pipeline aggregate coverage being assured? [Answer "Yes" only if both criteria have been met.]

12. If you did not answer Yes to one of lines 8 through 11, please attach a report from an independent certified public accountant certifying that there are no material differences between the data reported in lines 4 through 7 above and the financial statements for the latest financial reporting year.

ALTERNATIVE II

1. Amount of AST annual aggregate coverage being assured by a financial test, and/or guarantee
\$ _____

2. Amount of pipeline annual aggregate coverage covered by a financial test, and/or guarantee
\$ _____

3. Sum of lines 1 and 2 \$ _____

4. Total tangible assets \$ _____

5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line or add that amount to line 6]
\$ _____

6. Tangible net worth [subtract line 5 from line 4]
\$ _____

7. Total assets in the U.S. [required only if less than 90 percent of assets are located in the U.S.]
\$ _____

Yes No

8. Is line 6 at least equal to line 3 above? _____

9. Are at least 90 percent of assets located in the U.S.? [If "No," complete line 10.] _____

10. Is line 7 at least equal to line 3? _____

[Fill in either lines 11-14 or lines 15-17:]

11. Current assets \$ _____

12. Current liabilities \$ _____

13. Net working capital [subtract line 12 from line 11]
\$ _____

Yes No

14. Is line 13 at least equal to line 3? _____

15. Current bond rating of most recent bond issue

16. Name of rating service _____

17. Date of maturity of bond _____

18. Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, or the Rural Electrification Administration?

Yes No

[If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-17 above and the financial statements for the latest financial reporting year.]

[For Alternatives I and II, complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in Appendix I of 9 VAC 25-640-10 et seq. as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

APPENDIX II - GUARANTEE

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the state of [insert name of state], herein referred to as guarantor, to the State Water Control Board of the Commonwealth of Virginia and obligees, on behalf of [operator] of [business address].

Recitals.

(1) Guarantor meets or exceeds the financial test criteria of 9 VAC 25-640-70 B or C and D and agrees to comply with the requirements for guarantors as specified in 9 VAC 25-640-80.

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(2) Operator operates the following aboveground storage tank(s) and/or pipelines covered by this guarantee:

[List for each facility: the name and address of facility where tanks assured by this financial test are located, either the registration identification number assigned by the Department or the Oil Discharge Contingency Plan facility identification number, and whether tanks are assured by this guarantee. If more than one instrument is used to assure different tanks at any one facility, list each tank assured by this mechanism.]

List for each pipeline: the home office address and the names of the cities and counties in the Commonwealth where the pipeline is located.]

This guarantee satisfies the requirements of 9 VAC 25-640-10 et seq. for assuring funding for taking containment and clean up measures necessitated by a discharge of oil; [if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified aboveground storage tank(s) and/or pipelines in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) *[Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the operator); "On behalf of our affiliate" (if guarantor is a related firm of the operator); or*

"Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with operator)][operator], guarantor guarantees to the State Water Control Board that:

In the event that operator fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this guarantee and the State Water Control Board has determined or suspects that a discharge has occurred at an aboveground storage tank and/or pipeline covered by this guarantee, the guarantor, upon instructions from the State Water Control Board, shall fund a standby trust fund in accordance with the provisions of 9 VAC 25-640-180, in an amount not to exceed the coverage limits specified above.

In the event that the State Water Control Board determines that operator has failed to perform containment and clean up for discharges arising out of the operation of the above-identified tank(s) and/or pipelines in accordance with 9 VAC 25-91-10 et seq., the guarantor upon written instructions from the State Water Control Board shall fund a standby trust in accordance with the provisions of 9 VAC 25-640-180, in an amount not to exceed the coverage limits specified above.

(4) *Guarantor agrees that if, at the end of any financial reporting year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of 9 VAC 25-640-70 B or C and D, guarantor shall send within 120 days of such failure, by certified mail, notice to operator. The guarantee will terminate 120 days from the date of receipt of the notice by operator, as evidenced by the return receipt.*

(5) *Guarantor agrees to notify operator by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the guarantor as debtor, within 10 days after commencement of the proceeding.*

(6) *Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of operator pursuant to 9 VAC 25-91-10 et seq. or 9 VAC 25-640-10 et seq.*

(7) *Guarantor agrees to remain bound under this guarantee for so long as operator shall comply with the applicable financial responsibility requirements of 9 VAC 25-640-10 et seq. for the above-identified tank(s) and/or pipelines, except that guarantor may cancel this guarantee by sending notice by certified mail to operator, such cancellation to become effective no earlier than 120 days after receipt of such notice by operator, as evidenced by the return receipt.*

(8) *The guarantor's obligation does not apply to any of the following:*

(a) *Any obligation of operator under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;*

(b) *Bodily injury to an employee of operator arising from, and in the course of, employment by operator;*

(c) *Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;*

(d) *Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by operator that is not the direct result of a discharge from an aboveground storage tank and/or pipeline;*

(e) *Bodily damage or property damage for which operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 9 VAC 25-640-10 et seq.*

(9) *Guarantor expressly waives notice of acceptance of this guarantee by the State Water Control Board or by operator.*

I hereby certify that the wording of this guarantee is identical to the wording specified in Appendix II of 9 VAC 25-640-10 et seq. as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

APPENDIX III - ENDORSEMENT

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Name: _____ [name of each covered location] _____

Address: _____ [address of each covered location] _____

Policy Number: _____

Period of Coverage: _____ [current policy period] _____

Name of [Insurer or Group Self Insurance Pool]:

Address of [Insurer or Group Self Insurance Pool]:

Name of Insured: _____

Address of Insured:

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following aboveground storage tanks and/or pipelines in connection with the insured's obligation to demonstrate financial responsibility under 9 VAC 25-640-10 et seq.:

[List for each facility: the name and address of the facility where tanks assured by this mechanism are located, either the registration identification number assigned by the Department or the Oil Discharge Contingency Plan facility identification number, and whether tanks are assured by this mechanism. If more than one instrument is used to assure different tanks at any one facility, list each tank assured by this mechanism.

List for each pipeline: the home office address and the names of the cities and counties in the Commonwealth where the pipeline is located.]

for containment and clean up of a discharge of oil in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; [if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the aboveground storage tank(s) and/or pipelines identified above.

The limits of liability are [insert the dollar amount of the containment and clean up "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different aboveground storage tanks,

pipelines or locations, indicate the amount of coverage for each type of coverage and/or for each aboveground storage tank, pipeline or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections (a) through (d) for occurrence policies and (a) through (e) for claims-made policies of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Pool"] of its obligations under the policy to which this endorsement is attached.

b. The ["Insurer" or "Pool"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of containment and clean up, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Pool"].

This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 9 VAC 25-640-70 through -120.

c. Whenever requested by the State Water Control Board, the ["Insurer" or "Pool"] agrees to furnish to State Water Control Board a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Pool"], except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 15 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Pool"] within six months of the effective date of cancellation or nonrenewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this endorsement is in no respect less favorable than the coverage specified in

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Appendix III of 9 VAC 25-640-10 et seq. and has been so certified by the State Corporation Commission of the Commonwealth of Virginia. I further certify that the ["Insurer" or "Pool"] is ["licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in the Commonwealth of Virginia"].

[Signature of authorized representative of Insurer or Group Self Insurance Pool] [Name of person signing]

[Title of person signing], Authorized

Representative of [name of Insurer or Group Self Insurance Pool]

[Address of Representative]

APPENDIX IV - CERTIFICATE OF INSURANCE

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Name: _____ [name of each covered location] _____

Address: _____ [address of each covered location] _____

Policy Number: _____

Endorsement (if applicable): _____

Period of Coverage: _____ [current policy period] _____

Name of [Insurer or Group Self Insurance Pool]:

Address of [Insurer or Group Self Insurance Pool]:

Name of Insured: _____

Address of Insured: _____

Certification:

1. [Name of Insurer or Group Self Insurance Pool], [the "Insurer" or "Pool"], as identified above, hereby certifies that it has issued liability insurance covering the following aboveground storage tank(s) and/or pipelines in connection with the insured's obligation to demonstrate financial responsibility under 9 VAC 25-640-10 et seq.:

[List for each facility: the name and address of the facility where tanks assured by this mechanism are located, either the registration identification number assigned by the Department or the Oil Discharge Contingency Plan facility identification number, and whether tanks are assured by this mechanism. If more than one instrument is used to assure different tanks at any one facility, list each tank assured by this mechanism.

List for each pipeline: the home office address and the names of the cities and counties in the Commonwealth where the pipeline is located.]

for containment and clean up of discharges of oil; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; [if coverage is different for different tanks, pipelines or locations, indicate the type of coverage applicable to each tank, pipeline or location] arising from operating the aboveground storage tank(s) and/or pipelines identified above.

The limits of liability are [insert the dollar amount of the containment and clean up "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different aboveground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each aboveground storage tank, pipeline or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The ["Insurer" or "Pool"] further certifies the following with respect to the insurance described in Paragraph 1:

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Pool"] of its obligations under the policy to which this certificate applies.

b. The ["Insurer" or "Pool"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of containment and clean up with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Pool"].

This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 9 VAC 25-640-70 through 9 VAC 25-640-120.

c. Whenever requested by the State Water Control Board, the ["Insurer" or "Pool"] agrees to furnish to the State Water Control Board a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Pool"], except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 15 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies]

e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Pool"] within six months of the effective date of cancellation

or nonrenewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.

I hereby certify that the wording of this instrument is identical to the wording in Appendix IV of 9 VAC 25-640-10 et seq. and that the ["Insurer" or "Pool"] is ["licensed to transact the business of insurance, or eligible to provide insurance as an excess or approved surplus lines insurer, in the Commonwealth of Virginia"].

[Signature of authorized representative of Insurer]

[Type name] [Title], Authorized Representative of [name of Insurer or Group Self Insurance Pool]

[Address of Representative]

APPENDIX V - PERFORMANCE BOND

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Date bond executed: _____

Period of coverage: _____

Principal: [legal name and address of operator]

Type of organization: [insert "individual" "joint venture," "partnership," "corporation," or appropriate identification of type of organization] _____

State of incorporation (if applicable): _____

Surety(ies): [name(s) and business address(es)] _____

Scope of Coverage:

[List for each facility: the name and address of the facility where tanks assured by this mechanism are located, either the registration identification number assigned by the Department or the Oil Discharge Contingency Plan facility identification number, and whether tanks are assured by this mechanism. If more than one instrument is used to assure different tanks at any one facility, list each tank assured by this mechanism. For pipelines, list the home office address and the names of the cities and counties in the Commonwealth where the pipeline is located.

List the coverage guaranteed by the bond: containment and clean up of oil from a discharge arising from operating the aboveground storage tank and/or pipeline.]

Penal sums of bond:

Containment and Clean up (per discharge) \$ _____

Annual Aggregate \$ _____

Surety's bond number: _____

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the State Water Control Board of the Commonwealth of Virginia, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under § 62.1-44.34:16 of the Code of Virginia and under 9 VAC 25-640-10 et seq. to provide financial assurance for containment and clean up necessitated by discharges of oil; [if coverage is different for different tanks or locations or pipelines, indicate the type of coverage applicable to each tank or location or pipeline] arising from operating the aboveground storage tanks and/or pipelines identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully contain and clean up, in accordance with the State Water Control Board's instructions for containment and clean up of discharges of oil arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in 9 VAC 25-640-10 et seq., within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

- (a) Any obligation of operator under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
(b) Bodily injury to an employee of operator arising from, and in the course of, employment by operator;
(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by operator that is not the direct result of a discharge from an aboveground storage tank and/or pipeline;
(e) Bodily injury or property damage for which operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 9 VAC 25-640-10 et seq.

Final Regulations

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the State Water Control Board that the Principal has failed to contain and clean up in accordance with 9 VAC 25-91-10 et seq. and the State Water Control Board's instructions, the Surety(ies) shall perform containment and clean up in accordance with 9 VAC 25-91-10 et seq. and the board's instructions, or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the State Water Control Board under 9 VAC 25-640-180.

Upon notification by the State Water Control Board that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the State Water Control Board has determined or suspects that a discharge has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the State Water Control Board under 9 VAC 25-640-180.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in Appendix V of 9 VAC 25-640-10 et seq. as such regulations were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

CORPORATE SURETY(IES)

[Name and address]

State of Incorporation:

Liability limit: \$ _____

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$ _____

APPENDIX VI - IRREVOCABLE STANDBY LETTER OF CREDIT

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

[Name and address of issuing institution]

[Name and address of the Director]

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. _____ in your favor, at the request and for the account of [operator name] of [address] up to the aggregate amount of [in words] U.S. dollars (\$[insert dollar amount]), available upon presentation of

(1) your sight draft, bearing reference to this letter of credit, No. _____ and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of § 62.1- 44.34:16 of the Code of Virginia."

This letter of credit may be drawn on to cover containment and clean up necessitated by discharges of oil arising from operating the aboveground storage tank(s) and pipelines identified below in the amount of [in words] \$ [insert dollar amount] per occurrence and [in words] \$ [insert dollar amount] annual aggregate:

[List for each facility: the name and address of the facility where tanks assured by this mechanism are located, either the registration identification number assigned by the Department or the Oil Discharge Contingency Plan facility identification number, and whether tanks are assured by this mechanism. If more than one instrument is used to assure different tanks at any one facility, list each tank covered by this instrument.]

For pipelines, list: the home office address and the names of the cities and counties in the Commonwealth where the pipeline is located.]

The letter of credit may not be drawn on to cover any of the following:

(a) Any obligation of operator under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of operator arising from, and in the course of, employment by operator;

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by an operator that is not the direct result of a discharge of oil from an aboveground storage tank and/or pipeline;

(e) Bodily injury or property damage for which an operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 9 VAC 25-640-50.

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify operator by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that operator is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by operator, as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of operator in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in Appendix VI of 9 VAC 25-640-10 et seq. as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

APPENDIX VII - TRUST AGREEMENT

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the operator], a [name of state] [insert "corporation," "partnership," "association," "proprietorship," or appropriate identification of type of entity], the "Grantor," and [name of corporate trustee], [insert "Incorporated in the state of _____" or "a national bank"], the "Trustee."

Whereas, the State Water Control Board of the Commonwealth of Virginia has established certain regulations applicable to the Grantor, requiring that an operator of an aboveground storage tank and/or pipeline shall provide

assurance that funds will be available when needed for containment and clean up of a discharge of oil arising from the operation of the aboveground storage tank and/or pipeline. The attached Schedule A contains for each facility the name and address of the facility where tanks covered by this [trust agreement or standby trust agreement] are located, either the registration identification number assigned by the Department or the Oil Discharge Contingency Plan facility identification number and for pipelines the home office address and names of the cities and counties in the Commonwealth where the pipeline is located;

Whereas, the Grantor has elected to establish [insert either "a guarantee," "surety bond," or "letter of credit"] to provide all or part of such financial assurance for the aboveground storage tanks and/or pipelines identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.);

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of the Financial Assurance Mechanism.

This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)].

Section 3. Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the State Water Control Board of the Commonwealth of Virginia. The Grantor and the Trustee intend that no third party have access to the Fund. [The Fund is established initially as a standby to receive payments and shall not consist of any property.] Payments made by the provider of financial assurance pursuant to the State Water Control Board's instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the State Water Control Board.

Final Regulations

Section 4. Payment for Containment and Clean up.

The Trustee shall make payments from the Fund as the State Water Control Board shall direct, in writing, to provide for the payment of the costs of containment and clean up of a discharge of oil arising from operating the tanks and/or pipelines covered by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

- (a) Any obligation of operator under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of operator arising from, and in the course of, employment by operator;
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by operator that is not the direct result of a discharge from an oil aboveground storage tank or pipeline;
- (e) Bodily injury or property damage for which operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 9 VAC 25-640-50.

The Trustee shall reimburse the Grantor, or other persons as specified by the State Water Control Board, from the Fund for containment and clean up in such amounts as the State Water Control Board shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the State Water Control Board specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund.

Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

Section 6. Trustee Management.

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(a) Securities or other obligations of the Grantor, or any other operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. § 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment.

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. § 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee.

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or

arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel.

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the

Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee.

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests and instructions by the State Water Control Board to the Trustee shall be in writing, signed by the Executive Director of the Department of Environmental Quality, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the State Water Control Board hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the State Water Control Board, except as provided for herein.

Section 14. Amendment of Agreement.

This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and the State Water Control Board if the Grantor ceases to exist.

Section 15. Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the State Water Control Board, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 16. Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the State Water Control Board issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law.

This Agreement shall be administered, construed, and enforced according to the laws of the Commonwealth of Virginia, or the Comptroller of the Currency in the case of National Association banks.

Final Regulations

Section 18. Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in Appendix VII of 9 VAC 25-640-10 et seq. as such regulations were constituted on the date written above.

[Signature of Grantor]

[Name of the Grantor]

[Title]

Attest:

[Signature of Trustee]

[Name of the Trustee]

[Title]

[Seal]

[Signature of Witness]

[Name of Witness]

[Title]

[Seal]

APPENDIX VIII - CERTIFICATE OF ACKNOWLEDGMENT

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

State of _____

County of _____

On this [date], before me personally came [operator's representative] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

[Name of Notary Public]

My Commission expires: _____.

APPENDIX IX - CERTIFICATION OF FINANCIAL RESPONSIBILITY

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Operator hereby certifies that it is in compliance with the requirements of 9 VAC 25-640-10 et seq.

The financial assurance mechanism[s] used to demonstrate financial responsibility under 9 VAC 25-640-10 et seq. is [are] as follows:

Indicate type of Mechanism:

- ___ Letter from Chief Financial Officer
- ___ Guarantee
- ___ Insurance Endorsement or Certificate
- ___ Letter of Credit
- ___ Surety Bond
- ___ Trust Fund

Name of Issuer: _____

Mechanism Number (if applicable): _____

Total number of gallons of aboveground storage capacity for which demonstration is provided: _____

Amount of coverage for mechanism:

\$ _____ containment and clean up per occurrence and annual aggregate

Effective period of coverage: _____ to _____

Do(es) mechanism(s) cover(s): containment and clean up caused by either sudden accidental discharges or nonsudden accidental discharges or accidental discharges?

___ Yes ___ No

If "No," specify in the following space the items the mechanism covers:

[Signature of operator]

[Name of operator]

[Title] [Date]

[Signature of notary]

[Name of notary] [Date] My Commission expires: _____.

VA.R. Doc. No. R00-233; Filed December 28, 2001, 2:45 p.m.



TITLE 19. PUBLIC SAFETY

DEPARTMENT OF STATE POLICE

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4 (c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Department of State Police will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 19 VAC 30-20-10 et seq. Motor Carrier Safety Regulations (amending 19 VAC 30-20-80).

Statutory Authority: § 52-8.4 of the Code of Virginia.

Effective Date: March 14, 2001.

Summary:

Amendment 11 adopts and incorporates by reference changes made by the U. S. Department of Transportation, Federal Motor Carrier Safety Administration, to Title 49, Code of Federal Regulations (CFR), Parts 390 through 397 promulgated and in effect as of January 2, 2001. These include: (i) amending 49 CFR Part 390 to eliminate the marking regulations of the former Interstate Commerce Commission requiring motor carriers to file an updated Motor Carrier Identification Report (MCS-150) every 24 months. Motor carriers will be allowed two years to comply with the requirements to affix the USDOT number to both sides of their commercial motor vehicles and five years to comply with the additional requirements to display the legal name or a single trade name on the commercial motor vehicles currently in their fleet; (ii) amending 49 CFR Part 391 to update and simplify the medical examination form and instructions for performing and recording physical examinations found in 49 CFR 391.43. These would be revised only to the extent necessary to ensure that instructions to medical examiners are understandable and consistent with the information provided on the proposed form and guidance materials established by the FMCSA for medical examiners; (iii) amending 49 CFR Part 391 to make technical amendments to update the rules concerning qualifications of drivers who have loss or impairment of limbs by changing the designated official who authorizes and signs the skill performance evaluation (SPE) certificate for such drivers, and remove the reference to "waiver"; (iv) amending 49 CFR Part 393 to delay the termination date of the rule allowing the overloading of certain tires. This will enable motor carriers transporting manufactured homes to continue loading tires up to 18% above the load rating until December 31, 2001; and (v) amending 19 VAC 30-20-80 to remove the Federal Highway Administration and replace it with the new Federal Motor Carrier Safety Administration.

Agency Contact: Copies of the regulation may be obtained from Lieutenant Herbert B. Bridges, Department of State Police, Motor Carrier Safety, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 378-3489. There is a charge of \$5 for copies.

19 VAC 30-20-80. Compliance.

Every person and commercial motor vehicle subject to the Motor Carrier Safety Regulations operating in interstate or intrastate commerce within or through the Commonwealth of Virginia shall comply with the Federal Motor Carrier Safety Regulations promulgated by the United States Department of Transportation, Federal Highway Motor Carrier Safety Administration, with amendments promulgated and in effect as of January 2, 2000 2001, pursuant to the United States Motor Carrier Safety Act found in 49 CFR Parts 390 through 397, which are incorporated in these regulations by reference, with certain exceptions, as set forth below.

VA.R. Doc. No. R01-79; Filed January 8, 2001, 2:45 p.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Title of Regulation: 22 VAC 40-35-10 et seq. Virginia Independence Program (amending 22 VAC 40-35-10 and 22 VAC 40-35-90).

Statutory Authority: §§ 63.1-25 and 63.1-133.46 of the Code of Virginia.

Effective Date: February 28, 2001.

Summary:

The amendments provide for qualifying participants of VIEW (Virginia Initiative for Employment not Welfare) to receive transitional employment and training services after they have come to the end of their 24 months' assistance or for participants whose cases were not in sanction at case closure. The amendments clarify qualifying criteria, time frames and the services to be provided.

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 Chris Raines, Department of Social Services, 730 East Broad Street, 7th Floor, Richmond, VA 23219, telephone (804) 692-1323.

22 VAC 40-35-10. Definitions.

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

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"Actively seeking employment" means satisfactorily participating in any assigned job-seeking activity while in the program.

"Adult portion" means the TANF amount paid on behalf of the parent or other caretaker-relative with whom the TANF child resides, including a minor parent. This amount is the difference in the standard of assistance for a family size which includes the adult and the standard of assistance for a family size of one less person.

"AFDC-Foster Care" means a federal program authorized under § 472 of the Social Security Act (42 USC § 672) and administered by the Virginia Department of Social Services, which provides financial assistance on behalf of qualifying children.

"Agreement" means the written individualized agreement of personal responsibility required by § 63.1-133.49 of the Code of Virginia.

"Allotment" means the monthly food stamp benefit given to a household.

"Applicant" means a person who has applied for TANF or TANF-UP benefits and the disposition of the application has not yet been determined.

"Assistance unit" means those persons who have been determined categorically and financially eligible to receive assistance.

"Caretaker-relative" means the natural or adoptive parent or other relative, as specified in 45 CFR 233.90(c)(1)(v), who is responsible for supervision and care of the needy child.

"Case management" means the process of assessing, coordinating, monitoring, delivering or brokering activities and services necessary for VIEW participants to enter employment or employment-related activities as quickly as possible.

"Case management services" means services which include, but are not limited to, job development and job placement, community work experience, education, skills training, and support services.

"Case manager" means the worker designated by the local department of social services, a private-sector contractor or a private community-based organization including nonprofit entities, churches, or voluntary organizations that provide case management services.

"Child day care" means those services for which a participant is eligible pursuant to child day care services policy.

"Child day care services/program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of children under the age of 13 (or children up to 18 years of age if they are physically or mentally incapable of caring for themselves or subject to court supervision) for less than a 24-hour period.

"Community work experience" means work for benefits in a public or private organization that serves a community/public function.

"Department" means the Virginia Department of Social Services.

"Diversionary cash assistance" means a one-time lump sum payment to an individual or third-party vendor to prevent long-term receipt of TANF.

"Division of Child Support Enforcement" or "DCSE" means that division of the Virginia Department of Social Services which is responsible under Title IV-D of the Social Security Act (42 USC §§ 651-669) to locate noncustodial parents, establish paternity, establish child support and health care orders, enforce payment of delinquent support, and collect and distribute support payments.

"Employer tax credit" means a tax credit available to an employer pursuant to § 58.1-439.9 of the Code of Virginia.

"Family" means a TANF assistance unit.

"Food Stamp Program" means the program administered through the Virginia Department of Social Services through which a household can receive food stamps with which to purchase food products.

"Full Employment Program" or "FEP" means subsidized, training-oriented, employment which replaces the TANF and food stamp benefits of a participant. This component of VIEW is designed to train the recipient for a specific job, increase his self-sufficiency and improve his competitiveness in the labor market.

"Full-time unsubsidized employment" means employment which is considered by the employer to be full time, but in no case less than 30 hours per week, and for which no JOBS, VIEW, TANF, or food stamp funds are used to pay the individual's salary.

"Grant" means the monthly TANF benefit payment.

"Hardship exceptions" means prescribed reasons which, if applicable, would allow an extension of receipt of TANF benefits.

"He" means a male or female, as applicable.

"Hiring authority" means an individual with the authority to hire employees for a business.

"In loco parentis" means an adult relative or other adult who is acting in place of a parent.

"Incapacitated" means a medically verified condition which renders an individual unable to work.

"Job Opportunities and Basic Skills Training Program (JOBS)" means the program authorized by Title IV-F of the Social Security Act (42 USC §§ 681-687). This program provides education, training and work experience to enhance employment opportunities for TANF recipients who are not exempt from participation.

"Job finding" means identification of available jobs.

"*Job matching*" means matching a participant's minimum skills or prior work experience to available job openings.

"*Job placement*" means placing a participant in an unsubsidized or subsidized job. Job placement is the result of job finding and job matching.

"*Job search*" means a structured, time-limited period in which the participant is required to search for employment. To complete the job search, the participant must search and apply for a set number of jobs.

"*Job skills training*" means training in technical job skills or required knowledge in a specific occupational area in the labor market.

"*Local agency*" or "*local department*" means any one of the local social services or welfare agencies throughout the Commonwealth which administers the VIP program.

"*Minor parent*" means any parent under 18 years of age.

"*On-the-job training*" means training which is provided by an employer during routine performance of a job.

"*Parent*" means a mother or father, married or unmarried, natural, or adoptive following entry of an interlocutory order. The parent may be a minor parent.

"*Participant*" means a TANF or TANF-UP recipient who is participating in the VIEW program.

"*Participating family*" means an assistance unit including a parent who participates in the Virginia Initiative for Employment not Welfare (VIEW) Program.

"*Part-time unsubsidized employment*" means employment of at least eight hours but less than 30 hours per week and for which no JOBS, VIEW, TANF, or food stamp funds are used to pay the individual's salary.

"*Post-secondary education*" means formal instruction at an institution of higher education or vocational school leading to the attainment of a certificate, an associate degree, or a baccalaureate degree.

"*Qualified business employer*" means an employer whose business employed not more than 100 employees at the time that the employer first hired a qualified employee.

"*Qualified employee*" means an employee who is a Virginia resident and is a recipient of Temporary Assistance for Needy Families (TANF).

"*Qualified employer*" means an employer who may participate in the Virginia Targeted Jobs Grant Program by virtue of meeting all of the program criteria for employers.

"*Qualified participant*" means a Virginia Initiative for Employment not Welfare participant who meets all of the program criteria and may be hired by a qualified employer.

"*Recipient*" means an individual who is presently receiving a TANF assistance payment or whose eligibility exists even though the assistance payment is zero.

"*Recipient family*" means an assistance unit in which the caretaker-relative is a parent of the eligible child and the parent's needs may or may not be included on the grant.

"*Relative*" means spouse, child, grandchild, parent, or sibling of a qualified employer.

"*Sanction*" means to reduce or suspend a participant's TANF grant or food stamp allotment or both, where applicable, for noncompliance with these regulations or the statute.

"*School*" means (i) any public school from kindergarten through grade 12 operated under the authority of any locality within this Commonwealth or (ii) any private or parochial school that offers instruction at any level or grade from kindergarten through grade 12.

"*Support services*" means services such as child care or transportation provided to program participants to enable the participant to work or to receive training or education which are intended to lead to employment.

"*Temporary Assistance for Needy Families*" or "*TANF*" means the program authorized in § 406 of the Social Security Act (42 USC § 606) and administered by the Virginia Department of Social Services, through which a relative can receive monthly cash assistance for the support of his eligible children.

"*Temporary Assistance for Needy Families-Unemployed Parent*" or "*TANF-UP*" means the program authorized in § 63.1-105 of the Code of Virginia and administered by the Virginia Department of Social Services, which provides aid to two-parent families with dependent children who are in financial need.

"*Time limitations*" means a specified period of time, under the statute, to receive TANF.

"*Transitional support services*" means child care, transportation or , medical assistance or employment and training services provided to working participants whose TANF has been terminated either voluntarily, although still eligible for TANF, or involuntarily, due to time limitations.

"*Truant*" means a child who (i) fails to report to school for three consecutive school days, or for a total of five scheduled school days per month or an aggregate of seven scheduled school days per school calendar quarter, whichever occurs sooner, and no indication has been received by school personnel that the child's parent or guardian is aware of the child's absence, and a reasonable effort by school personnel to notify the parent or guardian has failed; or (ii) is not enrolled in school at any time during the month.

"*Underemployed*" means working at a job for less than the federal hourly minimum wage.

"*Unsubsidized employment*" means employment in which no government funds are used to subsidize directly the wages earned by a participant.

"*Virginia Independence Program*" or "*VIP*" means the program in the Commonwealth of Virginia which is made up of the TANF Program and the Virginia Initiative for Employment not Welfare.

"*Virginia Initiative for Employment not Welfare*" or "*VIEW*" means the Job Opportunities and Basic Skills Training Program as implemented in the Commonwealth.

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"Virginia Targeted Jobs Grant" or "VTJG" means a grant paid to an employer in accordance with § 63.1-25.3 of the Code of Virginia.

"Work activity" means participation in unsubsidized employment, FEP, part-time work, community work experience, or on-the-job training.

22 VAC 40-35-90. Services.

A. The participant shall have the primary responsibility to arrange transportation to be employed or participate in activities required by the Agreement of Personal Responsibility. Transportation shall be provided only when the participant is unable to make the necessary arrangements.

B. The local department shall provide transitional medical assistance in accordance with the Department of Medical Assistance Services State Plan and regulations.

C. The local departments may provide those services itemized in § 63.1-133.46 C of the Code of Virginia.

D. *Transitional employment and training services shall be through the VIEW program to certain individuals.*

1. *Transitional employment and training services can be provided if the following criteria are met:*

a. *The individual is already employed or the provisions of the employment and training services would allow the individual to become reemployed within 60 days.*

b. *The activities are designed to maintain employment income, increase employment income or prevent the loss of employment income by the participant.*

c. *The individual had been enrolled in the VIEW program.*

d. *The TANF case of which the individual was a member is closed.*

e. *The case had not been in a VIEW sanction at the time of closure.*

f. *The individual has not completed an associate degree or four-year degree.*

2. *The individual can only receive up to 12 months of transitional employment and training services available through the VIEW program.*

3. *The individual shall enroll in an activity which can be completed within the 12-month time period.*

4. *An individual can only be enrolled in an activity if approved by a VIEW employment services worker.*

5. *Individuals may be enrolled only in education and training activities for which there are jobs in the community or jobs are projected to become available in the community.*

6. *Continued enrollment in education and skills training activities is dependent upon meeting the satisfactory progress requirements for participation in these activities.*

a. *For education below the post-secondary level (Adult Basic Education and General Equivalency Diploma),*

the individual must obtain one grade level increase every three months.

b. *For certificate and job skills training activities, the participant must meet the satisfactory progress requirements of the institution providing the training.*

7. *Participants shall not be assigned to FEP (Full Employment Program).*

VA.R. Doc. No. R00-61; Filed January 10, 2001, 11:44 a.m.

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EMERGENCY REGULATIONS

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: 12 VAC 30-90-10 et seq. **Methods and Standards for Establishing Payment Rates for Long-Term Care (Nursing Home Payment System Resource Utilization Groups) (adding 12 VAC 30-90-19).**

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

Effective Dates: January 8, 2001, through January 7, 2002.

Preamble:

REQUEST: The Governor is hereby requested to approve this agency's adoption of the emergency regulation entitled Resource Utilization Groups (RUGs) for Nursing Facilities. This regulation will provide a new payment methodology for nursing facilities based on resident intensity of services.

RECOMMENDATION: Recommend approval of the Department's request to take an emergency adoption action regarding Resource Utilization Groups (RUGs) for Nursing Facilities. The Department intends to initiate the public notice and comment requirements contained in the Code of Virginia § 9-6.14:7.1.

/s/ Dennis G. Smith, Director
Date: December 14, 2000

/s/ James S. Gilmore, III
Governor
Date: January 8, 2001

DISCUSSION

BACKGROUND: The regulations affected by this action are Nursing Facility Resource Utilization Groups (RUGs) Patient Intensity Methodology.

Chapter 1073 of the 2000 Acts of Assembly, Item 319 section MM provided that the Department adopt regulations providing for the implementation of a new reimbursement system based on a Resource Utilization Groups (RUGS) methodology to reflect resident intensity. The Department has been working with provider representatives to develop and plan the implementation of such a system. As a result of these efforts and at the request of the provider representatives, the Department is recommending that implementation of the new RUGS methodology be conducted in two phases.

Phase I, covered by these emergency regulations, will be conducted over the time period of January 1, 2001, through December 31, 2001. This phase will be used to provide information to providers regarding what payments would be under the RUGs methodology in comparison to the payments under the current payment methodologies. During Phase I, nursing facilities will continue to receive payment of direct operating rates based on the current PIRS methodology and the Specialized Care methodology. Phase II, to be covered by the public notice and comment process contained in Article 2 of the APA, will be implemented on January 1, 2002. Phase

II will include the implementation of actual payment rates for the direct operating component using the RUGs methodology.

The key provisions of this emergency regulation are related to information and reports that the Department must provide to nursing facilities during Phase I of the implementation of the RUGs system. The information will include the reporting of the Minimum Data Set assessment instrument data elements; the results of the use of the RUG-III 34-group, Version 5.12, Index Maximization patient classification system; and the results of the use of case-mix index scores based on RUGs to reflect resident intensity in the direct operating component of the payment rate. This emergency regulation will allow providers a time period of 12 months to analyze their case-mix data and the impact that these data will have on their direct operating payment rate. The Phase I time period will provide time for any corrections or adjustments that providers need to ensure that the implementation of Phase II, with actual payment based on the RUGs methodology, will be conducted with the least disruption possible and with the full knowledge of the providers.

Given the mandate of the General Assembly, the Department had two options for the implementation of a RUGs methodology: to implement payment under the new methodology on January 1, 2001, or to implement payment under the new methodology on a phase-in basis starting on January 1, 2001. The two options were discussed with provider representatives during meetings with the Department. The consensus opinion was that providers needed to have case-mix information, time to make adjustments, and knowledge of the payment they would receive compared to what they receive under the current methodology prior to actual payment based on the RUGs methodology. Therefore, the option of a phase-in implementation was selected and the option of implementing payment under the new methodology on January 1, 2001, was eliminated. The active participation and education of providers during the phase-in period is expected to avert any facility management or operational problems that could have resulted from limited knowledge.

This regulatory action will have no effect on consumers or recipients. Therefore, it will not have any negative effects on the institution of the family or family stability. It will not increase or decrease disposable family income or erode the marital commitment. It will not discourage economic self-sufficiency, self-pride, or the assumption of family responsibilities.

AUTHORITY TO ACT: The Code of Virginia (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services (BMAS) the authority to administer and amend the Plan for Medical Assistance. The Code of Virginia (1950) as amended, § 32.1-324, grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:4.1(C)(5), for an agency's adoption of emergency regulations subject to the Governor's prior approval.

Emergency Regulations

Subsequent to the emergency adoption action and filing with the Registrar of Regulations, this agency intends to initiate the public notice and comment process contained in Article 2 of the APA. Therefore, approval to file the required Notice of Intended Regulatory Action is also necessary and hereby being requested by this action.

Without an emergency regulation, these regulations cannot become effective until the publication and concurrent comment and review period requirements of the APA's Article 2 are met. Therefore, an emergency regulation is needed to meet the January 1, 2001, effective date established by the General Assembly.

NEED FOR EMERGENCY ACTION: The Code § 9-6.14:4.1(C)(5) provides for regulations which an agency finds are necessitated by an emergency situation. To enable the Director, in lieu of the Board of Medical Assistance Services, to comply with the cited legislative mandate, he must adopt an emergency regulation for RUGs. This issue qualifies as an emergency regulation as provided for in § 9-6.14:4.1(C)(5)(ii), because Virginia statutory law or the appropriation act or federal law requires this regulation to be effective within 280 days from the enactment of the law or regulation. As such, this regulation may be adopted without public comment with the prior approval of the Governor.

Since this emergency regulation will be effective for no more than 12 months and the Director wishes to continue regulating the subject entities, the Department is initiating the Administrative Process Act Article 2 procedures.

FISCAL/BUDGETARY IMPACT: This regulatory action will provide a transitional time period of 12 months for Phase I implementation of a new prospective payment system for nursing facilities participating in the Virginia Medical Assistance Program. The purpose of Phase I is to provide information to providers of payments to be anticipated under the RUGs methodology in comparison to the payments under the current methodologies. This regulatory action will have no budgetary or fiscal impact on providers. During Phase I, nursing facilities will continue to receive payment of direct operating rates based on the current PIRS methodology and the Specialized Care methodology. This regulatory action will have no fiscal or budgetary impact on consumers or recipients, on providers, or on the Department. There are no localities that are uniquely affected by these regulations as they apply statewide.

RECOMMENDATION: Recommend approval of this request to adopt this emergency regulation to become effective on January 1, 2001. From its effective date, this regulation is to remain in force for one full year or until superseded by final permanent regulations, promulgated through the APA. Without an effective emergency regulation, the Department lacks the authority to simultaneously operate both the PIRS and RUGs nursing facility methodologies.

APPROVAL SOUGHT FOR 12 VAC 30-90-19: Approval of the Governor is sought for an emergency modification of the Medicaid State Plan in accordance with the Code of Virginia § 9-6.14:4.1(C)(5) to adopt the following regulation:

Agency Contact: Victoria Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad

Street, Suite 1300, Richmond, Virginia 23219, telephone (804) 786-7959 or FAX (804) 786-1680.

12 VAC 30-90-19. Implementation of RUGS payment rates.

Effective January 1, 2001, the Department shall implement Phase I of a new prospective payment system for nursing facilities participating in the Virginia Medical Assistance Program. The new payment system shall be based on a Resource Utilization Groups (RUGs) methodology to reflect resident intensity. Phase I of the implementation will be conducted from January 1, 2001, through December 31, 2001. Phase I will include modeling of the RUGs case mix and payment methodology and will be used to inform nursing facilities of the payments under the RUGs methodology in comparison to the payments under the current payment methodologies. During Phase I, nursing facilities will continue to receive payment of direct operating rates based on the current PIRS methodology and the Specialized Care methodology.

A. The Department shall base its nursing facility direct care payment rate calculations on the RUG-III 34-group, Version 5.12, Index Maximization patient classification system. The Health Care Financing Administration (HCFA) standard CMI (case-mix index) Set B01 will be used to assign the CMI value to each of the 34 RUG groups.

1. The average case-mix index for each nursing facility shall be calculated for each nursing facility based upon the Health Care Financing Administration's (HCFA) required assessment data reported on the Resident Assessment Instrument's (RAI) Minimum Data Set (MDS).

2. The average case-mix index for each nursing facility shall be calculated by computing the simple average of case-mix indexes for all residents residing in the nursing facility on the last day of March and on the last day of September.

B. The new reimbursement reporting system shall not be used to determine actual payments made for Medicaid nursing home services from January 1, 2001, through December 31, 2001. During this time period reimbursement shall continue to be based on the current PIRS nursing facility reimbursement methodology and the current RUG-III 44-group Specialized Care reimbursement methodology.

C. Regulations shall be adopted effective January 1, 2002, providing for completion of the transition to the RUGS methodology.

VA.R. Doc. No. R01-80; Filed January 8, 2001, 4:19 p.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

Title of Regulation: 18 VAC 110-20-10 et seq. Regulations Governing the Practice of Pharmacy (amending 18 VAC 110-20-20).

Statutory Authority: §§ 54.1-2400 and 54.1-3307.2 of the Code of Virginia.

Effective Dates: January 10, 2001, through January 9, 2002.

Preamble:

Amendments to the regulation are required in order to comply with an enactment clause in Chapter 876 of the 2000 Acts of the Assembly requiring the board to promulgate regulations within 280 days of enactment for innovative programs (pilot projects) in pharmacy for which some waiver of law or regulation would be necessary.

18 VAC 110-20-20 is being amended to comply with a statutory mandate for the board to provide regulations for the implementation of pilot projects or innovative programs in pharmacy that are not specifically authorized by the Code of Virginia or board regulations. The law requires any person who proposes to use an innovative process or procedure related to the dispensing of drugs or devices that would not be in compliance with law or regulation to apply to the Board of Pharmacy for approval. The law does not permit the board to expand the current scope of practice for pharmacists nor shall a pilot project be allowed to interfere with dispensing of drugs in accordance with instructions from prescribers.

Further, § 54.1-3307.2 of the Code of Virginia specifies the content of the application to include safety issues, potential benefit to the public, promotion of technical or scientific advances, compliance with prescriber instructions, potential for diversion, impact on costs, means of monitoring and providing quality assurance, and the reporting of outcomes to the board. The process for review and approval is through an informal conference committee that has the authority to make a case decision on each individual application and to set certain terms and conditions for approval of a pilot project. Approval is for a finite period of time, with requirements for review of outcomes and any additional information necessary to determine renewal of approval. The applicant has the right to appeal the decision of a committee before the board or a panel of the board in accordance with the Administrative Process Act. The law requires that the application be submitted on a form provided by the board to be accompanied by a fee to be determined.

Since the law is specific about the information and data to be submitted with an application and the approval process is a case decision on the merits and content of each application, the board determined that only the fee(s) needed to be set in regulation along with the

proposed application form. Fees set by regulation are modest and consistent with other fees charged to entities regulated under the board.

Through the informal conference process, the board will have the opportunity to review a proposed project, determine which provisions of law or regulation would need to be waived, evaluate its merits and safeguards, and set certain conditions for implementation and outcome in an order which would be signed by the board and the applicant. Requirements of law and regulation for approval of a pilot program or project are necessary and sufficient to address concerns about patient safety and the risks of drug diversion.

The above referenced emergency regulation is hereby approved in accordance with § 9-6.14:4.1 C 5 of the Code of Virginia.

/s/ James S. Gilmore, III
Governor

Date: January 9, 2001

Agency Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 West Broad Street, Richmond, VA 23230, telephone (804) 662-9911 or e-mail erussell@dhp.state.va.us.

18 VAC 110-20-20. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Fee for initial pharmacist licensure.

1. The application fee for a pharmacist license shall be \$50.

2. The fees for taking all required examinations shall be paid directly to the examination service as specified by the board.

3. The application fee for a person whose license has been revoked or suspended indefinitely shall be \$300.

C. Renewal of pharmacist license.

1. The annual fee for renewal of a pharmacist license shall be \$50.

2. The annual fee for renewal of an inactive pharmacist license shall be \$35.

3. If a pharmacist fails to renew his license within the Commonwealth by the renewal date, he must pay the back renewal fee and a \$25 late fee within 60 days of expiration.

4. Failure to renew a pharmacist license within 60 days following expiration shall cause the license to lapse and shall require the submission of a reinstatement application, payment of all unpaid renewal fees, and a delinquent fee of \$50.

D. Other licenses or permits.

1. The following fees shall be required upon submission of a new facility application, change of ownership of an existing facility, or annual renewal:

Emergency Regulations

- a. Pharmacy permit \$200
- b. Permitted physician to dispense drugs \$200
- c. Nonrestricted manufacturing permit \$200
- d. Restricted manufacturing permit \$150
- e. Wholesale distributor license \$200
- f. Warehouser permit \$200
- g. Medical equipment supplier permit \$150
- h. Licensed humane society permit \$10

2. The following fees shall be required for facility changes:

- a. Application for a change of the pharmacist-in-charge \$25
- b. Application for a change of location or a remodeling which requires an inspection \$100

3. The following fees shall be required for late renewals or reinstatement.

- a. If a licensee fails to renew a required license or permit prior to the expiration date, a \$25 late fee shall be assessed.
- b. If a required license or permit is not renewed within 60 days after its expiration, the license or permit shall lapse, and continued practice or operation of business with a lapsed license or permit shall be illegal. Thereafter, reinstatement shall be at the discretion of the board upon submission of an application accompanied by all unpaid renewal fees and a delinquent fee of \$50.

E. Controlled substances registration.

- 1. The annual fee for a controlled substances registration as required by § 54.1-3422 of the Code of Virginia shall be \$20.
- 2. If a registration is not renewed within 60 days of the expiration date, the back renewal fee and a \$10 late fee shall be paid prior to renewal.
- 3. If a controlled substance registration has been allowed to lapse for more than 60 days, all back renewal fees and a \$25 delinquent fee must be paid before a current registration will be issued. Engaging in activities requiring a controlled substance registration without holding a current registration is illegal and may subject the registrant to disciplinary action by the board. Reinstatement of a lapsed registration is at the discretion of the board and may be granted by the executive director of the board upon completion of an application and payment of all fees.

F. Other fees.

- 1. A request for a duplicate wall certificate shall be accompanied by a fee of \$25.
- 2. The fee for a returned check shall be \$15.

3. The fee for board approval of an individual CE program is \$100.

G. Approval of new process or procedure in pharmacy.

1. The fee for filing an application for board review of a new process, procedure or pilot project in pharmacy pursuant to § 54.1-3407.2 of the Code of Virginia shall be \$250. The initial application shall specify each pharmacy location in which the pilot is to be implemented.

2. The fee for an inspection of a pilot process or procedure, if required by the informal conference committee, shall be \$150 per location.

3. If the board determines that a technical consultant is required in order to make a decision on approval, any consultant fee, not to exceed the actual cost, shall be paid by the applicant.

4. The fee for a change in the name of the pharmacist responsible for the pilot program shall be \$25.

5. Continued approval.

a. In the initial order granting approval, the informal conference committee shall also set an approval period with a schedule for submission of reports and outcome data. The frequency for submission of required reports shall not exceed four times per year.

b. The committee shall determine the appropriate fee for continued approval, which shall be based on the requirements for review and monitoring but which shall not exceed \$200 per approval period.

NOTICE: The forms used in administering 18 VAC 110-20-10 et seq., Regulations Governing the Practice of Pharmacy, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

FORMS

Application for Registration as a Pharmacy Intern (rev. 12/98).

Affidavit of Practical Experience, Pharmacy Intern (rev. 12/98).

Application for Licensure as a Pharmacist by Examination (rev. 12/98).

Application to Reactivate Pharmacist License (rev. 12/98).

Application for Approval of a Continuing Education Program (rev. 3/99).

Application for Approval of ACPE Pharmacy School Course(s) for Continuing Education Credit (eff. 3/99).

Application for License to Dispense Drugs (permitted physician) (rev. 11/98).

Application for a Pharmacy Permit (rev. 3/99).

Application for a Non-Resident Pharmacy Registration (rev. 12/98).

Application for a Permit as a Medical Equipment Supplier (rev. 3/99).

Application for a Permit as a Restricted Manufacturer (rev. 3/99).

Application for a Permit as a Non-Restricted Manufacturer (rev. 3/99).

Application for a Permit as a Warehouse (rev. 3/99).

Application for a License as a Wholesale Distributor (rev. 3/99).

Application for a Non-Resident Wholesale Distributor Registration (rev. 3/99).

Application for a Controlled Substances Registration Certificate (rev. 1/99).

Application for Controlled Substances Registration Certificate for Optometrists (eff. 12/98).

Renewal Notice and Application, C-47005 (rev. 7/97).

Renewal Notice and Application, C-47533 (rev. 7/97).

Renewal Notice and Application, C-48130 (rev. 7/97).

Application to Reinstate a Pharmacist License (rev. 3/99).

Application for a Permit as a Humane Society (rev. 3/99).

Application for Registration as a Pharmacy Intern for Graduates of a Foreign College of Pharmacy (rev. 12/98).

Closing of a Pharmacy (rev. 3/99).

Application for Approval of an Innovative (Pilot) Program (eff. 1/01).

Pilot Program Application
Page 2



COMMONWEALTH OF VIRGINIA
Board of Pharmacy

6606 W. Broad Street, 4th Floor
Richmond, Virginia 23230

(804) 662-9911 (Tel)
(804) 662-9313 (Fax)

APPLICATION FOR APPROVAL OF AN INNOVATIVE (PILOT) PROGRAM

Application Fee (non-refundable): \$250.00

The required fee must accompany the application. Make check payable to "Treasurer of Virginia".

Applicant—Please provide the information requested below. (Print or Type) Use full name not initials

Name of Pharmacy where pilot program is to be conducted		Pharmacy Permit Number
Street Address		0201-
City	State	Area Code and Telephone Number
Zip Code	Virginia License Number of Pharmacist Responsible for Pilot Program	

Date Received	Date of PIC	For Board Use Only
Revised Date	Termination Date	Pending Number
		Program Number Assigned

*Responsible pharmacist need not be the PIC of the pharmacy, but should be the pharmacist who will most closely oversee and supervise the operation of the pilot project.

Please attach the following additional information and label as indicated. Please write this in lay terms which can be easily understood by non-pharmacists and persons not familiar with computers or other technology to be used in the practice of pharmacy:

LABEL DESCRIPTION

- Attachment 1:** A brief description, narrative, or summary of the new process or procedure for which approval is being sought.
- Attachment 2:** A listing of the laws or regulations for which waivers are being requested through approval of this program and a brief explanation why each waiver is needed.
- Attachment 3:** An explanation as to the rationale for the project, i.e. benefit to the consumer or industry.
- Attachment 4:** A summary of the outcomes which will be measured, method for measuring, and timelines for measurements, including requested duration of the approval.
- Attachment 5:** Any measures which will be taken to ensure security of drug product and confidentiality information in the execution of the pilot project, if applicable.
- Attachment 6:** Disclosure of any financial interests, if applicable.
- Attachment 7:** Any additional supporting information, such as technical or other descriptive literature describing equipment or a process, or information from another state where this process or procedure has been tested, etc.

I attest that the information furnished on this application is true and correct to the best of my knowledge.

Signature of Applicant _____

Date _____

GOVERNOR

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF MINES, MINERALS AND ENERGY

Title of Regulation: 4 VAC 25-90-10 et seq. Regulations Governing the Use of Diesel-Powered Equipment in Underground Coal Mines.

I have reviewed the proposed regulation on a preliminary basis. While I reserve the right to take action under the Administrative Process Act during the final adoption period, I have no objection to this regulation based on the information and public comment currently available.

/s/ James S. Gilmore, III
Governor
Date: December 6, 2000

VA.R. Doc. No. R00-85; Filed January 8, 2001, 10:59 a.m.

Title of Regulation: 4 VAC 25-100-10 et seq. Regulations Governing Vertical Ventilation Holes and Mining Near Gas and Oil Wells (REPEALING).

Title of Regulation: 4 VAC 25-101-10 et seq. Regulations Governing Vertical Ventilation Holes and Mining Near Gas and Oil Wells.

I have reviewed the proposed regulation on a preliminary basis. While I reserve the right to take action under the Administrative Process Act during the final adoption period, I have no objection to this regulation based on the information and public comment currently available.

/s/ James S. Gilmore, III
Governor
Date: November 16, 2000

VA.R. Doc. Nos. R00-92 and R00-95; Filed January 8, 2001, 10:59 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR CONTRACTORS

Title of Regulation: 18 VAC 50-22-10 et seq. Board for Contractors Regulations.

I have reviewed the proposed regulation on a preliminary basis. While I reserve the right to take action under the Administrative Process Act during the final adoption period, I

have no objection to this regulation based on the information and public comment currently available.

/s/ James S. Gilmore, III
Governor
Date: December 6, 2000

VA.R. Doc. No. R00-70; Filed January 8, 2001, 10:59 a.m.

BOARD OF MEDICINE

Title of Regulation: 18 VAC 85-80-10 et seq. Regulations Governing the Licensure of Occupational Therapists.

I have reviewed the proposed regulation on a preliminary basis. While I reserve the right to take action under the Administrative Process Act during the final adoption period, I have no objection to this regulation based on the information and public comment currently available.

/s/ James S. Gilmore, III
Governor
Date: November 16, 2000

VA.R. Doc. No. R99-5; Filed January 8, 2001, 10:59 a.m.

Title of Regulation: 18 VAC 85-101-10 et seq. Regulations Governing the Licensure of Radiologic Technologists and Radiologic Technologists-Limited.

I have reviewed the proposed regulation on a preliminary basis. While I reserve the right to take action under the Administrative Process Act during the final adoption period, I have no objection to this regulation based on the information and public comment currently available.

/s/ James S. Gilmore, III
Governor
Date: November 16, 2000

VA.R. Doc. No. R99-6; Filed January 8, 2001, 10:59 a.m.

Title of Regulation: 18 VAC 85-110-10 et seq. Regulations Governing the Practice of Licensed Acupuncturists.

I have reviewed the proposed regulation on a preliminary basis. While I reserve the right to take action under the Administrative Process Act during the final adoption period, I have no objection to this regulation based on the information and public comment currently available.

/s/ James S. Gilmore, III
Governor
Date: December 6, 2000

VA.R. Doc. No. R99-7; Filed January 8, 2001, 10:59 a.m.

Governor

Title of Regulation: 18 VAC 85-120-10 et seq. Regulations Governing the Certification of Athletic Trainers.

I have reviewed the proposed regulation on a preliminary basis. While I reserve the right to take action under the Administrative Process Act during the final adoption period, I have no objection to this regulation based on the information and public comment currently available.

/s/ James S. Gilmore, III
Governor
Date: December 13, 2000

VA.R. Doc. No. R00-104; Filed January 8, 2001, 10:59 a.m.



TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR THE DEAF AND HARD-OF-HEARING

Title of Regulation: 22 VAC 20-30-10 et seq. Regulations Governing Interpreter Services for the Deaf and Hard of Hearing.

I have reviewed the proposed regulation on a preliminary basis. While I reserve the right to take action under the Administrative Process Act during the final adoption period, I have no objection to this regulation based on the information and public comment currently available.

/s/ James S. Gilmore, III
Governor
Date: December 6, 2000

VA.R. Doc. No. R00-12; Filed January 8, 2001, 11 a.m.

STATE BOARD OF SOCIAL SERVICES

Title of Regulation: 22 VAC 40-690-10 et seq. Virginia Child Care Provider Scholarship Program.

I have reviewed the proposed regulation on a preliminary basis. While I reserve the right to take action under the Administrative Process Act during the final adoption period, I have no objection to this regulation based on the information and public comment currently available.

/s/ James S. Gilmore, III
Governor
Date: December 6, 2000

VA.R. Doc. No. R98-314; Filed January 8, 2001, 10:59 a.m.

Title of Regulation: 22 VAC 40-900-10 et seq. Community Service Block Grant Guidelines (REPEALING).

I have reviewed the proposed regulation on a preliminary basis. While I reserve the right to take action under the Administrative Process Act during the final adoption period, I

have no objection to the repeal of this regulation based on the information and public comment currently available.

/s/ James S. Gilmore, III
Governor
Date: December 6, 2000

VA.R. Doc. No. R00-14; Filed January 8, 2001, 10:59 a.m.

Title of Regulation: 22 VAC 40-901-10 et seq. Community Services Block Grant Program.

I have reviewed the proposed regulation on a preliminary basis. While I reserve the right to take action under the Administrative Process Act during the final adoption period, I have no objection to this regulation based on the information and public comment currently available.

/s/ James S. Gilmore, III
Governor
Date: December 6, 2000

VA.R. Doc. No. R00-13; Filed January 8, 2001, 10:59 a.m.



GENERAL NOTICES/ERRATA

AUCTIONEERS BOARD

Notice of Periodic Review

The Auctioneers Board invites public comment on 18 VAC 25-10-10 et seq., Public Participation Guidelines. This review is being conducted under Executive Order 25 (98). The board welcomes written comments on the performance and effectiveness of this regulation in achieving the goal to meet the notification requirements contained in the Administrative Process Act and to increase input into the regulatory process in the most cost efficient manner possible.

Copies of the regulation may be obtained from the board. Written comments will be received until 5 p.m. on Friday, February 23, 2001. Comments or questions should be sent to Mark N. Courtney, Assistant Director, Auctioneers Board, 3600 W. Broad Street, Richmond, Virginia 23230, telephone (804) 367-8514.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice of Public Meeting and Public Comment Regarding TMDL in South Fork Shenandoah River and North Fork Shenandoah River

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the development of a Total Maximum Daily Load (TMDL) for PCBs in the South Fork Shenandoah River/Shenandoah River and the North Fork Shenandoah River. The first stream segment is located in the towns of Front Royal and Berryville. The segment is 36.45 miles in length: beginning at the Rt. 619 bridge over the South Fork Shenandoah River in Front Royal and ending at the VA/WVA state line. The second segment is 5.33 miles in length: beginning at the Passage Creek confluence with the North Fork Shenandoah River and ending at the North Fork Shenandoah River's confluence with the South Fork Shenandoah River in Front Royal. The segments are identified in Virginia's 1998 § 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standard for PCBs.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report.

The first public meeting on the development of the PCB TMDL of the two Shenandoah segments will be held on Thursday, February 15, 2001, 7 p.m. at the Warren County Government Center, 220 N. Commerce Avenue, Front Royal, VA.

The public comment period will end on February 28, 2001. A fact sheet on the development of the TMDL for PCBs on South Fork Shenandoah/Shenandoah River and North Fork Shenandoah River is available upon request. Questions or information requests should be addressed to Rod Bodkin. Written comments should include the name, address, and

telephone number of the person submitting the comments and should be sent to Rod Bodkin, Department of Environmental Quality, 4411 Early Road, Harrisonburg, Virginia 22801, telephone (540) 574-7801, Fax (540) 540-7878, or e-mail rvbodkin@deq.state.va.us.

BOARD OF GAME AND INLAND FISHERIES

Notice of Biennial/Periodic Review of Game Wildlife, Hunting and Trapping Regulations

The board will conduct its regular biennial review of regulations governing game wildlife, hunting and trapping at its March 1 and May 3, 2001 meetings. The Virginia regulations subject to review and for which amendments may be adopted are:

- 4 VAC 15-20. Definitions And Miscellaneous: In General.
- 4 VAC 15-30. Definitions And Miscellaneous: Importation, Possession, Sale, Etc., of Animals.
- 4 VAC 15-40. Game: In General.
- 4 VAC 15-50. Game: Bear.
- 4 VAC 15-60. Game: Beaver.
- 4 VAC 15-70. Game: Bobcat.
- 4 VAC 15-80. Game: Crow.
- 4 VAC 15-90. Game: Deer.
- 4 VAC 15-100. Game: Dove.
- 4 VAC 15-110. Game: Fox.
- 4 VAC 15-120. Game: Grouse.
- 4 VAC 15-130. Game: Mink.
- 4 VAC 15-140. Game: Muskrat.
- 4 VAC 15-160. Game: Opossum.
- 4 VAC 15-170. Game: Otter.
- 4 VAC 15-180. Game: Pheasant.
- 4 VAC 15-190. Game: Quail.
- 4 VAC 15-200. Game: Rabbits And Hares.
- 4 VAC 15-210. Game: Raccoon.
- 4 VAC 15-220. Game: Skunk.
- 4 VAC 15-230. Game: Squirrel.
- 4 VAC 15-240. Game: Turkey.
- 4 VAC 15-250. Game: Falconry.
- 4 VAC 15-260. Game: Waterfowl And Waterfowl Blinds.
- 4 VAC 15-270. Game: Firearms.
- 4 VAC 15-280. Game: Pelts And Furs.
- 4 VAC 15-290. Game: Permits.

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4 VAC 15-300. Game: Weasel.

4 VAC 15-310. Game: Woodchuck.

This biennial regulation review is also the periodic review of regulations pursuant to Executive Order Number 25 (98) for all of the above-listed regulations except numbers 4 VAC 15-20, 4 VAC 15-30, 4 VAC 15-250, and 4 VAC 15-290. The Board of Game and Inland Fisheries is exempted from the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia) in promulgating wildlife management regulations. It is required by § 9-6.14:22 to publish all proposed and final regulations.

Under board procedures, regulatory actions occur over two sequential board meetings. At the March 1 meeting Department of Game and Inland Fisheries' staff will present recommendations for regulatory amendments, the board will solicit and hear comments from the public in a public hearing, and the board then intends to propose regulations or regulation amendments. Any proposed regulatory actions (or informative summaries) subsequently will be published in the *Virginia Register*, made accessible through the Department of Game and Inland Fisheries and Virginia Regulatory Town Hall websites, and advertised in newspapers. A public comment period for purposes of Executive Order 25 (98) periodic review and on the board proposals commences with the board's action at the March 1 meeting and ends at the subsequent board meeting on May 3, 2001. Adoption of any regulations or regulation amendments as final will take place at the May 3 board meeting. The May 3 meeting will be held in Richmond and will be announced in a separate public notice.

The following opportunities for public involvement are provided:

- *Pre-recommendation public meetings.* Public meetings for the purpose of receiving citizen input on game wildlife, hunting and trapping regulations were announced and held earlier, in September 2000, in multiple locations around the state.
- *First public hearing.* A public hearing will be held, as described above, at the March 1, 2001, board meeting. This is the first of the two sequential board meetings, and the one at which the board proposes regulatory actions.
- *Second public hearing.* A public hearing will be held at the May 3, 2001, board meeting. This is the second of the two board meetings, and the one at which the board adopts final regulations.
- *Supplemental public hearings.* More public hearings, or "public input meetings," to be held in March or April between the first and the second board meetings, may be ordered at the discretion of the board.
- *Public comment period.* A public comment period on any proposed regulatory actions and for Executive Order 25 (98) periodic review purposes will open at the time the board proposes such regulations at its March 1 meeting and will run until the second board meeting on May 3. However, in order to be assured the board will have opportunity to review them, comments need to be

received by the department no later than April 26, 2001, or seven days prior to the second board meeting. In order to be taken into consideration, comments submitted: (a) must be in writing; (b) must be accompanied by the name, address and telephone number of the party offering the comments; (c) should state the regulatory action desired; and (d) should state the justification for the desired action. Comments submitted during the public comment period should be mailed to: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230.

- *Ongoing public comment.* The department also receives and accepts comments on a continuous basis from members of the public, outside of the specified public comment period. The public comment period described above is an additional provision to facilitate public involvement in specific proposed regulations and Executive Order 25 (98) periodic review.

DEPARTMENT OF INFORMATION TECHNOLOGY

Customer Agency Firewall Procedures

PURPOSE: To document firewall security procedures for DIT customer agencies. Procedures include: obtaining firewall access; firewall exemption requirements; and performing periodic security reviews of firewall exemptions as recommended by the Auditor of Public Accounts.

SCOPE: This procedure applies to any agency, including institutions of higher education, and local governmental agencies requesting access to data or programs residing on DIT mainframes and/or servers.

STATEMENT: DIT provides a custodial data center service environment for agency information processing of data files and programs, including customer data back up, and disaster recovery. As custodian, DIT is required to ensure only validated access to customer files. DIT undergoes periodic audits to ensure compliance with firewall access procedures. DIT cannot exempt agencies from firewall authentication without customer written assurance that their authentication procedures are in place and operating to the highest level of security.

DIT's firewall, and/or the customer agency's firewall must, without exception, authenticate all customer access attempts to maintain the highest level of security for data and programs. All firewall exemptions will be subject to periodic DIT security review as recommended by the Auditor of Public Accounts.

Firewall access violations - unauthorized IP access will result in immediate forfeiture of firewall access privileges.

PROCEDURE:

Requesting Firewall access:

1. Customer agencies must be registered as a DIT customer. Ref attached DIT Form, Billing Account Request form ACTREQv2.

2. Customer agency Security Officer(s) must be registered with DIT's Office of Security. To register, a letter from the agency CIO or Primary Agency Security Officer should be sent to Director of the DIT Security Division.

3. The customer agency Security Officer "opens a ticket" to request firewall access by calling DIT's Help Desk (804-786-3932), and requesting the firewall administrator to send "CTN Security Firewall Access Form" (DIT03-004).

4. DIT's help desk forwards the "ticket" to DIT's Firewall Administrator, who validates the Security Officer's registration, and sends the Security Officer DIT Form DIT03-004, along with form instructions.

5. The customer agency Security Officer completes Form DIT03-004 and faxes or mails back to DIT Office of Security (DIT's address and fax number are part of the form instructions.)

6. DIT's Firewall Administrator, or assistant, processes the request and assigns passwords, sending passwords to Agency Security Officer.

Exemptions: Alternative user authentication (e.g. Private networks, VPN, etc.) may provide trusted access and may allow firewall exemptions. The Director of the DIT Security Division, on a case-by-case basis, will review and formally approve each exemption. Specific exemption criteria must be met and can be obtained by contacting the Director, DIT Office of Security. To request the criteria the agency security officer must call the DIT help Desk @ 804-786-3932.

DIT Security review of exempted IP addresses – to comply with APA recommendations – DIT Office of Security will periodically perform a review of exempted firewall IP addresses (e.g. used for printers etc). to ensure trusted relationships are being maintained. Customer agencies are required to keep accurate and up-to-date records identifying all exempted IP addresses.

REFERENCES: Executive Order 51; Office of the Governor, Implementing Certain Recommendations by the Governor's Commission on Information Technology, Specific Policies, D., DIT shall develop policies and procedures regarding access to state databases and data communications in order to ensure the security of such databases from unauthorized use, intrusion, or other security threats. DIT shall coordinate the implementation of such policies and procedures with agencies maintaining databases hosted outside of the State Data Center. Executive Order 65(00), Implementing Electronic Government in the Commonwealth of Virginia, specifically mentions, "Electronic security and authentication are integral components of successful e-government. ... the Commonwealth must have a means to provide assurance that the participating parties are who they claim to be and that the contents of their communications and transactions have not been altered." APA report, Service Organization Review, Report on policies and procedures placed in operation and tests of operation effectiveness as of March 31, 1999". . . We recommend that DIT develop a policy that establishes exemption requirements, procedures that agencies must follow, and requires periodic security reviews."

Establishing Network Connections to DIT

PURPOSE: To document the Department of Information Technology's (DIT) procedures for establishing a network connection to DIT to ensure that they are coordinated through a single point of contact, that all questions are addressed expeditiously and that all participants are aware of the security implications involved with data stored at DIT.

SCOPE: This procedure applies to any agency, including institutions of higher education, requesting network connection to the DIT mainframes.

PROCEDURE:

1. Each agency or institution of higher education will be required to sign a Communications Security Agreement (CSA) (Attachment A) which will be filed with the Security Division.

2. The Telecommunications Division (Telecommunications) will be the focal point for all requests for data communications services to the DIT Data Center.

3. Requests other than the normal requests for leased lines, frame relay or dial-up connection (non-standard telecommunications services), require a letter from the agency's Telecommunications (Network) Coordinator to DIT's Telecommunications Director. The letter will define the reason the connection is required and identify a Telecommunications Coordinator if one does not exist.

4. Requests for telecommunications access services coming into any other Division will be referred to Telecommunications for completion.

5. Telecommunications will verify that there is an existing CSA on file in Security prior to filling the request.

6. If there is no existing CSA, Security will be asked to forward a copy to the requesting agency for appropriate signatures prior to Telecommunications completing the request.

7. If the CSA exists, Telecommunications will complete the requests per normal procedures, as outlined in the documentation, notifying appropriate divisions, i.e., MVS and Unisys Systems Software Support Divisions, of what is to be done.

ATTACHMENT A

Communications Security Agreement

I. Purpose and Background

Security of data belonging to the Commonwealth of Virginia is of utmost importance to all agencies. Both the Department of Information Technology (DIT) and the agencies it supports have responsibilities to assure that there is no corruption of the data on, or unauthorized access to, the DIT mainframes.

The Communications Security Agreement is to assure that DIT and _____ (the requesting agency) understand their responsibilities for data security on the DIT mainframes to which they have access or to which they have authorized

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access to some other organization, i.e., local governments, Federal agencies or private sector organizations.

With the advances in telecommunications technology, the access to data residing on the DIT mainframes is being accomplished in various ways. Each entity accessing this data possibly could have connections to networks other than the DIT network. The requesting agency must assume the responsibility for securing all of its network connections from which the DIT mainframe environment could be corrupted.

II. DIT Responsibilities:

DIT has the responsibility, as custodians of data belonging to agencies of the Commonwealth of Virginia, to protect this data from internal DIT corruption and to some extent from external corruption.

DIT has the responsibility to physically protect the mainframe computer systems.

DIT has the responsibility of providing systems level security.

DIT has the responsibility for providing disaster recovery for all lines accessing the DIT mainframes that were ordered through DIT per DIT policies. Disaster recovery consists of switched circuits which can be redirected to the alternate processing site.

DIT Telecommunications Division has the responsibility for approving the telecommunications request and getting input from any DIT Division as required.

III. Agency Responsibilities:

A. Security

The agency has the responsibility to assure that access to its data has been appropriately validated and authorized prior to granting access whether this validation is done at DIT or prior to reaching the DIT location.

The agency has the responsibility to insure that all entities to which it grants access to its data are aware of all security implications and have taken all necessary action to protect the DIT mainframe environment.

The agency has the responsibility of naming a security officer who is responsible for administering its security.

The agency accepts the liability associated with any breach of security resulting from access to its data from a source not appropriately secured or that was not appropriately validated and authorized prior to accessing the DIT mainframe.

B. Non-Standard Connections

For a non-standard service request, the agency's Telecommunications Coordinator has the responsibility to provide a letter to the DIT Telecommunications Director stating the reason the connection is required and designating a Network Coordinator, if one is not already named. The Network Coordinator will serve as the point of contact for all network-related questions and issues. Any request other than normal requests for a leased line, frame relay, or dial-up connection is considered a non-standard telecommunications service.

The agency accepts that any non-standard connection, approved and ordered by DIT, is not automatically backed up for disaster recovery. It accepts that this connection is not deemed critical. Therefore, if a disaster occurs, the agency will accept an interruption in service until such time as normal operations are restored. The agency will be responsible for reactivation of the connections and will be responsible for requesting the reconnection after normal operations have been restored.

The agency accepts that those non-standard connections, **ordered prior to 1997 that were not ordered through DIT per its policies**, are not automatically backed up for disaster recovery. Therefore, if a disaster occurs, the agency will accept an interruption in service until such time as normal operations are restored. The agency will be responsible for reactivation of the connections and will be responsible for requesting the reconnection after normal operations have been restored.

DEPARTMENT OF TRANSPORTATION

Notice of Periodic Review

Pursuant to Executive Order Number 25 (98), the Virginia Department of Transportation has scheduled the regulations listed below for review. VDOT will conduct this review to determine whether the regulations should be terminated, amended, or retained as written. If any changes are deemed necessary, VDOT will file the appropriate documentation as required by statute or procedures established by the Registrar of Regulations.

Regulation Title: 24 VAC 30-61-10 et seq., Rules and Regulations Governing the Transportation of Hazardous Materials Through Bridge-Tunnel Facilities.

Subject: This regulation sets forth the rules for users of state-owned bridge-tunnel facilities, including those for transporting hazardous materials.

APA Exemption: None

VDOT seeks public comment regarding the following question: Does the regulation meet the following goals?

1. Protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.
2. Is the regulation written clearly and understandably?

Comments may be submitted until February 18, 2001, to Peggy Cogburn, Program Planner, Virginia Department of Transportation, Maintenance Division, 1221 E. Broad St., Richmond, Virginia 23219, telephone (804) 786-6824, FAX (804) 225-4979, e-mail Cogburn_pc@vdot.state.va.us

Regulation Title: 24 VAC 30-120-10 et seq. Rules and Regulations Controlling Outdoor Advertising and Directional and Other Signs and Notices.

Subject: This regulation sets forth the policies and procedures VDOT will use in issuing permits for outdoor

advertising, including criteria for location, content, and size of signs, and related definitions and prohibitions.

APA Exemption: None

VDOT seeks public comment regarding the following question: Does the regulation meet the following goals?

1. To ensure VDOT complies with applicable federal and state policies, procedures, and statutes concerning outdoor advertising.
2. To protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.
3. Is the regulation written clearly and understandably?

Comments may be submitted until February 18, 2001, to James R. Barrett, Program Manager, Virginia Department of Transportation, Environmental Division, 1221 E. Broad St., Richmond, Virginia 23219, telephone (804) 371-6826, FAX (804) 371-6827, e-mail barrett_jr@vdot.state.va.us.

Regulation Title: **24 VAC 30-350-10 et seq. Administrative Manual/Procurement and Surplus Property Manual.**

Subject: This regulation establishes the policies and procedures VDOT will follow (originally promulgated by the Department of General Services as the "Agency Procurement and Surplus Property Manual") in procurement of goods and services.

APA Exemption: § 9-6.14:4.1 B 2

VDOT seeks public comment regarding the following question: Does the regulation meet the following goals?

1. To ensure that VDOT complies with applicable policies, procedures, and statutes concerning procurement.
2. To receive satisfactory audit reports.
3. To protect the public's health, safety, and welfare with the least possible intrusiveness to the citizens and businesses of the Commonwealth.
4. Is the regulation written clearly and understandably?

Comments may be submitted until February 18, 2001, to Leonard G. Lao, Acting Administrative Services Division Administrator, Virginia Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-2724, FAX (804) 225-3659, e-mail lao_@vdot.state.va.us.

Regulation Title: **24 VAC 30-561-10 et seq. Adoption of the Manual on Uniform Traffic Control Devices.**

Subject: This regulation, approved by the Commonwealth Transportation Board, formally adopts the 1988 edition of the Manual on Uniform Traffic Control Devices (MUTCD), and any revisions or rulings to this manual, as the standard for all highways under VDOT jurisdiction. The Commonwealth Transportation Commissioner and the Traffic Engineering Division are authorized to publish and distribute changes to the MUTCD as they appear in the Code of Federal Regulations.

APA Exemption: § 9-6.14:4.1 B11

VDOT seeks public comment regarding the following question: Does the regulation meet the following goals?

1. To ensure traffic signs, signals, and control markers and devices are designed and installed in compliance with accepted federal and agency requirements to preserve motorist safety and preserve the infrastructure of the road system.
2. To minimize the number and severity of highway accidents and fatalities.
3. To protect the public's health, safety, and welfare with the least possible intrusiveness to the citizens and businesses of the Commonwealth.
4. Is the regulation written clearly and understandably?

Comments may be submitted until February 18, 2001, to Mansour Mahbanoozadeh, Transportation Engineer Program Supervisor, Virginia Department of Transportation, Traffic Engineering Division, 1401 E. Broad St., Richmond, Virginia 23219, telephone (804) 786-7983, (804) 786-2888, e-mail mahban_me@vdot.state.va.us.

STATE WATER CONTROL BOARD

Proposed Consent Special Order Maggie T. Moran

The State Water Control Board (SWCB) proposes to issue a consent special order to Mrs. Maggie T. Moran regarding settlement of a civil enforcement action related to compliance with the Permit Regulation, 9 VAC 25-31-10 *et seq.* On behalf of the SWCB, the department will consider written comments relating to this settlement for 30 days after the date of publication of this notice. Comments should be addressed to Robert Steele, DEQ, West Central Regional Office, 3019 Peters Creek Road, NW, Roanoke, VA 24019.

The final order may be examined at the department during regular business hours. Copies are available from Mr. Steele at the address above or by calling (540) 562-6777.

Proposed Consent Special Order

Smith Mountain Lake 4-H Educational Conference Center

The State Water Control Board (SWCB) proposes to issue a consent special order to the Smith Mountain Lake 4-H Educational Conference Center regarding settlement of a civil enforcement action related to compliance with certain environmental law and/or regulations. On behalf of the SWCB, the department will consider written comments relating to this settlement for 30 days after the date of publication of this notice. Comments should be addressed to Jerry R. Ford, Jr., DEQ, West Central Regional Office, 3019 Peters Creek Road, NW, Roanoke, VA 24019.

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The final order may be examined at the department during regular business hours. Copies are available from Mr. Ford at the address above or by calling (540) 562-6700.

Proposed Special Order

Triple G Quick Superette #2

The State Water Control Board proposes to take an enforcement action against the above listed facility. Under the terms of the proposed special order, the owner of this facility has agreed to be bound by the terms and conditions of a schedule of compliance contained in the appendix of the order. The requirements contained in the order bring the facility into compliance with state law and protect water quality.

On behalf of the State Water Control Board, the Department of Environmental Quality will receive comments relating to the special order until March 1, 2001. Comments should be addressed to Dallas Sizemore, Department of Environmental Quality, Southwest Regional Office, P.O. Box 1688, Abingdon, Virginia 24212 and should refer to the consent order amendment. Comments can also be sent by e-mail to drsizemore@deq.state.va.us. Anyone wishing to comment must include their name, address, and phone number and all comments must be received before the end of the comment period.

The proposed orders may be examined at the Department of Environmental Quality, 355 Deadmore Street, Abingdon, Virginia.

A copy of the orders may be obtained in person or by mail from the above office or by calling Dallas Sizemore at (540) 676-4800.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Mailing Address: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219. You may FAX in your notice; however, we ask that you FAX two copies and do not follow up with a mailed copy. Our FAX number is: (804) 692-0625.

Forms for Filing Material for Publication in *The Virginia Register of Regulations*

All agencies are required to use the appropriate forms when furnishing material 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/register/regindex.htm>

FORMS:

NOTICE of INTENDED REGULATORY ACTION - RR01
NOTICE of COMMENT PERIOD - RR02
PROPOSED (Transmittal Sheet) - RR03
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AGENCY RESPONSE TO LEGISLATIVE OBJECTIONS
- RR08

CALENDAR OF EVENTS

Symbol Key

-  Location accessible to persons with disabilities
 Teletype (TTY)/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. If you are unable to find a meeting notice for an organization in which you are interested, please check the Commonwealth Calendar at www.vipnet.org or contact the organization directly.

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/TTY , 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 FOR ACCOUNTANCY

February 1, 2001 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Conference Room 5W, Richmond,
Virginia. 

A meeting to consider public comment on proposed regulations and to adopt final regulations.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2648, FAX (804) 367-6128, (804) 367-9753/TTY , e-mail accountancy@dpor.state.va.us.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Virginia Aquaculture Advisory Board

† February 9, 2001 - 9 a.m. -- Open Meeting
Virginia State University, Cooperative Extension Pavilion,
4415 River Road, Ettrick, Virginia. 

The board will meet in its regular session to discuss issues related to Virginia aquaculture. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

Contact: T. Robins Buck, Board Secretary, Virginia Aquaculture Advisory Board, 1100 Bank St., 9th Floor, Richmond, VA, telephone (804) 371-6094, FAX (804) 371-2945.

Virginia Bright Flue-Cured Tobacco Board

† February 23, 2001 - 9:30 a.m. -- Open Meeting
Sheldon's Restaurant, Business Route 15 and 360, Keysville,
Virginia. 

The board will meet to consider funding proposals for research, promotion, and education projects pertaining to Virginia flue-cured tobacco and other business that may come before the board. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

Contact: D. Stanley Duffer, Secretary, Virginia Bright Flue-Cured Tobacco Board, P.O. Box 129, Halifax, VA 24558, telephone (804) 572-4568, FAX (804) 572-8234.

Virginia Cattle Industry Board

February 21, 2001 - 10:30 a.m. -- Open Meeting
The Homestead, Hot Springs, Virginia. 

A regular business meeting to approve the minutes from the November 2000 meeting, in addition to reviewing the financial statement for the fiscal year 99-00 and finances from October 1, 2000 through February 1, 2001. Staff will give program updates for the state and national level checkoff activities. Election of chairperson(s) will take place as well as appointments to committees for the newly appointed board members. 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 the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

Contact: Reginald B. Reynolds, Executive Director, Virginia Cattle Industry Board, P.O. Box 9, Daleville, VA 24083, telephone (540) 992-1992, FAX (540) 992-4632.

Calendar of Events

Virginia Charity Food Assistance Advisory Board

February 8, 2001 - 10:30 a.m. -- Open Meeting
Washington Building, 1100 Bank Street, 2nd Floor, Board Room, Richmond, Virginia 

A routine meeting to discuss issues related to food insecurity. 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 Steven W. Thomas at least five days before the meeting date so that suitable arrangements can be made.

Contact: Steven W. Thomas, Executive Director, Virginia Charity Food Assistance Advisory Board, 1100 Bank St., Room 809, Richmond, VA, telephone (804) 786-3936, FAX (804) 371-7788.

Virginia Cotton Board

March 8, 2001 - 9 a.m. -- Open Meeting
Airfield Conference Center, 15189 Airfield Road, Wakefield, Virginia 

A meeting to include discussions and possible approval of contractual arrangements with national and regional organizations, reports of programs and projects funded over the past year, hearing of project proposal grant requests on cotton by VPI and SU, VSU, and other groups for the year 2001. During the meeting, financial reports will be heard and approved if appropriate. 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 Gail Moody-Milteer at least five days before the meeting date so that suitable arrangements can be made.

Contact: Gail Moody-Milteer, Program Director, Virginia Cotton Board, 1100 Armory Dr., Suite 120, Franklin, VA, telephone (757) 569-1100, FAX (757) 562-6104.

Virginia Horse Industry Board

February 7, 2001 - 9 a.m. -- Open Meeting
Middleburg Agricultural Experiment Station, 5527 Sullivans Mill Road, 1st Floor, Conference Room, Middleburg, Virginia 

The board will review the minutes of the last meeting, review planned projects for 2001, and discuss the upcoming grant review period and process. 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 the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

Contact: Andrea S. Heid, Program Director, Virginia Horse Industry Board, 1100 Bank St., Suite 1004, Richmond, VA 23219, telephone (804) 786-5842, FAX (804) 371-7786.

Virginia Plant Pollination Advisory Board

February 2, 2001 - 10 a.m. -- Open Meeting
Washington Building, 1100 Bank Street, First Floor Conference Room, Richmond, Virginia 

An annual meeting. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact the board at least five days before the meeting date so that suitable arrangements can be made.

Contact: Robert G. Wellemeyer, Board Secretary, Virginia Plant Pollination Advisory Board, 234 West Shirley Ave., Warrenton, VA 20186, telephone (540) 347-6380, FAX (540) 347-6384, (804) 828-1120/TTY 

Virginia Sweet Potato Board

February 6, 2001 - 7 p.m. -- Open Meeting
Little Italy Restaurant, 10227 Rogers Drive, Nassawadox, Virginia 

A meeting to hear and approve, if appropriate, minutes of the last meeting and the presentation of the board's financial statement. The board will discuss and consider programs (promotion, research, and education), the annual budget, and other business that may be presented. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate in the meeting should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

Contact: J. W. Nottingham, Program Director, Virginia Sweet Potato Board, P.O. Box 26, Onley, VA 23418, telephone (757) 787-5867, FAX (757) 787-5973, e-mail jknight@vdacs.state.va.us.

Virginia Winegrowers Advisory Board

† February 8, 2001 - 10 a.m. -- Open Meeting
Washington Building, 1100 Bank Street, Ninth Floor Board Room, Richmond, Virginia 

A quarterly meeting of the board. Agenda items will include committee reports, a report from a representative of the Alcoholic Beverage Control Board, hearing and possible approval of minutes of the last board meeting, and presentation of the board's financial statement. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact the person identified in this notice at least five days before the

meeting date so that suitable arrangements can be made.

Contact: Mary Davis-Barton, Board Secretary, Virginia Winegrowers Advisory Board, 1100 Bank St., Suite 1010, Richmond, VA 23219, telephone (804) 371-7685, FAX (804) 786-3122.

STATE AIR POLLUTION CONTROL BOARD

February 16, 2001 - 9 a.m. -- Open Meeting
Main Street Centre, 600 East Main Street, Lower Level Conference Room, Richmond, Virginia. 

A public meeting to receive comments on and to discuss the State Air Pollution Control Board's notice of intent to adopt a new regulation for mobile sources that meets current air quality needs and to repeal the existing regulation for mobile sources.

Contact: Kathleen Sands, Policy Analyst, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4413, FAX (804) 698-4510, (804) 698-4021/TTY , e-mail krsands@deq.state.va.us.

ALCOHOLIC BEVERAGE CONTROL BOARD

† **February 13, 2001 - 10:30 a.m.** -- Open Meeting
Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the board to receive public comment on a proposal it received from the Virginia Beer Wholesalers Association recommending the board repeal the current provision of its regulations forbidding the use of present or former athletes or athletic teams in alcoholic beverage advertising.

Contact: W. Curtis Coleburn, Secretary to the Board, Department of Alcoholic Beverage Control, P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4409, FAX (804) 213-4411, (804) 213-4687/TTY 

BOARD OF ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

January 31, 2001 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the Architects section. 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, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail apelsla@dpor.state.va.us.

February 7, 2001 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the Professional Engineers section. 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, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail apelsla@dpor.state.va.us.

February 14, 2001 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the Land Surveyors section. 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, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail apelsla@dpor.state.va.us.

February 21, 2001 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the Landscape Architects section. 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, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail apelsla@dpor.state.va.us.

Calendar of Events

February 28, 2001 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting of the Certified Interior Designers section. 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, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail apelsla@dpor.state.va.us.

March 7, 2001 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

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, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail apelsla@dpor.state.va.us.

ART AND ARCHITECTURAL REVIEW BOARD

February 2, 2001 - 10 a.m. -- Open Meeting
March 2, 2001 - 10 a.m. - Open Meeting
April 6, 2001 - 10 a.m. -- Open Meeting
Science Museum of Virginia, 2500 West Broad Street, Forum Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A monthly meeting to review projects submitted by state agencies.

Contact: Richard L. Ford, AIA, Chairman, Art and Architectural Review Board, 1011 E. Main St., Room 221, Richmond, VA 23219, telephone (804) 643-1977, FAX (804) 643-1981, (804) 786-6152/TTY

BOARD FOR ASBESTOS AND LEAD

February 15, 2001 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 5W, Richmond, Virginia.

A meeting to discuss routine business. A public comment period will be held at the beginning of the meeting.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, Virginia 23230, telephone (804) 367-2648, FAX (804) 367-6128, (804) 367-9753/TTY , e-mail asbestos@dpor.state.va.us.

ASSISTIVE TECHNOLOGY LOAN FUND AUTHORITY

February 15, 2001 - 10 a.m. -- Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The Board of Directors will hold its monthly meeting to review loan applications for assistive technology. Following the business meeting, the board will meet in closed session to maintain confidentiality of customer information.

Contact: Shilpa Joshi, Assistive Technology Loan Fund Authority, Box K091, Richmond, VA 23288, telephone (804) 662-9000, FAX (804) 662-9533, toll-free (800) 552-5019, (804) 662-9000/TTY , e-mail loanfund@erols.com.

COMPREHENSIVE SERVICES FOR AT-RISK YOUTH AND FAMILIES

State Executive Council

February 28, 2001 - 9 a.m. -- Open Meeting
March 28, 2001 - 9 a.m. -- Open Meeting
† April 25, 2001 - 9 a.m. -- Open Meeting
Department of Social Services, 730 East Broad Street, Lower Level, Richmond, Virginia. (Interpreter for the deaf provided upon request)

An agenda will be posted on the web a week prior to the meeting.

Contact: Alan G. Saunders, Director, Comprehensive Services for At-Risk Youth and Families, 1604 Santa Rosa Rd., Suite 137, Richmond, VA 23229, telephone (804) 662-9815, FAX (804) 62-9831, e-mail AGS992@central.dss.state.va.us.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

† February 15, 2001 - 9:30 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia.

A general business meeting. Public comment will be received at the beginning of the meeting.

Contact: Elizabeth Tisdale, Executive Director, Board of Audiology and Speech-Language Pathology, 6606 W. Broad St., 4th Floor, Richmond, VA, telephone (804) 662-9111, FAX

(804) 662-9523, (804) 662-7197/TTY ☎, e-mail etisdale@dhp.state.va.us.

VIRGINIA AVIATION BOARD

† **February 13, 2001 - 3 p.m.** -- Open Meeting
Bridgewater Airport, Highway 727, Bridgewater, Virginia. ♿

† **February 14, 2001 - 9 a.m.** -- Open Meeting
Hilton Richmond Airport, 5501 Eubank Road, Sandston, Virginia ♿

A regular bimonthly meeting. Application for state funding will be presented to the board and other matters of interest to the aviation community will be discussed. Individuals with disabilities should contact Carolyn Toth 10 days prior to the meeting if assistance is needed.

Contact: Carolyn Toth, Virginia Aviation Board, 5702 Gulfstream Rd., Richmond, VA 23250, telephone (804) 236-3632, (804) 235-3624/TTY ☎

BOARD FOR BARBERS AND COSMETOLOGY

† **March 5, 2001 - 8:30 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to discuss regulatory review and other matters requiring board action, including disciplinary cases. A public comment period will be held at the beginning of the meeting. All meetings are subject to cancellation. The time of the meeting is subject to change. Any person desiring to attend the meeting and requiring special accommodations or interpretative services should contact the department at (804) 367-8590 or (804) 367-9753/TTY 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, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY ☎, e-mail barbercosmo@dpor.state.va.us.

DEPARTMENT FOR THE BLIND AND VISION IMPAIRED

Statewide Rehabilitation Council for the Blind

† **March 3, 2001 - 10 a.m.** -- Open Meeting
Department for the Blind and Vision Impaired, 397 Azalea Avenue, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

Council meets quarterly to advise the Department for the Blind and Vision Impaired on matters related to vocational rehabilitation services for the blind and visually impaired citizens of the Commonwealth.

Contact: James G. Taylor, VR Program Director, Department for the Blind and Vision Impaired, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3111, FAX (804) 371-3351, toll-free (800) 622-2155, (804) 371-3140/TTY ☎, e-mail taylorjg@dbvi.state.va.us.

BOARD FOR BRANCH PILOTS

January 31, 2001 - 9:30 a.m. -- Open Meeting
Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia. ♿ (Interpreter for the deaf provided upon request)

The board will meet to conduct examinations.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail branchpilots@dpor.state.va.us.

February 1, 2001 - 9:30 a.m. -- Open Meeting
Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia. ♿ (Interpreter for the deaf provided upon request)

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, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail branchpilots@dpor.state.va.us.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

† **February 14, 2001 - 10 a.m.** -- Open Meeting
Chesapeake Bay Local Assistance Department, James Monroe Building, 101 North 14th Street, 17th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The Northern Area Review Committee will review Chesapeake Bay Preservation Area programs for the Northern Area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the Review Committee meeting, however, written comments are welcome.

Contact: Carolyn J. Elliott, Executive Secretary Sr., Chesapeake Bay Local Assistance Department, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 371-7505, FAX (804) 225-3447, toll-free (800) 243-7229, (800) 243-7229/TTY ☎, e-mail celliott@cblad.state.va.us.

Calendar of Events

February 14, 2001 - Noon -- Open Meeting

James Monroe Building, 101 North 14th Street, 17th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting of the board's Grants Committee to consider the FY02 Competitive Grants Program applications for funding. No comments from the public will be entertained at the Grants Committee meeting; however, written comments are welcome.

Contact: Margaret H. Reynolds, Grants Program Manager, Chesapeake Bay Local Assistance Department, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 225-3440, FAX (804) 225-3447, toll-free (800) 243-7229, (804) 243-7229/TTY, e-mail mreynolds@cblad.state.va.us.

† February 14, 2001 - 2 p.m. -- Open Meeting

Chesapeake Bay Local Assistance Department, James Monroe Building, 101 North 14th Street, 17th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The Southern Area Review Committee will review Chesapeake Bay Preservation Area programs for the Southern Area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the Review Committee meeting, however, written comments are welcome.

Contact: Carolyn J. Elliott, Executive Secretary Sr., Chesapeake Bay Local Assistance Department, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 371-7505, FAX (804) 225-3447, toll-free (800) 243-7229, (800) 243-7229/TTY, e-mail celliott@cblad.state.va.us.

CHILD DAY CARE COUNCIL

† February 8, 2001 - 9 a.m. -- Open Meeting

Department of Social Services, Theatre Row Building, 730 East Broad Street, Conference Room 1, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The Child Day-Care Council will meet to discuss issues and concerns that impact child day centers, camps, school age programs and preschools/nursery schools. Public comment period will begin at noon. Please call ahead for possible changes in meeting time.

Contact: Arlene Kasper, Program Consultant, Child Day-Care Council, Division of Licensing Programs, 730 East Broad St., Richmond, VA 23219-1849, telephone (804) 692-1791, FAX (804) 692-2370.

COMPENSATION BOARD

† February 27, 2001 - 11 a.m. -- Open Meeting

Ninth Street Office Building, 202 North 9th Street, 10th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A monthly board meeting.

Contact: Cindy P. Waddell, Administrative Staff Assistant, Compensation Board, P.O. Box 710 Richmond, VA 23218, telephone (804) 786-0786, FAX (804) 371-0235, e-mail cwaddell@scb.state.va.us.

DEPARTMENT OF CONSERVATION AND RECREATION

† January 29, 2001 - 4 p.m. -- Open Meeting

Rockbridge County High School, Greenhouse Road, Auditorium, Lexington, Virginia. (Interpreter for the deaf provided upon request)

† January 30, 2001 - 4 p.m. -- Open Meeting

Douthat State Park Restaurant, Route 629, Millboro, Virginia. (Interpreter for the deaf provided upon request)

† February 2, 2001 - 4 p.m. -- Open Meeting

Dabney S. Lancaster Community College, Dabney Lane, Armory/Gym, Clifton Forge, Virginia. (Interpreter for the deaf provided upon request)

Hill Studio, P.C., has been contracted by the Department of Conservation and Recreation to conduct an Environmental Assessment of the proposed Alleghany Highlands Horse Trail. This is a public meeting to solicit comment concerning potential impacts to natural, historic, cultural, or other resources of the proposed horse trail connecting the Virginia Horse Center in Lexington with the Homestead in Hot Springs. Suggestions for alternative routes will also be solicited.

Contact: Mary Zirkle, Hill Studio P.C., 120 W. Campbell Ave., Roanoke, VA 24011, telephone (540) 342-5263.

† February 15, 2001 - 6 p.m. -- Open Meeting

Lake Anna State Park Visitor Center, 6800 Lawyers Road, Spotsylvania, Virginia. (Interpreter for the deaf provided upon request)

A meeting of the Lake Anna State Park Advisory Committee to review and discuss the final draft of the Lake Anna State Park Master Plan.

Contact: Derral Jones, Planning Bureau Manager, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-9042, FAX (804) 371-7899, e-mail djones@dcr.state.va.us.

Board on Conservation and Development of Public Beaches

† March 13, 2001 - 10 a.m. -- Open Meeting

Yorktown, Virginia. (Interpreter for the deaf provided upon request)

A regular business meeting.

Contact: Leon E. App, Acting Deputy Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-6124, FAX (804) 786-6141, e-mail leonapp@dcr.state.va.us.

Virginia Soil and Water Conservation Board

† **March 15, 2001 - 9 a.m.** -- Open Meeting
Department of Forestry, Charlottesville, Virginia.  (Interpreter for the deaf provided upon request)

A regular business meeting.

Contact: Leon E. App, Acting Deputy Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-6124, FAX (804) 786-6141, e-mail leonapp@dcr.state.va.us.

BOARD FOR CONTRACTORS

February 7, 2001 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 4W, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting of the Tradesman Committee to consider matters of interest relating to tradesmen and backflow workers and other appropriate matters pertaining to the tradesman section of the Board for Contractors.

Contact: Robert F. Tortolani, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2607, FAX (804) 367-2474, (804) 367-9753/TTY , e-mail tortolani@dpor.state.va.us.

February 21, 2001 - 2 p.m. -- Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

March 5, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Contractors intends to amend regulations entitled: **18 VAC 50-22-10 et seq. Board for Contractors Regulations.** The purpose of the proposed action is to amend existing regulations governing the licensure of Class A, B, and C contractors to clarify the definitions section; clarify entry requirements; and modify the procedures and provisions regarding renewal, reinstatement, and the standards of practice and conduct.

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

Contact: Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-2785, FAX (804) 367-2474 or (804) 367-9753/TTY , e-mail contractors@dpor.state.va.us.

BOARD OF CORRECTIONAL EDUCATION

† **February 16, 2001 - 10 a.m.** -- Open Meeting
James Monroe Building, 101 North 14th Street, 7th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to discuss general business.

Contact: Patricia Ennis, Board Clerk, Board of Correctional Education, 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-3314, FAX (804) 786-7642, (804) 371-8647/TTY , e-mail paennis@dce.state.va.us.

BOARD OF CORRECTIONS

† **February 13, 2001 - 10 a.m.** -- Open Meeting
Board of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. 

A meeting of the Correctional Services/Policy and Regulations Committee to discuss correctional services/policy and regulations matters for possible presentation to the full board.

Contact: Barbara Reyes, Executive Secretary, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3288, FAX (804) 674-3509, e-mail reyesbb@vadoc.state.va.us.

† **February 14, 2001 - 8:30 a.m.** -- Open Meeting
Board of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. 

A meeting of the Administration Committee to discuss administrative matters for possible presentation to the full board.

Contact: Barbara Reyes, Executive Secretary, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3288, FAX (804) 674-3509, e-mail reyesbb@vadoc.state.va.us.

† **February 14, 2001 - 10 a.m.** -- Open Meeting
Board of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. 

A meeting to discuss matters that may be presented to the full board.

Contact: Barbara Reyes, Executive Secretary, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3288, FAX (804) 674-3509, e-mail reyesbb@vadoc.state.va.us.

BOARD OF COUNSELING

† **February 1, 2001 - Noon** -- Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

March 30, 2001 - Public comments may be submitted until this date.

Calendar of Events

Notice is hereby given in accordance with § 9-6.14:7.1 that the Board of Counseling intends to amend regulations entitled: **18 VAC 115-60-10 et seq. Regulations Governing the Licensure of Substance Abuse Treatment Practitioners.** The purpose of the proposed action is to amend fees in accordance with statutory requirements for the board to collect sufficient revenue to cover the expenditures of administering the regulatory program.

Statutory Authority: § 54.1-2400 and Chapter 35 (§ 54.1-3500 et seq.) of Title 54.1 of the Code of Virginia.

Contact: Evelyn Brown, Executive Director, Board of Counseling, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9967, FAX (804) 662-9943, or (804) 662-7197/TTY ☎

† **February 1, 2001 - 10 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting of the Credentials Committee to review applicant credentials.

Contact: Joyce D. Williams, Administrative Assistant, Board of Counseling, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9912, FAX (804) 662-7250, (804) 662-7197/TTY ☎, e-mail coun@dhp.state.va.us.

† **February 1, 2001 - 1 p.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The Regulatory Committee will review proposed waiver language for substance abuse treatment practitioner licensure, consider education requirements for substance abuse counselor certification, and discuss the impact that any submitted legislative proposals may have on the board's regulated professions.

Contact: Evelyn B. Brown, Executive Director, Board of Counseling, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9912, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail ebrown@dhp.state.va.us.

† **February 2, 2001 - 8:30 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting of the Executive Committee to review the agenda for the Board of Counseling meeting.

Contact: Joyce D. Williams, Administrative Assistant, Board of Counseling, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9912, FAX (804) 662-7250, (804) 662-7197/TTY ☎, e-mail coun@dhp.state.va.us.

† **February 2, 2001 - 10 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The board will adopt proposed waiver language for licensure of individuals as substance abuse treatment

practitioners who do not meet the requirements in the current regulations. The board will hear reports from standing committees. New members will be appointed to committees.

Contact: Evelyn B. Brown, Executive Director, Board of Counseling, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9912, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail ebrown@dhp.state.va.us.

DEPARTMENT FOR THE DEAF AND HARD-OF-HEARING

February 6, 2001 - 6 p.m. -- Public Hearing
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Lee Building, 1st Floor Conference Room, Richmond, Virginia.

March 2, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department for the Deaf and Hard-of-Hearing intends to amend 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 amendments is to add a clear statement of fees, add provisions for a grievance procedure, provide for separate interpreting and transliterating assessments, and clarify confidentiality.

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

Contact: Laurie Malheiros, Interpreter Programs Manager, Department for the Deaf and Hard-of-Hearing, 1602 Rolling Hills Dr., Suite 203, Richmond, VA 23229, telephone (804) 662-9502 (V/TTY), FAX (804) 662-9718 and toll-free 1-800-552-7197 (V/TTY).

DESIGN-BUILD/CONSTRUCTION MANAGEMENT REVIEW BOARD

February 26, 2001 - 11 a.m. -- Open Meeting

March 19, 2001 - 11 a.m. -- Open Meeting

April 16, 2001 - 11 a.m. -- Open Meeting

Virginia War Memorial, 621 Belvidere Street, Auditorium, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A monthly meeting to review requests submitted by localities to use Design-Build or Construction Management type contracts. Please contact the Division of Engineering and Buildings to confirm meeting.

Contact: Freddie M. Adcock, Administrative Assistant, Department of General Services, 805 E. Broad St., Rm. 101, Richmond, VA 23219, telephone (804) 786-3263, FAX (804) 371-7934, (804) 786-6152/TTY ☎, e-mail fadcock@dgs.state.va.us.

BOARD OF EDUCATION

February 15, 2001 - 9 a.m. -- Open Meeting
Richmond City School Board, 301 North 9th Street, Meeting Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

March 22, 2001 - 9 a.m. -- Open Meeting
Location to be announced.  (Interpreter for the deaf provided upon request)

A regular monthly meeting. Persons may register to speak at the meeting by calling Margaret Roberts. Persons requesting services of an interpreter for the deaf should do so in advance.

Contact: Dr. Margaret N. Roberts, Office of Policy, Department of Education, P.O. Box 2120, 101 N. 14th St., 25th Floor, Richmond, VA 23218, telephone (804) 225-2540, FAX (804) 225-2524, e-mail mroberts@mail.vak12ed.edu.

DEPARTMENT OF ENVIRONMENTAL QUALITY

† January 30, 2001 - 4 p.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. 

The Coastal Program is updating its coastal needs assessment and strategy under Section 309 of the Coastal Zone Management Act. Section 309 is a voluntary coastal zone enhancement grants program which encourages states to develop program changes in one or more of nine coastal enhancement areas, including wetlands, public access, coastal hazards, cumulative and secondary impacts, energy and government facility siting, marine debris, ocean resources, special area management plans and aquaculture. The coastal needs assessment and strategy will evaluate the Commonwealth of Virginia's priority needs for improvement in above areas, and develop a strategy for addressing these top priority needs. The public is invited to attend an open house, review documents, and provide comments or suggestions. A draft assessment and strategy outline will be available for review at after January 16, 2001, at <http://www.state.va.us/coastal>. For copies of this draft, or to submit written comments, please write Laura McKay. Comments must be received by February 15, 2001.

Contact: Laura McKay, Department of Environmental Quality, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4323, FAX (804) 698-4319, e-mail lmcckay@deq.state.va.us, homepage <http://www.deq.state.va.us/>.

Virginia Environmental Education Advisory Committee

† January 30, 2001 - 10 a.m. -- Open Meeting
Maymont Foundation, 1700 Hampton Street, Richmond, Virginia. 

A meeting of the Resources for Environmental Education workgroup.

Contact: Jim Firebaugh, Department of Education, 101 N. 14th St., Richmond, VA, telephone (804) 225-2651, e-mail jfirebau@pen.k12.va.us.

† January 30, 2001 - 2:30 p.m. -- Open Meeting
Maymont Foundation, 1700 Hampton Street, Richmond, Virginia. 

A meeting of the formal education K-12 workgroup.

Contact: Ann Regn, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4442, e-mail amregn@deq.state.va.us.

† January 31, 2001 - 9:30 a.m. -- Open Meeting
Science Museum of Virginia, 2500 West Broad Street, Richmond, Virginia. 

A meeting of the Formal Education Workgroup.

Contact: Marcie Wagner, Department of Environmental Quality, P.O. Box 10009 Richmond, VA 23240, telephone (804) 698-4198, e-mail mcjudd@deq.state.va.us.

VIRGINIA FIRE SERVICES BOARD

February 8, 2001 - 11 a.m. -- Open Meeting
Airfield 4-H Educational Center, Wakefield, Virginia.  (Interpreter for the deaf provided upon request)

11 a.m. - Committee on Administration and Policy
1 p.m. - Committee on Fire Education and Training
3 p.m. - Committee on Fire Prevention and Control
At conclusion - Committee on Finance

Contact: Christy L. King, Secretary to the Board, Virginia Fire Services Board, 101 N. 14th St., 18th Floor, Richmond, Virginia 23219, telephone (804) 371-0220, FAX (804) 371-0219, e-mail cking@dfp.state.va.us.

February 9, 2001 - 9 a.m. -- Open Meeting
Airfield 4-H Educational Center, Wakefield, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting. Contact the board for details.

Contact: Christy L. King, Secretary to the Board, Virginia Fire Services Board, 101 N. 14th St., 18th Floor, Richmond, Virginia 23219, telephone (804) 371-0220, FAX (804) 371-0219, e-mail cking@dfp.state.va.us.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

January 31, 2001 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. 

A meeting to hold informal hearings. There will not be a public comment period.

Calendar of Events

Contact: Cheri Emma-Leigh, Administrative Staff Assistant, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA, telephone (804) 662-9907, FAX (804) 662-9523, e-mail CEmma-Leigh@dhp.state.va.us.

February 28, 2001 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. 

A meeting of the Legislative Committee to review legislation from the 2001 Session of the General Assembly and possible proposals for the 2002 Session of the General Assembly. Public comment will be received at the beginning of the meeting.

Contact: Elizabeth Young Tisdale, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9907, FAX (804) 662-9523, (804) 662-7197/TTY , e-mail etisdale@dhp.state.va.us.

BOARD OF GAME AND INLAND FISHERIES

† **March 1, 2001 - 9 a.m.** -- Open Meeting
Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

The board will meet and intends to propose changes in regulations for game wildlife, hunting and trapping. This is the regular biennial review for these regulations, and an Executive Order 25 (98) periodic review for all except four of these regulations. The Board of Game and Inland Fisheries is exempted from the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia) in promulgating wildlife management regulations. It is required by § 9-6.14:22 to publish all proposed and final regulations.

Under board procedures, regulatory actions occur over two sequential board meetings. At the March 1 meeting, Department of Game and Inland Fisheries' staff will present recommendations for regulatory amendments, the board will solicit and hear comments from the public in a public hearing, and the board then intends to propose regulations or regulation amendments. Any proposed regulatory actions (or informative summaries) will then be published in the *Virginia Register*, posted on the Internet at www.dgif.state.va.us, and advertised in newspapers. Adoption of any regulations or regulation amendments as final will take place at the subsequent board meeting, to be held May 3, 2001. The May 3 meeting will held in Richmond; the time and address will be announced in a later notice. Additional information on this review of regulations, including a list of the specific regulations subject to review and additional details on opportunities for public involvement, is available in a separate announcement submitted under General Notices.

General and administrative issues may be discussed by the board at the March 1 meeting. The board may hold a closed session beginning at 9 a.m. on March 1. If the board does not complete its entire agenda on March 1, it

may convene for a second day beginning at 9 a.m. on March 2, 2001.

Contact: Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4010 W. Broad St., Richmond, VA, telephone (804) 367-1341 or FAX (804) 367-0488.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

† **March 20, 2001 - 8:30 a.m.** -- Open Meeting
Virginia Tech, Blacksburg, Virginia.

Agenda materials will be available on the Web site approximately one week prior to the meeting at www.schev.edu.

Contact: Lee Ann Rung, Assistant to the Executive Director, State Council of Higher Education for Virginia, James Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2602, FAX (804) 371-7911, e-mail lrung@schev.edu.

DEPARTMENT OF LABOR AND INDUSTRY

Virginia Apprenticeship Council

† **March 15, 2001 - 10 a.m.** -- Open Meeting
New Horizons Regional Education Center, 520 Butler Farm Road, Hampton, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting.

Contact: Beverly Donati, Assistant Program Manager, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2382, FAX (804) 786-8418, (804) 786-2376/TTY , e-mail bgd@doli.state.va.us.

LIBRARY BOARD

March 19, 2001 - 8:15 a.m. -- Open Meeting
The Library of Virginia, 800 East Broad Street, Richmond, Virginia. 

A meeting to discuss matters pertaining to The Library of Virginia and the Library Board. Committees of the board will meet as follows:

8:15 a.m. -- Public Library Development Committee, Orientation Room
Publications and Educational Services Committee, Conference Room B
Records Management Committee, Conference Room C

9:30 a.m. -- Archival and Information Services Committee, Orientation Room
Collection Management Services Committee, Conference Room B
Legislative and Finance Committee, Conference Room C

10:30 a.m. The full board will meet in the Conference Room on 2M.

Public comments will be received at approximately 11 a.m.

Contact: Jean H. Taylor, Executive Secretary to the Librarian of Virginia, The Library of Virginia, Richmond, VA 23219, telephone (804) 692-3535, FAX (804) 692-3594, (804) 692-3976/TTY ☎, e-mail jtaylor@lva.lib.va.us.

COMMISSION ON LOCAL GOVERNMENT

† **March 12, 2001 - 10 a.m.** -- Open Meeting
Pocahontas Building, 900 East Main Street, Suite 103, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting to consider matters as presented.

Contact: Barbara Bingham, Administrative Assistant, Commission on Local Government, Pocahontas Bldg., 900 E. Main St., Suite 103, Richmond, VA 23219-3513, telephone (804) 786-6508, FAX (804) 371-7999, (800) 828-1120/TTY ☎, e-mail bbingham@clg.state.va.us.

MARINE RESOURCES COMMISSION

February 27, 2001- 9:30 a.m. -- Open Meeting
March 27, 2001 - 9:30 a.m. -- Open Meeting
Marine Resources Commission, 2600 Washington Avenue, 4th Floor, Newport News, Virginia. ♿

A monthly meeting.

Contact: LaVerne Lewis, Commission Secretary, Marine Resources Commission, 2600 Washington Ave., Newport News, VA 23607, telephone (757) 247-2261, FAX (757) 247-2020, toll-free (800) 541-4646, (757) 247-2292/TTY ☎, e-mail lewis@mrc.state.va.us.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

† **March 30, 2001** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-50-10 et seq., Amount, Duration and Scope of Medical and Remedial Care Services, 12 VAC 30-80-10 et seq., Methods and Standards for Establishing Payment Rates--Other Types of Care, and 12 VAC 30-120-10 et seq. Waivered Services (Individual and Family Developmental Disability Support Waiver).** The purpose of the proposed amendments is to establish the program and provider requirements, service limitations and coverage, and recipient eligibility standards for the new DMAS program entitled Individual and Family Developmental Disability Support Waiver.

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

Public comments may be submitted until March 30, 2001, to Karen Lawson, Analyst, Division of Long-Term Care, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959 or FAX (804) 786-1680.

* * * * *

† **March 30, 2001** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-90-10 et seq. Methods and Standards for Establishing Payment Rates--Long-Term Care (2000 Nursing Home Payment System).** The purpose of the proposed amendments is to implement increased payments for operating costs and implement a new capital payment methodology (Fair Rental Value), both of which are authorized by the 2000 Appropriation Act.

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

Public comments may be submitted until March 30, 2001, to Stan Fields, Director, Cost Settlement and Audit Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959 or FAX (804) 786-1680.

BOARD OF MEDICINE

February 16, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled: **18 VAC 85-80-10 et seq. Regulations Governing the Licensure of Occupational Therapists.** Amendments are proposed to establish requirements for evidence of continued competency in renewal or reinstatement of licensure and for inactive license.

Statutory Authority: §§ 54.1-103, 54.1-2400 and 54.1-2912.1 of the Code of Virginia.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908.

Calendar of Events

Informal Conference Committee

February 16, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled: **18 VAC 85-101-10 et seq. Regulations Governing the Licensure of Radiologic Technologists and Radiologic Technologists-Limited.** The purpose of the proposed amendments is to establish requirements for evidence of continued competency to renew or reinstate a license and for an inactive license.

Statutory Authority: §§ 54.1-2400 and 54.1-2912.1 of the Code of Virginia.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908.

February 1, 2001 - 9:30 a.m. -- Open Meeting
Holiday Inn Select, 2801 Plank Road, Fredericksburg, Virginia.

February 14, 2001 - 10 a.m. -- Open Meeting
Wyndham Hotel, 2801 Hershberger Road, Roanoke, Virginia.

A meeting to inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 of the Code of Virginia. Public comment will not be received.

Contact: Peggy Sadler or Renee Dixon, Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-7332, FAX (804) 662-9517, (804) 662-7197/TTY ☎

February 16, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled: **18 VAC 85-110-10 et seq. Regulations Governing the Practice of Licensed Acupuncturists.** Amendments are proposed to establish an inactive licensure and requirements for reactivation of status.

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

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908.

March 3, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to adopt regulations entitled: **18 VAC 85-120-10 et seq. Regulations Governing the Certification of Athletic Trainers.** The purpose of the proposed regulation is to establish criteria for certification of athletic trainers, fees for applicants and certificate holders, and requirements for renewal or reinstatement of certification.

Statutory Authority: §§ 54.1-2400 and 54.1-2957.4 of the Code of Virginia.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943 or (804) 662-7197/TTY ☎

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

February 4, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Mental Health, Mental Retardation and Substance Abuse Services Board intends to repeal regulations entitled: **12 VAC 35-110-10 et seq. Rules and Regulations to Assure the Rights of Residents of Facilities Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.** This regulation was designed to protect the legal and human rights of all residents of facilities operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services. The provisions of this regulation are being incorporated into 12 VAC 35-115-10 et seq.

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

Contact: Margaret S. Walsh, Director, Office of Human Rights, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-3988 or FAX (804) 371-2308.

February 4, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Mental Health, Mental Retardation and Substance Abuse Services Board intends to adopt regulations entitled: **12 VAC 35-115-10 et seq. Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services.** The proposed regulation will protect

the legal and human rights of individuals who receive treatment in programs and facilities operated, funded and licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

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

Contact: Margaret S. Walsh, Director, Office of Human Rights, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-3988 or FAX (804) 371-2308.

February 4, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Mental Health, Mental Retardation and Substance Abuse Services Board intends to repeal 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.** This regulation was designed to protect the legal and human rights of all persons admitted to inpatient psychiatric programs licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services. The provisions of this regulation are being incorporated into 12 VAC 35-115-10 et seq.

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

Contact: Margaret S. Walsh, Director, Office of Human Rights, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-3988 or FAX (804) 371-2308.

February 4, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Mental Health, Mental Retardation and Substance Abuse Services Board intends to repeal regulations entitled: **12 VAC 35-130-10 et seq. Rules and Regulations to Assure the Rights of Clients in Community Programs Licensed or Funded by the Department of Mental Health, Mental Retardation and Substance Abuse Services.** This regulation was designed to protect the legal and human rights of consumers of community programs funded or licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services. The provisions of this regulation are being incorporated into 12 VAC 35-115-10 et seq.

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

Contact: Margaret S. Walsh, Director, Office of Human Rights, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-3988 or FAX (804) 371-2308.

STATE MILK COMMISSION

† **February 28, 2001 - 10 a.m.** -- Public Hearing
Department of Forestry, 900 Natural Resources Drive, Room 3301, Charlottesville, Virginia. 📍

A public hearing to receive evidence and testimony relative to amendments to 2 VAC 15-20-40 and 2 VAC 15-20-81 and the issuance of an order temporarily suspending enforcement of retail below cost selling. Amendments to 2 VAC 15-20-40 effect the base establishment period and the addition of new base producers. Amendments to 2 VAC 15-20-81 effect the final producer payment date. The issuance of the order effects enforcement of below cost pricing at retail as specified in 2 VAC 15-20-100. Anyone desiring copies of the amendments or order may contact Edward C. Wilson, Jr. for copies. Any persons requiring special accommodations should notify Edward C. Wilson, Jr. at least five days prior to the meeting so that suitable arrangements can be made.

Contact: Edward C. Wilson, Jr., Deputy Administrator, State Milk Commission, 9th St. Office Bldg., 202 N. Ninth St., Room 915, Richmond, VA 23219, telephone (804) 786-2013, FAX (804) 786-3779, e-mail ewilson@smc.state.va.us.

† **February 28, 2001 - 11 a.m.** -- Open Meeting
Department of Forestry, 900 Natural Resources Drive, Room 3301, Charlottesville, Virginia. 📍

A regular meeting to (i) consider industry issues, distributor licensing, base transfers, fiscal matters, and reports from staff; and (ii) review evidence and testimony relative to amendments to 2 VAC 15-20-40 B1 and B2.

Contact: Edward C. Wilson, Jr., Deputy Administrator, State Milk Commission, Ninth St. Office Bldg., 202 N. Ninth St., Room 915, Richmond, VA 23219, telephone (804) 786-2013, FAX (804) 786-3779, (804) 786-2013/TTY 📞, e-mail ewilson@smc.state.va.us.

DEPARTMENT OF MINES, MINERALS AND ENERGY

February 16, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Mines, Minerals and Energy intends to amend regulations entitled: **4 VAC 25-90-10 et seq. Regulations Governing the Use of Diesel-Powered Equipment in Underground Coal Mines.** The regulation sets forth the

Calendar of Events

requirements for operation and maintenance, ventilation, air quality, fire protection, and fuel for diesel engines being used in underground coal mining.

Statutory Authority: §§ 45.1-161.3, 45.1-161.106, 45.1-107 and 45.1-161.206 of the Code of Virginia.

Contact: Frank Linkous, Mine Chief, Department of Mines, Minerals and Energy, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (540) 523-8100 or (540) 828-1120/TTY ☎

February 16, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Mines, Minerals and Energy intends to **repeal** regulations entitled: **4 VAC 25-100-10 et seq. Regulation Governing Vertical Ventilation Holes and Mining near Gas and Oil Wells** and **adopt** regulations entitled: **4 VAC 25-101-10 et seq. Regulation Governing Vertical Ventilation Holes and Mining near Gas and Oil Wells**. The purpose of the proposed action is to establish guidelines that govern drilling, equipping and operating of vertical ventilation holes that are used to remove methane gas from underground coal mines. This regulation is being developed to replace the existing regulation that is being repealed.

Statutory Authority: §§ 45.1-161.3, 45.1-161.106, 45.1-161.121, 45.1-161.254 and 45.1-161.292 of the Code of Virginia.

Contact: Frank Linkous, Mine Chief, Department of Mines, Minerals and Energy, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (540) 523-8100 or (540) 828-1120/TTY ☎

Division of Mined Land Reclamation

† **February 16, 2001 - 1 p.m.** -- Open Meeting
Department of Mines, Minerals and Energy, Buchanan-Smith Building, U.S. Route 23 South, Room 116, Big Stone Gap, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to give interested persons an opportunity to be heard in regard to the Fiscal Year 2001 Abandoned Mine Land Consolidated Grant Application to be submitted to the Federal Office of Surface Mining.

Contact: Roger Williams, AML Services Manager, Department of Mines, Minerals and Energy, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (540) 523-8208, FAX (540) 523-8247, (800) 828-1120/TTY ☎, e-mail rlw@mme.state.va.us.

VIRGINIA MUSEUM OF FINE ARTS

February 15, 2001 - 12:30 p.m. -- Open Meeting
Virginia Museum of Fine Arts, Auditorium, 2800 Grove Avenue, Richmond, Virginia. ♿

A quarterly meeting of the full Board of Trustees. Public comment will not be received.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY ☎, e-mail sbroyles@vmfa.state.va.us.

Architect Search Committee

February 14, 2001 - 10 a.m. -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, CEO Building, 2nd Floor Meeting Room, Richmond, Virginia. ♿

A quarterly meeting to review architects proposals.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Avenue, Richmond, VA, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY ☎, e-mail sbroyles@vmfa.state.va.us.

Buildings and Grounds Committee

February 15, 2001 - 8:30 a.m. -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, CEO Bldg., 2nd Floor Meeting Room, Richmond, Virginia. ♿

A quarterly meeting to review activities and plans of the committee. Public comment will not be received.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Avenue, Richmond, VA 23221, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY ☎, e-mail sbroyles@vmfa.state.va.us.

Collections Committee

February 15, 2001 - 9:30 a.m. -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Ave., Auditorium, Richmond, Virginia. ♿

A quarterly meeting to review acquisitions, gifts and loans in closed session. Public comment will not be received.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY ☎, e-mail sbroyles@vmfa.state.va.us.

Communications and Marketing Committee

February 14, 2001 - 3:15 p.m. -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Ave., CEO Building, 2nd Floor Meeting Room, Richmond, Virginia. ♿

A quarterly meeting to update the committee on marketing/public relations activities and plans.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Avenue, Richmond, VA 23221, telephone (804) 340-1503, FAX (804)

340-1502, (804) 340-1401/TTY ☎, e-mail sbroyles@vmfa.state.va.us.

Education and Programs Committee

February 14, 2001 - 2 p.m. -- Open Meeting
Virginia Museum of Fine Arts, CEO Building, 2800 Grove Avenue, 1st Floor Meeting Room, Richmond, Virginia. ♿

A quarterly meeting to update the committee on the activities of the Education and Outreach department.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY ☎, e-mail sbroyles@vmfa.state.va.us.

Exhibitions Committee

February 14, 2001 - 4:30 p.m. -- Open Meeting
Virginia Museum of Fine Arts, CEO Building, 1st Floor Meeting Room, 2800 Grove Ave., Richmond, Virginia. ♿

A quarterly meeting to discuss future exhibitions to include a closed session. Public comment will not be received.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY ☎, e-mail sbroyles@vmfa.state.va.us.

Finance Committee

February 15, 2001 - 11 a.m. -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Main Lobby Conference Room, Richmond, Virginia. ♿

A quarterly meeting reporting on museum finances. Public comment will not be received.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY ☎, e-mail sbroyles@vmfa.state.va.us.

Legislative Committee

February 14, 2001 - 11:30 a.m. -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Main Lobby Conference Room, Richmond, Virginia. ♿

A quarterly meeting to review legislative activities.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY ☎, e-mail sbroyles@vmfa.state.va.us.

Planning Committee

February 14, 2001 - 12:30 p.m. -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Auditorium, Richmond, Virginia. ♿

A quarterly meeting to review strategic plan.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY ☎, e-mail sbroyles@vmfa.state.va.us.

BOARD OF NURSING

March 19, 2001 - 8:30 a.m. -- Open Meeting
March 21, 2001 - 8:30 a.m. -- Open Meeting
March 22, 2001 - 8:30 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room, Richmond, Virginia. ♿

A panel of the board will conduct formal hearings with licensees and/or certificate holders. Public comment will not be received.

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, e-mail nursebd@dhp.state.va.us.

Special Conference Committee

February 12, 2001 - 8:30 a.m. -- Open Meeting
February 13, 2001 - 8:30 a.m. -- Open Meeting
February 15, 2001 - 8:30 a.m. -- Open Meeting
February 22, 2001 - 8:30 a.m. -- Open Meeting
February 23, 2001 - 8:30 a.m. -- Open Meeting
April 5, 2001 - 8:30 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room, Richmond, Virginia. ♿

A Special Conference Committee, comprised of two or three members of the Virginia Board of Nursing, will conduct informal conferences with licensees or certificate holders. Public comment will not be received.

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, e-mail nursebd@dhp.state.va.us.

OLD DOMINION UNIVERSITY

February 19, 2001 - 3 p.m. -- Open Meeting
March 19, 2001 - 3 p.m. -- Open Meeting
Old Dominion University, Webb University Center, Norfolk, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting of the executive committee of the governing board of the institution to discuss business of the board and the institution as determined by the Rector and the President.

Calendar of Events

Contact: Donna Meeks, Assistant to the Vice President for Administration and Finance, Old Dominion University, 225 Koch Hall, Norfolk, VA 23529, telephone (757) 683-3072, FAX (757) 683-5679, e-mail dmeeks@odu.edu.

April 12, 2001 - 2:30 p.m. -- Open Meeting
Old Dominion University, Webb University Center, Norfolk, Virginia.  (Interpreter for the deaf provided upon request)

A quarterly meeting of the governing board of the institution to discuss business of the board and the institution as determined by the Rector and the President.

Contact: Donna Meeks, Assistant to the Vice President for Administration and Finance, Old Dominion University, 225 Koch Hall, Norfolk, VA 23529, telephone (757) 683-3072, FAX (757) 683-5679, e-mail dmeeks@odu.edu.

BOARD FOR OPTICIANS

February 2, 2001 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to discuss regulatory review and other matters requiring board action, including disciplinary cases. A public comment period will be held at the beginning of the meeting. All meetings are subject to cancellation. The time of the meeting is subject to change. Any persons desiring to attend the meeting and requiring special accommodations or interpretative 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: Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., 4th Floor, Richmond, VA 23230-4917, telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-9753/TTY , e-mail opticians@dpor.state.va.us.

VIRGINIA OUTDOORS FOUNDATION

† February 12, 2001 - 1 p.m. -- Public Hearing
James Monroe Building, 101 North 14th Street, Training Room 3, Mezzanine, Richmond, Virginia. 

Proposed grant application for Transportation Enhancement Program to purchase conservation easements along selected designated Scenic Byways in Virginia.

Contact: Estie Thomas, Conservation Easement Specialist, Virginia Outdoors Foundation, 203 Governor St., Richmond VA 23219, telephone (804) 786-0801, FAX (804) 225-3236, e-mail edthomas@dcr.state.va.us.

VIRGINIA BOARD FOR PEOPLE WITH DISABILITIES

February 21, 2001 - 9 a.m. -- Open Meeting
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting of the board.

Contact: Nan Pemberton, Assistant Director of Board Operations, Virginia Board for People with Disabilities, 202 N. 9th St., 9th Floor, Richmond, VA 23219, telephone (804) 786-0016, FAX (804) 786-1118, toll-free (800) 846-4464, (804) 786-0016/TTY , e-mail pembernj@vbpd.state.va.us.

BOARD OF PHARMACY

† January 31, 2001 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, Fifth Floor, Conference Room 4, Richmond, Virginia. 

The Special Conference Committee will discuss disciplinary matters. Public comments will not be received.

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 West Broad Street, 4th Floor, Richmond, Virginia 23230, telephone (804) 662-9911, FAX (804) 662-9313, e-mail pharmbd@dhp.state.va.us.

February 1, 2001 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. 

A general business meeting to consider disciplinary matters or conduct disciplinary proceedings. Public comment will be received at the beginning of the meeting.

Contact: Elizabeth Scott Russell, RPh, Executive Director, Board of Pharmacy, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9911, FAX (804) 662-9313, (804) 662-7197/TTY , e-mail erussell@dhp.state.va.us.

BOARD OF PSYCHOLOGY

† February 8, 2001 - 3:30 p.m. -- Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

March 30, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 that the Board of Psychology intends to amend regulations entitled: **18 VAC 125-20-10 et seq. Regulations Governing the Practice of Psychology.** The purpose of the proposed action is to establish continuing education requirements for licensure renewal and an inactive status for licensed individuals who are not actively practicing psychology in Virginia.

Statutory Authority: §§ 54.1-2400 and 54.1-3606.1 of the Code of Virginia.

Contact: Evelyn Brown, Executive Director, Board of Psychology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9967, FAX (804) 662-9943, or (804) 662-7197/TTY ☎

REAL ESTATE BOARD

February 7, 2001 - 4 p.m. -- Open Meeting
† **February 8, 2001 - 10 a.m.** -- Open Meeting
Omni Hotel, 12th and Cary Streets, Richmond, Virginia.

A general business meeting of the Education Committee.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA, telephone (804) 367-8552, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail www.state.va.us/dpor/real estate board.

† **February 8, 2001 - 9 a.m.** -- Open Meeting
Omni Hotel, 12th and Cary Streets, Richmond, Virginia.

A general business meeting of the Fair Housing Committee.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA, telephone (804) 367-8552, FAX (804) 367-2475, (804) 367-9375/TTY ☎, mail www.state.va.us/dpor/real estate board.

† **February 8, 2001 - 10 a.m.** -- Open Meeting
Omni Hotel, 12th and Cary Streets, Richmond, Virginia.

A general business meeting.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA, telephone (804) 367-8552, FAX (804) 367-2475, (804) 367-9375/TTY ☎, mail www.state.va.us/dpor/real estate board.

VIRGINIA RECYCLING MARKETS DEVELOPMENT COUNCIL

† **February 13, 2001 - 10 a.m.** -- Open Meeting
Central Virginia Waste Management Authority, 2104 West Laburnum Avenue, Board Room, Richmond, Virginia. ♿
(Interpreter for the deaf provided upon request)

A regular meeting. Subcommittee meetings may be held prior to or after the general council meeting.

Contact: Michael P. Murphy, Director, Environmental Enhancement, Department of Environmental Quality, Virginia Recycling Markets Development Council, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4003, FAX (804) 698-4319, toll-free (800) 592-5482, (804) 698-4021/TTY ☎

DEPARTMENT OF REHABILITATIVE SERVICES

February 5, 2001 - 10 a.m. -- Open Meeting
The Mill House, 570 Staples Mill Road, Richmond, Virginia. ♿
(Interpreter for the deaf provided upon request)

A meeting to discuss issues pertaining to the Commonwealth Neurotrauma Initiative. A public comment period will be held at the beginning of the meeting. Anyone needing special accommodations should contact Ana Hernandez at least five days before the meeting so that suitable arrangements can be made.

Contact: Ana Hernandez, Program Specialist, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23288-0300, telephone (804) 662-7162, FAX (804) 662-7663, toll-free (800) 552-5019, (804) 464-9950/TTY ☎.

VIRGINIA RESOURCES AUTHORITY

February 13, 2001 - 9 a.m. -- Open Meeting
March 13, 2001 - 9 a.m. -- Open Meeting
Virginia Resources Authority, Eighth and Main Building, 707 East Main Street, Second Floor Conference Room, Richmond, Virginia.

A regular meeting of the Board of Directors to (i) review and, if appropriate, approve the minutes from the most recent monthly meeting; (ii) review the authority's operations for the prior month; (iii) review applications for loans submitted to the authority for approval; (iv) consider loan commitments for approval and ratification under its various programs; (v) approve the issuance of any bonds; (vi) review the results of any bond sales; and (vii) consider such other matters and take such other actions as it may deem appropriate. Various committees of the Board of Directors may also meet immediately before or after the regular meeting and consider matters within their purview. The planned agenda of the meeting and any committee meetings will be available at the offices of the authority one week prior to the date of the meeting. Any person who needs any accommodation in order to participate in the meeting should contact the authority at least 10 days before the meeting so that suitable arrangements can be made.

Contact: Benjamin M. Hoyle, Executive Assistant, Virginia Resources Authority, 707 E. Main St., Suite 1350, Richmond, VA 23219, telephone (804) 644-3100, FAX (804) 644-3109, e-mail bhoyle@vra.state.va.us.

DEPARTMENT FOR RIGHTS OF VIRGINIANS WITH DISABILITIES

January 30, 2001 - 10 a.m. -- Open Meeting
Ninth Street Office Building, 202 North 9th Street, 9th Floor, Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A quarterly meeting.

Contact: Claunita Jackson, Administrative Staff Assistant, Department for Rights of Virginians with Disabilities, Ninth

Calendar of Events

Street Office Bldg., 202 N. 9th St., Richmond, VA 23219, telephone (804) 225-3220, FAX (804) 225-3221, toll-free 1-800-552-3962, (804) 225-2042/TTY ☎, e-mail jacksoca@drvd.state.va.us.

SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD

February 28, 2001 - 10 a.m. -- Open Meeting
Henrico County Human Services, 8600 Dixon Powers Road, Board Room, 2nd Floor, Richmond, Virginia. 📍

A meeting to hear appeals of denials of applications for permits to construct a septic system.

Contact: Susan Sherertz, Board Secretary, Department of Health, P.O. Box 2448, Room 115, Richmond, VA 23185, telephone (804) 371-4236, FAX (804) 225-4003, e-mail ssherertz@vdh.state.va.us.

STATE BOARD OF SOCIAL SERVICES

February 16, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to amend regulations entitled: **22 VAC 40-690-10 et seq. Virginia Child Care Provider Scholarship Program (formerly Child Day Care Scholarship Programs)**. This regulation is being amended to reflect the administration of the current child care scholarship program. The current regulation was written to administer two different scholarship programs. The two scholarship programs are the CDA credentialing program and the college tuition program. The CDA credentialing scholarship program ended in 1995. The college tuition scholarship program still exists. All references to the CDA credentialing scholarship program have been removed.

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

Contact: Rhonda Harrell, Program Development Consultant, Division of Licensing Programs, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1775.

February 16, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to repeal regulations entitled: **22 VAC 40-900-10 et seq. Community Services Block Grant Guidelines**. This action will repeal the outdated and excessive regulation for the Community Services Block Grant Program.

Statutory Authority: §§ 2.1-590 and 63.1-25 of the Code of Virginia.

Contact: Phyl Parrish, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1895.

February 16, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to adopt regulations entitled: **22 VAC 40-901-10 et seq. Community Services Block Grant Program**. The purpose of the proposed regulation is to detail the formula used for the distribution of Community Services Block Grant funds to local community action agencies. The regulation will also require that community action agencies provide matching funds equal to 20% of the grant award.

Statutory Authority: §§ 2.1-590 and 63.1-25 of the Code of Virginia.

Contact: Phyl Parrish, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1895.

BOARD OF SOCIAL WORK

† **March 9, 2001 - 10 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Board Street, 5th Floor, Conference Room 2, Richmond, Virginia. 📍

The Special Conference Committee will convene for an informal conference to hear possible violations of the laws and regulations governing the practice of social work. Public comment will not be heard.

Contact: Rai Minor, Administrative Assistant, Board of Social Work, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9914, FAX (804) 662-7250, (804) 662-7197/TTY ☎, e-mail bsw@dhp.state.va.us.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS

† **February 13, 2001 - 10 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general business meeting.

Contact: William H. Ferguson, II, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA, telephone (804) 367-2406, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail soilscientist@dpor/state.va.us.

COUNCIL ON TECHNOLOGY SERVICES

† **March 8, 2001 - 9 a.m.** -- Open Meeting
Department of Transportation, 1221 East Broad Street, Auditorium, Richmond, Virginia.

A regular meeting.

Contact: Janice Akers, Department of Technology Planning, 1100 Bank St., Room 901, Richmond VA, 23219, telephone (804) 786-1434, FAX (804) 371-7952, e-mail jakers@egov.state.va.us.

COMMONWEALTH TRANSPORTATION BOARD

† **February 14, 2001 - 2 p.m.** -- Open Meeting
Department of Transportation, 1221 East Broad Street, Auditorium, Richmond, Virginia.

A work session of the Commonwealth Transportation Board and the Department of Transportation staff.

Contact: Cathy M. Ghidotti, Assistant Secretary to the Board, Commonwealth Transportation Board, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-6675, FAX (804) 786-6683, e-mail ghidotti_cm@vdot.state.va.us.

† **February 15, 2001 - 10 a.m.** -- Open Meeting
Department of Transportation, 1221 East Broad Street, Auditorium, Richmond, Virginia. 

A monthly meeting to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval. Public comment will be received at the outset of the meeting on items on the meeting agenda for which the opportunity for public comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the group. The board reserves the right to amend these conditions. Separate committee meetings may be held on call of the chairman. Contact VDOT Public Affairs at (804) 786-2715 for schedule.

Contact: Cathy M. Ghidotti, Assistant Secretary to the Board, Commonwealth Transportation Board, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-6675, FAX (804) 786-6683, e-mail ghidotti_cm@vdot.state.va.us.

BOARD OF VETERINARY MEDICINE

January 31, 2001 - 9 a.m. -- Open Meeting
Williamsburg Marriott, 50 Kingsmill Road, Williamsburg, Virginia. 

A general business meeting to consider disciplinary and regulatory issues that may come before the board. Public comment will be received at the beginning of the meeting.

Contact: Elizabeth A. Carter, Ph.D., Executive Director, Board of Veterinary Medicine, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9915, FAX (804) 662-9504, (804) 662-7197/TTY , e-mail ecarter@dhp.state.va.us.

† **February 1, 2001 - 10 a.m.** -- Open Meeting
Williamsburg Marriott, 50 Kingsmill Road, Williamsburg, Virginia. 

The Special Conference Committee will conduct disciplinary conferences. These are public meetings, but public comment will not be received.

Contact: Terri H. Behr, Administrative Assistant, Board of Veterinary Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9915, FAX (804) 662-7098, (804) 662-7197/TTY , e-mail tbehr@dhp.state.va.us.

VIRGINIA MILITARY INSTITUTE

February 10, 2001 - 8:30 a.m. -- Open Meeting
Virginia Military Institute, Turman Room, Preston Library, Lexington, Virginia. 

A regular meeting of the Board of Visitors to hear committee reports and remarks of the superintendent. The Board of Visitors does not provide an opportunity for public comment at this meeting. Public comment is received at the first meeting of the academic year, usually in August.

Contact: Colonel Edwin L. Dooley, Jr., Secretary, Virginia Military Institute, Superintendent's Office, Lexington, VA 24450, telephone (540) 464-7206.

VIRGINIA VOLUNTARY FORMULARY BOARD

February 1, 2001 - 10 a.m. -- Public Hearing
Washington Building, 1100 Bank Street, 2nd Floor, Conference Room, Richmond, Virginia. 

A public hearing to consider the adoption and issuance of revisions to the Virginia Voluntary Formulary. The proposed revisions to the formulary add and delete drugs and drug products to the Formulary that became effective July 27, 1998, and the most recent supplement to that revision. Copies of the proposed revisions are available for inspection at the Bureau of Pharmacy Services, Virginia Department of Health, Monroe Building, 101 North 14th Street, Room S-45, Richmond, VA 23219. Written comments sent to the above address and received prior to 5 p.m. on February 1, 2001, will be made a part of the hearing record and considered by the board.

Contact: James K. Thomson, Director, Bureau of Pharmacy Services, Department of Health, 101 N. 14th St., S-45, Richmond, VA 23219, telephone (804) 786-4326.

March 1, 2001 - 10:30 a.m. -- Open Meeting
Washington Building, 1100 Bank Street, 2nd Floor, Conference Room, Richmond, Virginia. 

A meeting to review public hearing comments and product data for drug products being considered for inclusion in the Virginia Voluntary Formulary.

Contact: James K. Thomson, Director, Bureau of Pharmacy Services, Department of Health, Monroe Building, 101 N. 14th St., Room S-45, Richmond, VA 23219, telephone (804) 786-4326.

Calendar of Events

VIRGINIA WASTE MANAGEMENT BOARD

February 2, 2001 - Public comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Waste Management Board intends to amend regulations entitled: **9 VAC 20-140-10 et seq. Regulations for the Certification of Recycling Machinery and Equipment for Tax Exemption Purposes.** The proposed amendments remove requirements for submittal of proof of purchase price and for equipment to be in a fixed location to qualify for state income tax credit and clarify what is not covered by the regulation.

Statutory Authority: §§ 58.1-338, 58.1-439.7, 58.1-439.8 and 58.1-3661 of the Code of Virginia.

Contact: Daniel S. Gwinner, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4218, e mail dsgwinner@deq.state.va.us.

February 5, 2001 - 1:30 p.m. -- Public Hearing
Salem Church Library, 2607 Salem Church Road, Library Room B, Fredericksburg, Virginia.

February 6, 2001 - 10:30 a.m. -- Public Hearing
Tidewater Regional Office, Department of Environmental Quality, 5636 Southern Boulevard, Virginia Beach, Virginia.

February 13, 2001 - 1 p.m. -- Public Hearing
West Central Regional Office, Department of Environmental Quality, 3019 Peters Creek Road, Roanoke, Virginia.

March 16, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Waste Management Board intends to amend regulations entitled: **9 VAC 20-70-10 et seq. Financial Assurance Regulations for Solid Waste Facilities.** The proposed amendments will incorporate statutory changes, update provisions to maintain consistency with federal regulations and require submittal of documentation to verify that financial assurance mechanisms are funded to required amounts.

Statutory Authority: §§ 10.1-1402 and 10.1-1410 of the Code of Virginia.

Contact: Melissa Porterfield, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4238.

January 31, 2001 - 1 p.m. -- Open Meeting

February 7, 2001 - 1 p.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. 

The Technical Advisory Committee (15A) for Amendment of the Hazardous Waste Management Regulations (9 VAC 20-60-10 et seq.) will meet in two sessions to consider any modifications that may be appropriate to the

regulations. All aspects of the regulations are possible subjects of discussion by the committee. The last comprehensive review of the regulations was Amendment 14 (1999). Amendment 14 included a change in the regulation's structure by incorporating similar federal text into the Commonwealth's regulations by reference and deleting large portions of text that was redundant to the newly incorporated federal text. On July 11, 2000, the Virginia Waste Management Board adopted the date of July 1, 2000, as the date of the federal text that was incorporated into the Commonwealth's regulations. This action coincidentally incorporated many changes that were amendments to the federal regulations, which were adopted after the date of incorporated federal text as previously defined by Amendment 14. The committee may consider whether adjustments or exceptions to the Commonwealth's regulations should be made in those parts related to incorporation of federal text. It may consider further use of the incorporation of federal regulation and additional removal of text that is redundant to federal regulatory text incorporated by reference. It may consider correction of errors and any other change it feels will be a constructive change to the regulations.

Contact: Robert G. Wickline, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4213, FAX (804) 698-4327, (804) 698-4021/TTY , e-mail rgwickline@deq.state.va.us.

February 7, 2001 - 9 a.m. -- Open Meeting

March 7, 2001 - 9 a.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. 

A meeting of the advisory committee assisting the department in developing proposed amendments to the Voluntary Remediation Regulation.

Contact: Melissa Porterfield, Virginia Waste Management Board, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4238, e-mail mporterfi@deq.state.va.us.

STATE WATER CONTROL BOARD

† **February 28, 2001 - 1 p.m.** -- Public Hearing
Chase City Municipal Building, 319 N. Main Street, Chase City, Virginia.  (Interpreter for the deaf provided upon request)

A public hearing to receive comments on the proposed amendments to the Roanoke River Basin Water Quality Management Plan for the Town of Chase City.

Contact: Curtis Linderman, Department of Environmental Quality, 4949-A Cox Rd., Richmond, VA 23260, telephone (804) 527-5038, FAX (804) 527-5106, e-mail cjlinderma@deq.state.va.us.

† **February 28, 2001 - 7 p.m.** -- Public Hearing
Department of Environmental Quality, 4411 Early Road, Harrisonburg, Virginia.  (Interpreter for the deaf provided upon request)

A public hearing to receive comments on the proposed discharge permit for the North River wastewater treatment facility located on State Route 867 in Mount Crawford.

Contact: Valerie Rourke, Department of Environmental Quality, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7839, FAX (540) 574-7878, (804) 698-4021/TTY ☎, e-mail varourke@deq.state.va.us.

† **March 1, 2001 - 2 p.m.** -- Open Meeting
Virginia War Memorial, Auditorium, 621 South Belvidere Street, Auditorium, Richmond, Virginia. ♿

† **March 5, 2001 - 2 p.m.** -- Open Meeting
Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, Virginia. ♿

A public meeting to receive comments on the State Water Control Board's notice of intent of the triennial review of the water quality standards.

Contact: Eleanore Daub, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4111, FAX (804) 698-4522, e-mail emdaub@deq.state.va.us.

INDEPENDENT

VIRGINIA RETIREMENT SYSTEM

February 13, 2001 - Noon -- Open Meeting

March 14, 2001 - 3 p.m. -- Open Meeting
Virginia Retirement System Headquarters, 1200 East Main Street, Richmond, Virginia. ♿

A regular meeting of the Investment Advisory Committee.

Contact: Darla K. Glazier, Office Manager, Virginia Retirement System, P.O. Box 2500, Richmond, VA 23218, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail dglazier@vrs.state.va.us.

February 15, 2001 - 1 p.m. -- Open Meeting

March 15, 2001 - 9 a.m. -- Open Meeting
Virginia Retirement System Headquarters, 1200 East Main Street, Richmond, Virginia. ♿

A regular meeting of the Board of Trustees.

Contact: Darla K. Glazier, Office Manager, Virginia Retirement System, P.O. Box 2500, Richmond, VA 23218, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail dglazier@vrs.state.va.us.

February 15, 2001 - 10 a.m. -- Open Meeting
Virginia Retirement System Headquarters, 1200 East Main Street, Richmond, Virginia. ♿

The following committees will meet:

Benefits and Actuarial Committee - 10 a.m.
Audit and Compliance Committee - 11 a.m.

Administration and Personnel Committee - Noon

Contact: Darla K. Glazier, Office Manager, Virginia Retirement System, P.O. Box 2500, Richmond, VA 23218, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail dglazier@vrs.state.va.us.

LEGISLATIVE

Notice to Subscribers

Legislative meetings held during the Session of the General Assembly are exempted from publication in *The Virginia Register of Regulations*. You may call Legislative Information for information on standing committee meetings. The number is (804) 698-1500.

VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

March 14, 2001 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting.

Contact: Maria J.K. Everett, Executive Director, Virginia Freedom of Information Advisory Council, General Assembly Building, 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 225-3056, FAX (804) 371-0169, toll-free (866) 448-4100, e-mail meverett@leg.state.va.us.

CHRONOLOGICAL LIST

OPEN MEETINGS

January 29

† Conservation and Recreation, Department of

January 30

† Conservation and Recreation, Department of
† Environmental Quality, Department of
- Virginia Environmental Education Advisory Committee

Rights of Virginian's with Disabilities, Department for

January 31

Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for

- Architects Section

Branch Pilots, Board for

† Environmental Quality, Department of
- Virginia Environmental Education Advisory Committee

Funeral Directors and Embalmers, Board of

† Pharmacy, Board of

Calendar of Events

Veterinary Medicine, Board of
Waste Management Board, Virginia

February 1

Accountancy, Board of
Branch Pilots, Board for
† Counseling, Board of
- Credentials Committee
- Regulatory Committee
Medicine, Board of
- Informal Conference Committee
Pharmacy, Board of
† Veterinary Medicine, Board of

February 2

Agriculture and Consumer Services, Department of
- Virginia Plant Pollination Advisory Board
Art and Architectural Review Board
† Conservation and Recreation, Department of
† Counseling, Board of
- Executive Committee
Opticians, Board for

February 5

Rehabilitative Services, Department of
- Commonwealth Neurotrauma Initiative Advisory Board

February 6

Agriculture and Consumer Services, Department of
- Virginia Sweet Potato Board

February 7

Agriculture and Consumer Services, Department of
- Virginia Horse Industry Board
Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for
- Professional Engineers Section
Contractors, Board for
- Tradesman Committee
† Real Estate Board
- Education Committee
Waste Management Board, Virginia

February 8

† Agriculture and Consumer Services, Department of
- Virginia Charity Food Assistance Advisory Board
- Virginia Winegrowers Advisory Board
† Child Day-Care Council
Fire Services Board, Virginia
- Administration and Policy Committee
- Fire Education and Training Committee
- Fire Prevention and Control Committee
- Committee on Finance
† Real Estate Board
- Education Committee
- Fair Housing Committee

February 9

† Agriculture and Consumer Services, Department of
- Virginia Aquaculture Advisory Board
Fire Services Board, Virginia

February 10

Virginia Military Institute
- Board of Visitors

February 12

Nursing, Board of
- Special Conference Committee

February 13

† Alcoholic Beverage Control Board
† Aviation Board
† Corrections, Board of
- Correctional Services/Policy and Regulations Committee
Nursing, Board of
- Special Conference Committee
† Recycling Markets Development Council, Virginia Resources Authority, Virginia Retirement System, Virginia
- Investment Advisory Committee
† Soil Scientists, Board for Professional

February 14

Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for
- Land Surveyors Section
† Aviation Board
† Chesapeake Bay Local Assistance Board
- Grants Committee
- Northern Area Review Committee
- Southern Area Review Committee
† Corrections, Board of
- Administration Committee
Medicine, Board of
- Informal Conference Committee
Museum of Fine Arts, Virginia
- Architect Search Committee
- Communications and Marketing Committee
- Education and Programs Committee
- Exhibitions Committee
- Legislative Committee
- Planning Committee
† Transportation Board, Commonwealth

February 15

Asbestos and Lead, Board for
Assistive Technology Loan Fund Authority
† Audiology and Speech-Language Pathology, Board of
† Conservation and Recreation, Department of
- Lake Anna State Park Advisory Committee
Education, Board of
Museum of Fine Arts, Virginia
- Board of Trustees
- Buildings and Grounds Committee
- Collections Committee
- Finance Committee
Nursing, Board of
- Special Conference Committee
Retirement System, Virginia
- Board of Trustees
- Administration and Personnel Committee
- Audit and Compliance Committee

- Benefits and Actuarial Committee
- † Transportation Board, Commonwealth

February 16

- Air Pollution Control Board, State
- † Correctional Education, Board of
- † Mines, Minerals and Energy, Department of
 - Division of Mined Land Reclamation

February 19

- Old Dominion University
 - Board of Visitors Executive Committee

February 21

- Agriculture and Consumer Services, Department of
 - Virginia Cattle Industry Board
- Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
 - Landscape Architects Section
- People with Disabilities, Virginia Board for

February 22

- Nursing, Board of
 - Special Conference Committee

February 23

- † Agriculture and Consumer Services, Department of
 - Virginia Bright Flue-Cured Tobacco Board
- Nursing, Board of
 - Special Conference Committee

February 26

- Design-Building/Construction Management Review Board

February 27

- † Compensation Board
- Marine Resources Commission

February 28

- Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
 - Certified Interior Designers Section
- At-Risk Youth and Families, Comprehensive Services for
 - State Executive Council
- Funeral Directors and Embalmers, Board of
 - Legislative Committee
- † Milk Commission, State
- Sewage Handling and Disposal Appeal Review Board

March 1

- † Game and Inland Fisheries, Board of
- Voluntary Formulary Board, Virginia
- † Water Control Board, State

March 2

- Art and Architectural Review Board

March 3

- † Blind and Vision Impaired, Board for the

March 5

- † Barbers and Cosmetology, Board for
- † Water Control Board, State

March 7

- Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
- Waste Management Board, Virginia

March 8

- Agriculture and Consumer Services, Department of
 - Virginia Cotton Board
- † Technology Services, Council on

March 9

- † Social Work, Board of
 - Special Conference Committee

March 12

- † Local Government, Commission on

March 13

- † Conservation and Recreation, Department of
 - Board of Conservation and Development of Public Beaches
- Resources Authority, Virginia

March 14

- Freedom of Information Advisory Council, Virginia
- Retirement System, Virginia

March 15

- † Labor and Industry, Department of
 - Virginia Apprenticeship Council
- Retirement System, Virginia
- † Conservation and Recreation, Department of
 - Soil and Water Conservation Board

March 19

- Design-Building/Construction Management Review Board
- Library Board
 - Archival and Information Services Committee
 - Collection Management Services Committee
 - Legislative and Finance Committee
 - Public Library Development Committee
 - Publications and Educational Services Committee
 - Records Management Committee
- Nursing, Board of
- Old Dominion University
 - Board of Visitors Executive Committee

March 20

- † Higher Education for Virginia, State Council of

March 21

- Nursing, Board of

March 22

- Education, Board of
- Nursing, Board of

March 27

- Marine Resources Commission

March 28

- At-Risk Youth and Families, Comprehensive Services for
 - State Executive Council

Calendar of Events

April 5

Nursing, Board of
- Special Conference Committee

April 6

† Art and Architectural Review Board

April 12

Old Dominion University

April 16

† Design-Build/Construction Management Review Board

April 25

† At-Risk Youth and Families, Comprehensive Services
for
- State Executive Council

PUBLIC HEARINGS

February 1

† Counseling, Board of
Voluntary Formulary Board, Virginia

February 5

Waste Management Board, Virginia

February 6

Deaf and Hard-of-Hearing, Department for the
Waste Management Board, Virginia

February 8

† Psychology, Board of

February 12

† Outdoors Foundation, Virginia

February 13

Waste Management Board, Virginia

February 21

Contractors, Board for

February 28

† Milk Commission, State
† Water Control Board, State