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CUMULATIVE TABLE OF VIRGINIA ADMINISTRATIVE CODE SECTIONS ADOPTED, AMENDED, OR REPEALED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printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Spring 2005 VAC Supplement includes final regulations published through *Virginia Register* Volume 21, Issue 11, dated February 7, 2005). 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 1. Administration			
1 VAC 55-30-10 through 1 VAC 55-30-90 emer	Added	21:19 VA.R. 2599-2602	5/16/05-5/15/06
Title 3. Alcoholic Beverages			
3 VAC 5-30-10	Amended	21:19 VA.R. 2530	6/29/05
3 VAC 5-30-30	Amended	21:19 VA.R. 2531	6/29/05
3 VAC 5-30-60	Amended	21:19 VA.R. 2532	6/29/05
3 VAC 5-30-70	Amended	21:19 VA.R. 2533	6/29/05
3 VAC 5-40-20	Amended	21:19 VA.R. 2533	6/29/05
3 VAC 5-40-20	Amended	21:19 VA.R. 2533	6/29/05
3 VAC 5-40-40	Amended	21:19 VA.R. 2533	6/29/05
3 VAC 5-40-50	Amended	21:19 VA.R. 2533	6/29/05
3 VAC 5-40-50	Amended	21:19 VA.R. 2533	6/29/05
3 VAC 5-70-220	Added	21:19 VA.R. 2533	6/29/05
Title 4. Conservation and Natural Resources			
4 VAC 15-40-20	Amended	21:23 VA.R. 3235	8/24/05
4 VAC 15-40-21	Added	21:23 VA.R. 3235	8/24/05
4 VAC 15-380-120	Readopting	21:23 VA.R. 3236	8/24/05
4 VAC 20-80-30	Amended	21:25 VA.R. 3469	7/29/05
4 VAC 20-110-20	Amended	21:21 VA.R. 2900	6/1/05
4 VAC 20-170-10 emer	Amended	21:16 VA.R. 2219	4/1/05-4/30/05
4 VAC 20-170-30 emer	Amended	21:16 VA.R. 2219	4/1/05-4/30/05
4 VAC 20-170-30	Amended	21:18 VA.R. 2372	5/1/05
4 VAC 20-252-50	Amended	21:13 VA.R. 1824	2/2/05
4 VAC 20-252-55	Amended	21:13 VA.R. 1824	2/2/05
4 VAC 20-252-90	Amended	22:1 VA.R. 81	9/1/05
4 VAC 20-252-100	Amended	22:1 VA.R. 81	9/1/05
4 VAC 20-252-130	Amended	21:13 VA.R. 1825	2/2/05
4 VAC 20-252-135 emer	Added	21:16 VA.R. 2219	4/1/05-4/30/05
4 VAC 20-252-135	Added	21:18 VA.R. 2372	5/1/05
4 VAC 20-252-150	Amended	21:13 VA.R. 1825	2/2/05
4 VAC 20-252-160	Amended	21:13 VA.R. 1826	2/2/05
4 VAC 20-270-30 emer	Amended	21:23 VA.R. 3290	6/29/05-7/28/05
4 VAC 20-270-30	Amended	21:25 VA.R. 3469	7/29/05
4 VAC 20-320-20 emer	Amended	21:16 VA.R. 2220	4/1/05-4/30/05
4 VAC 20-320-20	Amended	21:18 VA.R. 2373	5/1/05
4 VAC 20-320-65 emer	Added	21:16 VA.R. 2220	4/1/05-4/30/05
4 VAC 20-320-65	Added	21:18 VA.R. 2373	5/1/05
4 VAC 20-390-20 through 4 VAC 20-390-50	Amended	21:22 VA.R. 3089-3092	7/1/05
4 VAC 20-430-10 emer	Amended	21:16 VA.R. 2220	4/1/05-4/30/05
4 VAC 20-430-10	Amended	21:18 VA.R. 2373	5/1/05
4 VAC 20-430-15 emer	Amended	21:16 VA.R. 2220	4/1/05-4/30/05
4 VAC 20-430-15	Amended	21:18 VA.R. 2373	5/1/05
4 VAC 20-430-65 emer	Added	21:16 VA.R. 2220	4/1/05-4/30/05
4 VAC 20-430-65	Added	21:18 VA.R. 2373	5/1/05
4 VAC 20-450-30	Amended	21:13 VA.R. 1827	2/2/05

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-566-10 through 4 VAC 20-566-50 emer	Added	21:25 VA.R. 3552	8/16/05-9/14/05
4 VAC 20-566-10 through 4 VAC 20-566-50	Added	22:1 VA.R. 81-82	9/15/05
4 VAC 20-620-20	Amended	21:21 VA.R. 2900	6/1/05
4 VAC 20-620-40	Amended	21:14 VA.R. 1992	3/1/05
4 VAC 20-620-50	Amended	21:14 VA.R. 1993	3/1/05
4 VAC 20-620-60	Amended	21:14 VA.R. 1993	3/1/05
4 VAC 20-620-70	Amended	21:14 VA.R. 1994	3/1/05
4 VAC 20-670-30	Amended	21:25 VA.R. 3470	7/29/05
4 VAC 20-670-50	Amended	21:25 VA.R. 3470	7/29/05
4 VAC 20-720-10 emer	Amended	21:12 VA.R. 1563	2/1/05-2/28/05
4 VAC 20-720-20 emer	Amended	21:12 VA.R. 1563	2/1/05-2/28/05
4 VAC 20-720-20	Amended	21:14 VA.R. 1994	3/1/05
4 VAC 20-720-40 emer	Amended	21:12 VA.R. 1564	2/1/05-2/28/05
4 VAC 20-720-40	Amended	21:14 VA.R. 1995	3/1/05
4 VAC 20-720-49 emer	Added	21:14 VA.R. 2016	3/1/05-3/9/05
4 VAC 20-720-50 emer	Amended	21:12 VA.R. 1564	2/1/05-2/28/05
4 VAC 20-720-50	Amended	21:14 VA.R. 1995	3/1/05
4 VAC 20-720-60 emer	Amended	21:12 VA.R. 1565	2/1/05-2/28/05
4 VAC 20-720-110 emer	Amended	21:12 VA.R. 1565	2/1/05-2/28/05
4 VAC 20-910	Erratum	21:20 VA.R. 2736	--
4 VAC 20-910-45	Amended	21:13 VA.R. 1827	2/2/05
4 VAC 20-910-45	Amended	21:21 VA.R. 2901	6/1/05
4 VAC 20-920-45	Added	21:8 VA.R. 914	12/1/04
4 VAC 20-950-45	Amended	21:16 VA.R. 2191	4/1/05
4 VAC 20-950-48	Amended	21:13 VA.R. 1828	2/2/05
4 VAC 20-1065-10 through 4 VAC 20-1065-40	Added	21:12 VA.R. 1523	2/1/05
4 VAC 20-1080-10 through 4 VAC 20-1080-50 emer	Added	21:16 VA.R. 2221	4/1/05-4/30/05
4 VAC 20-1080-10 through 4 VAC 20-1080-50	Added	21:18 VA.R. 2374	5/1/05
4 VAC 25-130 (Forms)	Amended	21:22 VA.R. 3106	--
4 VAC 25-130-816.11	Amended	21:26 VA.R. 3706	8/10/05-8/9/06
4 VAC 25-130-816.64	Amended	21:26 VA.R. 3707	8/10/05-8/9/06
Title 6. Criminal Justice and Corrections			
6 VAC 20-130-60	Amended	21:16 VA.R. 2192	5/18/05
6 VAC 20-180-10 through 6 VAC 20-180-50	Amended	21:14 VA.R. 1996-1998	4/20/05
6 VAC 20-180-60	Added	21:14 VA.R. 1998	4/20/05
6 VAC 20-230-10 through 6 VAC 20-230-350	Added	21:26 VA.R. 3680-3691	10/5/05
6 VAC 20-250-10 through 6 VAC 20-250-360 emer	Added	21:21 VA.R. 2914-2925	7/1/05-6/30/06
6 VAC 35-140-10	Amended	21:19 VA.R. 2534	7/1/05
6 VAC 35-140-20	Amended	21:19 VA.R. 2536	7/1/05
6 VAC 35-140-22	Added	21:19 VA.R. 2536	7/1/05
6 VAC 35-140-23	Added	21:19 VA.R. 2536	7/1/05
6 VAC 35-140-24	Added	21:19 VA.R. 2536	7/1/05
6 VAC 35-140-30	Amended	21:19 VA.R. 2536	7/1/05
6 VAC 35-140-40	Amended	21:19 VA.R. 2536	7/1/05
6 VAC 35-140-45	Added	21:19 VA.R. 2536	7/1/05
6 VAC 35-140-50 through 6 VAC 35-140-90	Amended	21:19 VA.R. 2536	7/1/05
6 VAC 35-140-110 through 6 VAC 35-140-140	Amended	21:19 VA.R. 2537	7/1/05
6 VAC 35-140-170 through 6 VAC 35-140-190	Amended	21:19 VA.R. 2537	7/1/05
6 VAC 35-140-192	Added	21:19 VA.R. 2537	7/1/05
6 VAC 35-140-200 through 6 VAC 35-140-230	Amended	21:19 VA.R. 2537	7/1/05
6 VAC 35-140-250 through 6 VAC 35-140-270	Amended	21:19 VA.R. 2537	7/1/05
6 VAC 35-140-275	Added	21:19 VA.R. 2537	7/1/05
6 VAC 35-140-280	Amended	21:19 VA.R. 2537	7/1/05
6 VAC 35-140-290	Amended	21:19 VA.R. 2538	7/1/05
6 VAC 35-140-295	Added	21:19 VA.R. 2538	7/1/05
6 VAC 35-140-300 through 6 VAC 35-140-350	Amended	21:19 VA.R. 2538	7/1/05

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
6 VAC 35-140-385 through 6 VAC 35-140-389	Added	21:19 VA.R. 2538	7/1/05
6 VAC 35-140-400	Amended	21:19 VA.R. 2538	7/1/05
6 VAC 35-140-430 through 6 VAC 35-140-500	Amended	21:19 VA.R. 2538	7/1/05
6 VAC 35-140-510	Repealed	21:19 VA.R. 2538	7/1/05
6 VAC 35-140-530	Amended	21:19 VA.R. 2538	7/1/05
6 VAC 35-140-540	Amended	21:19 VA.R. 2538	7/1/05
6 VAC 35-140-545	Added	21:19 VA.R. 2538	7/1/05
6 VAC 35-140-550 through 610	Amended	21:19 VA.R. 2538-2540	7/1/05
6 VAC 35-140-615	Added	21:19 VA.R. 2540	7/1/05
6 VAC 35-140-620	Amended	21:19 VA.R. 2540	7/1/05
6 VAC 35-140-630	Amended	21:19 VA.R. 2540	7/1/05
6 VAC 35-140-660	Amended	21:19 VA.R. 2540	7/1/05
6 VAC 35-140-670	Amended	21:19 VA.R. 2540	7/1/05
6 VAC 35-140-680	Amended	21:19 VA.R. 2540	7/1/05
6 VAC 35-140-685	Added	21:19 VA.R. 2540	7/1/05
6 VAC 35-140-690	Amended	21:19 VA.R. 2540	7/1/05
6 VAC 35-140-700	Amended	21:19 VA.R. 2540	7/1/05
6 VAC 35-140-701 through 6 VAC 35-140-709	Added	21:19 VA.R. 2540	7/1/05
6 VAC 35-140-711 through 6 VAC 35-140-715	Added	21:19 VA.R. 2540	7/1/05
6 VAC 35-140-730 through 6 VAC 35-140-770	Amended	21:19 VA.R. 2540	7/1/05
Title 8. Education			
8 VAC 20-21-80	Amended	21:25 VA.R. 3471	9/22/05
8 VAC 20-21-90	Amended	21:25 VA.R. 3473	9/22/05
8 VAC 20-21-580	Amended	21:15 VA.R. 2111	5/5/05
8 VAC 20-21-660	Amended	21:25 VA.R. 3473	9/22/05
8 VAC 20-21-680	Amended	21:25 VA.R. 3474	9/22/05
8 VAC 20-30-10 through 8 VAC 20-30-40	Amended	21:22 VA.R. 3092-3093	8/15/05
8 VAC 20-30-50	Repealed	21:22 VA.R. 3093	8/15/05
8 VAC 20-30-60	Amended	21:22 VA.R. 3093	8/15/05
8 VAC 20-30-70	Amended	21:22 VA.R. 3093	8/15/05
8 VAC 20-90-10	Amended	21:14 VA.R. 1999	5/2/05
8 VAC 20-90-30	Amended	21:14 VA.R. 2000	5/2/05
8 VAC 20-90-40	Amended	21:14 VA.R. 2003	5/2/05
8 VAC 20-90-70	Amended	21:14 VA.R. 2003	5/2/05
8 VAC 20-210-10	Erratum	21:13 VA.R. 1941	--
8 VAC 20-520-5 emer	Added	21:14 VA.R. 2016	3/1/05-2/28/06
8 VAC 20-520-10 emer	Repealed	21:14 VA.R. 2017	3/1/05-2/28/06
8 VAC 20-520-20 through 8 VAC 20-520-60 emer	Added	21:14 VA.R. 2017-2018	3/1/05-2/28/06
8 VAC 20-680-10	Added	21:12 VA.R. 1559	5/9/05
8 VAC 20-680-20	Added	21:12 VA.R. 1559	5/9/05
8 VAC 20-690-10 through 8 VAC 20-690-50	Added	21:12 VA.R. 1525	3/29/05
8 VAC 20-700-10 through 8 VAC 20-700-50 (emer)	Added	21:13 VA.R. 1928-1929	2/16/05-2/15/06
8 VAC 40-20-20	Amended	21:22 VA.R. 3102	9/28/05
8 VAC 40-20-30	Amended	21:22 VA.R. 3103	9/28/05
Title 9. Environment			
9 VAC 5-10-20	Amended	21:15 VA.R. 2112	5/4/05
9 VAC 5-20-204	Amended	21:15 VA.R. 2119	5/4/05
9 VAC 5-40-6620	Amended	21:15 VA.R. 2120	5/4/05
9 VAC 5-40-7260	Erratum	21:13 VA.R. 1941	--
9 VAC 5-40-7270	Erratum	21:13 VA.R. 1941	--
9 VAC 5-50-260	Amended	21:19 VA.R. 2577	*
9 VAC 5-60-92	Added	21:19 VA.R. 2577	*
9 VAC 5-80-1100	Amended	21:19 VA.R. 2577	*

* Suspension of Regulatory Process 21:26

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 5-80-1110	Amended	21:19 VA.R. 2578	*
9 VAC 5-80-1120	Amended	21:19 VA.R. 2583	*
9 VAC 5-80-1140	Amended	21:19 VA.R. 2584	*
9 VAC 5-80-1160	Amended	21:19 VA.R. 2584	*
9 VAC 5-80-1170	Amended	21:19 VA.R. 2584	*
9 VAC 5-80-1280	Amended	21:19 VA.R. 2585	*
9 VAC 5-80-1290	Amended	21:19 VA.R. 2586	*
9 VAC 5-80-1300	Amended	21:19 VA.R. 2586	*
9 VAC 5-80-1320	Amended	21:19 VA.R. 2587	*
9 VAC 5-91-20	Amended	21:19 VA.R. 2541	6/29/05
9 VAC 5-91-160	Amended	21:19 VA.R. 2547	6/29/05
9 VAC 5-91-180	Amended	21:19 VA.R. 2547	6/29/05
9 VAC 5-91-740	Amended	21:19 VA.R. 2548	6/29/05
9 VAC 5-91-741	Added	21:19 VA.R. 2548	6/29/05
9 VAC 5-91-742	Added	21:19 VA.R. 2548	6/29/05
9 VAC 5-91-743	Added	21:19 VA.R. 2548	6/29/05
9 VAC 5-91-750	Amended	21:19 VA.R. 2548	6/29/05
9 VAC 5-91-760	Amended	21:19 VA.R. 2548	6/29/05
9 VAC 5-230-10 through 9 VAC 5-230-120	Added	21:24 VA.R. 3385-3390	9/7/05
9 VAC 20-20-20	Amended	21:20 VA.R. 2668	7/13/05
9 VAC 20-20-40	Amended	21:20 VA.R. 2668	7/13/05
9 VAC 20-20-60	Amended	21:20 VA.R. 2668	7/13/05
9 VAC 20-20-80	Amended	21:20 VA.R. 2669	7/13/05
9 VAC 20-20-100	Amended	21:20 VA.R. 2669	7/13/05
9 VAC 20-20-110 through 9 VAC 20-20-150	Amended	21:20 VA.R. 2669	7/13/05
9 VAC 20-20-160	Added	21:20 VA.R. 2669	7/13/05
9 VAC 20-30-30	Amended	21:20 VA.R. 2670	7/13/05
9 VAC 20-30-50	Amended	21:20 VA.R. 2670	7/13/05
9 VAC 20-30-70 through 9 VAC 20-30-120	Amended	21:20 VA.R. 2670	7/13/05
9 VAC 20-30-130	Added	21:20 VA.R. 2671	7/13/05
9 VAC 20-40-20	Amended	21:20 VA.R. 2671	7/13/05
9 VAC 20-40-40 through 9 VAC 20-40-150	Amended	21:20 VA.R. 2671-2680	7/13/05
9 VAC 20-40-160	Added	21:20 VA.R. 2680	7/13/05
9 VAC 20-50-20	Amended	21:20 VA.R. 2680	7/13/05
9 VAC 20-50-40 through 9 VAC 20-50-100	Amended	21:20 VA.R. 2680-2693	7/13/05
9 VAC 20-50-110	Added	21:20 VA.R. 2693	7/13/05
9 VAC 20-70-290	Amended	21:20 VA.R. 2693	7/13/05
9 VAC 20-80-60	Amended	21:26 VA.R. 3691	10/5/05
9 VAC 20-80-400	Amended	21:26 VA.R. 3694	10/5/05
9 VAC 20-80-480	Amended	21:26 VA.R. 3697	10/5/05
9 VAC 20-80-485	Amended	21:26 VA.R. 3698	10/5/05
9 VAC 20-80-790	Amended	22:1 VA.R. 104	12/19/05
9 VAC 20-80 (Forms)	Amended	21:13 VA.R. 1930	--
9 VAC 20-130 (Forms)	Amended	21:13 VA.R. 1930	--
9 VAC 25-31-10	Erratum	21:13 VA.R. 1941	--
9 VAC 25-31-100	Erratum	21:14 VA.R. 2022	--
9 VAC 25-31-120	Erratum	21:13 VA.R. 1941	--
9 VAC 25-40-10	Amended	21:23 VA.R. 3236	Suspended
9 VAC 25-40-20	Repealed	21:23 VA.R. 3236	Suspended
9 VAC 25-40-25	Added	21:23 VA.R. 3236	Suspended
9 VAC 25-40-30	Amended	21:23 VA.R. 3236	Suspended
9 VAC 25-40-40	Amended	21:23 VA.R. 3237	Suspended
9 VAC 25-40-50	Amended	21:23 VA.R. 3237	Suspended

* Suspension of Regulatory Process 21:26

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-40-70	Added	21:23 VA.R. 3237	Suspended
9 VAC 25-260-5	Amended	21:18 VA.R. 2375	6/24/05
9 VAC 25-260-10	Amended	21:18 VA.R. 2375	6/24/05
9 VAC 25-260-30	Amended	21:22 VA.R. 3094	8/10/05
9 VAC 25-260-30	Amended	21:22 VA.R. 3094	8/10/05
9 VAC 25-260-30	Amended	21:22 VA.R. 3094	8/10/05
9 VAC 25-260-30	Amended	21:22 VA.R. 3094	8/10/05
9 VAC 25-260-50	Amended	21:18 VA.R. 2377	6/24/05
9 VAC 25-260-185	Added	21:18 VA.R. 2377	6/24/05
9 VAC 25-260-186	Added	21:18 VA.R. 2379	6/24/05
9 VAC 25-260-310	Amended	21:23 VA.R. 3250	Suspended
9 VAC 25-260-350	Amended	21:18 VA.R. 2379	6/24/05
9 VAC 25-260-410	Amended	21:23 VA.R. 3252	Suspended
9 VAC 25-260-530	Amended	21:23 VA.R. 3252	Suspended
9 VAC 25-720-10	Amended	21:23 VA.R. 3238	Suspended
9 VAC 25-720-30 through 9 VAC 25-720-70	Amended	21:23 VA.R. 3240-3246	Suspended
9 VAC 25-720-50	Amended	21:12 VA.R. 1526	3/23/05
9 VAC 25-720-60	Amended	21:17 VA.R. 2302	6/1/05
9 VAC 25-720-80	Amended	21:12 VA.R. 1527	3/23/05
9 VAC 25-720-80	Amended	21:17 VA.R. 2302	6/1/05
9 VAC 25-720-90	Amended	21:12 VA.R. 1527	3/23/05
9 VAC 25-720-100	Amended	21:17 VA.R. 2303	6/1/05
9 VAC 25-720-110	Amended	21:23 VA.R. 3247	Suspended
9 VAC 25-720-120	Amended	21:23 VA.R. 3247	Suspended
9 VAC 25-720-130	Amended	21:12 VA.R. 1528	3/23/05
9 VAC 25-720-130	Amended	21:17 VA.R. 2303	6/1/05
Title 11. Gaming			
11 VAC 10-70-20	Amended	21:22 VA.R. 3094	6/17/05
11 VAC 10-70-30	Amended	21:22 VA.R. 3095	6/17/05
11 VAC 10-70-40	Amended	21:22 VA.R. 3095	6/17/05
11 VAC 10-70-50	Repealed	21:22 VA.R. 3095	6/17/05
11 VAC 10-70-60	Amended	21:22 VA.R. 3095	6/17/05
11 VAC 10-70-70	Amended	21:22 VA.R. 3096	6/17/05
11 VAC 10-70-80	Amended	21:22 VA.R. 3096	6/17/05
11 VAC 10-70-90	Amended	21:22 VA.R. 3096	6/17/05
11 VAC 10-70-170	Amended	21:22 VA.R. 3096	6/17/05
11 VAC 10-90-10	Amended	21:22 VA.R. 3097	6/17/05
11 VAC 10-90-30	Amended	21:22 VA.R. 3097	6/17/05
11 VAC 10-90-50	Amended	21:22 VA.R. 3097	6/17/05
11 VAC 10-180-10	Amended	21:16 VA.R. 2197	5/18/05
11 VAC 10-180-20	Amended	21:16 VA.R. 2193	3/31/03
11 VAC 10-180-20	Amended	21:16 VA.R. 2198	5/18/05
11 VAC 10-180-30	Repealed	21:16 VA.R. 2199	5/18/05
11 VAC 10-180-40	Repealed	21:16 VA.R. 2200	5/18/05
11 VAC 10-180-50	Repealed	21:16 VA.R. 2200	5/18/05
11 VAC 10-180-60	Amended	21:16 VA.R. 2194	3/31/03
11 VAC 10-180-60 through 11 VAC 10-180-90	Amended	21:16 VA.R. 2202-2207	5/18/05
11 VAC 10-180-80	Amended	21:16 VA.R. 2196	3/31/03
11 VAC 10-180-85	Added	21:16 VA.R. 2206	5/18/05
11 VAC 10-180-90	Amended	21:16 VA.R. 2197	3/31/03
11 VAC 10-180-100	Added	21:16 VA.R. 2207	5/18/05
11 VAC 10-180-110	Added	21:16 VA.R. 2207	5/18/05
Title 12. Health			
12 VAC 5-390-10 through 12 VAC 5-390-660	Repealed	21:23 VA.R. 3254	11/1/05
12 VAC 5-391-10 through 12 VAC 5-391-500	Added	21:23 VA.R. 3254-3272	11/1/05
12 VAC 5-410-10	Amended	21:12 VA.R. 1561	5/9/05

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12 VAC 5-410-420	Amended	21:25 VA.R. 3550	11/7/05
12 VAC 5-410-1190	Amended	21:25 VA.R. 3550	11/7/05
12 VAC 5-590-10	Amended	21:13 VA.R. 1829	4/6/05
12 VAC 5-590-140	Amended	21:16 VA.R. 2209	5/18/05
12 VAC 5-590-150	Amended	21:16 VA.R. 2212	5/18/05
12 VAC 5-590-370	Amended	21:13 VA.R. 1835	4/6/05
12 VAC 5-590-410	Amended	21:13 VA.R. 1860	4/6/05
12 VAC 5-590-420	Amended	21:13 VA.R. 1863	4/6/05
12 VAC 5-590-500	Amended	21:13 VA.R. 1879	4/6/05
12 VAC 5-590-530	Amended	21:13 VA.R. 1880	4/6/05
12 VAC 5-590-540	Amended	21:13 VA.R. 1886	4/6/05
12 VAC 5-590-550	Amended	21:13 VA.R. 1890	4/6/05
12 VAC 5-590, Appendix L	Amended	21:13 VA.R. 1891	4/6/05
12 VAC 5-590, Appendix M	Amended	21:13 VA.R. 1897	4/6/05
12 VAC 5-590, Appendix O	Amended	21:13 VA.R. 1901	4/6/05
12 VAC 30-50-190 emer	Amended	21:23 VA.R. 3291	7/1/05-6/30/06
12 VAC 30-50-300	Amended	21:22 VA.R. 3098	8/10/05
12 VAC 30-50-490 emer	Amended	21:12 VA.R. 1566	2/1/05-1/31/06
12 VAC 30-50-520 emer	Amended	21:20 VA.R. 2715	5/27/05-5/26/06
12 VAC 30-50-530	Amended	21:22 VA.R. 3098	8/10/05
12 VAC 30-60-40 emer	Amended	21:20 VA.R. 2716	7/1/05-6/30/06
12 VAC 30-60-70	Amended	21:19 VA.R. 2592	8/15/05
12 VAC 30-60-350 emer	Amended	21:20 VA.R. 2717	7/1/05-6/30/06
12 VAC 30-70-291 emer	Amended	21:20 VA.R. 2720	5/12/05-5/11/06
12 VAC 30-70-291	Amended	21:23 VA.R. 3274	9/1/05
12 VAC 30-70-291 emer	Amended	21:23 VA.R. 3299	7/1/05-6/30/06
12 VAC 30-70-301	Amended	21:14 VA.R. 2014	6/6/05
12 VAC 30-70-301	Amended	21:23 VA.R. 3274	9/1/05
12 VAC 30-70-331	Amended	21:20 VA.R. 2696	7/14/05
12 VAC 30-70-391	Amended	21:23 VA.R. 3275	9/1/05
12 VAC 30-70-425 emer	Amended	21:23 VA.R. 3292	7/1/05-6/30/06
12 VAC 30-70-426 emer	Repealed	21:23 VA.R. 3293	7/1/05-6/30/06
12 VAC 30-80-20 emer	Amended	21:23 VA.R. 3293	7/1/05-6/30/06
12 VAC 30-80-30 emer	Amended	21:23 VA.R. 3296	7/1/05-6/30/06
12 VAC 30-80-40	Amended	21:15 VA.R. 2121	7/1/05
12 VAC 30-80-190	Amended	21:23 VA.R. 3275	9/1/05
12 VAC 30-90-19 emer	Amended	21:23 VA.R. 3298	7/1/05-6/30/06
12 VAC 30-90-41	Amended	21:15 VA.R. 2136	7/1/05
12 VAC 30-90-41 emer	Amended	21:20 VA.R. 2717	7/1/05-6/30/06
12 VAC 30-120-10 through 12 VAC 30-120-60 emer	Repealed	21:12 VA.R. 1601	2/1/05-1/31/06
12 VAC 30-120-380 emer	Amended	21:20 VA.R. 2721	7/1/05-6/30/06
12 VAC 30-120-490 through 12 VAC 30-120-550 emer	Repealed	21:12 VA.R. 1601	2/1/05-1/31/06
12 VAC 30-120-700 emer	Amended	21:12 VA.R. 1568	2/1/05-1/31/06
12 VAC 30-120-710 emer	Amended	21:12 VA.R. 1572	2/1/05-1/31/06
12 VAC 30-120-720 emer	Amended	21:12 VA.R. 1572	2/1/05-1/31/06
12 VAC 30-120-730 emer	Amended	21:12 VA.R. 1576	2/1/05-1/31/06
12 VAC 30-120-740 emer	Amended	21:12 VA.R. 1578	2/1/05-1/31/06
12 VAC 30-120-750 emer	Amended	21:12 VA.R. 1579	2/1/05-1/31/06
12 VAC 30-120-752 emer	Amended	21:12 VA.R. 1580	2/1/05-1/31/06
12 VAC 30-120-753 emer	Amended	21:12 VA.R. 1582	2/1/05-1/31/06
12 VAC 30-120-754 emer	Amended	21:12 VA.R. 1583	2/1/05-1/31/06
12 VAC 30-120-756 emer	Amended	21:12 VA.R. 1584	2/1/05-1/31/06
12 VAC 30-120-758 emer	Amended	21:12 VA.R. 1585	2/1/05-1/31/06
12 VAC 30-120-760 emer	Amended	21:12 VA.R. 1586	2/1/05-1/31/06
12 VAC 30-120-762 emer	Amended	21:12 VA.R. 1586	2/1/05-1/31/06
12 VAC 30-120-764 emer	Amended	21:12 VA.R. 1587	2/1/05-1/31/06

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12 VAC 30-120-766 emer	Amended	21:12 VA.R. 1588	2/1/05-1/31/06
12 VAC 30-120-768 emer	Amended	21:12 VA.R. 1590	2/1/05-1/31/06
12 VAC 30-120-770 emer	Amended	21:12 VA.R. 1592	2/1/05-1/31/06
12 VAC 30-120-772 emer	Amended	21:12 VA.R. 1596	2/1/05-1/31/06
12 VAC 30-120-774 emer	Amended	21:12 VA.R. 1597	2/1/05-1/31/06
12 VAC 30-120-776 emer	Amended	21:12 VA.R. 1598	2/1/05-1/31/06
12 VAC 30-120-780 emer	Repealed	21:12 VA.R. 1600	2/1/05-1/31/06
12 VAC 30-120-790 emer	Repealed	21:12 VA.R. 1601	2/1/05-1/31/06
12 VAC 30-120-900 through 12 VAC 30-120-990 emer	Added	21:12 VA.R. 1601-1619	2/1/05-1/31/06
12 VAC 30-120-1500 through 12 VAC 120-1590 emer	Added	21:23 VA.R. 3300-3308	7/1/05-6/30/06
12 VAC 30-141-10 emer	Amended	21:25 VA.R. 3553	8/1/05-7/31/06
12 VAC 30-141-10 emer	Amended	21:25 VA.R. 3561	8/1/05-7/31/06
12 VAC 30-141-40 emer	Amended	21:25 VA.R. 3555	8/1/05-7/31/06
12 VAC 30-141-100 emer	Amended	21:25 VA.R. 3555	8/1/05-7/31/06
12 VAC 30-141-100 emer	Amended	21:25 VA.R. 3563	8/1/05-7/31/06
12 VAC 30-141-120 emer	Amended	21:25 VA.R. 3564	8/1/05-7/31/06
12 VAC 30-141-150 emer	Amended	21:25 VA.R. 3564	8/1/05-7/31/06
12 VAC 30-141-160 emer	Amended	21:25 VA.R. 3557	8/1/05-7/31/06
12 VAC 30-141-170 emer	Repealed	21:25 VA.R. 3557	8/1/05-7/31/06
12 VAC 30-141-175 emer	Added	21:25 VA.R. 3559	8/1/05-7/31/06
12 VAC 30-141-200 emer	Amended	21:20 VA.R. 2721	7/1/05-6/30/06
12 VAC 30-141-200 emer	Amended	21:25 VA.R. 3560	8/1/05-7/31/06
12 VAC 30-141-500	Amended	21:19 VA.R. 2549	6/29/05
12 VAC 30-141-500 emer	Amended	21:23 VA.R. 3291	7/1/05-6/30/06
12 VAC 30-141-810 through 12 VAC 30-141-1660 emer	Added	21:25 VA.R. 3566-3573	8/1/05-7/31/06
Title 13. Housing			
13 VAC 5-63-110	Erratum	21:14 VA.R. 2021	--
Title 14. Insurance			
14 VAC 5-170-20 through 14 VAC 5-170-105	Amended	21:25 VA.R. 3477-3490	8/15/05
14 VAC 5-170-120	Amended	21:25 VA.R. 3490	8/15/05
14 VAC 5-170-130	Amended	21:25 VA.R. 3492	8/15/05
14 VAC 5-170-150	Amended	21:25 VA.R. 3493	8/15/05
14 VAC 5-170-150	Erratum	22:1 VA.R. 114	--
14 VAC 5-170-160	Amended	21:25 VA.R. 3525	8/15/05
14 VAC 5-170-190 Appendices A through D	Amended	21:25 VA.R. 3527-3548	8/15/05
14 VAC 5-210-10 through 14 VAC 5-210-150	Repealed	21:23 VA.R. 3276	7/1/05
14 VAC 5-211-10 through 14 VAC 5-211-280	Added	21:23 VA.R. 3279-3287	7/1/05
Title 15. Judicial			
15 VAC 5-50-10 through 15 VAC 5-50-210	Repealed	21:17 VA.R. 2304	4/13/05
15 VAC 5-60-10 through 15 VAC 5-60-240	Repealed	21:17 VA.R. 2304	4/13/05
Title 16. Labor and Employment			
16 VAC 25-90-1910.142	Amended	21:21 VA.R. 2901	8/15/05
16 VAC 25-90-1910.151	Amended	21:21 VA.R. 2901	8/15/05
16 VAC 25-90-1910.268	Amended	21:21 VA.R. 2901	8/15/05
16 VAC 25-90-1910.1001	Amended	21:21 VA.R. 2901	8/15/05
16 VAC 25-90-1910.1003	Amended	21:21 VA.R. 2901	8/15/05
16 VAC 25-90-1910.1017	Amended	21:21 VA.R. 2901	8/15/05
16 VAC 25-90-1910.1018	Amended	21:21 VA.R. 2901	8/15/05
16 VAC 25-90-1910.1025	Amended	21:21 VA.R. 2901	8/15/05
16 VAC 25-90-1910.1027	Amended	21:21 VA.R. 2901	8/15/05
16 VAC 25-90-1910.1028	Amended	21:21 VA.R. 2901	8/15/05
16 VAC 25-90-1910.1029	Amended	21:21 VA.R. 2901	8/15/05
16 VAC 25-90-1910.1043	Amended	21:21 VA.R. 2901	8/15/05
16 VAC 25-90-1910.1044	Amended	21:21 VA.R. 2901	8/15/05
16 VAC 25-90-1910.1045	Amended	21:21 VA.R. 2901	8/15/05

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16 VAC 25-90-1910.1047	Amended	21:21 VA.R. 2901	8/15/05
16 VAC 25-90-1910.1048	Amended	21:21 VA.R. 2901	8/15/05
16 VAC 25-90-1910.1051	Amended	21:21 VA.R. 2901	8/15/05
16 VAC 25-100-1915.1001	Amended	21:21 VA.R. 2901	8/15/05
16 VAC 25-175-1926.60	Amended	21:21 VA.R. 2901	8/15/05
16 VAC 25-175-1926.62	Amended	21:21 VA.R. 2901	8/15/05
16 VAC 25-175-1926.1101	Amended	21:21 VA.R. 2901	8/15/05
16 VAC 25-175-1926.1127	Amended	21:21 VA.R. 2901	8/15/05
16 VAC 25-175-1926.60	Amended	21:21 VA.R. 2903	8/15/05
Title 18. Professional and Occupational Licensing			
18 VAC 30-20-290	Added	21:21 VA.R. 2904	7/27/05
18 VAC 47-20-10 emer	Amended	21:25 VA.R. 3574	8/1/05-7/31/06
18 VAC 47-20-35 emer	Added	21:25 VA.R. 3575	8/1/05-7/31/06
18 VAC 47-20-70 emer	Amended	21:25 VA.R. 3575	8/1/05-7/31/06
18 VAC 47-20-140 emer	Amended	21:25 VA.R. 3575	8/1/05-7/31/06
18 VAC 47-20-240 emer	Repealed	21:25 VA.R. 3575	8/1/05-7/31/06
18 VAC 47-20-250 emer	Added	21:25 VA.R. 3576	8/1/05-7/31/06
18 VAC 47-20-260 emer	Added	21:25 VA.R. 3576	8/1/05-7/31/06
18 VAC 47-20-270 emer	Added	21:25 VA.R. 3576	8/1/05-7/31/06
18 VAC 50-22-100	Amended	21:20 VA.R. 2696	8/1/05
18 VAC 50-22-140	Amended	21:20 VA.R. 2697	8/1/05
18 VAC 50-22-170	Amended	21:20 VA.R. 2697	8/1/05
18 VAC 50-22-250	Amended	21:20 VA.R. 2697	8/1/05
18 VAC 50-30-90	Amended	21:20 VA.R. 2698	8/1/05
18 VAC 50-30-120	Amended	21:20 VA.R. 2698	8/1/05
18 VAC 50-30-130	Amended	21:20 VA.R. 2699	8/1/05
18 VAC 60-20	Erratum	21:22 VA.R. 3119	--
18 VAC 60-20-10	Amended	21:19 VA.R. 2551	6/29/05
18 VAC 60-20-10 emer	Amended	22:1 VA.R. 106	9/1/05-8/31/06
18 VAC 60-20-16	Amended	21:19 VA.R. 2551	6/29/05
18 VAC 60-20-17	Added	21:19 VA.R. 2550	6/29/05
18 VAC 60-20-20	Amended	21:19 VA.R. 2551	6/29/05
18 VAC 60-20-20	Amended	21:19 VA.R. 2555	6/29/05
18 VAC 60-20-20 emer	Amended	22:1 VA.R. 107	9/1/05-8/31/06
18 VAC 60-20-50 through 18 VAC 60-20-90	Amended	21:19 VA.R. 2551-2552	6/29/05
18 VAC 60-20-71 emer	Amended	22:1 VA.R. 107	9/1/05-8/31/06
18 VAC 60-20-91	Added	21:19 VA.R. 2555	6/29/05
18 VAC 60-20-105	Amended	21:19 VA.R. 2552	6/29/05
18 VAC 60-20-105 emer	Amended	22:1 VA.R. 107	9/1/05-8/31/06
18 VAC 60-20-106	Added	21:19 VA.R. 2552	6/29/05
18 VAC 60-20-106	Erratum	21:22 VA.R. 3119	--
18 VAC 60-20-106 emer	Amended	22:1 VA.R. 108	9/1/05-8/31/06
18 VAC 60-20-107	Added	21:19 VA.R. 2552	6/29/05
18 VAC 60-20-107	Erratum	21:22 VA.R. 3119	--
18 VAC 60-20-110	Amended	21:19 VA.R. 2552	6/29/05
18 VAC 60-20-120	Amended	21:19 VA.R. 2553	6/29/05
18 VAC 60-20-130	Repealed	21:19 VA.R. 2554	6/29/05
18 VAC 60-20-135	Added	21:19 VA.R. 2554	6/29/05
18 VAC 60-20-190	Amended	21:19 VA.R. 2554	6/29/05
18 VAC 60-20-195	Amended	21:19 VA.R. 2554	6/29/05
18 VAC 60-20-210 emer	Amended	22:1 VA.R. 108	9/1/05-8/31/06
18 VAC 60-20-230 emer	Amended	22:1 VA.R. 109	9/1/05-8/31/06
18 VAC 62-20-10 through 18 VAC 62-20-180	Added	21:20 VA.R. 2700-2706	7/15/05
18 VAC 65-20-15	Added	21:18 VA.R. 2380	6/15/05
18 VAC 75-40-10	Added	21:16 VA.R. 2215	5/18/05
18 VAC 75-40-20	Added	21:16 VA.R. 2215	5/18/05

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18 VAC 75-40-30	Added	21:16 VA.R. 2215	5/18/05
18 VAC 76-20-20 emer	Amended	21:25 VA.R. 3577	7/25/05-7/24/06
18 VAC 76-20-30 emer	Amended	21:25 VA.R. 3577	7/25/05-7/24/06
18 VAC 76-20-50 emer	Amended	21:25 VA.R. 3577	7/25/05-7/24/06
18 VAC 76-20-60	Amended	21:19 VA.R. 2556	6/29/05
18 VAC 76-20-60 emer	Amended	21:25 VA.R. 3577	7/25/05-7/24/06
18 VAC 76-20-70 emer	Added	21:25 VA.R. 3578	7/25/05-7/24/06
18 VAC 76-40-10	Amended	21:19 VA.R. 2596	8/15/05
18 VAC 85-15-10	Added	21:21 VA.R. 2905	7/27/05
18 VAC 85-15-20	Added	21:21 VA.R. 2905	7/27/05
18 VAC 85-15-30	Added	21:21 VA.R. 2905	7/27/05
18 VAC 85-20	Erratum	22:1 VA.R. 114	--
18 VAC 85-20-25	Added	22:1 VA.R. 82	10/19/05
18 VAC 85-20-26	Added	22:1 VA.R. 83	10/19/05
18 VAC 85-20-27	Added	22:1 VA.R. 83	10/19/05
18 VAC 85-20-28	Added	22:1 VA.R. 83	10/19/05
18 VAC 85-20-29	Added	22:1 VA.R. 84	10/19/05
18 VAC 85-20-30	Amended	21:20 VA.R. 2707	7/13/05
18 VAC 85-20-30	Amended	22:1 VA.R. 84	10/19/05
18 VAC 85-20-40	Amended	22:1 VA.R. 84	10/19/05
18 VAC 85-20-50	Amended	22:1 VA.R. 84	10/19/05
18 VAC 85-20-80	Amended	22:1 VA.R. 84	10/19/05
18 VAC 85-20-90	Amended	22:1 VA.R. 84	10/19/05
18 VAC 85-20-100	Amended	21:20 VA.R. 2707	7/13/05
18 VAC 85-20-100	Amended	22:1 VA.R. 85	10/19/05
18 VAC 85-20-105	Amended	22:1 VA.R. 85	10/19/05
18 VAC 85-20-280	Amended	21:22 VA.R. 3105	9/26/05
18 VAC 85-40-85 through 18 VAC 85-40-91	Added	22:1 VA.R. 87-89	10/19/05
18 VAC 85-50-175 through 18 VAC 85-50-184	Added	22:1 VA.R. 89-91	10/19/05
18 VAC 85-80-61	Added	21:23 VA.R. 3287	8/24/05
18 VAC 85-80-120 through 18 VAC 85-80-125	Added	22:1 VA.R. 92-93	10/19/05
18 VAC 85-101-161 through 18 VAC 85-101-166	Added	22:1 VA.R. 94-95	10/19/05
18 VAC 85-110-175 through 18 VAC 85-110-183	Added	22:1 VA.R. 95-98	10/19/05
18 VAC 85-120-155 through 18 VAC 85-120-162	Added	22:1 VA.R. 98-100	10/19/05
18 VAC 90-15-10	Added	21:21 VA.R. 2905	7/27/05
18 VAC 90-15-20	Added	21:21 VA.R. 2905	7/27/05
18 VAC 90-15-30	Added	21:21 VA.R. 2905	7/27/05
18 VAC 90-20-10	Amended	21:21 VA.R. 2906	7/27/05
18 VAC 90-20-181	Added	21:21 VA.R. 2907	7/27/05
18 VAC 90-20-182	Added	21:21 VA.R. 2907	7/27/05
18 VAC 90-20-183	Added	21:21 VA.R. 2907	7/27/05
18 VAC 90-20-230	Amended	21:20 VA.R. 2708	7/13/05
18 VAC 90-20-280	Amended	21:21 VA.R. 2907	7/27/05
18 VAC 90-20-300	Amended	21:21 VA.R. 2907	7/27/05
18 VAC 90-30-80	Amended	21:21 VA.R. 2910	7/27/05
18 VAC 90-30-100	Amended	21:21 VA.R. 2910	7/27/05
18 VAC 90-30-110	Amended	21:21 VA.R. 2910	7/27/05
18 VAC 90-30-120	Amended	21:21 VA.R. 2909	7/27/05
18 VAC 95-10-10	Amended	21:18 VA.R. 2380	7/1/05
18 VAC 95-10-20	Amended	21:18 VA.R. 2380	7/1/05
18 VAC 95-20-10	Amended	21:18 VA.R. 2381	7/1/05
18 VAC 95-20-471	Added	21:19 VA.R. 2557	6/29/05
18 VAC 100-20-53	Added	21:20 VA.R. 2709	8/1/05
18 VAC 100-20-54	Amended	21:20 VA.R. 2708	8/1/05
18 VAC 100-20-54	Erratum	21:23 VA.R. 3311	--
18 VAC 100-20-81	Amended	21:20 VA.R. 2709	8/1/05

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 105-20-41	Added	21:18 VA.R. 2382	6/15/05
18 VAC 110-20-15	Added	21:15 VA.R. 2122	5/4/05
18 VAC 110-20-276	Added	21:24 VA.R. 3390	9/7/05
18 VAC 110-20-515	Added	21:24 VA.R. 3391	9/7/05
18 VAC 112-20-26	Added	21:19 VA.R. 2557	6/29/05
18 VAC 112-20-135	Amended	22:1 VA.R. 100	10/19/05
18 VAC 112-20-150	Amended	22:1 VA.R. 101	10/19/05
18 VAC 112-20-151	Repealed	22:1 VA.R. 101	10/19/05
18 VAC 115-15-10 through 18 VAC 115-15-30	Added	21:22 VA.R. 3099	8/10/05
18 VAC 120-40-50	Amended	21:20 VA.R. 2712	8/1/05
18 VAC 125-15-10	Added	21:20 VA.R. 2712	7/13/05
18 VAC 125-15-20	Added	21:20 VA.R. 2712	7/13/05
18 VAC 125-15-30	Added	21:20 VA.R. 2712	7/13/05
18 VAC 140-20-171	Added	21:21 VA.R. 2913	7/27/05
18 VAC 150-20-15	Added	21:21 VA.R. 2913	7/27/05
18 VAC 150-20-100	Amended	21:26 VA.R. 3701	10/5/05
18 VAC 150-20-195	Amended	21:23 VA.R. 3289	10/8/05
Title 19. Public Safety			
19 VAC 30-70-210	Amended	21:18 VA.R. 2382	4/15/05
Title 20. Public Utilities and Telecommunications			
20 VAC 5-315 (Forms)	Amended	21:19 VA.R. 2603	--
20 VAC 5-315-20	Amended	21:18 VA.R. 2387	4/26/05
20 VAC 5-315-30	Amended	21:18 VA.R. 2388	4/26/05
20 VAC 5-315-40	Amended	21:18 VA.R. 2388	4/26/05
20 VAC 5-315-90	Repealed	21:18 VA.R. 2389	4/26/05
20 VAC 5-427-10	Erratum	22:1 VA.R. 114	--
20 VAC 5-427-100	Erratum	22:1 VA.R. 114	--
20 VAC 5-427-110	Erratum	22:1 VA.R. 114	--
20 VAC 5-427-130	Erratum	22:1 VA.R. 114	--
Title 22. Social Services			
22 VAC 15-30-10	Amended	21:12 VA.R. 1528	6/1/05
22 VAC 15-30-30	Amended	21:12 VA.R. 1532	6/1/05
22 VAC 15-30-50	Amended	21:12 VA.R. 1532	6/1/05
22 VAC 15-30-70	Amended	21:12 VA.R. 1533	6/1/05
22 VAC 15-30-80	Amended	21:12 VA.R. 1533	6/1/05
22 VAC 15-30-90	Amended	21:12 VA.R. 1533	6/1/05
22 VAC 15-30-110	Amended	21:12 VA.R. 1534	6/1/05
22 VAC 15-30-140	Amended	21:12 VA.R. 1534	6/1/05
22 VAC 15-30-150	Amended	21:12 VA.R. 1534	6/1/05
22 VAC 15-30-160	Amended	21:12 VA.R. 1534	6/1/05
22 VAC 15-30-180	Amended	21:12 VA.R. 1535	6/1/05
22 VAC 15-30-190	Amended	21:12 VA.R. 1535	6/1/05
22 VAC 15-30-200	Amended	21:12 VA.R. 1536	6/1/05
22 VAC 15-30-200	Erratum	21:13 VA.R. 1941	--
22 VAC 15-30-230	Amended	21:12 VA.R. 1536	6/1/05
22 VAC 15-30-250	Amended	21:12 VA.R. 1537	6/1/05
22 VAC 15-30-260	Amended	21:12 VA.R. 1537	6/1/05
22 VAC 15-30-290	Amended	21:12 VA.R. 1538	6/1/05
22 VAC 15-30-310 through 22 VAC 15-30-390	Amended	21:12 VA.R. 1538-1542	6/1/05
22 VAC 15-30-410	Amended	21:12 VA.R. 1542	6/1/05
22 VAC 15-30-430	Amended	21:12 VA.R. 1543	6/1/05
22 VAC 15-30-440	Amended	21:12 VA.R. 1543	6/1/05
22 VAC 15-30-451	Amended	21:12 VA.R. 1545	6/1/05
22 VAC 15-30-461	Amended	21:12 VA.R. 1545	6/1/05
22 VAC 15-30-471	Amended	21:12 VA.R. 1545	6/1/05

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
22 VAC 15-30-490	Amended	21:12 VA.R. 1546	6/1/05
22 VAC 15-30-500	Amended	21:12 VA.R. 1547	6/1/05
22 VAC 15-30-510	Amended	21:12 VA.R. 1547	6/1/05
22 VAC 15-30-520	Amended	21:12 VA.R. 1548	6/1/05
22 VAC 15-30-540 through 22 VAC 15-30-670	Amended	21:12 VA.R. 1548-1556	6/1/05
22 VAC 15-30-575	Erratum	21:13 VA.R. 1941	--
22 VAC 15-30-585	Added	21:12 VA.R. 1550	6/1/05
22 VAC 15-51-50	Amended	21:20 VA.R. 2713	7/13/05
22 VAC 30-40-10	Amended	21:16 VA.R. 2215	5/18/05
22 VAC 30-40-70	Amended	21:16 VA.R. 2217	5/18/05
22 VAC 30-40-130	Amended	21:16 VA.R. 2218	5/18/05
22 VAC 30-40-140	Amended	21:16 VA.R. 2218	5/18/05
22 VAC 30-40-150	Amended	21:16 VA.R. 2218	5/18/05
22 VAC 40-90-10 through 22 VAC 40-90-60	Amended	21:18 VA.R. 2393	7/1/05
22 VAC 40-90-70	Added	21:18 VA.R. 2395	7/1/05
22 VAC 40-170-10	Amended	21:19 VA.R. 2558	8/1/05
22 VAC 40-170-20	Repealed	21:19 VA.R. 2559	8/1/05
22 VAC 40-170-30 through 22 VAC 40-170-210	Amended	21:19 VA.R. 2560-2567	8/1/05
22 VAC 40-170-230	Amended	21:19 VA.R. 2567	8/1/05
22 VAC 40-191-40	Amended	21:18 VA.R. 2395	7/1/05
22 VAC 40-191-50	Amended	21:18 VA.R. 2399	7/1/05
22 VAC 40-191-90	Amended	21:18 VA.R. 2400	7/1/05
22 VAC 40-660-10 through 22 VAC 40-660-100	Repealed	21:19 VA.R. 2568	8/1/05
22 VAC 40-661-10 through 22 VAC 40-661-90	Added	21:19 VA.R. 2568-2572	8/1/05
Title 24. Transportation and Motor Vehicles			
24 VAC 30-41-30	Amended	21:13 VA.R. 1911	4/6/05
24 VAC 30-41-50	Amended	21:13 VA.R. 1913	4/6/05
24 VAC 30-41-110	Amended	21:13 VA.R. 1913	4/6/05
24 VAC 30-41-190	Amended	21:13 VA.R. 1914	4/6/05
24 VAC 30-41-210	Amended	21:13 VA.R. 1915	4/6/05
24 VAC 30-41-220	Amended	21:13 VA.R. 1916	4/6/05
24 VAC 30-41-230	Amended	21:13 VA.R. 1916	4/6/05
24 VAC 30-41-250	Amended	21:13 VA.R. 1917	4/6/05
24 VAC 30-41-280	Amended	21:13 VA.R. 1917	4/6/05
24 VAC 30-41-290	Amended	21:13 VA.R. 1918	4/6/05
24 VAC 30-41-300	Amended	21:13 VA.R. 1918	4/6/05
24 VAC 30-41-310	Amended	21:13 VA.R. 1918	4/6/05
24 VAC 30-41-320	Amended	21:13 VA.R. 1919	4/6/05
24 VAC 30-41-350	Amended	21:13 VA.R. 1920	4/6/05
24 VAC 30-41-430	Amended	21:13 VA.R. 1920	4/6/05
24 VAC 30-41-500	Amended	21:13 VA.R. 1921	4/6/05
24 VAC 30-41-510	Amended	21:13 VA.R. 1921	4/6/05
24 VAC 30-41-520	Amended	21:13 VA.R. 1921	4/6/05
24 VAC 30-41-530	Amended	21:13 VA.R. 1922	4/6/05
24 VAC 30-41-580	Amended	21:13 VA.R. 1922	4/6/05
24 VAC 30-41-650	Amended	21:13 VA.R. 1923	4/6/05
24 VAC 30-41-660	Amended	21:13 VA.R. 1923	4/6/05
24 VAC 30-41-680	Amended	21:13 VA.R. 1923	4/6/05
24 VAC 30-91-10	Erratum	21:12 VA.R. 1776	--
24 VAC 30-91-110	Erratum	21:12 VA.R. 1776	--
24 VAC 30-91-130	Erratum	21:12 VA.R. 1776	--
24 VAC 30-620-10	Amended	21:15 VA.R. 2123	5/22/05
24 VAC 30-620-30	Amended	21:15 VA.R. 2123	5/22/05
24 VAC 30-620-30	Amended	21:22 VA.R. 3099	8/20/05

NOTICES OF INTENDED REGULATORY ACTION

Symbol Key

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

TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF MINES, MINERALS AND ENERGY

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Mines, Minerals and Energy intends to consider amending regulations entitled **4 VAC 25-130, Coal Surface Mining Reclamation Regulations**. The purpose of the proposed action is to revise references to sections in the Virginia Administrative Process Act to reflect the renumbering that became effective October 1, 2001; provide direction as to where requests for formal administrative review and notices of judicial appeal shall be filed; maintain consistency with corresponding federal amendments regarding survey requirements and the rebuttable presumption of subsidence determinations; allow the approval of natural stream restoration channel design as approved by the U.S. Army Corps of Engineers; maintain consistency with federal regulations regarding thick overburden; and increase the civil penalties for violations of the Virginia Coal Surface Mining Control and Reclamation Act that result in personal injury or fatality.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

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

Public comments may be submitted until November 3, 2005.

Contact: Stephen A. Walz, Regulatory Coordinator, Department of Mines, Minerals and Energy, 202 N. 9th St., 8th Floor, Richmond, VA 23219, telephone (804) 692-3211, FAX (804) 692-3237 or e-mail stephen.walz@dmme.virginia.gov.

VA.R. Doc. No. R06-38; Filed August 31, 2005, 3:43 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Mines, Minerals and Energy intends to consider amending regulations entitled **4 VAC 25-130, Coal Surface Mining Reclamation Regulations**. The purpose of the proposed action is to require coal mine permit boundary markers located on steep slopes above private dwellings of occupied buildings to be made of or marked with fluorescent or reflective paint, and to require persons conducting blasting operations on coal mines with 1,000 feet of a dwelling or occupied building to conduct seismic monitoring of the blasting.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

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

Public comments may be submitted until October 5, 2005.

Contact: Stephen A. Walz, Regulatory Coordinator, Department of Mines, Minerals and Energy, 202 N. 9th St., 8th Floor, Richmond, VA 23219, telephone (804) 692-3211, FAX (804) 692-3237 or e-mail stephen.walz@dmme.virginia.gov.

VA.R. Doc. No. R05-282; Filed August 10, 2005, 3 p.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Criminal Justice Services Board intends to consider amending regulations entitled **6 VAC 20-30, Rules Relating to Compulsory In-Service Training Standards for Law-Enforcement Officers, Jailors or Custodial Officers, Courtroom Security Officers, Process Service Officers and Officers of the Department of Corrections, Division of Institutional Services**. The purpose of the proposed action is to establish a licensure process to conduct a periodic review with four additional goals: (i) incorporating into the regulation greater opportunities to use electronic media to facilitate in-service training; (ii) providing cost savings to agencies and localities; (iii) providing a consistency between the courses used for firearms training at entry level and the courses used for in-service recertification with firearms; and (iv) including training on cultural diversity and the potential for bias-based policing as required by § 9.1-102 of the Code of Virginia (§ 9.1-102 (40)).

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 9.1-102 of the Code of Virginia.

Public comments may be submitted until October 6, 2005.

Contact: John Byrd, Program Manager, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-6375, FAX (804) 225-2398 or e-mail john.byrd@dcjs.virginia.gov.

VA.R. Doc. No. R05-284; Filed August 15, 2005, 9:52 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Criminal Justice Services Board

Notices of Intended Regulatory Action

intends to consider amending regulations entitled **6 VAC 20-80, Rules Relating to Certification of Criminal Justice Instructors**. The purpose of the proposed action is to amend the rules to provide for an approach allowing certified criminal justice academies to formulate their own program for recertification of criminal justice instructors. Additionally, a change from "radar instructor" to "speed measurement instructor" is recommended.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 9.1-102 of the Code of Virginia.

Public comments may be submitted until October 6, 2005.

Contact: John Byrd, Program Manager, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-6375, FAX (804) 225-2398 or e-mail john.byrd@dcjs.virginia.gov.

VA.R. Doc. No. R05-285; Filed August 15, 2005, 9:53 a.m.

TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Virginia Waste Management Board intends to consider amending regulations entitled **9 VAC 20-80, Solid Waste Management Regulations**. The purpose of the proposed action is to amend the requirements for control programs for unauthorized wastes.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 10.1-1402 of the Code of Virginia; 42 USC § 6941 et seq; 40 CFR Part 258.

Public comments may be submitted until November 4, 2005.

Contact: Robert G. Wickline, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4213, FAX (804) 698-4327 or e-mail rgwickline@deq.virginia.gov.

VA.R. Doc. No. R06-31; Filed August 31, 2005, 10:48 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Virginia Waste Management Board intends to consider amending regulations entitled **9 VAC 20-80, Solid Waste Management Regulations**. The purpose of the proposed action is to amend the numerous requirements for solid waste management including exemptions and exclusions, open burning, waste intake rates, bird hazards, etc.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 10.1-1402 of the Code of Virginia; 42 USC § 6941 et seq; 40 CFR Part 258.

Public comments may be submitted until November 4, 2005.

Contact: Michael J. Dieter, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4146, FAX (804) 698-4327 or e-mail mjdieter@deq.virginia.gov.

VA.R. Doc. No. R06-32; Filed August 31, 2005, 10:48 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Virginia Waste Management Board intends to consider amending regulations entitled **9 VAC 20-101, Vegetative Waste Management and Yard Waste Composting Regulations**. The purpose of the proposed action is to address the composting of manure and crop waste with vegetative waste and yard waste. The goal is to make the regulations clear and enforceable and to protect human health and the environment.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 10.1-1402 of the Code of Virginia; 42 USC § 6941 et seq. 40 CFR; Part 258.

Public comments may be submitted until November 4, 2005.

Contact: Michael J. Dieter, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4146, FAX (804) 698-4327 or e-mail mjdieter@deq.virginia.gov.

VA.R. Doc. No. R06-30; Filed August 31, 2005, 10:49 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Virginia Waste Management Board intends to consider amending regulations entitled **9 VAC 20-130, Regulations for the Development of Solid Waste Management Plans**. The purpose of the proposed action is to amend the regulation on the calculation of the mandatory recycling rate for localities and regions, procedures for formation and dissolution of planning regions, clear specification of qualifications for variances, requirements for plan approval and duplicative language on the Waste Information and Assessment Program.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 10.1-1411 of the Code of Virginia; 42 USC § 6942 (b) of the Resource Conservation and Recovery Act of 1976; 40 CFR Parts 255 and 256.

Public comments may be submitted until November 4, 2005.

Contact: Allen Brockman, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone

Notices of Intended Regulatory Action

(804) 698-4468, FAX (804) 698-4327 or e-mail
arbrockman@deq.virginia.gov.

VA.R. Doc. No. R06-29; Filed August 31, 2005, 10:49 a.m.

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to consider amending regulations entitled **9 VAC 25-660, Virginia Water Protection General Permit for Impacts Less Than One-Half of an Acre**. The purpose of the proposed action is to review and renew the general permit that is scheduled to expire in October 2006 and allow revisions regarding administrative procedures, permit and application requirements, definitions and terminology, compensatory mitigation, permit usage thresholds, permit conditions, and topographical and grammatical errors.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §§ 62.-44.15 and 62.1-44.15:5 of the Code of Virginia; § 401 of the Clean Water Act (33 USC § 1251 et seq.)

Public comments may be submitted until October 5, 2005.

Contact: Catherine M. Harold, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4047, FAX (804) 698-4347 or e-mail cmharold@deq.virginia.gov.

VA.R. Doc. No. R05-286; Filed August 17, 2005, 11:19 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to consider amending regulations entitled **9 VAC 25-670, Virginia Water Protection General Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activities**. The purpose of the proposed action is to consider whether this general permit should be extended or repealed after incorporation of these provisions into WP-4 (development and certain mining activities) due to limited use of WP-2. Should the renewal proceed, the purpose is to allow for the renewal of the above-referenced general permit regulation and allow revisions regarding administrative procedures, permit and application requirements, definitions and terminology, compensatory mitigation, permit usage thresholds, permit conditions, and topographical and grammatical errors.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §§ 62.-44.15 and 62.1-44.15:5 of the Code of Virginia; § 401 of the Clean Water Act (33 USC § 1251 et seq.)

Public comments may be submitted until October 5, 2005.

Contact: Catherine M. Harold, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4047, FAX (804) 698-4347 or e-mail cmharold@deq.virginia.gov.

VA.R. Doc. No. R05-287; Filed August 17, 2005, 11:19 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to consider amending regulations entitled **9 VAC 25-680, Virginia Water Protection General Permit for Linear Transportation Projects**. The purpose of the proposed action is to review and reissue the general permit that is scheduled to expire in October 2006 and allow revisions regarding administrative procedures, permit and application requirements, definitions and terminology, compensatory mitigation, permit usage thresholds, permit conditions, and topographical and grammatical errors.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §§ 62.-44.15 and 62.1-44.15:5 of the Code of Virginia; § 401 of the Clean Water Act (33 USC § 1251 et seq.)

Public comments may be submitted until October 5, 2005.

Contact: Catherine M. Harold, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4047, FAX (804) 698-4347 or e-mail cmharold@deq.virginia.gov.

VA.R. Doc. No. R05-288; Filed August 17, 2005, 11:19 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to consider amending regulations entitled **9 VAC 25-690, Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities**. The purpose of the proposed action is to review and renew the general permit that is scheduled to expire in October 2006 and allow revisions regarding administrative procedures, permit and application requirements, definitions and terminology, compensatory mitigation, permit usage thresholds, permit conditions, and topographical and grammatical errors.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §§ 62.-44.15 and 62.1-44.15:5 of the Code of Virginia; § 401 of the Clean Water Act (33 USC § 1251 et seq.)

Public comments may be submitted until October 5, 2005.

Contact: Catherine M. Harold, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4047, FAX (804) 698-4347 or e-mail cmharold@deq.virginia.gov.

Notices of Intended Regulatory Action

VA.R. Doc. No. R05-289; Filed August 17, 2005, 11:20 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to consider amending regulations entitled **9 VAC 25-740, Regulation for Wastewater Reclamation and Reuse**. The purpose of the proposed action is to establish a technical regulation that includes requirements and standards for the reclamation and reuse of wastewater.

The department developed a proposed regulation for wastewater reclamation and reuse that was published in the Virginia Register on February 24, 2003. A public hearing for the proposed regulation was held on April 2, 2003, to further solicit public comments. Comments received during the public comment period and at the public hearing were addressed as appropriate through revisions to the proposed regulation. Thereafter, work on the draft proposed regulation was suspended until June 2005. Due to the prolonged period following the first revisions to the proposed regulation, the department determined that the Administrative Process Act should be reinitiated for the regulation. Much of the information used to draft the previous proposed regulation, as well as text of the previous proposed regulation, will be retained as applicable for discussion by a Technical Advisory Committee during the development of the currently proposed regulation.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

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

Public comments may be submitted until October 28, 2005.

Contact: Valerie Rourke, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4158, FAX (804) 698-4116 or e-mail varourke@deq.virginia.gov.

VA.R. Doc. No. R06-33; Filed August 31, 2005, 10:48 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to consider adopting regulations entitled **9 VAC 25-830, Virginia General Pollution Abatement Permit Regulation for Industrial and Other Nonirrigation Reuses of Reclaimed Water**. The purpose of the proposed action is to adopt a general Virginia pollution abatement permit for industrial and other nonirrigation reuses of reclaimed water.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

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

Public comments may be submitted until October 28, 2005.

Contact: Valerie Rourke, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4158, FAX (804) 698-4116 or e-mail varourke@deq.virginia.gov.

VA.R. Doc. No. R06-34; Filed August 31, 2005, 10:48 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to consider adopting regulations entitled **9 VAC 25-840, Virginia General Pollution Abatement Permit for Irrigation Reuse of Level A Reclaimed Water**. The purpose of the proposed action is to adopt a general Virginia pollution abatement permit for irrigation uses of Level A reclaimed water.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

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

Public comments may be submitted until October 28, 2005.

Contact: Valerie Rourke, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4158, FAX (804) 698-4116 or e-mail varourke@deq.virginia.gov.

VA.R. Doc. No. R06-35; Filed August 31, 2005, 10:48 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to consider adopting regulations entitled **9 VAC 25-850, Virginia General Pollution Abatement Permit Regulation for Irrigation Reuse of Level B Reclaimed Water**. The purpose of the proposed action is to adopt a general Virginia pollution abatement permit for irrigation uses of Level B reclaimed water.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

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

Public comments may be submitted until October 28, 2005.

Contact: Valerie Rourke, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4158, FAX (804) 698-4116 or e-mail varourke@deq.virginia.gov.

VA.R. Doc. No. R06-36; Filed August 31, 2005, 10:47 a.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled **12 VAC 30-120, Waivered Services**. The purpose of the

Notices of Intended Regulatory Action

proposed action is to establish a new waiver program to provide additional services to residents of assisted living facilities who receive an auxiliary grant, who meet nursing facility criteria, who are age 55 and older, and who have a diagnosis of Alzheimer's disease or a related dementia.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Public comments may be submitted until November 2, 2005.

Contact: Teja Stokes, Project Manager, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-0527, FAX (804) 786-1680 or email teja.stokes@dmas.virginia.gov.

VA.R. Doc. No. R06-50; Filed September 14, 2005, 11:06 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Dentistry intends to consider amending regulations entitled **18 VAC 60-20, Regulations Governing the Practice of Dentistry and Dental Hygiene**. The purpose of the proposed action is to increase certain fees as needed to address the deficit of the board.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

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

Public comments may be submitted until October 19, 2005.

Contact: Sandra Reen, Executive Director, Board of Dentistry, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9906, FAX (804) 662-9943 or e-mail sandra.reen@dhp.virginia.gov.

VA.R. Doc. No. R06-27; Filed August 31, 2005, 9:46 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Dentistry intends to consider amending regulations entitled **18 VAC 60-20, Regulations Governing the Practice of Dentistry and Dental Hygiene**. The purpose of the proposed action is to implement changes in the Dental Practice Act including licensure by credentials for dentists.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

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

Public comments may be submitted until October 5, 2005.

Contact: Sandra Reen, Executive Director, Board of Dentistry, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9906, FAX (804) 662-9943 or e-mail sandra.reen@dhp.virginia.gov.

VA.R. Doc. No. R05-290; Filed August 17, 2005, 11: 37 a.m.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Funeral Directors and Embalmers intends to consider amending regulations entitled **18 VAC 65-20, Regulations of the Board of Funeral Directors and Embalmers, and 18 VAC 65-40, Resident Trainee Program for Funeral Service**. The purpose of the proposed action is to increase certain fees sufficient to cover expenditures.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

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

Public comments may be submitted until October 19, 2005.

Contact: Elizabeth Young, Executive Director, Board of Funeral Directors and Embalmers, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9907, FAX (804) 662-9943 or e-mail elizabeth.young@dhp.virginia.gov.

VA.R. Doc. No. R06-28; Filed August 31, 2005, 9:46 a.m.

BOARD OF MEDICINE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled:

18 VAC 85-20, Regulations Governing the Practice of Medicine, Osteopathy, Podiatry and Chiropractic.

18 VAC 85-40, Regulations Governing the Practice of Respiratory Care Practitioners.

18 VAC 85-50, Regulations Governing the Practice of Physician Assistants.

18 VAC 85-80, Regulations for Licensure of Occupational Therapists.

18 VAC 85-101, Regulations Governing the Licensure of Radiologic Technologists and Radiologic Technologist-Limited.

Notices of Intended Regulatory Action

18 VAC 85-110, Regulations Governing the Practice of Licensed Acupuncturists.

18 VAC 85-120, Regulations Governing the Certification of Athletic Trainers.

The purpose of the proposed action is increase fees as necessary to meet expenditures.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

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

Public comments may be submitted until October 19, 2005.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943 or e-mail william.harp@dhp.virginia.gov.

VA.R. Doc. No. R06-26; Filed August 31, 2005, 9:46 a.m.

proposed action is to promulgate new regulations for issuance of nonresident concealed handgun carry permits.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 18.2-308 of the Code of Virginia.

Public comments may be submitted until October 19, 2005.

Contact: Donna Tate, Firearms Manager, Department of State Police, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 674-2292, FAX (804) 674-6704 or e-mail donna.tate@vsp.virginia.gov.

VA.R. Doc. No. R06-37; Filed September 1, 2005, 12:53 p.m.

BOARD OF LONG-TERM CARE ADMINISTRATORS

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Long-Term Care Administrators intends to consider promulgating regulations entitled **18 VAC 95-30, Regulations Governing the Practice of Assisted Living Facility Administrators**. The purpose of the proposed action is to establish initial requirements for licensure of assisted living administrators.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §§ 54.1-2400 and 54.1-3102 of the Code of Virginia.

Public comments may be submitted until November 2, 2005.

Contact: Sandra Reen, Executive Director, Board of Long-Term Care Administrators, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-7457, FAX (804) 662-9943 or email sandra.reen@dhp.virginia.gov.

VA.R. Doc. No. R06-42; Filed September 13, 2005, 10:10 a.m.

TITLE 19. PUBLIC SAFETY

DEPARTMENT OF STATE POLICE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of State Police intends to consider adopting regulations entitled **19 VAC 30-190, Regulations Relating to the Issuance of Nonresident Concealed Handgun Carry Permits**. The purpose of the

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: 12 VAC 30-120. Waivered Services Elderly or Disabled Consumer Direction Waiver (adding 12 VAC 30-120-900 through 12 VAC 30-120-980; repealing 12 VAC 30-120-10 through 12 VAC 30-120-60 and 12 VAC 30-120-490 through 12 VAC 30-120-550).

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until December 2, 2005.

(See Calendar of Events section for additional information)

Agency Contact: Teja Stokes, Project Manager, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-0527, FAX (804) 786-1680, or e-mail teja.stokes@dmas.virginia.gov.

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 authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according to the board's requirements. The Medicaid authority as established by § 1902(a) of the Social Security Act, 42 USC § 1396a, provides governing authority for payments for services.

Purpose: This regulatory action combines the Elderly and Disabled (E&D) Waiver (12 VAC 30-120-10 et seq.) with the Consumer-Directed Personal Attendant Services (CDPAS) Waiver (12 VAC 30-120-490 et seq.). The new combined waiver (12 VAC 30-120-900 et seq.) will offer agency-directed personal assistance, agency-directed respite, consumer-directed personal assistance, consumer-directed respite, adult day health care, and personal emergency response systems.

Substance: Elderly and Disabled Waiver: The Elderly and Disabled Waiver was DMAS' first waiver program beginning in the early 1980s. At its outset, it provided coverage in the community for adult day health care, respite care, and personal care services to consumers who, in the absence of these support services, would otherwise have required institutionalization in nursing facilities. More recently, the coverage of Personal Emergency Response Systems (PERS) was added to this waiver.

The adult day health care provided for waiver consumers to attend group activities at adult day care facilities while their family members were otherwise employed. Personal care services provided support for the basic activities of daily living

such as bathing, eating, toileting, transferring, and dressing. Respite care provided temporary relief for the primary care persons so they could take vacations and otherwise have brief breaks from their primary care responsibilities. PERS places personal emergency response systems (emergency call systems) into the homes of consumers who must remain alone for long periods each day and reduces the need for on-site aide or assistant care. All of these services have been rendered by home health agencies and personal care providers. Annually, approximately 10,000 to 12,000 persons have been served by this waiver.

Consumer-Directed Waiver: The Consumer-Directed Waiver Program was developed in 1997 in response to community requests. This waiver allowed consumers to have greater control over the receipt of personal care services by permitting them to hire/fire their attendants and determine attendants' work hours within the approved number of hours. This enabled disabled adults to set their own work schedules and fostered the pursuit of careers and educational opportunities. This waiver program has typically served only a small population, approximately 100 persons.

Since its implementation, there has been a tremendously positive impact on, and response from, consumers. This positive impact is important because, during the waiver's development, health care industry professionals raised several significant concerns regarding these regulations. Some consumers have reported that by utilizing consumer-directed services, there has been less personal care staff turnover, greater flexibility in meeting their schedules and preferences, and greater satisfaction with the way the personal assistants perform their duties.

Concerns, raised when DMAS began developing this consumer-directed program, focused on personal assistant standards and qualifications, and appropriate and adequate supervision of the plan of care. There were concerns that using assistants, who would not be required to have formal nurse aide training, would engage in fraudulent, abusive, and neglectful behaviors. Another concern was that a Registered Nurse (RN) would not complete the assessment, develop the plan of care, or be involved in the assistant's supervision. Consumers argued that such RN oversight was not needed and that they (the consumers) are aware of their own needs and are capable of addressing these needs. Some critics also predicted more hospitalizations for these consumers due to the absence of RN care. None of these concerns have materialized to date.

Combined Waiver: Under the former E&D Waiver, in order for an individual to be eligible for services they had to be at imminent risk of being placed in a nursing facility. The combined waiver does not have this criterion; it is replaced under the new waiver with the requirement that the individual require a nursing facility level of care.

All waiver programs must meet the federal cost effectiveness standard -- the cost of the individual participant's community care, in the aggregate, cannot exceed their institutional costs of care. This same standard applies to services under the combined waiver. Under the new combined waiver all services are available to all clients. Because all services are still limited by medical necessity under the new combined waiver, DMAS projects no cost increase for services. Combining the two waivers simplifies waiver administration and is more cost effective for DMAS. Therefore, while remaining cost effective, the new waiver enables clients greater freedom to choose to direct their own personal care and respite services, to choose agency-directed care for all their services, or a combination of the two.

With the implementation of this regulatory change, the E&D Waiver services (agency-directed personal care, agency-directed respite, adult day health care, and personal emergency response systems) will be combined with the CDPAS Waiver services (consumer-directed personal assistance and consumer-directed respite). This new regulation outlines the requirements for the services the providers must follow in order to receive reimbursement from DMAS.

The combining of these two waivers is resulting from the specific request of consumers and families/caregivers. With the combining of these two waivers, recipients will have more options of service delivery models for their care. Recipients will now be able to choose consumer-directed (service delivery model) personal assistance services for more than 42 hours of care each week if their needs indicate more hours of service are required. A consumer may also choose to receive consumer-directed and agency-directed care simultaneously as long as the service hours do not exceed the approved care plan hours.

Issues: The primary advantage of combining these two waivers is to provide recipients more options of service delivery for care. Recipients will be afforded the opportunity to choose consumer-directed personal assistance and can combine consumer-directed and agency-directed care as long as the blended service hours do not exceed amounts allotted in approved plans of care. There are no disadvantages to the public or the Commonwealth with these regulations.

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 § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H 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 will permanently combine existing elderly and disabled waiver services with consumer direction waiver services making consumer-directed model of care available to consumers receiving services under the elderly and disabled waiver. The combined waiver services have been provided since February 2005 under emergency regulations.

Estimated economic impact. The proposed regulations will permanently combine existing elderly and disabled waiver services with consumer-directed waiver services. The elderly and disabled waiver provides adult day health care, respite care, personal care, and personal emergency response system services to consumers in their community in order to avoid their institutionalization. The consumer-directed services, on the other hand, are primarily personal care services. The main differences between the two waivers are the scope of services provided and the delivery model utilized in provision of the covered services. Elderly and disabled waiver services are much broader in scope. Also, the elderly and disabled waiver utilizes agency-directed model of delivery as opposed to consumer-directed model.

With the proposed changes, recipients of consumer-directed personal care waiver will be eligible to receive adult day health care, respite care, and personal emergency response system services in addition to personal care services they are currently receiving. In fiscal year 2004, there were 417 recipients enrolled in consumer-directed personal care waiver. Thus, we can expect some of these individuals to start receiving a broader scope of services. However, availability of three additional services does not necessarily imply a three-fold increase in fiscal expenditures. It appears that there is some degree of substitutability among these services. For example, a recipient may decrease the number of days he receives adult day health care if he has access to personal emergency response system services. Similarly, adult day health care and respite care services could be close substitutes for personal care services for some of the consumers.

The role of consumer direction on utilization is an important factor that has an effect on the potential fiscal impact of the proposed changes. With the proposed changes, recipients of consumer-directed personal care waiver will not only be eligible to receive a broader scope of services, but also will have much more discretion. More consumer discretion could lead to better consumer satisfaction, higher utilization, and consequently a higher level of per capita expenditures. A higher level of utilization of services that are provided in the recipients' community would, in turn, increase savings from avoiding institutionalized care. Thus, the proposed changes should provide net fiscal savings to the Commonwealth. In fact, the waiver costs should be lower than the costs of institutional care otherwise required in order to obtain an approval from the Centers for Medicare and Medicaid Services.

The effects of the proposed changes on recipients are expected to be a net improvement on their well-being. The proposed changes do not take away anything from recipients, but instead provide access to more services and more discretion in the way these services are received. Since

Proposed Regulations

consumers will likely utilize new services and take advantage of the new service delivery model only if they choose to do so, we can reliably infer that consumer satisfaction will be improved under the proposed combined waiver services.

Businesses and entities affected. In fiscal year 2004, there were 10,161 individuals enrolled in the elderly and disabled waiver and 417 individuals in the consumer-directed personal care waiver. In February 2005, 10,879 individuals were receiving services under the combined waiver.

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

Projected impact on employment. The proposed regulations could lessen the need for institutionalized care while increasing utilization of care provided in the recipients' communities. Thus, a decrease in the demand for labor in nursing home-type institutions and an increase in the demand for labor in the community-based services industry are expected. However, the net potential impact on employment is unlikely to be significant.

Effects on the use and value of private property. To the extent the demand for institutionalized care services by recipients decreases and the demand for community-based services increases, we may see some small impact on their revenues, profitability, and consequently on their asset values.

Small businesses: Costs and other effects. The Department of Medical Assistance Services estimates that there are approximately 280 providers that would be defined as small businesses providing community-based care services. The proposed regulations are not anticipated to introduce any economic costs on these small businesses, but instead increase the demand for their services.

Small businesses: Alternative method that minimizes adverse impact. The proposed regulations are not expected to create any adverse impact on small businesses.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Medical Assistance Services has reviewed the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning 12 VAC 30-120: Waiver Services (Elderly or Disabled with Consumer Direction Waiver). The agency concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

This regulatory action combines the Elderly and Disabled Waiver with the Consumer-Directed Waiver. The new combined waiver will offer agency-directed personal assistance, agency-directed respite, consumer-directed personal assistance, consumer-directed respite, adult day health care, and personal emergency response systems.

PART I.

HOME AND COMMUNITY BASED WAIVER SERVICES FOR ELDERLY AND DISABLED INDIVIDUALS.

12 VAC 30-120-10. Definitions. (Repealed.)

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

~~"Activities of daily living" or "ADL" means personal care tasks (e.g., bathing, dressing, toileting, transferring, and eating/feeding). An individual's degree of independence in performing these activities is part of determining the appropriate level of care and service needs.~~

~~"Adult day health care center" means a participating provider that offers a community-based day program providing a variety of health, therapeutic, and social services designed to meet the specialized needs of those elderly and physically disabled individuals at risk of placement in a nursing facility.~~

~~"Adult day health care services" means services designed to prevent institutionalization by providing participants with health, maintenance, and coordination of rehabilitation services in a congregate daytime setting.~~

~~"Appeal" means the process used to challenge adverse actions regarding services, benefits, and reimbursement provided by Medicaid pursuant to 12 VAC 30-110 and 12 VAC 30-20-500 through 12 VAC 30-20-560.~~

~~"Cognitive impairment" means a severe deficit in mental capability that affects areas such as thought processes, problem solving, judgment, memory, or comprehension and that interferes with such things as reality orientation, ability to care for self, ability to recognize danger to self or others, or impulse control.~~

~~"Current functional status" means the individual's degree of dependency in performing activities of daily living.~~

~~"Designated preauthorization contractor" means the entity that has been contracted by DMAS to perform preauthorization of services.~~

~~"Direct marketing" means either (i) directly or indirectly conducting door-to-door, telephonic, or other "cold call" marketing of services at residences and provider sites; (ii) mailing directly; (iii) paying "finders fees"; (iv) offering financial incentives, rewards, gifts, or special opportunities to eligible recipients as inducements to use their services; (v) continuous, periodic marketing activities to the same prospective recipient, e.g., monthly, quarterly, or annual giveaways, as inducements to use their services; or (vi) engaging in marketing activities that offer potential customers rebates or discounts in conjunction with the use of their services or other benefits as a means of influencing recipients' use of providers' services.~~

~~"DMAS" means the Department of Medical Assistance Services.~~

~~"DSS" means the Department of Social Services.~~

~~"Episodic respite care" means services specifically designed to provide relief to the primary unpaid caregiver for a~~

nonroutine, short-term period of time for a specified reason (e.g., respite care offered for seven days, 24 hours a day while the caregiver takes a vacation).

"Home and community based care" means a variety of in-home and community-based services reimbursed by DMAS (personal care, adult day health care, respite care, and personal emergency response systems (PERS)) authorized under a Social Security Act § 1915(c) Elderly and Disabled waiver designed to offer individuals an alternative to nursing facility placement. Individuals may be preauthorized to receive one or more of these services either solely or in combination, based on the documented need for the service or services in order to avoid nursing facility placement. (PERS may only be provided in conjunction with personal care, respite care, or adult day health care services.) The Nursing Home Preadmission Screening Team, DMAS or the designated preauthorized contractor shall give prior authorization for any Medicaid-reimbursed home and community-based care.

"Instrumental activities of daily living" or "IADLs" means tasks such as meal preparation, shopping, housekeeping, laundry, and money management.

"Medication monitoring" means an electronic device that enables certain recipients at high risk of institutionalization to be reminded to take their medications at the correct dosages and times.

"Nursing home preadmission screening" means the process to: (i) evaluate the functional, nursing, and social supports of individuals referred for preadmission screening; (ii) analyze what specific services the individuals need; (iii) evaluate whether a service or a combination of existing community services are available to meet the individuals' needs; and (iv) authorize Medicaid-funded nursing home or community-based care for those individuals who meet nursing facility level of care.

"Nursing Home Preadmission Screening Committee/Team" means the entity contracted with DMAS that is responsible for performing nursing home preadmission screening. For individuals in the community, this entity is a committee comprised of a nurse from the local health department and a social worker from the local department of social services. For individuals in an acute care facility who require screening, the entity is a team of nursing and social work staff. A physician must be a member of both the local committee and an acute care team.

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

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

"Personal care services" means long term maintenance or support services necessary to enable the individual to remain at or return home rather than enter a nursing care facility. Personal care services are provided to individuals in the areas

of activities of daily living, instrumental activities of daily living, access to the community, monitoring of self-administered medications or other medical needs, and the monitoring of health status and physical condition. It may be provided in home and community settings to enable an individual to maintain the health status and functional skills necessary to live in the community or participate in community activities.

"Personal emergency response system (PERS)" means an electronic device that enables certain recipients at high risk of institutionalization to secure help in an emergency.

"PERS provider" means 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. PERS providers may also provide medication monitoring.

"Plan of Care" means the written plan developed by the provider related solely to the specific services required by the recipient to ensure optimal health and safety for the delivery of home and community-based care.

"Reconsideration" means the supervisory review of information submitted to DMAS in the event that a decision to deny the reimbursement of services is made at an analyst's level.

"Respite care" means services specifically designed to provide a temporary, but periodic or routine, relief to the primary unpaid caregiver of an individual who is incapacitated or dependent due to frailty or 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.

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

"Routine respite care" means services specifically designed to provide relief to the primary unpaid caregiver on a periodic basis over an extended period of time to allow the caregiver a routine break from continuous care (e.g., respite care offered one day a week for six hours).

"Service plan" means the written plan certified by the screening team as needed by the individual to ensure optimal health and safety for the delivery of home and community-based care.

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

"Uniform Assessment Instrument" or "UAI" means the standardized multidimensional questionnaire that assesses an individual's social, physical health, mental health, and functional abilities.

Proposed Regulations

12 VAC 30-120-20. General coverage and requirements for all home and community-based care waiver services. (Repealed.)

A. Coverage statement.

1. Coverage shall be provided under the administration of DMAS for elderly and disabled individuals who would otherwise require the level of care provided in a nursing facility.

2. These services shall be medically appropriate and necessary to maintain these individuals in the community.

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

B. Patient eligibility requirements.

1. Virginia has elected to cover low income families with children as described in § 1931 of the Social Security Act; aged, blind, or disabled individuals who are eligible under 42 CFR 435.121; optional categorically needy individuals who are aged and disabled who have incomes at 80% of the federal poverty level; the special home and community-based waiver groups under 42 CFR 435.217; and the medically needy under 42 CFR 435.320, 435.322, 435.324, and 435.330.

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

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

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

(a) An amount for the maintenance needs of the individual which is equal to the categorically needy income standard for a noninstitutionalized individual;

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

(c) 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; and

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

(2) For individuals to whom § 1924(d) does not apply, deduct the following in the following order:

(a) An amount for the maintenance needs of the individual which is equal to the categorically needy income standards for a noninstitutionalized individual;

(b) For an individual with a family at home, an additional amount for the maintenance needs of the family which shall be equal to the medically needy income standard for a family of the same size; and

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

2. Reserved.

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

1. To ensure that Virginia's home and community-based care waiver programs serve only individuals who would otherwise be placed in a nursing facility, home and community-based care services shall be considered only for individuals who are seeking nursing facility admission or for individuals who are at imminent risk of nursing facility admission. "Imminent risk" is defined as within one month. Home and community-based care services shall be the critical service that enables the individual to remain at home rather than being placed in a nursing facility.

2. The individual's eligibility for home and community-based care services shall be determined by the Nursing Home Preadmission Screening Team after completion of a thorough assessment of the individual's needs and available support.

3. Before Medicaid will assume payment responsibility of home and community-based care services, preauthorization must be obtained from the designated preauthorization contractor.

~~4. An essential part of the Nursing Home Preadmission Screening Team's assessment process is determining the required level of care by applying existing criteria for nursing facility care according to the established Nursing Home Preadmission Screening process.~~

~~5. The team shall explore alternative settings and/or services to provide the care needed by the individual. If nursing facility placement or a combination of other services is determined to be appropriate, the screening team shall initiate referrals for service. If Medicaid-funded home and community-based care services are determined to be the critical service to delay or avoid nursing facility placement, the screening team shall develop an appropriate service plan and initiate referrals for service.~~

~~6. Home and community-based care services shall not be offered or provided to any individual who resides in a nursing facility, an intermediate care facility for the mentally retarded, a hospital, or an assisted living facility licensed or certified by DSS. Additionally, home and community-based care services shall not be provided to any individual who resides outside of the physical boundaries of the Commonwealth, with the exception of brief periods of time as approved by DMAS or the designated preauthorization contractor. Brief periods of time may include, but are not necessarily restricted to, vacation or illness.~~

~~7. Medicaid will not pay for any home and community-based care services delivered prior to the authorization date approved by the Nursing Home Preadmission Screening Committee/Team and the physician signature on the Medicaid Funded Long Term Care Service Authorization Form (DMAS-96). Preadmission screenings are valid for the following periods of time: (i) month 0-6 no updates needed; (ii) month 6-12 update needed (do not submit for reimbursement); and (iii) over 12 months new screening must be completed (submit for reimbursement).~~

~~D. 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 30-20-560.~~

~~12 VAC 30-120-30. General conditions and requirements for all home and community-based care participating providers. (Repealed.)~~

~~A. All providers must meet the general requirements and conditions for provider participation. In addition, there are specific requirements for each of the service providers (personal care, respite care, adult day health care, and PERS) that are set forth in 12 VAC 30-120-40 through 12 VAC 30-120-60.~~

~~B. General requirements. Providers approved for participation shall, at a minimum, perform the following activities:~~

~~1. Immediately notify DMAS, in writing, of any change in the information which the provider previously submitted to DMAS, to include the provider's physical and mailing addresses, executive staff and officers, and contact person's name, telephone number, and fax number.~~

~~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.~~

~~5. Provide services and supplies to recipients in full compliance with (i) Title VI of the Civil Rights Act of 1964 (42 USC § 2000 et seq.), which prohibits discrimination on the grounds of race, color, religion, or national origin; (ii) § 504 of the Rehabilitation Act of 1973 (29 USC § 70 et seq.), which prohibits discrimination on the basis of disability; and (iii) Title II of the Americans with Disabilities Act of 1990 (42 USC § 126 et seq.), which provides comprehensive civil rights protections to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.~~

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

~~7. Charge DMAS for the provision of services and supplies to recipients in amounts not to exceed the provider's usual and customary charges to the general public.~~

~~8. Accept Medicaid payment from the first day of eligibility.~~

~~9. Accept as payment in full the amount established by DMAS.~~

~~10. Use Program-designated billing forms for submission of charges.~~

~~11. Maintain and retain business and professional records sufficient to document fully and accurately the nature, scope and details of the health care provided.~~

~~a. Such records shall be retained for at least five years from the last date of service or as provided by applicable federal or state laws, whichever period is longer. If an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every exception resolved. Records of minors shall be kept for at least five years after such minor has reached the age of 18 years.~~

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

~~12. Furnish to authorized state and federal personnel, in the form and manner requested, access to records and facilities.~~

~~13. Disclose, as requested by DMAS, all financial, beneficial, ownership, equity, surety, or other interests in~~

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~~any and all firms, corporations, partnerships, associations, business enterprises, joint ventures, agencies, institutions, or other legal entities providing any form of health care services to recipients of Medicaid.~~

~~14. Hold confidential and use only for authorized DMAS purposes all medical assistance information regarding recipients.~~

~~15. Change of ownership. When ownership of the provider agency changes, DMAS shall be notified within 15 calendar days.~~

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

~~D. Provider participation standards. For DMAS to approve contracts with home and community-based care providers, providers must meet staffing, financial solvency, disclosure of ownership and assurance of comparability of services requirements as specified in DMAS' Elderly and Disabled Waiver Services Manual published July 1, 2002.~~

~~E. Adherence to provider contract and special participation conditions. In addition to compliance with the general conditions and requirements, all providers enrolled by the Department of Medical Assistance Services shall adhere to the conditions of participation outlined in their individual provider contracts.~~

~~F. Recipient choice of provider agencies. If there is more than one approved provider agency offering services in the community, the individual will have the option of selecting the provider agency of his choice from among those agencies that can appropriately meet the individual's needs.~~

~~G. Termination of provider participation. DMAS may administratively terminate a provider from participation upon 30 days' written notification. DMAS may also cancel a contract immediately or may give notification in the event of a breach of the contract by the provider as specified in the DMAS contract. Payment by DMAS is prohibited for services provided to recipients subsequent to the date specified in the termination notice.~~

~~H. Reconsideration of adverse actions. Adverse actions may include, but shall not be limited to: disallowed payment of claims for services rendered which are not in accordance with DMAS policies and procedures, caseload restrictions, and contract limitations or termination. The following procedures will be available to all providers when DMAS takes adverse action:~~

- ~~1. The reconsideration process shall consist of three phases:
 - ~~a. A written response and reconsideration to the preliminary findings;~~
 - ~~b. The informal conference; and~~
 - ~~c. The formal evidentiary hearing.~~~~

~~2. The provider shall have 30 days to submit information for written reconsideration, 30 days from the date of the notice~~

~~to request the informal conference, and 30 days to request the formal evidentiary hearing.~~

~~3. An appeal of adverse actions shall be heard in accordance with 12 VAC 30-10-1000 and Part XII (12 VAC 30-20-500 et seq.) of 12 VAC 30-20.~~

~~I. Participating provider agency's responsibility for the Patient Information Form (DMAS 122). It is the responsibility of the provider agency to notify DMAS, or the designated preauthorization contractor, and the 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; or~~
- ~~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.~~

- ~~1. Decreases in the amount of authorized care by the provider agency.
 - ~~a. The provider agency may decrease the amount of authorized care if the amount of care in the revised plan of care is appropriate, based on the needs of the individual. If the recipient disagrees with the proposed decrease, the recipient has the right to reconsideration by DMAS or the designated preauthorization contractor.~~
 - ~~b. The participating provider is responsible for devising the new plan of care and calculating the new hours of service delivery.~~
 - ~~c. The individual responsible for supervising the recipient's care shall discuss the decrease in care with the recipient or family, document the conversation in the recipient's record, and shall notify the recipient or family of the change by letter. This letter shall give the right to reconsideration.~~~~

~~2. Increases in the amount of authorized care. If a change in the recipient's condition necessitates an increase in care, the participating provider shall assess the need for increase and, if appropriate, develop a plan of care for services to meet the changed needs. The provider may implement the increase in hours without approval from DMAS, or the designated preauthorization contractor, if the amount of service does not exceed the amount established by DMAS, or the designated preauthorization contractor, as the maximum for the level of care designated for that recipient. Any increase to a recipient's plan of care which exceeds the number of hours allowed for that recipient's level of care or any change in the recipient's level of care must be preapproved by DMAS, or the designated preauthorization contractor.~~

~~3. Nonemergency termination of home and community-based care services by the participating provider. The participating ADHC, personal care and respite care provider shall give the recipient or family, or~~

~~both, five days written notification of the intent to terminate services. The letter shall provide the reasons for and the effective date of the termination. The effective date of the termination of services shall be at least five days from the date of the termination notification letter. The PERS provider shall give the recipient or family, or both, 14 days' written notification of the intent to terminate services. The letter shall provide the reasons for and the effective date of the termination. The effective date of the termination of services shall be at least 14 days from the date of the termination notification letter.~~

~~4. Emergency termination of home and community-based care services by the participating provider. In an emergency situation when the health and safety of the recipient or provider agency personnel is endangered, DMAS, or the designated preauthorization contractor, must be notified prior to termination. The five-day written notification period shall not be required.~~

~~5. DMAS, or the designated preauthorization contractor, termination of home and community-based care services. The effective date of termination will be at least 10 days from the date of the termination notification letter. DMAS, or the designated preauthorization contractor, has the responsibility and the authority to terminate home and community-based care services to the recipient for any of these reasons:~~

- ~~a. The home and community-based care service is not the critical alternative to prevent or delay institutional placement;~~
- ~~b. The recipient no longer meets the 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 plan of care cannot be developed.~~

~~If the recipient disagrees with the service termination decision, DMAS or the designated preauthorization contractor shall conduct a review of the recipient's service needs as part of the reconsideration process.~~

~~K. Suspected abuse or neglect. Pursuant to § 63.2-1606 of the Code of Virginia, if a participating provider agency knows or suspects that a home and community-based care recipient is being abused, neglected, or exploited, the party having knowledge or suspicion of the abuse, neglect, or exploitation shall report this to the local DSS.~~

~~L. DMAS is responsible for assuring continued adherence to provider participation standards. DMAS shall conduct ongoing monitoring and compliance with provider participation standards and DMAS policies. A provider's noncompliance with DMAS policies and procedures, as required in the provider's contract, may result in a retraction of Medicaid payment or termination of the provider agreement.~~

~~M. Waiver desk reviews. DMAS will request, on an annual basis, information on every recipient, which is used to assess the recipient's ongoing need for Medicaid funded long-term care. With this request, the provider will receive a list that specifies the information that is being requested.~~

~~12 VAC 30-120-40. Adult day health care services. (Repealed.)~~

~~The following are specific requirements governing the provision of adult day health care (ADHC):~~

~~A. General. Adult day health care services may be offered to individuals in a congregate daytime setting as an alternative to institutional care. Adult day health care may be offered either as the sole home and community-based care service that avoids institutionalization or in conjunction with personal care, respite care, or PERS.~~

~~B. Special provider participation conditions. In order to be a participating provider, the adult day health care center shall:~~

- ~~1. Be an adult day care center licensed by DSS. A copy of the current license shall be available to DMAS for verification purposes prior to the applicant's enrollment as a Medicaid provider and shall be available for DMAS review;~~
- ~~2. Adhere to DSS adult day care center standards. DMAS special participation conditions included here are standards imposed in addition to DSS standards which shall be met in order to provide Medicaid adult day health care services;~~
- ~~3. The center shall provide a separate room or an area equipped with one bed, cot, or recliner for every 12 Medicaid adult day health care participants; and~~
- ~~4. Employ sufficient interdisciplinary staff to adequately meet the health, maintenance, and safety needs of each participant.~~

~~The following staff are required by DMAS:~~

- ~~a. The center shall maintain a minimum staff to participant ratio of one staff member to every six participants. This includes Medicaid and other participants;~~
- ~~b. There shall be at least two staff members at the center at all times when there are Medicaid participants in attendance;~~
- ~~c. In the absence of the director, the Activities Director, Registered Nurse or therapist shall be designated to supervise the program;~~
- ~~d. Volunteers can be included in the staff to participant ratio if these volunteers meet the qualifications and training requirements for compensated employees; and, for each volunteer, there shall be at least one compensated employee included in the staff to participant ratio;~~
- ~~e. Any center that is collocated with another facility shall count only its own separate identifiable staff in the center's staff to participant ratio.~~
- ~~f. The adult day health care center shall employ the following:
 - ~~(1) A director who shall be responsible for overall management of the center's programs. This individual shall be the provider contact person for DMAS and the designated preauthorization contractor, and shall be responsible for responding to communication from~~~~

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~~DMAS and the designated preauthorization contractor. The director shall be responsible for assuring the development of the plan of care for adult day health care participants. The director has ultimate responsibility for directing the center program and supervision of its employees. The director can also serve as the activities director if those qualifications are met.~~

~~(2) An activities director who shall be responsible for directing recreational and social activities for the adult day health care participants.~~

~~(3) Program aides who shall be responsible for overall assistance with care and maintenance of the participant (assistance with activities of daily living, recreational activities, and other health and therapeutic related activities).~~

~~g. The center shall employ or subcontract with a registered nurse who shall be responsible for administering and monitoring the health needs of the participants. The nurse shall be responsible for the planning, organization, and management of the plan of care involving multiple services where specialized health care knowledge is needed. The nurse shall be present a minimum of eight hours each month at the center. DMAS may require the nurse's presence at the adult day health care center for more than this minimum standard depending on the number of participants in attendance and according to the medical and nursing needs of the participants. Although DMAS does not require that the nurse be a full time staff position, there shall be a nurse available, either in person or by telephone, to the center's participants and staff during all times that the center is in operation.~~

~~h. The director shall assign himself, the activities director, registered nurse or therapist to act as adult day health care coordinator for each participant and shall document in the participant's file the identity of the care coordinator. The adult day health care coordinator shall be responsible for management of the participant's plan of care and for its review with the program aides.~~

~~C. Minimum qualifications of adult day health care staff. Documentation of all staffs' credentials shall be maintained in the provider agency's personnel files for review by DMAS staff who are authorized by the agency to review these files.~~

~~1. Program aide. Each program aide hired by the provider agency shall be screened to ensure compliance with qualifications required by DMAS. The aide shall, at a minimum, have the following qualifications:~~

~~a. Be able to read and write in English to the degree necessary to perform the tasks expected;~~

~~b. Be physically able to do the work;~~

~~c. Have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of abuse, neglect, or exploitation of incapacitated or older adults and children. Providers are responsible for complying with § 32.1-162.9:1 of the Code~~

~~of Virginia regarding criminal record checks. The criminal record check shall be available for review by DMAS staff who are authorized by the agency to review these files.~~

~~d. Have satisfactorily completed an educational curriculum related to the needs of the elderly and disabled. Acceptable curriculum are offered by educational institutions, nursing facilities, and hospitals. Training consistent with DMAS training guidelines may also be given by the center's professional staff. Curriculum titles include: Nurses Aide, Geriatric Nursing Assistant, and Home Health Aide. Documentation of successful completion shall be maintained in the aide's personnel file and be available for review by DMAS staff who are authorized by the agency to review these files. Prior to assigning a program aide to a participant, the center shall ensure that the aide has satisfactorily completed a training program consistent with DMAS' Elderly and Disabled Waiver Services Manual published July 1, 2002.~~

~~2. Registered nurse. The registered nurse shall:~~

~~a. Be registered and licensed to practice nursing in the Commonwealth of Virginia;~~

~~b. Have two years of related clinical experience (which may include work in an acute care hospital, public health clinic, home health agency, rehabilitation hospital, nursing facility, or as an LPN); and~~

~~c. Have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of abuse, neglect, or exploitation of incapacitated or older adults and children. Providers are responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks. The criminal record check shall be available for review by DMAS staff who are authorized by the agency to review these files.~~

~~3. Activities director. The activities director shall:~~

~~a. Have a minimum of 48 semester hours or 72 quarter hours of post secondary education from an accredited college or university with a major in recreational therapy, occupational therapy, or a related field such as art, music, or physical education;~~

~~b. Have one year of related experience which may include work in an acute care hospital, rehabilitation hospital, nursing facility, or have completed a course of study including any prescribed internship in occupational, physical, and recreational therapy or music, dance, art therapy, or physical education; and~~

~~c. Have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of abuse, neglect, or exploitation of incapacitated or older adults and children. Providers are responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks. The criminal record check shall be available for review by DMAS staff who are authorized by the agency to review these files.~~

~~4. Director. The director shall meet the qualifications specified in the DSS standards for adult day care for~~

directors. Providers are responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks. The criminal record check shall be available for review by DMAS staff who are authorized by the agency to review these files.

D. Service responsibilities of the adult day health care center and staff duties are:

1. Aide responsibilities. The aide shall be responsible for assisting with activities of daily living, supervising the participant, and assisting with the management of the participant's plan of care.

2. Nursing responsibilities. These services shall include:

a. Periodic evaluation of the nursing needs of each participant;

b. Provision of the indicated nursing care and treatment; and

c. Monitoring, recording, and administering of prescribed medications, if no other individual is designated by the individual's physician to administer medications in the center, or supervising the individual in self-administered medication.

3. Rehabilitation services coordination responsibilities. These services are designed to ensure the participant receives all rehabilitative services deemed necessary to improve or maintain independent functioning, to include the coordination and implementation of physical therapy, occupational therapy, and speech language therapy. Rendering of the specific Rehabilitative Therapy is not included in the center's fee for service but must be rendered as a separate service by a rehabilitative provider.

4. Nutrition responsibilities. The center shall provide one meal per day, which supplies one-third of the daily nutritional requirements. Special diets and counseling shall be provided to Medicaid participants as necessary.

5. Adult day health care coordination. The designated adult day health care coordinator shall coordinate the delivery of the activities as prescribed in the participants' plan of care and keep it updated, record 30-day progress notes, and review the participants' daily records each week.

6. Recreation and social activities responsibilities. The center shall provide planned recreational and social activities suited to the participants' needs and designed to encourage physical exercise, prevent deterioration, and stimulate social interaction.

E. Documentation required. The center shall maintain all records of each Medicaid participant. These records shall be reviewed periodically by DMAS staff who are authorized by the agency to review these files. At a minimum, these records shall contain:

1. The Long-Term Care Uniform Assessment Instrument, the Medicaid Long-Term Care Service Authorization form (DMAS-96), and the Screening Team Service Plan for Medicaid-Funded Long-term Care;

2. Interdisciplinary plans of care developed by the center's director, registered nurse, or therapist; the participant; and relevant support persons;

3. Documentation of interdisciplinary staff meetings which shall be held at least every three months to reassess each participant and evaluate the adequacy of the adult day health care plan of care and make any necessary revisions;

4. At a minimum, 30-day goal oriented progress notes recorded by the individual who is designated as the adult day health care coordinator. If a participant's condition and treatment plan changes more often, progress notes shall be written more frequently than every 30 days;

5. The center shall obtain a rehabilitative progress report and updated treatment plan from all professional disciplines involved in the participant's care every 30 days (physical therapy, speech therapy, occupational therapy, home health and others);

6. Daily records of services provided. The daily record shall contain the specific services delivered by center staff. The record shall also contain the arrival and departure times of the participant and be signed weekly by the director, activities director, registered nurse, or therapist employed by the center. The daily record shall be completed on a daily basis, neither before nor after the date of service delivery. At least once a week, a staff member shall chart significant comments regarding care given to the participant. If the staff member writing comments is different from the staff signing the weekly record, that staff member shall sign the weekly comments. A copy of this record must be given to the participant or representative weekly; and

7. All correspondence to the participant, DMAS, and the designated preauthorization contractor.

12 VAC 30-120-50. Personal care services. (Repealed.)

The following requirements govern the provision of personal care services.

A. General. Personal care services may be offered to individuals as an alternative to institutional care. Personal care may be offered either as the sole home and community-based care service that avoids institutionalization or in conjunction with adult day health care, respite care, or PERS.

Recipients may continue to work or attend post-secondary school, or both, while they receive services under this waiver. The personal care attendant who assists the recipient may accompany that person to work or school or both and may assist the person with personal needs while the individual is at work or school or both. DMAS will also pay for any personal care services that the attendant gives to the enrolled recipient to assist him in getting ready for work or school or both or when he returns home.

DMAS will review the recipient's needs and the complexity of the disability when determining the services that will be provided to the recipient in the workplace or school or both.

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~~DMAS will not duplicate services that are required as a reasonable accommodation as a part of the Americans with Disabilities Act (ADA) (42 USC §§ 12131 through 12165) or the Rehabilitation Act of 1973. For example, if the recipient's only need is for assistance during lunch, DMAS would not pay for the attendant to be with the recipient for any hours extending beyond lunch. For a recipient whose speech is such that they cannot be understood without an interpreter (not translation of a foreign language), or the recipient is physically unable to speak or make himself understood even with a communication device, the attendant's services may be necessary for the length of time the recipient is at work or school or both. DMAS will reimburse for the attendant's services unless the attendant is required to assist the recipient for the length of time the recipient is at work or school or both as a part of the ADA or the Rehabilitation Act.~~

~~The provider agency must develop an individualized plan of care that addresses the recipient's needs at home and work and in the community.~~

~~DMAS will not pay for the attendant to assist the enrolled recipient with any functions related to the recipient completing his job or school functions or for supervision time during work or school or both.~~

~~B. Special provider participation conditions. The personal care provider shall:~~

~~1. Operate from a business office;~~

~~2. Employ (or subcontract with) and directly supervise a registered nurse who will provide ongoing supervision of all personal care aides.~~

~~a. The registered nurse shall be currently licensed to practice in the Commonwealth of Virginia 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, rehabilitation hospital, nursing facility, or as a licensed practical nurse (LPN)).~~

~~b. The registered nurse shall have a satisfactory work record, as evidenced by two references from prior job experience, including no evidence of abuse, neglect, or exploitation of incapacitated or older adults and children. Providers are responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks. The criminal record check shall be available for review by DMAS staff who are authorized by the agency to review these files.~~

~~c. The registered nurse supervisor shall make an initial home assessment visit on or before the start of care for all new recipients admitted to personal care, when a recipient is readmitted after being discharged from services, or if he is transferred to another provider or ADHC.~~

~~d. The registered nurse supervisor shall make supervisory visits as often as needed, but no fewer visits than provided as follows, to ensure both quality and appropriateness of services.~~

~~(1) A minimum frequency of these visits is every 30 days for recipients with a cognitive impairment and~~

~~every 90 days for recipients who do not have a cognitive impairment.~~

~~(2) The initial home assessment visit by the registered nurse shall be conducted to create the plan of care and assess the recipient's needs. The registered nurse shall return for a follow-up visit within 30 days after the initial visit to assess the recipient's needs and make a final determination that there is no cognitive impairment. This determination must be documented in the recipient's record by the registered nurse. Recipients who are determined to have a cognitive impairment will continue to have supervisory visits every 30 days.~~

~~(3) If there is no cognitive impairment, the registered nurse may give the recipient or caregiver or both the option of having the supervisory visit every 90 days or any increment in between, not to exceed 90 days. The registered nurse must document in the recipient's record this conversation and the option that was chosen.~~

~~(4) The provider agency has the responsibility of determining if 30-day registered nurse supervisory visits are appropriate for the recipient. The provider agency may offer the extended registered nurse visits, or the agency may choose to continue the 30-day supervisory visits based on the needs of the individual. The decision must be documented in the recipient's record.~~

~~(5) If a recipient's personal care aide is supervised by the provider's registered nurse less often than every 30 days and DMAS or the designated preauthorization contractor determines that the recipient's health, safety or welfare is in jeopardy, DMAS, or the designated preauthorization contractor, may require the provider's registered nurse to supervise the personal care aide every 30 days or more frequently than what has been determined by the registered nurse. This will be documented and entered in the recipient's record.~~

~~e. During visits to the recipient's home, a registered nurse shall observe, evaluate, and document the adequacy and appropriateness of personal care services with regard to the recipient's current functioning status, medical, and social needs. The personal care aide's record shall be reviewed and the recipient's (or family's) satisfaction with the type and amount of service discussed. The registered nurse summary shall note:~~

~~(1) Whether personal care services continue to be appropriate;~~

~~(2) Whether the plan is adequate to meet the recipient's needs or if changes need to be made in the plan of care;~~

~~(3) Any special tasks performed by the aide and the aide's qualifications to perform these tasks;~~

~~(4) Recipient's satisfaction with the service;~~

~~(5) Hospitalization or change in the medical condition or functioning status of the recipient;~~

~~(6) Other services received by the recipient and the amount; and~~

~~(7) The presence or absence of the aide in the home during the registered nurse's visit.~~

~~f. A registered nurse shall be available to the personal care aide for conference pertaining to individuals being served by the aide and shall be available to aides by telephone at all times that the aide is providing services to personal care recipients.~~

~~g. The registered nurse supervisor shall evaluate the aides' performance and the recipient's needs to identify any insufficiencies in the aides' abilities to function competently and shall provide training as indicated. This shall be documented in the recipient's record.~~

~~h. If there is a delay in the registered nurses' supervisory visits, because the recipient was unavailable, the reason for the delay must be documented in the recipient's record.~~

~~3. Employ and directly supervise personal care aides who 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 qualifications required by DMAS. Each aide shall:~~

~~a. Be able to read and write in English to the degree necessary to perform the expected tasks;~~

~~b. Complete a minimum of 40 hours of training consistent with DMAS standards. Prior to assigning an aide to a recipient, the provider agency shall 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 references from prior job experience, including no evidence of abuse, neglect, or exploitation of incapacitated or older adults and children. Providers are responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks. The criminal record check shall be available for review by DMAS staff who are authorized by the agency to review these files;~~

~~e. Not be: (i) the parents of minor children who are receiving waiver services or (ii) spouses of individuals who are receiving waiver services; and~~

~~f. Payment may be made for services furnished by other family members when there is objective written documentation as to why there are no other providers available to provide the care. These family members must meet the same requirements as aides who are not family members.~~

~~C. Required documentation for recipients' records. The provider agency shall maintain all records of each personal care recipient. These records shall be separate from those of nonhome and community-based care services, such as companion or home health services. These records shall be reviewed periodically by the DMAS staff who are authorized~~

~~by the agency to review these files. At a minimum the record shall contain:~~

~~1. The most recently updated Long Term Care Uniform Assessment Instrument, the Medicaid-Funded Long Term Care Service Authorization form (DMAS-96), the Screening Team Service Plan for Medicaid-Funded Long-Term Care (DMAS-97), all provider agency plans of care, and all Patient Information forms (DMAS-122);~~

~~2. The initial assessment by a registered nurse completed prior to or on the date that services are initiated;~~

~~3. Registered nurses' notes recorded and dated during significant contacts with the personal care aide and during supervisory visits to the recipient's home;~~

~~4. All correspondence to the recipient, DMAS, and the designated preauthorization contractor;~~

~~5. Reassessments made during the provision of services;~~

~~6. Significant contacts made with family, physicians, DMAS, the designated preauthorization contractor, formal, informal service providers and all professionals related to the recipient's Medicaid services or medical care;~~

~~7. All personal care aide records. The personal care aide record shall contain:~~

~~a. The specific services delivered to the recipient by the aide and the recipient's responses to this service;~~

~~b. The aide's daily arrival and departure times;~~

~~c. The aide's weekly comments or observations about the recipient, including observations of the recipient's physical and emotional condition, daily activities, and responses to services rendered; and~~

~~d. The aide's and recipient's or responsible caregiver's weekly signatures, including the date, to verify that personal care services have been rendered during that week as documented in the record. An employee of the provider cannot sign for the recipient unless he is a family member of the recipient;~~

~~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; and~~

~~8. All recipient progress reports.~~

12 VAC 30-120-55. Personal emergency response system (PERS) services. (Repealed.)

~~A. Service description. PERS is a service that monitors recipient safety in the home and provides access to emergency assistance 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. PERS may also include medication monitoring devices.~~

~~B. Criteria. PERS services are limited to those recipients, ages 14 and older, who live alone or are alone for significant parts of the day and who have no regular caregiver for extended~~

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periods of time, and who would otherwise require extensive routine supervision. PERS may only be provided in conjunction with personal care, respite care, or adult day health care. A recipient may not receive PERS if he has a cognitive impairment as defined in 12 VAC 30-120-10.

PERS can be authorized when there is no one else, other than the recipient, 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, but not limited to, a day care center, PERS will only be approved if the recipient is evaluated as being dependent in the categories of "Behavior Pattern" and "Orientation" on the Uniform Assessment Instrument (UAI).

Medication monitoring units must be physician ordered. In order to receive medication monitoring services, a recipient must also receive PERS services.

C. Service units and service limitations.

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

In cases where medication monitoring units must be filled by the provider, the person filling the unit must be a registered nurse, a licensed practical nurse, or a licensed pharmacist. The units can be refilled every 14 days.

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 30-120-20 and 12 VAC 30-120-30, 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 with fully trained operators who are capable of receiving signals for help from a recipient's PERS equipment 24 hours a day, 365 or 366 days per year as appropriate; determining whether an emergency exists; and notifying an emergency response organization or an emergency responder that the PERS recipient needs emergency help;

3. A PERS provider must comply with all applicable Virginia statutes, 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 within seven days of the request unless there is appropriate documentation of why this timeframe cannot be met. The PERS provider must furnish all supplies necessary to ensure that the system is installed and working properly. The PERS provider must test the PERS device monthly, or more frequently if needed, to ensure that the device is fully operational;

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

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

- a. Delivery and installation date of the PERS;
- b. Recipient/caregiver signature verifying receipt of the PERS device;
- c. Verification by a test that the PERS device is operational, monthly or more frequently if 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 the recipient's utilization of the system, all contacts, and all communications with the recipient, caregiver, and responders;

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

9. Standards for PERS equipment. 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 (copyright 2002) and Number 1637 for Home Health Care Signaling Equipment (copyright 2002). 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 a manual reset by the recipient;

~~10. A PERS provider must furnish education, data, and ongoing assistance to DMAS and the designated preauthorization contractor 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;~~

~~11. 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;~~

~~12. 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 monitoring 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;~~

~~13. The monitoring agency must maintain detailed technical and operation manuals that describe PERS elements, including the installation, functioning, and testing of PERS equipment; emergency response protocols; and recordkeeping and reporting procedures;~~

~~14. The PERS provider shall document and furnish within 30 days (of the action taken) a written report for each emergency signal that results in action being taken on behalf of the recipient. This excludes test signals or activations made in error. This written report shall be~~

~~furnished to the personal care provider, the respite care provider, or in cases where the recipient only receives ADHC services, to the ADHC provider;~~

~~15. The PERS provider is prohibited from performing any type of direct marketing activities to Medicaid recipients; and~~

~~16. The provider must obtain and keep on file a copy of the most recently completed Patient Information form (DMAS-122). Until the provider obtains a copy of the DMAS-122, the provider must clearly document efforts to obtain the completed DMAS-122 from the personal care, respite care, or the ADHC provider.~~

12 VAC 30-120-60. Respite care services. (Repealed.)

~~These requirements govern the provision of respite care services:~~

~~A. General. Respite care services may be offered to individuals as an alternative to institutional care. Respite care is distinguished from other services in the continuum of long-term care because it is specifically designed to focus on the need of the unpaid caregiver for temporary relief. Respite care may only be offered to individuals who have a primary caregiver living in the home who requires temporary relief to avoid institutionalization of the individual. The authorization of respite care is limited to 720 hours per calendar year per recipient. A recipient who transfers to a different provider or is discharged and readmitted into the Elderly and Disabled Individuals Waiver program within the same calendar year will not receive an additional 720 hours of respite care. DMAS cannot be billed for more than 720 respite care hours in a calendar year for a waiver recipient. Reimbursement shall be made on an hourly basis, not to exceed a total of 720 hours per calendar year.~~

~~B. Special provider participation conditions. To be approved for respite care contracts with DMAS, the respite care provider shall:~~

~~1. Operate from a business office.~~

~~2. Employ (or subcontract with) and directly supervise a registered nurse who will provide ongoing supervision of all respite care aides:~~

~~a. The registered nurse shall 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, rehabilitation hospital, nursing home, or as an LPN).~~

~~b. The registered nurse shall have a satisfactory work record, as evidenced by two references from prior job experience, including no evidence of abuse, neglect, or exploitation of incapacitated or older adults and children. Providers are responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks. The criminal record check shall be available for review by DMAS staff who are authorized by the agency to review these files.~~

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~~c. Based on continuing evaluations of the aides' performance and the recipients' individual needs, the registered nurse supervisor shall identify any insufficiencies in the aides' abilities to function competently and shall provide training as indicated.~~

~~d. The registered nurse supervisor shall make an initial home assessment visit on or before the start of care for any recipient admitted to respite care.~~

~~e. A registered nurse shall 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 visits shall be every 30 days.~~

~~(2) When respite care services are not received on a routine basis, but are episodic in nature, a registered nurse shall not be required to conduct a supervisory visit every 30 days. Instead, a registered nurse shall conduct the initial home assessment visit with the respite care aide on or before the start of care and make a second home visit during the second respite care visit.~~

~~(3) When respite care services are routine in nature and offered in conjunction with personal care, the supervisory visit conducted for personal care services may serve as the registered nurse supervisory visit for respite care. However, the registered nurse supervisor shall document supervision of respite care separately from the personal care documentation. For this purpose, the same recipient record can be used with a separate section for respite care documentation.~~

~~f. During visits to the recipient's home, the registered nurse shall observe, evaluate, and document the adequacy and appropriateness of respite care services with regard to the recipient's current functioning status, medical, and social needs. The respite care aide's record shall be reviewed along with the recipient's or family's satisfaction with the type and amount of service discussed. The registered nurse shall document in a summary note:~~

~~(1) Whether respite care services continue to be appropriate;~~

~~(2) Whether the plan of care is adequate to meet the recipient's needs or if changes need to be made to the plan of care;~~

~~(3) The recipient's satisfaction with the service;~~

~~(4) Any hospitalization or change in the medical condition or functioning status of the recipient;~~

~~(5) Other services received by the recipient and the amount of the services received; and~~

~~(6) The presence or absence of the aide in the home during the registered nurse's visit.~~

~~g. A registered nurse shall be available to the respite care aide for conference pertaining to individuals being served~~

~~by the aide and shall be available to aides by telephone at all times that aides are providing services to respite care recipients.~~

~~h. If there is a delay in the registered nurse's supervisory visits, because the recipient is unavailable, the reason for the delay must be documented in the recipient's record.~~

~~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 qualifications as required by DMAS. Each aide must:~~

~~a. Be able to read and write in English to the degree necessary to perform the tasks expected;~~

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

~~c. Be evaluated in his job performance by the registered nurse supervisor;~~

~~d. Be physically able to do the work;~~

~~e. Have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of abuse, neglect or exploitation of incapacitated or older adults and children. Providers are responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks. The criminal record checks shall be available for review by DMAS staff who are authorized by the agency to review these files.~~

~~f. Not be: (i) the parents of minor children who are receiving waiver services or (ii) the spouses of individuals receiving waiver services.~~

~~g. Payment may be made for services furnished by other family members when there is objective written documentation as to why there are no other providers available to provide the care. These family members must meet the same requirements as aides who are not family members.~~

~~4. The Respite Care Agency may employ a licensed practical nurse to perform respite care services, which shall be reimbursed by DMAS under the following circumstances:~~

~~a. The licensed practical nurse (LPN) shall be currently licensed to practice in the Commonwealth. The LPN must have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of abuse, neglect, or exploitation of incapacitated or older adults and children. Providers shall be responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks. The criminal record checks shall be available for review by DMAS staff who are authorized by the agency to review these files;~~

~~b. The recipient has a need for routine skilled care which cannot be provided by unlicensed personnel. These~~

individuals would typically require a skilled level of care if in a nursing facility (e.g., recipients on a ventilator, recipients requiring nasogastric, or gastrostomy feedings, etc.);

e. No other individual in the recipient's support system is able to supply the skilled component of the recipient's care during the caregiver's absence;

d. The recipient is unable to receive skilled nursing visits from any other source which could provide the skilled care usually given by the caregiver; and

e. The agency must document in the recipient's record the circumstances which require the provision of services by an LPN.

G. Required documentation for recipients' records. The provider agency shall maintain all records of each respite care recipient. These records shall be separated from those of nonhome and community-based care services, such as companion or home health services. These records shall be reviewed periodically by the DMAS staff who are authorized by the agency to review these files. At a minimum these records shall contain:

1. The most recently updated Long Term Care Uniform Assessment Instrument, the Medicaid-Funded Long Term Care Service Authorization form (DMAS-96), the Screening Team Service Plan for Medicaid-Funded Long Term Care (DMAS-97), all respite care assessments and plans of care, and all Patient Information forms (DMAS-122);

2. The initial assessment by a registered nurse completed prior to or on the date services are initiated;

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

4. All correspondence to the recipient, DMAS, and the designated preauthorization contractor;

5. Reassessments made during the provision of services;

6. Significant contacts made with family, physicians, DMAS, the designated preauthorization contractor, formal and informal service providers, and all professionals related to the recipient's Medicaid services or medical care; and

7. All respite care aide records. The respite care aide record shall contain:

a. The specific services delivered to the recipient by the respite care aide or LPN, and the recipient's response to this service;

b. The daily arrival and departure times of the aide or LPN for respite care services;

c. Comments or observations recorded weekly about the recipient. Aide or LPN comments shall include but not be limited to observation of the recipient's physical and emotional condition, daily activities, and the recipient's response to services rendered; and

d. The signatures of the aide or LPN, and the recipient, once each week to verify that respite care services have

been rendered. Signature, times, and dates shall not be placed on the aide record prior to the last date of the week that the services are delivered. If the recipient is unable to sign the aide record, it must be documented in the recipient's record how or who will sign in his place. An employee of the provider shall not sign for the recipient unless he is a family member or legal guardian of the recipient.

8. All recipient progress reports.

PART II. I.

PROGRAM OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE).

PART III. II.

HOME AND COMMUNITY-BASED SERVICES FOR TECHNOLOGY ASSISTED INDIVIDUALS.

PART IV. III.

HOME AND COMMUNITY-BASED SERVICES FOR INDIVIDUALS WITH ACQUIRED IMMUNODEFICIENCY SYNDROME (AIDS) AND AIDS-RELATED COMPLEX.

PART V. IV.

MENTAL RETARDATION WAIVER.

PART VI. V. MEDALLION.

PART VII. VI. MEDALLION II.

PART VIII. VII.

ASSISTED LIVING SERVICES FOR INDIVIDUALS RECEIVING AUXILIARY GRANTS RESIDING IN ADULT CARE RESIDENCES.

PART IX.

CONSUMER-DIRECTED PERSONAL ATTENDANT SERVICES FOR ELDERLY AND DISABLED INDIVIDUALS.

12 VAC 30-120-490. Definitions. (Repealed.)

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

"Committee for recipient" means a person who has been legally invested with the authority, and charged with the duty of managing the estate or making decisions to promote the well-being of a person who has been determined by the circuit court to be totally incapable of taking care of his person or handling and managing his estate because of mental illness or mental retardation. A committee shall be appointed only if the court finds that the person's inability to care for himself or handle and manage his affairs is total.

"Current functional status" means the individual's degree of dependency in performing activities of daily living (ADL).

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~~"DMAS" means the Department of Medical Assistance Services.~~

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

~~"DSS" means the Department of Social Services.~~

~~"Family or caregiver" means a spouse, parent, adult child, or guardian. A family or caregiver may direct the care on behalf of the recipient if a recipient is incapable of directing his own care.~~

~~"Fiscal agent" means an agency or organization that may be contracted by DMAS to handle employment, payroll, and tax responsibilities on behalf of the recipient who is receiving consumer directed personal attendant services (PAS).~~

~~"Guardian" means a person who has been legally invested with the authority and charged with the duty of taking care of the recipient and managing his property and protecting the rights of the 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 in need of a guardian has been determined to be incapacitated.~~

~~"Home and community-based care" means a variety of in-home and community-based services reimbursed by DMAS (personal care, adult day health care, respite care, and assisted living,) authorized under a Social Security Act § 1915(c) waiver designed to offer individuals an alternative to institutionalization. Individuals may be preauthorized to receive one or more of these services either solely or in combination, based on the documented need for the service or services in order to avoid nursing facility placement. The Nursing Home Preadmission Screening Team or DMAS shall give prior authorization for any Medicaid-funded home and community-based care.~~

~~"Instrumental activities of daily living" or "IADL" means social tasks, i.e., meal preparation, shopping, housekeeping, laundry, money management. A person's degree of independence in performing these activities is part of determining appropriate level of care and services. Meal preparation is planning, preparing, cooking and serving food. Shopping is getting to and from the store, obtaining/paying for groceries and carrying them home. Housekeeping is dusting, washing dishes, making beds, vacuuming, cleaning floors, and cleaning bathroom/kitchen. Laundry is washing/drying clothes. Money management is paying bills, writing checks, handling cash transactions, and making change.~~

~~"Nursing Home Preadmission Screening (NHPAS)" means the process to (i) evaluate the medical, nursing, and social needs of individuals referred for preadmission screening, (ii) analyze what specific services the individuals need, (iii) evaluate whether a service or a combination of existing community services are available to meet the individuals' needs, and (iv) authorize Medicaid funded nursing facility or community based care for those individuals who meet nursing facility level of care and require that level of care.~~

~~"Nursing Home Preadmission Screening Team" means the entity contracted with DMAS which is responsible for performing nursing home preadmission screening. For individuals in the community, this entity is a committee comprised of staff from the local health department and local DSS. For individuals in an acute care facility who require screening, the entity is a team of nursing and social work staff. A physician shall be a member of both the local committee or acute care team.~~

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

~~"Personal attendant" means, for purposes of this part and exemption from Worker's Compensation, a domestic servant. Consumers shall be restricted from employing more than two personal attendants simultaneously at any given time.~~

~~"Personal attendant services" or "PAS" means long term maintenance or support services necessary to enable the mentally alert and competent individual to remain at or return home rather than enter a nursing care facility. Personal attendant services include hands on care specific to the needs of a medically stable, physically disabled individual. Personal attendant services include assistance with ADLs, bowel/bladder programs, range of motion exercises, routine wound care which does not include sterile technique, and external catheter care as further defined in the Consumer-Directed PAS Manual. Supportive services are those which substitute for the absence, loss, diminution, or impairment of a physical function. When specified, supportive services may include assistance with IADLs which are incidental to the care furnished, or which are essential to the health and welfare of the recipient. Personal attendant services shall not include either practical or professional nursing services as defined in Chapters 30 and 34 of Title 54.1 of the Code of Virginia, as appropriate.~~

~~"Plan of care" or "POC" means the written plan of services certified by the screening team physician and approved by DMAS as needed by the individual to ensure optimal health and safety for the delivery of home and community-based care.~~

~~"Providers" means those individuals, agencies or facilities registered, licensed, or certified, as appropriate, and enrolled by DMAS to render services to Medicaid recipients eligible for services.~~

~~"Service coordination provider" means the provider contracted by DMAS that is responsible for ensuring that the assessment, development and monitoring of the plan of care, management training, and review activities as required by DMAS are accomplished. Individuals employed by the service coordination provider shall meet the knowledge, skills, and abilities as further defined in this part.~~

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

"Uniform Assessment Instrument" or "UAI" means the standardized multidimensional questionnaire which assesses an individual's social, physical health, mental health, and functional abilities. The UAI is used to gather information for the determination of an individual's care needs and service eligibility, and for planning and monitoring an individual's care across various agencies for long term care services.

12 VAC 30-120-500. General coverage and requirements for consumer-directed PAS as a home and community-based care waiver service. (Repealed.)

A. Coverage statement. Coverage of consumer-directed PAS shall be provided under the administration of the DMAS to disabled and elderly individuals who must be mentally alert and have no cognitive impairments who would otherwise require the level of care provided in a nursing facility. Individuals must be able to manage their own affairs without help from another individual. Individuals eligible for consumer-directed PAS must have the capability to hire and train their own personal attendants and supervise the attendant's performance. If a recipient is incapable of directing his own care, a spouse, parent, adult child, or guardian may direct the care on behalf of the recipient.

B. Individuals receiving services under this waiver must meet the following requirements:

1. Individuals receiving services under this waiver must be eligible under one of the following eligibility groups: aged, blind or disabled recipients eligible under 42 CFR 435.121, and the special home and community-based waiver group at 42 CFR 435.217 which includes individuals who would be eligible under the State Plan if they were institutionalized.
2. Under this waived service, the coverage groups authorized under § 1902(a)(10)(C)(i)(III) of the Social Security Act will be considered as if they were institutionalized for the purpose of applying institutional deeming rules.
3. Virginia shall reduce its payment for home and community based care services provided for an individual by that amount of the individual's total income (including amounts disregarded in determining eligibility) that remains after allowable deductions for personal maintenance needs, deductions for other dependents, and medical needs have been made according to the guidelines in 42 CFR 435.735. DMAS will reduce its payment for home and community based waiver services by the amount that remains after deducting the amounts as specified in 42 CFR 435.726, listed below:

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

- (1) An amount for the maintenance needs of the individual which is equal to the categorically needy income standard for a non-institutionalized individual. Working individuals have a greater need due to expenses of employment; therefore, an additional amount of income shall be deducted. Earned income shall be deducted within the following limits: (i) for

individuals employed 20 hours or more, earned income shall be disregarded up to a maximum of 300% of SSI and (ii) for individuals employed at least eight but less than 20 hours, earned income shall be disregarded up to a maximum of 200% of SSI. However, in no case, shall the total amount of income (both earned and unearned) disregarded for maintenance exceed 300% of SSI.

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

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

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

b. For individuals to whom § 1924(d) does not apply, deduct the following in the respective order:

- (1) An amount for the maintenance needs of the individual which is equal to the categorically needy income standard for a non-institutionalized individual. Working individuals have a greater need due to expenses of employment; therefore, an additional amount of income shall be deducted. Earned income shall be deducted within the following limits: (i) for individuals employed 20 hours or more, earned income shall be disregarded up to a maximum of 300% of SSI and (ii) for individuals employed at least eight but less than 20 hours, earned income shall be disregarded up to a maximum of 200% of SSI. However, in no case, shall the total amount of income (both earned and unearned) disregarded for maintenance exceed 300% of SSI.
- (2) For an individual with a family at home, an additional amount for the maintenance needs of the family which shall be equal to the medically needy income standard for a family of the same size.
- (3) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but covered under the state Medical Assistance Plan.

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

1. To ensure that Virginia's home and community based care waiver programs serve only individuals who would otherwise be placed in a nursing facility, home and community based care services shall be considered only for individuals who are seeking nursing facility admission or for

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~~individuals who are at imminent risk of nursing facility admission in the near future. "Imminent risk" is defined as within one month. Home and community-based care services shall be the critical service that enables the individual to remain at home rather than being placed in a nursing facility.~~

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

~~3. An essential part of the NHPAS Team's assessment process is determining the level of care required by applying existing criteria for nursing facility care according to established nursing home preadmission screening processes.~~

~~4. The team shall explore alternative settings or services to provide the care needed by the individual. If nursing facility placement or a combination of other services are determined to be appropriate, the screening team shall initiate referrals for service. If Medicaid funded home and community-based care services are determined to be the critical service to delay or avoid nursing facility placement, the screening team shall develop an appropriate plan of care and initiate referrals for service.~~

~~5. The annual cost of care for home and community-based care services for a recipient shall not exceed the average annual cost of nursing facility care. For purposes of this subdivision, the annual cost of care for home and community-based care services for a recipient shall include all costs of all Medicaid covered services which would actually be received by the recipient. The average annual cost of nursing facility care shall be determined by DMAS and shall be updated annually.~~

~~6. Home and community based care services shall not be provided to any individual who resides in a board and care facility or adult care residences (ACRs) nor who is an inpatient in general acute care hospitals, skilled or intermediate nursing facilities, or intermediate care facilities for the mentally retarded. Additionally, home and community-based care services shall not be provided to any individual who resides outside of the physical boundaries of the Commonwealth, with the exception of brief periods of time as approved by DMAS. Brief periods of time may include, but are not necessarily restricted to, vacation or illness.~~

~~7. Medicaid will not pay for any home and community-based care services delivered prior to the authorization date approved by the NHPAS Team.~~

~~8. Any authorization and POC for home and community-based care services will be subject to the approval of DMAS prior to Medicaid reimbursement for waiver services.~~

12 VAC 30-120-510. General conditions and requirements for home and community-based care participating service coordination providers. (Repealed.)

~~A. Service coordination providers approved for participation shall, at a minimum, perform the following activities:~~

~~1. Accept referrals for services only when staff is available to initiate and perform such services on an ongoing basis.~~

~~2. Provide services and supplies to recipients in full compliance with (i) Title VI of the Civil Rights Act of 1964 (42 USC § 2000 et seq.) which prohibits discrimination on the grounds of race, color, religion, or national origin; (ii) § 504 of the Rehabilitation Act of 1973 (29 USC § 70 et seq.) which prohibits discrimination on the basis of a disability and; (iii) Title II of the Americans with Disabilities Act of 1990 (42 USC § 126 et seq.) which provides comprehensive civil rights protections to individuals with disabilities in the areas of employment, public accommodations, state and local government services and telecommunications.~~

~~3. Assure freedom of choice to recipients in seeking medical care from any institution, pharmacy, practitioner, or other provider qualified to perform the service or services required and participating in the Medicaid Program at the time the service or services were performed. Also assure the recipient's freedom to reject medical care and treatment.~~

~~4. Provide services and supplies to recipients in the same quality and mode of delivery as provided to the general public.~~

~~5. Maintain and retain business and professional records sufficient to document fully and accurately the nature, scope and details of the health care provided.~~

~~a. Such records shall be retained for at least five years from the last date of service or as provided by applicable state laws, whichever period is longer. If an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every exception resolved. Records of minors shall be kept for at least five years after such minor has reached the age of 18 years.~~

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

~~6. Submit charges to DMAS for the provision of services and supplies to recipients in amounts not to exceed the provider's usual and customary charges to the general public. The provider will accept as payment in full the amount established by DMAS payment methodology from the first day of eligibility.~~

~~7. Immediately notify DMAS, in writing, of any change in the information which the provider previously submitted to DMAS. The provider will use program designated billing forms for submission of charges.~~

~~8. Furnish to DMAS, the Attorney General of Virginia or his authorized representatives, or the State Medicaid Fraud Control Unit information on request and in the form requested. The Commonwealth's right of access to provider agencies and records shall survive any termination of this agreement.~~

~~9. Disclose all financial, beneficial, ownership, equity, surety, or other interests in any and all firms, corporations, partnerships, associations, business enterprises, joint ventures, agencies, institutions, or other legal entities providing any form of health care services to recipients of Medicaid.~~

~~10. Hold confidential and use for authorized DMAS purposes only all medical and identifying information regarding recipients served. A provider shall disclose information in his possession only when the information is used in conjunction with a claim for health benefits or the data is necessary for the functioning of DMAS. DMAS shall not disclose medical information to the public.~~

~~11. When ownership of the provider agency changes, notify DMAS within 15 calendar days prior to the date of the change.~~

~~B. Requests for participation will be screened by DMAS to determine whether the provider applicant meets the basic requirements for participation.~~

~~C. For DMAS to approve contracts with home and community-based care providers the following provider participation standards shall be met:~~

- ~~1. Financial solvency.~~
- ~~2. Disclosure of ownership.~~
- ~~3. Staffing requirements.~~

~~D. In addition to compliance with the general conditions and requirements, all providers enrolled by DMAS shall adhere to the conditions of participation outlined in their individual provider contracts.~~

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

~~F. If there is more than one approved provider agency in the community, the individual will have the option of selecting the provider agency of his choice.~~

~~G. A participating service coordinator provider may voluntarily terminate his participation in Medicaid by providing 30 days written notification. DMAS shall be permitted to administratively terminate a service coordinator provider from~~

~~participation upon 30 days written notification. DMAS may also cancel a contract immediately or may give notification in the event of a breach of the contract by the provider as specified in the DMAS contract. Such action precludes further payment by DMAS for services provided to recipients subsequent to the date specified in the termination notice.~~

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

~~I. 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 must, within 30 days, notify the Medicaid Program of this conviction and relinquish its provider agreement. Reinstatement will be contingent upon provisions of state law. Additionally, termination of a provider contract will occur as may be required for federal financial participation.~~

~~J. It is the responsibility of the provider agency to notify DMAS and DSS, in writing on form DMAS 122, when any of the following circumstances occur:~~

- ~~1. Home and community-based care services are implemented.~~
- ~~2. A recipient dies.~~
- ~~3. A recipient is discharged or terminated from services.~~
- ~~4. Any other circumstances (including hospitalization) which cause home and community-based care services to cease or be interrupted for more than 30 days.~~

~~K. It shall be the responsibility of the provider agency to notify DMAS, in writing, within five days when any of the following changes in the authorized hours or termination of provider agency services occur:~~

- ~~1. Decreases in amount of authorized care by the provider.
 - ~~a. The provider may decrease the amount of authorized care only if the recipient and the participating provider both agree that a decrease in care is needed and that the amount of care in the revised POC is appropriate.~~
 - ~~b. The participating provider is responsible for devising the new POC and calculating the new hours of service delivery.~~~~

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~~c. The individual responsible for supervising the recipient's care shall discuss the decrease in care with the recipient, document the conversation in the recipient's record, and shall notify the recipient of the change by letter.~~

~~d. If the recipient disagrees with the decrease proposed, DMAS shall be notified to conduct a special review of the recipient's service needs.~~

~~2. Increases in amount of authorized care. If a change in the recipient's condition (physical, mental, or social) necessitates an increase in care, the participating provider shall assess the need for increase and, if appropriate, develop a plan of care with the recipient for services to meet the changed needs. The provider may implement the increase in hours without approval from DMAS as long as the amount of service does not exceed the amount established by DMAS as the maximum for the level of care designated for that recipient. Any increase to a recipient's plan of care which exceeds the number of hours allowed for that recipient's level of care or any change in the recipient's level of care must be pre-approved by DMAS. However, in no case shall the number of hours authorized exceed those established by the agency's individual cost effectiveness formula.~~

~~3. Nonemergency termination of home and community-based care services by the participating provider. The participating provider shall give the recipient 10 days written notification of the intent to terminate services. The letter shall provide the reasons for and effective date of the termination. The effective date of services termination shall be at least 10 days from the date of the termination notification letter.~~

~~4. Emergency termination of home and community-based care services by the participating provider. In an emergency situation when the health and safety of the recipient or provider agency personnel is endangered, DMAS must be notified prior to termination. The 10-day written notification period shall not be required. If appropriate, the local DSS Adult Protective Services supervisor must be notified immediately.~~

~~L. If a participating provider agency knows or suspects that a home and community-based care recipient is being abused, neglected, or exploited, the party having knowledge or suspicion of the abuse, neglect, or exploitation shall report this immediately but no later than 48 hours from first knowledge to the local DSS adult protective services worker and to DMAS.~~

~~M. 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 regulations, policies and procedures may result in retraction of funds or termination of the provider agreement.~~

12 VAC 30-120-520. Personal attendant services (PAS). (Repealed.)

~~A. Consumer directed PAS may be offered to individuals in their homes as an alternative to more costly institutional nursing facility care. When the individual referred for consumer-directed PAS is already receiving another home and community-based care service, the DMAS utilization review staff shall assess the individual to determine the eligibility for consumer directed PAS and authorize it if necessary to avoid more costly nursing facility care. In no event shall the services exceed cost effectiveness for this individual.~~

~~B. In addition to the general requirements above, to be enrolled as a Medicaid service coordination provider and maintain provider status, the following requirements shall be met:~~

~~1. The service coordination provider shall operate from a business office.~~

~~2. The service coordination provider must have sufficient qualified staff who will function as service coordinators to perform the needed POC development and monitoring, reassessments, service coordination, and support activities as required by the Consumer Directed Personal Attendant Services Program.~~

~~3. It is preferred that the individual employed by 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 of Virginia. 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 the elderly. The individual shall possess a combination of work experience and relevant education which indicates possession of the following knowledge, skills, and abilities. Such knowledge, skills and abilities must be documented on the application form, found in supporting documentation, or observed during the interview. Observations during the interview must be documented. The knowledge, skills, and abilities shall include, but not necessarily be limited to:~~

~~a. Knowledge of:~~

~~(1) Types of functional limitations and health problems that are common to different disability types and the aging process, as well as strategies to reduce limitations and health problems;~~

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

~~(3) Equipment and environmental modifications commonly used and required by people with physical disabilities or elderly persons which reduces the need for human help and improves safety;~~

~~(4) Various long term care program requirements, including nursing home and adult care residence~~

placement criteria, Medicaid-waiver services, and other federal, state, and local resources that provide personal assistance services;

(5) ~~DMAS consumer directed personal attendant services program requirements, as well as the administrative duties for which the recipient will be responsible;~~

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

(7) ~~Interviewing techniques;~~

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

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

(10) ~~General principles of record documentation.~~

b. ~~Skills in:~~

(1) ~~Negotiating with recipients and service providers;~~

(2) ~~Observing, recording, and reporting behaviors;~~

(3) ~~Identifying, developing, or providing services to persons with severe disabilities or elderly persons; and~~

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

c. ~~Abilities to:~~

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

(6) ~~Develop a rapport and communicate with different types of persons from diverse cultural backgrounds.~~

4. ~~If the service coordinator staff employed by the service coordination provider is not a registered nurse, the service coordination provider must have registered nurse (RN) consulting services available, either by a staffing arrangement or through a contracted consulting arrangement. The RN consultant is to be available as needed to consult with recipients/service coordination providers on issues related to the health needs of the recipient.~~

5. ~~Service coordination provider duties.~~

a. ~~The service coordination provider must make an initial, comprehensive home visit to develop the POC with the recipient or family or caregiver and provide management training. Recipients or family or caregivers who cannot receive management training at the time of the initial visit must receive management training within seven days of the initial visit. After the initial visit, two routine onsite visits must occur in the recipient's home within 60 days of the initiation of care or the initial visit to monitor the POC. The service coordination provider will continue to monitor the POC 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 program. If a waiver recipient changes service coordination provider agencies the new service coordination provider shall bill for a reassessment in lieu of a comprehensive visit.~~

b. ~~A reevaluation 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 shall observe, evaluate and document the adequacy and appropriateness of personal attendant services with regard to the recipient's current functioning and cognitive status, medical and social needs. The service coordination provider shall discuss the recipient's satisfaction with the type and amount of service. The service coordination provider's summary shall include, but not necessarily be limited to:~~

(1) ~~Whether personal attendant services continue to be appropriate and medically necessary to prevent institutionalization;~~

(2) ~~Whether the POC is adequate to meet the needs of the recipient;~~

(3) ~~Any special tasks performed by the attendant and the attendant's qualifications to perform these tasks;~~

(4) ~~Recipient's or family or caregiver's satisfaction with the service;~~

(5) ~~Hospitalization or change in medical condition, functioning or cognitive status;~~

(6) ~~Other services received and their amount; and~~

(7) ~~The presence or absence of the attendant in the home during the service coordinator's visit.~~

5. ~~The service coordination provider shall be available to the recipient by telephone.~~

6. ~~The service coordination provider will submit a criminal record check pertaining to the personal attendant on behalf of the recipient and report findings of the criminal record check to the recipient or family or caregiver. 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 12 VAC 30-90-180.~~

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~~7. The service coordination provider shall verify biweekly timesheets signed by the recipient or family or caregiver and the personal attendant to ensure the number of approved hours on the POC are not exceeded. If discrepancies are identified, the service coordination provider will contact the recipient or family or caregiver to resolve discrepancies and will notify the fiscal agent. If a recipient or family or caregiver is consistently being identified as having discrepancies in his timesheets, the service coordination provider will contact DMAS to resolve the situation. Service coordination providers shall not verify timesheets for personal attendants who have been convicted of crimes described in 12 VAC 30-90-180 and will notify the fiscal agent.~~

~~C. The service coordination provider shall maintain a personal attendant registry. The registry shall contain names of persons who have experience with providing personal attendant services or who are interested in providing personal attendant services. The registry shall be maintained as a supportive source for the recipient who may use the registry to obtain names of potential personal attendants.~~

~~D. The service coordination provider shall maintain all records of each consumer directed PAS recipient. At a minimum these records shall contain:~~

- ~~1. All copies of the completed UAIs, the Long Term Care Preadmission Screening Authorization (DMAS-96), all plans of care, and all DMAS-122's.~~
- ~~2. All DMAS utilization review forms.~~
- ~~3. Service coordination provider's notes contemporaneously recorded and dated during any contacts with the recipient and during visits to the recipient's home.~~
- ~~4. All correspondence to the recipient and to DMAS.~~
- ~~5. Reassessments made during the provision of services.~~
- ~~6. Records of contacts made with family, physicians, DMAS, formal, informal service providers and all professionals concerning the recipient.~~
- ~~7. All training provided to the personal attendant or attendants on behalf of the recipient.~~
- ~~8. All recipient progress reports, as specified in subsection E of this section.~~
- ~~9. All management training provided to the recipients or family or caregivers, including the recipient's or family or caregiver's responsibility for the accuracy of the timesheets.~~

~~E. The service coordination provider is required to submit to DMAS biannually, for every recipient, a recipient progress report, an updated UAI, and any monthly visit/progress reports. This information is used to assess the recipient's ongoing need for Medicaid-funded long term care and appropriateness and adequacy of services rendered.~~

~~F. Recipients or family or caregivers will hire their own personal attendants and manage and supervise the attendants' performance.~~

~~1. Attendant qualifications include, but shall not be necessarily limited to the following requirements. The attendant must:~~

- ~~a. Be 18 years of age or older;~~
- ~~b. Have the required skills to perform attendant care services as specified in the recipient's POC;~~
- ~~c. Possess basic math, reading, and writing skills;~~
- ~~d. Possess a valid social security number;~~
- ~~e. Submit to a criminal records check. The personal attendant will not be compensated for services provided to the recipient if the records check verifies the personal attendant has been convicted of crimes described in 12 VAC 30-90-180;~~
- ~~f. Be willing to attend training at the recipient's or family or caregiver's request;~~
- ~~g. Understand and agree to comply with the DMAS Consumer-Directed PAS Program requirements; and~~
- ~~h. Be willing to register in a personal attendant registry, which will be maintained by the provider agency chosen by the recipient.~~

~~2. Restrictions. Attendants shall not be a parent or stepparent of a minor child or a recipient's spouse. In addition, anyone who has legal guardianship or is a committee for the recipient shall also be prohibited from being an attendant under this program.~~

~~G. The recipient's inability to obtain personal attendant services and substitution of attendants. The service coordination provider shall note on the Plan of Care what constitutes the recipient's backup plan in case the personal attendant does not report for work as expected or terminates employment without prior notice. 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 is able to select and hire a new personal attendant. If a recipient is consistently unable to hire and retain the employment of an attendant to provide personal attendant services, the service coordination provider must:~~

- ~~1. Contact DMAS to transfer the recipient to a provider which provides Medicaid-funded agency directed personal care services. The service coordination provider will make arrangements to have the recipient transferred, or~~
- ~~2. Contact the local health department and request a Nursing Home Preadmission Screening to determine if another long term care option is appropriate.~~

12 VAC 30-120-530. Fiscal services. (Repealed.)

~~A. DMAS shall be permitted to contract for the services of a fiscal agent. The fiscal agent will be reimbursed by the DMAS to perform certain tasks as an agent for the recipient/employer who is receiving consumer directed PAS. The fiscal agent 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 these duties.

~~B. A fiscal agent may be a state agency or other organization, and will sign a contract with the DMAS that clearly defines the roles and tasks expected of the fiscal agent and the DMAS and enroll as a provider of consumer-directed PAS. Roles and tasks which will be defined for the fiscal agent in the contract will consist of but not necessarily be limited to the following:~~

- ~~1. The fiscal agent will file for and obtain employer agent status with the federal and state tax authorities;~~
- ~~2. Once the recipient has been authorized to receive consumer directed PAS, the fiscal agent will register the recipient or family or caregiver as an employer, including providing assistance to the recipient or family or caregiver in completing forms required to obtain employer identification numbers from federal agencies, state agencies, and unemployment insurance agencies;~~
- ~~3. The fiscal agent will prepare and maintain original and file copies of all forms needed to comply with federal, state, and local tax payment, payment of unemployment compensation insurance premiums, and all other reporting requirements of employers;~~
- ~~4. Upon receipt of the required completed forms from the recipient, the fiscal agent will remit the required forms to the appropriate agency and maintain copies of the forms in the recipient's file. The fiscal agent will return copies of all forms to the recipient or family or caregiver for the recipient's or family or caregiver's permanent personnel records;~~
- ~~5. The fiscal agent will prepare all unemployment tax filings on behalf of the recipient as employer, and make all deposits of unemployment taxes withheld according to the appropriate schedule;~~
- ~~6. The fiscal agent will receive and verify the attendant biweekly timesheets do not exceed the maximum hours approved for the recipient and will process the timesheets.~~
- ~~7. The fiscal agent will prepare and process the payroll for the recipient's attendants, performing appropriate income tax, FICA and other withholdings according to federal and state regulations. Withholdings include, but are not limited to, all judgments, garnishments, tax levies or any related holds on the funds of the attendants as may be required by local, state, or federal law;~~
- ~~8. The fiscal agent will prepare payrolls for the recipient's personal attendant according to approved time sheets and after making appropriate deductions;~~
- ~~9. The fiscal agent will make payments on behalf of the recipient for FICA (employer and employee shares), unemployment compensation taxes, and other payments required and as appropriate;~~
- ~~10. The fiscal agent will distribute biweekly payroll checks to the recipient's attendants on behalf of the recipient;~~
- ~~11. The fiscal agent will maintain accurate payroll records by preparing and submitting to DMAS, at the time the fiscal~~

~~agent bills DMAS for personal attendant services, an accurate accounting of all payments on personal attendants to whom payments for services were made, including a report of FICA payments for each covered attendant;~~

- ~~12. The fiscal agent will maintain such other records and information as DMAS may require, in the form and manner prescribed by DMAS;~~
- ~~13. The fiscal agent will generate W-2 forms for all personal attendants who meet statutory threshold amounts during the tax year;~~
- ~~14. The fiscal agent will establish a customer service mechanism in order to respond to calls from recipients and personal attendants regarding lost or late checks, or other questions regarding payments that are not related to the authorization amounts generated from DMAS;~~
- ~~15. The fiscal agent will keep abreast of all applicable state and federal laws and regulations relevant to the responsibilities it has undertaken with regard to these filings;~~
- ~~16. The fiscal agent will use program designated billing forms or electronic billing to bill DMAS; and~~
- ~~17. The fiscal agent will be capable of requesting electronic transfer of funds from DMAS.~~

~~C. The fiscal agent and all subcontracting bookkeeping firms, as appropriate, will maintain the confidentiality of Medicaid information in accordance with the following:~~

- ~~1. The fiscal agent agrees to ensure that access to Medicaid information will be limited to the fiscal agent. The fiscal agent shall take measures to prudently safeguard and protect unauthorized disclosure of the Medicaid information in its possession. The fiscal agent shall establish internal policies to ensure compliance with federal and state laws and regulations regarding confidentiality including, but not limited to, 42 CFR Part 431, Subpart F, and Chapter 38 (§ 2.2-3800 et seq.) of Title 2.2 of the Code of Virginia. In no event shall the fiscal agent provide, grant, allow, or otherwise give, access to Medicaid information to anyone without the express written permission of the DMAS Director. The fiscal agent shall assume all liabilities under both state and federal law in the event that the information is disclosed in any manner.~~
- ~~2. Upon the fiscal agent receiving any requests for Medicaid information from any individual, entity, corporation, partnership or otherwise, the fiscal agent must notify DMAS of such requests within 24 hours. The fiscal agent shall ensure that there will be no disclosure of the data except through DMAS. DMAS will treat such requests in accordance with DMAS policies.~~
- ~~3. In cases where the information requested by outside sources can be released under the Freedom of Information Act (FOIA), as determined by DMAS, the fiscal agent shall provide support for copying and invoicing such documents.~~

~~D. A contract between the fiscal agent and the recipient or family or caregiver will be used to clearly express those aspects of the employment relationship that are to be handled~~

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~~by the fiscal agent, and which are to be handled by the recipient or family or caregiver. The contract will reflect that the fiscal agent is performing these tasks on behalf of the recipient or family or caregiver who is the actual employer of the attendant. Before the recipient begins receiving services, the fiscal agent will send the contract to the recipient or family or caregiver to review and sign. The fiscal agent must have a signed contract with the recipient or family or caregiver prior to the reimbursement of personal attendant services.~~

12 VAC 30-120-540. Recipient or family or caregiver responsibilities. (Repealed.)

~~A. The recipient or family or caregiver must be authorized for consumer directed PAS and successfully complete management training performed by the service coordinator before the recipient or family or caregiver can hire a personal attendant.~~

~~B. The recipient or family or caregiver is the employer in this program and is responsible for hiring, training, supervising and firing personal attendants. Specific duties include checking references of personal attendants, determining that personal attendants meet basic qualifications, training personal attendants, supervising the personal attendants' performance, and submitting timesheets to the service coordinator and fiscal agent on a consistent and timely basis. The recipient or family or caregiver 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. The recipient or family or caregiver shall cooperate with the development of the plan of care with the service coordination provider, who monitors the plan of care and provides supportive services to the recipient. The recipient or family or caregiver shall also cooperate with the fiscal agent, who handles fiscal responsibilities on behalf of the recipient. Recipients or family or caregivers who do not cooperate with the service coordination provider and fiscal agent will be disenrolled from consumer directed PAS.~~

~~D. Recipients or family or caregivers will acknowledge they will not knowingly continue to accept consumer directed personal attendant services when the services are no longer appropriate or necessary for their care needs and will inform the service coordination provider.~~

12 VAC 30-120-550. DMAS termination of eligibility to receive home and community-based care services. (Repealed.)

~~A. DMAS shall have the ultimate responsibility for assuring appropriate placement of the recipient in home and community based care services and the authority to terminate such services to the recipient for any of these reasons, but not necessarily limited to the provisions of this section.~~

~~B. Reasons eligibility for consumer directed PAS may be terminated:~~

~~1. The home and community based care service is not the critical alternative to prevent or delay institutional (nursing facility) placement.~~

~~2. The recipient no longer meets the nursing level of care for consumer directed PAS or does not have family or a caregiver to direct his care.~~

~~3. The recipient's environment does not provide for his health, safety, and welfare.~~

~~4. An appropriate and cost-effective POC cannot be developed.~~

~~C. DMAS shall notify the recipient by letter. The effective date of termination shall be at least 10 days from the date of the termination notification letter. At the same time, DMAS will also advise the recipient in writing of his right to appeal the decision.~~

~~PART XL VIII.~~

~~INDIVIDUAL AND FAMILY DEVELOPMENTAL DISABILITIES SUPPORT WAIVER.~~

~~PART IX.~~

~~ELDERLY OR DISABLED WITH CONSUMER DIRECTION WAIVER.~~

12 VAC 30-120-900. Definitions.

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

"Activities of daily living" or "ADLs" means tasks such as bathing, dressing, toileting, transferring, and eating/feeding. An individual's degree of independence in performing these activities is a part of determining appropriate level of care and service needs.

"Adult day health care center" or "ADHC" means a DMAS-enrolled provider that offers a community-based day program providing a variety of health, therapeutic, and social services designed to meet the specialized needs of those elderly and disabled individuals at risk of placement in a nursing facility. The ADHC must be licensed by DSS as an ADHC.

"Adult day health care services" means services designed to prevent institutionalization by providing participants with health, maintenance, and coordination of rehabilitation services in a congregate daytime setting.

"Agency-directed services" means services provided by a personal care agency.

"Americans with Disabilities Act" or "ADA" means the United States Code pursuant to 42 USC § 12101 et seq.

"Appeal" means the process used to challenge adverse actions regarding services, benefits, and reimbursement provided by Medicaid pursuant to 12 VAC 30-110 and 12 VAC 30-20-500 through 12 VAC 30-20-560.

"Barrier crime" means those crimes as defined at § 37.2-416 of the Code of Virginia.

"CMS" means the Centers for Medicare and Medicaid Services, which is the unit of the U.S. Department of Health and Human Services that administers the Medicare and Medicaid programs.

"Cognitive impairment" means a severe deficit in mental capability that affects an individual's areas of functioning such as thought processes, problem solving, judgment, memory, or comprehension that interferes with such things as reality orientation, ability to care for self, ability to recognize danger to self or others, or impulse control.

"Consumer-directed services" means services for which the individual or family/caregiver is responsible for hiring, training, supervising, and firing of the personal care aide.

"Consumer-directed (CD) services facilitator" or "facilitator" means the DMAS-enrolled provider who is responsible for supporting the individual and family/caregiver by ensuring the development and monitoring of the Consumer-Directed Services Plan of Care, providing employee management training, and completing ongoing review activities as required by DMAS for consumer-directed personal care and respite services.

"Designated preauthorization contractor" means DMAS or the entity that has been contracted by DMAS to perform preauthorization of services.

"Direct marketing" means either (i) conducting either directly or indirectly door-to-door, telephonic, or other "cold call" marketing of services at residences and provider sites; (ii) using direct mailing; (iii) paying "finders fees"; (iv) offering financial incentives, rewards, gifts, or special opportunities to eligible individuals or family/caregivers as inducements to use the providers' services; (v) providing continuous, periodic marketing activities to the same prospective individual or family/caregiver, for example, monthly, quarterly, or annual giveaways as inducements to use the providers' services; or (vi) engaging in marketing activities that offer potential customers rebates or discounts in conjunction with the use of the providers' services or other benefits as a means of influencing the individual's or family/caregiver's use of the providers' services.

"DMAS" means the Department of Medical Assistance Services.

"DMAS staff" means persons employed by the Department of Medical Assistance Services.

"DRS" means the Department of Rehabilitative Services.

"DSS" means the Department of Social Services.

"Elderly or Disabled with Consumer Direction Waiver" or "EDCD waiver" means the CMS-approved waiver that covers a range of community support services offered to individuals who are elderly or disabled who would otherwise require a nursing facility level of care.

"Fiscal agent" means an agency or division within DMAS or contracted by DMAS to handle employment, payroll, and tax responsibilities on behalf of individuals who are receiving consumer-directed personal care services and respite services.

"Home and community-based waiver services" or "waiver services" means the range of community support services approved by the CMS pursuant to § 1915(c) of the Social Security Act to be offered to persons who are elderly or

disabled who would otherwise require the level of care provided in a nursing facility. DMAS or the designated preauthorization contractor shall only give preauthorization for medically necessary Medicaid reimbursed home and community care.

"Individual" means the person receiving the services established in these regulations.

"Instrumental activities of daily living" or "IADLs" means tasks such as meal preparation, shopping, housekeeping and laundry. An individual's degree of independence in performing these activities is a part of determining appropriate level of care and service needs.

"Medication monitoring" means an electronic device, which is only available in conjunction with Personal Emergency Response Systems, that enables certain individuals at high risk of institutionalization to be reminded to take their medications at the correct dosages and times.

"Participating provider" means an entity that meets the standards and requirements set forth by DMAS and has a current, signed provider participation agreement with DMAS.

"Personal care agency" means a participating provider that provides personal care services.

"Personal care aide" means a person who provides personal care services.

"Personal care services" means long-term maintenance or support services necessary to enable the individual to remain at or return home rather than enter a nursing facility. Personal care services are provided to individuals in the areas of activities of daily living, access to the community, monitoring of self-administered medications or other medical needs, and the monitoring of health status and physical condition. Where the individual requires assistance with activities of daily living, and where specified in the plan of care, such supportive services may include assistance with instrumental activities of daily living. Services may be provided in home and community settings to enable an individual to maintain the health status and functional skills necessary to live in the community or participate in community activities.

"Personal emergency response system (PERS)" means an electronic device and monitoring service that enable certain individuals at high risk of institutionalization to secure help in an emergency. PERS services are limited to those individuals 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.

"PERS provider" means a certified home health or a 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 services calls), and PERS monitoring. PERS providers may also provide medication monitoring.

"Plan of care" means the written plan developed by the provider related solely to the specific services required by the

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individual to ensure optimal health and safety while remaining in the community.

"Preadmission screening" means the process to: (i) evaluate the functional, nursing, and social supports of individuals referred for preadmission screening; (ii) assist individuals in determining what specific services the individuals need; (iii) evaluate whether a service or a combination of existing community services are available to meet the individuals' needs; and (iv) refer individuals to the appropriate provider for Medicaid-funded nursing facility or home and community-based care for those individuals who meet nursing facility level of care.

"Preadmission Screening Committee/Team" means the entity contracted with DMAS that is responsible for performing preadmission screening pursuant to § 32.1-330 of the Code of Virginia.

"Respite care agency" or "respite care facility" means a participating provider that renders respite services.

"Respite services" means those short-term personal care services provided to individuals who are unable to care for themselves because of the absence of or need for the relief of those unpaid caregivers who normally provide the care.

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

"Uniform Assessment Instrument" or "UAI" means the standardized multidimensional questionnaire that is completed by the Preadmission Screening Team that assesses an individual's physical health, mental health, and social and functional abilities to determine if the individual meets the nursing facility level of care.

12 VAC 30-120-910. General coverage and requirements for Elderly or Disabled with Consumer Direction Waiver services.

A. EDCD Waiver services populations. Home and community-based waiver services shall be available through a § 1915(c) of the Social Security Act waiver for the following Medicaid-eligible individuals who have been determined to be eligible for waiver services and to require the level of care provided in a nursing facility:

1. Individuals who are elderly as defined by § 1614 of the Social Security Act; or
2. Individuals who are disabled as defined by § 1614 of the Social Security Act.

B. Covered services.

1. Covered services shall include: adult day health care, personal care (both consumer- and agency-directed), respite services (both consumer-directed, agency-directed, and facility-based), and PERS.
2. These services shall be medically appropriate and medically necessary to maintain the individual in the community and prevent institutionalization.

3. A recipient of EDCD Waiver services may receive personal care (agency- and consumer-directed), respite care (agency- and consumer-directed), adult day health care, and PERS services in conjunction with hospice services, regardless of whether the hospice provider receives reimbursement from Medicare or Medicaid for the services covered under the hospice benefit. Services under this waiver will not be available to hospice recipients unless the hospice can document the provision of at least 21 hours per week of homemaker/home health aide services and that the recipient needs personal care-type services that exceed this amount.

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

12 VAC 30-120-920. Individual eligibility requirements.

A. The Commonwealth has elected to cover low-income families with children as described in § 1931 of the Social Security Act; aged, blind, or disabled individuals who are eligible under 42 CFR 435.121; optional categorically needy individuals who are aged and disabled who have incomes at 80% of the federal poverty level; the special home and community-based waiver group under 42 CFR 435.217; and the medically needy groups specified in 42 CFR 435.320, 435.322, 435.324, and 435.330.

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 individuals as if the individual 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. DMAS will reduce its payment for home and community-based waiver services by the amount that remains after the following deductions:

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

(1) An amount for the maintenance needs of the individual that is equal to the SSI income limit for one individual. Working individuals have a greater need due to expenses of employment; therefore, an additional amount of income shall be deducted. Earned income shall be deducted within the following limits: (i) for

individuals employed 20 hours or more per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 300% of SSI and (ii) for individuals employed at least eight but less than 20 hours per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 200% of SSI. However, in no case, shall the total amount of income (both earned and unearned) that is disregarded for maintenance exceed 300% 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. (The guardianship fee is not to exceed 5.0% of the individual's total monthly income.);

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

(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; and

(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 the state law but not covered under the State Plan.

b. For individuals to whom § 1924(d) of the Social Security Act does not apply, deduct the following in the respective order:

(1) An amount for the maintenance needs of the individual that is equal to the SSI income limit for one individual. Working individuals have a greater need due to expenses of employment; therefore, an additional amount of income shall be deducted. Earned income shall be deducted within the following limits: (i) for individuals employed 20 hours or more, earned income shall be disregarded up to a maximum of 300% of SSI and (ii) for individuals employed at least eight but less than 20 hours, earned income shall be disregarded up to a maximum of 200% of SSI. However, in no case, shall the total amount of income (both earned and unearned) that is disregarded for maintenance exceed 300% 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. (The guardianship fee is not to exceed 5.0% of the individual's total monthly income.);

(2) For an individual with a family at home, an additional amount for the maintenance needs of the family that shall be equal to the medically needy income standard for a family of the same size; and

(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 Plan.

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

1. To ensure that Virginia's home and community-based waiver programs serve only Medicaid eligible individuals who would otherwise be placed in a nursing facility, home and community-based waiver services shall be considered only for individuals who are eligible for admission to a nursing facility. Home and community-based waiver services shall be the critical service to enable the individual to remain at home and in the community rather than being placed in a nursing facility.

2. The individual's eligibility for home and community-based services shall be determined by the Preadmission Screening Team after completion of a thorough assessment of the individual's needs and available support. If an individual meets nursing facility criteria, the Preadmission Screening Team shall provide the individual and family/caregiver with the choice of Elderly or Disabled with Consumer Direction Waiver services or nursing facility placement.

3. The Preadmission Screening Team shall explore alternative settings or services to provide the care needed by the individual. When Medicaid-funded home and community-based care services are determined to be the critical services necessary to delay or avoid nursing facility placement, the Preadmission Screening Team shall initiate referrals for services.

4. Medicaid will not pay for any home and community-based care services delivered prior to the individual establishing Medicaid eligibility and prior to the date of the preadmission screening by the Preadmission Screening Team and the physician signature on the Medicaid Funded Long-Term Care Services Authorization Form (DMAS-96).

5. Before Medicaid will assume payment responsibility of home and community-based services, preauthorization must be obtained from the designated preauthorization contractor on all services requiring preauthorization. Providers must submit all required information to the designated preauthorization contractor within 10 business days of initiating care. If the provider submits all required information to the designated preauthorization contractor within 10 business days of initiating care, services may be authorized beginning from the date the provider initiated services but not preceding the date of the physician's signature on the Medicaid Funded Long-Term Care Services Authorization Form (DMAS-96). If the provider does not submit all required information to the designated

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preauthorization contractor within 10 business days of initiating care, the services may be authorized beginning with the date all required information was received by the designated preauthorization contractor, but in no event preceding the date of the Preadmission Screening Team physician's signature on the DMAS-96 form.

6. Once services for the individual have been authorized by the designated preauthorization contractor, the provider/services facilitator will submit a Patient Information Form (DMAS-122), along with a written confirmation of level of care eligibility from the designated preauthorization contractor, to the local DSS to determine financial eligibility for the waiver program and any patient pay responsibilities. After the provider/services facilitator has received written notification of Medicaid eligibility by DSS and written enrollment from the designated preauthorization contractor, the provider/services facilitator shall inform the individual or family/caregiver so that services may be initiated.

7. The provider/services facilitator with the most billable hours must request an updated DMAS-122 form from the local DSS annually and forward a copy of the updated DMAS-122 form to all service providers when obtained.

8. Home and community-based care services shall not be offered or provided to any individual who resides in a nursing facility, an intermediate care facility for the mentally retarded, a hospital, an assisted living facility licensed by DSS or an Adult Foster Care provider certified by DSS, or a group home licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services. Additionally, home and community-based care services shall not be provided to any individual who resides outside of the physical boundaries of the Commonwealth, with the exception of brief periods of time as approved by DMAS or the designated preauthorization contractor. Brief periods of time may include, but are not necessarily restricted to, vacation or illness.

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 30-20-560.

12 VAC 30-120-930. General requirements for home and community-based participating providers.

A. Requests for participation will be screened by DMAS or the designated DMAS contractor to determine whether the provider applicant meets these basic requirements for participation and demonstrates the abilities to perform, at a minimum, 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 individuals in seeking services 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 are performed;
3. Assure the individual's freedom to refuse medical care, treatment, and services;

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

5. Provide services and supplies to individuals in full compliance with Title VI (42 USC § 2000d et seq.) of the Civil Rights Act of 1964 which prohibits discrimination on the grounds of race, color, religion, or national origin; the Virginians with Disabilities Act (§ 51.5-1 et seq. of the Code of Virginia); § 504 of the Rehabilitation Act of 1973 (29 USC § 794), which prohibits discrimination on the basis of a disability; and the Americans with Disabilities Act of 1990 (42 USC § 12101 et seq.), which provides comprehensive civil rights protections to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications;

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

7. Submit charges to DMAS for the provision of services and supplies to individuals in amounts not to exceed the provider's usual and customary charges to the general public and accept as payment in full the amount established by DMAS payment methodology beginning with the individual's authorization date for the waiver services;

8. Use only DMAS-designated forms for service documentation. The provider must not alter the DMAS forms in any manner unless approval from DMAS is obtained prior to using the altered forms;

9. Use DMAS-designated billing forms for submission of charges;

10. Not perform any type of direct marketing activities to Medicaid individuals;

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

a. In general, such records shall be retained for at least six years from the last date of service or as provided by applicable federal and 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 six years after such minor has reached 18 years of age.

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

12. 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;

13. Disclose, as requested by DMAS, all financial, beneficial, ownership, equity, surety, or other interests in any and all firms, corporations, partnerships, associations, business enterprises, joint ventures, agencies, institutions, or other legal entities providing any form of health care services to recipients of Medicaid;

14. Pursuant to 42 CFR 431.300 et seq., 12 VAC 30-20-90, and any other applicable federal or state law, hold confidential and use for authorized DMAS purposes only all medical assistance information regarding individuals served. A provider shall disclose information in his possession only when the information is used in conjunction with a claim for health benefits or the data is necessary for the functioning of DMAS in conjunction with the cited laws;

15. When ownership of the provider changes, notify DMAS in writing at least 15 calendar days before the date of change;

16. Pursuant to §§ 63.2-1509 and 63.2-1606 of the Code of Virginia, if a participating provider knows or suspects that a home and community-based waiver services individual is being abused, neglected, or exploited, the party having knowledge or suspicion of the abuse, neglect, or exploitation must report this immediately from first knowledge to the local DSS adult or child protective services worker as applicable;

17. In addition to compliance with the general conditions and requirements, adhere to the conditions of participation outlined in the individual provider's participation agreements and in the applicable DMAS provider manual. DMAS shall conduct ongoing monitoring of compliance with provider's participation standards and DMAS policies. A provider's noncompliance with DMAS policies and procedures may result in a retraction of Medicaid payment or termination of the provider agreement, or both; and

18. Meet minimum qualifications of staff. All employees must have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of abuse, neglect, or exploitation of incapacitated or older adults and children. The criminal record check shall be available for review by DMAS staff who are authorized by the agency to review these files. DMAS will not reimburse the provider for any services provided by an employee who has committed a barrier crime as defined herein. Providers are responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks.

B. For DMAS to approve provider agreements with home and community-based waiver providers, providers must meet staffing, financial solvency, disclosure of ownership, and assurance of comparability of services requirements as specified in the applicable provider manual.

C. The individual shall have the option of selecting the provider of his choice from among those providers who are approved and who can appropriately meet his needs.

D. A participating provider may voluntarily terminate his participation in Medicaid by providing 30 days' written notification.

E. DMAS may terminate at-will a provider's participation agreement on 30 days' written notice as specified in the DMAS participation agreement. DMAS may immediately terminate a provider's participation agreement if the provider is no longer eligible to participate in the Medicaid program. Such action precludes further payment by DMAS for services provided to individuals on or after the date specified in the termination notice.

F. A provider shall have the right to appeal adverse actions taken by DMAS. Provider appeals shall be considered pursuant to 12 VAC 30-10-1000 and 12 VAC 30-20-500 through 12 VAC 30-20-560.

G. The Medicaid provider agreement shall terminate upon conviction of the provider of a felony pursuant to § 32.1-325 of the Code of Virginia. A provider convicted of a felony in Virginia or in any other of the 50 states, the District of Columbia or, the U.S. territories, must, within 30 days, notify the Virginia Medicaid Program of this conviction and relinquish the provider agreement.

H. The provider/services facilitator is responsible for the Patient Information Form (DMAS-122). The service provider/services facilitator's provider shall notify the designated preauthorization contractor and DMAS, in writing, when any of the following circumstances occur. Furthermore, it shall be the responsibility of the designated preauthorization contractor to update DMAS, as requested, when any of the following events occur:

1. Home and community-based waiver services are implemented;
2. An individual dies;
3. An individual is discharged from EDCD waiver services;
4. Any other circumstances (including hospitalization) that cause home and community-based waiver services to cease or be interrupted for more than 30 days; or
5. The initial selection by the individual or family/caregiver of a provider/services facilitator to provide services, or a change by the individual or family/caregiver of a provider/services facilitator, if it affects the individual's patient pay amount.

I. Changes or termination of services.

1. The provider may decrease the amount of authorized care if the revised plan of care is appropriate and based on the needs of the individual. If the individual disagrees with the proposed decrease, the individual has the right to appeal to DMAS. The participating provider is responsible for developing the new plan of care and calculating the new hours of service delivery. The individual or person responsible for supervising the individual's care shall discuss the decrease in care with the individual or family/caregiver, document the conversation in the individual's record, and notify the designated preauthorization contractor and the individual or family of the change by letter. This letter shall clearly state the individual's right to appeal.

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2. If a change in the individual's condition necessitates an increase in care, the participating provider must assess the need for increase and, if appropriate, develop a plan of care for services to meet the changed needs. The provider may implement the increase in personal/respite care hours without approval from DMAS, or the designated preauthorization contractor, if the amount of services does not exceed the amount established by DMAS, or the designated preauthorization contractor, as the maximum for the level of care designated for that individual on the plan of care. Any increase to an individual's plan of care that exceeds the number of hours allowed for that individual's level of care or any change in the individual's level of care must be preauthorized by DMAS or the designated preauthorization contractor.

3. In an emergency situation when the health and safety of the individual or provider personnel is endangered, DMAS, or the designated preauthorization contractor, must be notified prior to discontinuing services. The written notification period shall not be required. If appropriate, the local DSS adult or child protective services department must be notified immediately.

4. In a nonemergency situation, i.e., when the health and safety of the individual or provider personnel is not endangered, the participating provider, other than a PERS provider, shall give the individual or family/caregiver, or both, at least 10 days' written notification plus three days for mailing of the intent to discontinue services. The notification letter shall provide the reasons for and the effective date the provider is discontinuing services. The effective date shall be at least 10 days plus three days for mailing from the date of the notification letter. A PERS provider shall give the individual or family/caregiver at least 14 days' prior written notification of the intent to discontinue services. The letter shall provide the reasons for and the effective date of the action. The effective date shall be at least 14 days from the date of the notification letter.

5. In the case of termination of home and community-based waiver services by DMAS or the designated preauthorization contractor, individuals shall be notified of their appeal rights pursuant to 12 VAC 30-110. DMAS, or the designated preauthorization contractor, has the responsibility and the authority to terminate the receipt of home and community-based care services by the individual for any of the following reasons:

- a. The home and community-based care services are no longer the critical alternative to prevent or delay institutional placement;
- b. The individual is no longer eligible for Medicaid;
- c. The individual no longer meets the nursing facility criteria; or
- d. The individual's environment does not provide for his health, safety, and welfare.

J. DMAS will conduct annual level-of-care reviews for all waiver recipients.

12 VAC 30-120-940. Adult day health care services.

A. This section contains specific requirements governing the provision of adult day health care (ADHC).

B. Adult day health care services may be offered to individuals in an ADHC setting. Adult day health care may be offered either as the sole home and community-based care service or in conjunction with personal care (agency- or consumer-directed), respite care (agency- or consumer-directed), or PERS.

C. Special provider participation conditions. In order to be a participating provider, the adult day health care center shall:

1. Be an adult day care center licensed by DSS. A copy of the current license shall be available to DMAS for verification purposes prior to the applicant's enrollment as a Medicaid provider and shall be available for DMAS review;
2. Adhere to DSS adult day health care center standards;
3. Adhere to and meet the following DMAS special participation standards that are imposed in addition to DSS standards:
 - a. Provide a separate room or an area equipped with one bed, cot, or recliner for every 12 Medicaid adult day health care participants;
 - b. Employ sufficient interdisciplinary staff to adequately meet the health, maintenance, and safety needs of each participant;
 - c. Maintain a minimum staff-to-participant ratio of at least one staff member to every six participants. This includes Medicaid and other participants;
 - d. Provide at least two staff members awake and on duty at the ADHC at all times when there are Medicaid participants in attendance;
 - e. In the absence of the director, designate the activities director, registered nurse, or therapist to supervise the program;
 - f. May include volunteers in the staff-to-participant ratio if these volunteers meet the qualifications and training requirements for compensated employees, and, for each volunteer so counted, include at least one compensated employee in the staff-to-participant ratio;
 - g. For any center that is co-located with another facility, count only its own separate identifiable staff in the center's staff-to-participant ratio; and
 - h. Employ the following:
 - (1) A director who shall be responsible for overall management of the center's programs. The director shall be the provider contact person for DMAS and the designated preauthorization contractor and shall be responsible for responding to communication from DMAS and the designated preauthorization contractor.

(a) The director shall be responsible for assuring the development of the plan of care for adult day health care individuals. The director has ultimate

responsibility for directing the center program and supervision of its employees. The director can also serve as the activities director if they meet the qualifications for that position.

(b) The director shall assign himself, the activities director, registered nurse or therapist to act as adult day health care coordinator for each participant and shall document in the participant's file the identity of the care coordinator. The adult day health care coordinator shall be responsible for management of the participant's plan of care and for its review with the program aides.

(c) The director shall meet the qualifications specified in the DSS standards for adult day health care for directors.

(2) An activities director who shall be responsible for directing recreational and social activities for the adult day health care participants. The activities director shall:

(a) Have a minimum of 48 semester hours or 72 quarter hours of postsecondary education from an accredited college or university with a major in recreational therapy, occupational therapy, or a related field such as art, music, or physical education; and

(b) Have one year of related experience, which may include work in an acute care hospital, rehabilitation hospital, nursing facility, or have completed a course of study including any prescribed internship in occupational, physical, and recreational therapy or music, dance, art therapy, or physical education.

(3) Program aides who shall be responsible for overall care and maintenance of the participant (assistance with activities of daily living, social/recreational activities, and other health and therapeutic-related activities). Each program aide hired by the provider shall be screened to ensure compliance with qualifications required by DMAS. The aide shall, at a minimum, have the following qualifications:

(a) Be able to read and write in English to the degree necessary to perform the tasks expected;

(b) Be physically able to do the work;

(c) Have satisfactorily completed an educational curriculum related to the needs of the elderly and disabled. Acceptable curriculums are offered by educational institutions, nursing facilities, and hospitals. Training consistent with DMAS training guidelines may also be given by the center's professional staff. Curriculum titles include: Nurses Aide, Geriatric Nursing Assistant, and Home Health Aide. Documentation of successful completion shall be maintained in the aide's personnel file and be available for review by DMAS staff who are authorized by DMAS to review these files. Prior to assigning a program aide to a participant, the ADHC

shall ensure that the aide has satisfactorily completed a DMAS-approved training program.

(4) A registered nurse (RN) employed or contracted with the center who shall be responsible for administering to and monitoring the health needs of the participants. The nurse shall be responsible for the planning and implementation of the plan of care involving multiple services where specialized health care knowledge is needed. The nurse shall be present a minimum of eight hours each month at the center. DMAS may require the nurse's presence at the adult day health care center for more than this minimum standard depending on the number of participants in attendance and according to the medical and nursing needs of the participants. Although DMAS does not require that the registered nurse be a full-time staff position, there shall be a registered nurse available, either in person or by telephone, to the center's participants and staff during all times that the center is in operation. The registered nurse shall:

(a) Be registered and licensed as a registered nurse to practice nursing in the Commonwealth; and

(b) Have two years of related clinical experience, which may include work in an acute care hospital, public health clinic, home health agency, rehabilitation hospital, nursing facility, or as an LPN.

D. Service responsibilities of the adult day health care center and staff shall be:

1. Aide responsibilities. The aide shall be responsible for assisting with activities of daily living, supervising the participant, and assisting with the management of the participant's plan of care.

2. RN responsibilities. The RN shall be responsible for:

a. Providing periodic evaluation of the nursing needs of each participant;

b. Providing the indicated nursing care and treatment; and

c. Monitoring, recording, and administering of prescribed medications or supervising the participant in self-administered medication.

3. Rehabilitation services coordination responsibilities. These services are designed to ensure the participant receives all rehabilitative services deemed necessary to improve or maintain independent functioning, to include the coordination and implementation of physical therapy, occupational therapy, and speech-language therapy. Rendering of the specific rehabilitative therapy is not included in the center's fee for services but must be rendered as a separate service by a rehabilitative provider.

4. Nutrition responsibilities. The center shall provide one meal per day that supplies one-third of the daily nutritional requirements established by the U.S. Department of Agriculture. Special diets and counseling shall be provided to Medicaid participants as necessary.

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5. *Adult day health care coordination.* The designated adult day health care coordinator shall coordinate the delivery of the activities as prescribed in the participants' plans of care and keep them updated, record 30-day progress notes, and review the participants' daily records each week. If the individual's condition changes more frequently, more frequent reviews and recording of progress notes shall be required to reflect the participant's changing condition.

6. *Recreation and social activities responsibilities.* The center shall provide planned recreational and social activities suited to the individuals' needs and designed to encourage physical exercise, prevent deterioration of the individual's condition, and stimulate social interaction.

E. *Documentation required.* The ADHC shall maintain all records of each Medicaid participant. These records shall be reviewed periodically by DMAS staff who are authorized by DMAS to review these files. At a minimum, these records shall contain:

1. The Long-Term Care Uniform Assessment Instrument, the Medicaid Funded Long-Term Care Service Authorization Form (DMAS-96), the Screening Team Plan of Care for Medicaid-Funded Long-Term Care form (DMAS-97), the DMAS-101A and the DMAS-101B forms (if applicable), and the most recent patient information from the DMAS-122 form;

2. Interdisciplinary plans of care developed by the ADHC's director, registered nurse, or therapist and relevant support persons, in conjunction with the participant;

3. Documentation of interdisciplinary staff meetings that shall be held at least every three months to reassess each participant and evaluate the adequacy of the adult day health care plan of care and make any necessary revisions;

4. At a minimum, 30-day goal oriented progress notes recorded by the designated adult day health care coordinator. If a participant's condition and treatment plan changes more often, progress notes shall be written more frequently than every 30 days;

5. The rehabilitative progress report and updated treatment plan from all professional disciplines involved in the participant's care obtained every 30 days (physical therapy, speech therapy, occupational therapy, home health, and others);

6. *Daily records of services provided.* The daily record shall contain the specific services delivered by ADHC staff. The record shall also contain the arrival and departure times of the participant and be signed weekly by the director, activities director, registered nurse, or therapist employed by the center. The daily record shall be completed on a daily basis, neither before nor after the date of services delivery. At least once a week, a staff member shall chart significant comments regarding care given to the participant. If the staff member writing comments is different from the staff signing the weekly record, that staff member shall sign the weekly comments. A copy of this record must be given to the participant or family/caregiver weekly; and

7. All correspondence to the individual, DMAS, and the designated preauthorization contractor.

12 VAC 30-120-950. Agency-directed personal care services.

A. This section contains requirements governing the provision of agency-directed personal care services.

B. *Service description.* Personal care services are comprised of hands-on care of either a supportive or health-based nature and may include, but are not limited to, assistance with activities of daily living, access to the community, monitoring of self-administered medications or other medical needs, and the monitoring of health status and physical condition. Where the individual requires assistance with activities of daily living, and where specified in the plan of care, such supportive services may include assistance with instrumental activities of daily living. This service does not include skilled nursing services with the exception of skilled nursing tasks (e.g., catheterization) that may be delegated pursuant to 18 VAC 90-20-420 through 18 VAC 90-20-460. It may be provided in a home and community setting to enable an individual to maintain the health status and functional skills necessary to live in the community or participate in community activities. Personal care may be offered either as the sole home and community-based care service or in conjunction with adult day health care, respite care (agency- or consumer-directed), or PERS.

C. *Criteria.* In order to qualify for these services, the individual must demonstrate a need for care with activities of daily living.

1. DMAS will also pay, consistent with the approved plan of care, for personal care that the personal care aide provides to the enrolled individual to assist him at work or postsecondary school. DMAS will not duplicate services that are required as a reasonable accommodation as a part of the Americans with Disabilities Act (ADA) (42 USC §§ 12131 through 12165) or the Rehabilitation Act of 1973.

2. DMAS or the designated preauthorization contractor will review the individual's needs and the complexity of the disability, as applicable, when determining the services that will be provided to him in the workplace or postsecondary school or both.

3. DMAS will not pay for the personal care aide to assist the enrolled individual with any functions related to the individual completing his job or postsecondary school functions or for supervision time during work or school or both.

4. There shall be a limit of eight hours per 24-hour day for supervision services.

5. The provider must develop an individualized plan of care that addresses the individual's needs at home and work and in the community.

D. *Special provider participation conditions.* The personal care provider shall:

1. Operate from a business office.

2. Employ persons who have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of abuse, neglect, or exploitation of incapacitated or older adults and children. Providers are responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks. The criminal record check shall be available for review by DMAS staff who are authorized by DMAS to review these files.

3. Employ (or contract with) and directly supervise a registered nurse who will provide ongoing supervision of all personal care aides.

a. The registered nurse shall be currently licensed to practice in the Commonwealth as an RN 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, rehabilitation hospital, nursing facility, or as a licensed practical nurse (LPN).

b. The registered nurse supervisor shall make an initial home assessment visit on or before the start of care for all individuals admitted to personal care, when an individual is readmitted after being discharged from services, or if he is transferred from another provider, ADHC, or from a consumer-directed services program.

c. The registered nurse supervisor shall make supervisory visits as often as needed, but no fewer visits than provided as follows, to ensure both quality and appropriateness of services:

(1) A minimum frequency of these visits is every 30 days for individuals with a cognitive impairment and every 90 days for individuals who do not have a cognitive impairment, as defined herein. The provider agency shall have the responsibility of determining if 30-day registered nurse supervisory visits are appropriate for the individual.

(2) The initial home assessment visit by the registered nurse shall be conducted to create the plan of care and assess the individual's needs. The registered nurse shall return for a follow-up visit within 30 days after the initial visit to assess the individual's needs and make a final determination that there is no cognitive impairment. This determination must be documented in the individual's record by the registered nurse. Individuals who are determined to have a cognitive impairment will continue to have supervisory visits every 30 days.

(3) If there is no cognitive impairment, the registered nurse may give the individual or family/caregiver the option of having the supervisory visit every 90 days or any increment in between, not to exceed 90 days, or the provider may choose to continue the 30-day supervisory visits based on the needs of the individual. The registered nurse supervisor must document in the individual's record this conversation and the option that was chosen. The individual or the family/caregiver must sign and date this document.

(4) If an individual's personal care aide is supervised by the provider's registered nurse supervisor less

frequently than every 30 days and DMAS, or the designated preauthorization contractor, determines that the individual's health, safety, or welfare is in jeopardy, DMAS, or the designated preauthorization contractor, may require the provider's registered nurse supervisor to supervise the personal care aide every 30 days or more frequently than has been determined by the registered nurse supervisor. This will be documented by the provider and entered in the individual's record.

d. During visits to the individual's home, a registered nurse supervisor shall observe, evaluate, and document the adequacy and appropriateness of personal care services with regard to the individual's current functioning status, and medical and social needs. The personal care aide's record shall be reviewed and the individual's or family's/caregiver's satisfaction with the type and amount of services discussed. The registered nurse supervisor's summary shall note:

(1) Whether personal care services continue to be appropriate;

(2) Whether the plan of care is adequate to meet the individual's needs or if changes are indicated in the plan;

(3) Any special tasks performed by the personal care aide and the personal care aide's qualifications to perform these tasks;

(4) The individual's satisfaction with the services;

(5) Whether the individual has been hospitalized or there has been a change in the medical condition or functional status of the individual;

(6) Other services received by the individual and the amount; and

(7) The presence or absence of the personal care aide in the home during the registered nurse supervisor's visit.

e. A registered nurse supervisor shall be available to the personal care aide for conferences pertaining to individuals being served by the aide and shall be available to the aide by telephone at all times that the aide is providing services to individuals.

f. The registered nurse supervisor shall evaluate the personal care aide's performance and the individual's needs to identify any insufficiencies in the personal care aide's abilities to function competently and shall provide training as indicated. This shall be documented in the individual's record.

g. If there is a delay in the registered nurses' supervisory visits because the individual was unavailable, the reason for the delay must be documented in the individual's record.

4. Employ and directly supervise personal care aides who provide direct care to individuals. Each aide hired for personal care shall be evaluated by the provider agency to

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ensure compliance with qualifications required by DMAS. Each personal care aide shall:

- a. Be able to read and write in English to the degree necessary to perform the expected tasks;
- b. Complete a minimum of 40 hours of training consistent with DMAS standards. Prior to assigning an aide to an individual, the provider agency shall ensure that the personal care aide has satisfactorily completed a DMAS-approved training program consistent with DMAS standards;
- c. Be physically able to do the work; and
- d. Not be (i) the parents of minor children who are receiving waiver services or (ii) spouses of individuals who are receiving waiver services.

Payment may be made for services furnished by other family members when there is objective written documentation as to why there are no other providers or aides available to provide the care. These family members must meet the same requirements as personal care aides who are not family members.

E. Required documentation for individuals' records. The provider shall maintain all records for each individual receiving personal care services. These records shall be separate from those of nonhome and community-based care services, such as companion or home health services. These records shall be reviewed periodically by DMAS. At a minimum, the record shall contain:

1. The most recently updated Long-Term Care Uniform Assessment Instrument, the Medicaid Funded Long-Term Care Service Authorization Form (DMAS-96), the Screening Team Plan of Care for Medicaid-Funded Long-Term Care (DMAS-97), all Provider Agency Plans of Care (DMAS-97A), all Patient Information Forms (DMAS-122), and all DMAS-101A and 101B forms (if applicable);
2. The initial assessment by a registered nurse or a RN supervisor completed prior to or on the date that services are initiated;
3. Registered nurse supervisor's notes recorded and dated during significant contacts with the personal care aide and during supervisory visits to the individual's home;
4. All correspondence to the individual, DMAS, and the designated preauthorization contractor;
5. Reassessments made during the provision of services;
6. Significant contacts made with family/caregivers, physicians, DMAS, the designated preauthorization contractor, formal, informal services providers and all professionals related to the individual's Medicaid services or medical care;
7. All personal care aides' records (DMAS-90). The personal care aide record shall contain:
 - a. The specific services delivered to the individual by the aide and his responses to this service;

b. The personal care aide's daily arrival and departure times;

c. The aide's weekly comments or observations about the individual, including observations of the individual's physical and emotional condition, daily activities, and responses to services rendered; and

d. The personal care aide's and individual's or responsible caregiver's weekly signatures, including the date, to verify that personal care services have been rendered during that week as documented in the record. An employee of the provider cannot sign for the individual unless he is a family/caregiver of the individual. This family member cannot be the same family member who is providing the service. Signatures, times and dates shall not be placed on the personal care aide record prior to the last date that the services are actually delivered; and

8. All of the individual's progress reports.

12 VAC 30-120-960. Agency-directed respite care services.

A. This section contains requirements governing the provision of agency-directed respite care services.

B. Agency-directed respite care services are comprised of hands-on care of either a supportive or health-related nature and may include, but are not limited to, assistance with activities of daily living, access to the community, monitoring of self-administration of medications or other medical needs, monitoring health status and physical condition, and personal care services provided in a work environment. Where the individual requires assistance with activities of daily living, and where specified in the plan of care, such supportive services may include assistance with instrumental activities of daily living. This service does not include skilled nursing services with the exception of skilled nursing tasks (e.g., catheterization) that may be delegated pursuant to 18 VAC 90-20-420 through 18 VAC 90-20-460.

C. General. Respite care may only be offered to individuals who have a primary caregiver living in the home who requires temporary relief to avoid institutionalization of the individual. Respite care services may be provided in the individual's home or place of residence, or a facility licensed as a nursing facility and enrolled in Medicaid. The authorization of respite care (agency-directed and consumer-directed) is limited to a total of 720 hours per calendar year per individual. Reimbursement shall be made on an hourly basis.

D. Special provider participation conditions. To be approved as a respite care provider with DMAS, the respite care provider shall:

1. Operate from a business office.
2. Have employees who have satisfactory work records, as evidenced by references from prior job experience, including no evidence of abuse, neglect, or exploitation of incapacitated or older adults and children. Providers are responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks. The criminal record check shall be available for review by DMAS staff who are authorized by the agency to review these files.

DMAS will not reimburse the provider for any services provided by an employee who has committed a barrier crime.

3. Employ (or contract with) and directly supervise a registered nurse who will provide ongoing supervision of all respite care aides/LPNs.

a. The registered nurse supervisor shall be currently licensed to practice in the Commonwealth as an RN 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, rehabilitation hospital, nursing facility, or as an LPN.

b. Based on continuing evaluations of the aide's/LPN's performance and the individual's needs, the registered nurse supervisor shall identify any insufficiencies in the aide's/LPN's abilities to function competently and shall provide training as indicated.

c. The registered nurse supervisor shall make an initial home assessment visit on or before the start of care for any individual admitted to respite care.

d. A registered nurse supervisor shall 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 dependent on the cognitive status of the individual. If an individual is also receiving personal care services, the respite care RN supervisory visit may coincide with the personal care RN supervisory visits.

(2) When respite care services are not received on a routine basis, but are episodic in nature, a registered nurse supervisor shall not be required to conduct a supervisory visit every 30 to 90 days. Instead, a registered nurse supervisor shall conduct the initial home assessment visit with the aide/LPN on or before the start of care and make a second home visit during the second respite care visit. If an individual is also receiving personal care services, the respite care RN supervisory visit may coincide with the personal care RN supervisory visit.

(3) When respite care services are routine in nature and offered in conjunction with personal care, the RN supervisory visit conducted for personal care services may serve as the registered nurse supervisory visit for respite care. However, the registered nurse supervisor shall document supervision of respite care separately from the personal care documentation. For this purpose, the same individual record can be used with a separate section for respite care documentation.

e. During visits to the individual's home, the registered nurse supervisor shall observe, evaluate, and document the adequacy and appropriateness of respite care services with regard to the individual's current functioning status and medical and social needs. The aide's/LPN's record shall be reviewed along with the individual's or

family's satisfaction with the type and amount of services discussed. The registered nurse supervisor shall document in a summary note:

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

(2) Whether the plan of care is adequate to meet the individual's needs or if changes need to be made to the plan of care;

(3) The individual's satisfaction with the services;

(4) Any hospitalization or change in the medical condition or functioning status of the individual;

(5) Other services received by the individual and the amount of the services received; and

(6) The presence or absence of the aide/LPN in the home during the RN supervisory visit.

f. An RN supervisor shall be available to the aide/LPN for conference pertaining to individuals being served by the aide/LPN and shall be available to the aide/LPN by telephone at all times that the aide/LPN is providing services to respite care individuals.

g. If there is a delay in the registered nurse's supervisory visits because the individual is unavailable, the reason for the delay must be documented in the individual's record.

4. Employ and directly supervise aides/LPNs who provide direct care to respite care individuals. Each aide/LPN hired by the provider shall be evaluated by the provider to ensure compliance with qualifications as required by DMAS. Each aide must:

a. Be at least 18 years of age or older;

b. Be physically able to do the work;

c. Be able to read and write in English to the degree necessary to perform the tasks expected;

d. Have completed a minimum of 40 hours of DMAS-approved training consistent with DMAS standards. Prior to assigning an aide to an individual, the provider shall ensure that the aide has satisfactorily completed a training program consistent with DMAS standards; and

e. Be evaluated in his job performance by the registered nurse supervisor.

Respite care aides may not be the parents of individuals who are minors or the individuals' spouses. Payment may not be made for services furnished by other family members living under the same roof as the individual receiving services unless there is objective written documentation as to why there are no other providers or aides available to provide the care. Family members who are approved to provide paid respite services must meet the qualifications for respite care aides.

5. Employ a licensed practical nurse (LPN) to perform skilled respite care services. Such services shall be reimbursed by DMAS under the following circumstances:

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a. The individual has a need for routine skilled care that cannot be provided by unlicensed personnel. These individuals would typically require a skilled level of care if in a nursing facility (e.g., individuals on a ventilator, individuals requiring nasogastric or gastrostomy feedings, etc.);

b. No other individual in the individual's support system is willing and able to supply the skilled component of the individual's care during the caregiver's absence; and

c. The individual is unable to receive skilled nursing visits from any other source that could provide the skilled care usually given by the caregiver.

The provider must document in the individual's record the circumstances that require the provision of services by an LPN. When an LPN is required, the LPN must also provide any of the services normally provided by an aide.

E. Required documentation for individuals' records. The provider shall maintain all records of each individual receiving respite services. These records shall be separated from those of nonhome and community-based care services, such as companion or home health services. These records shall be reviewed periodically by the DMAS staff who are authorized by DMAS to review these files. At a minimum these records shall contain:

1. The most recently updated Long-Term Care Uniform Assessment Instrument, the Medicaid Funded Long-Term Care Service Authorization Form (DMAS-96), the Screening Team Plan of Care for Medicaid-Funded Long-Term Care (DMAS-97), all respite care assessments and plans of care, all aide records (DMAS-90), all LPN skilled respite records (DMAS-90A), all Patient Information Forms (DMAS-122), and all DMAS-101A and DMAS-101B forms, as applicable;

2. The physician's order for services, obtained prior to the service begin date and updated every six months;

3. The initial assessment by a registered nurse completed prior to or on the date services are initiated;

4. Registered nurse supervisor's notes recorded and dated during significant contacts with the care aide and during supervisory visits to the individual's home;

5. All correspondence to the recipient, DMAS, and the designated preauthorization contractor;

6. Reassessments made during the provision of services;

7. Significant contacts made with family, physicians, DMAS, the designated preauthorization contractor, formal and informal services providers, and all professionals related to the individual's Medicaid services or medical care; and

8. All respite care records. The respite care record shall contain:

a. The specific services delivered to the individual by the aide or LPN and his response to this service;

b. The daily arrival and departure times of the aide or LPN for respite care services;

c. Comments or observations recorded weekly about the individual. Aide or LPN comments shall include but not be limited to observation of the individual's physical and emotional condition, daily activities, and the individual's response to services rendered;

d. The signatures of the aide or LPN, and the individual, once each week to verify that respite care services have been rendered. Signature, times, and dates shall not be placed on the aide's record prior to the last date of the week that the services are delivered. If the individual is unable to sign the aide record, it must be documented in his record how or who will sign in his place. An employee of the provider shall not sign for the individual unless he is a family member or legal guardian of the recipient; and

e. All individual progress reports.

Documentation signed by the LPN must be reviewed and signed by the supervising RN.

12 VAC 30-120-970. Personal emergency response system (PERS).

A. Service description. PERS is a service that monitors individual safety in the home and provides access to emergency assistance 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 individual's home telephone line. PERS may also include medication monitoring devices.

B. Standards for PERS equipment. 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 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.

C. Criteria. PERS services are limited to those individuals ages 14 and older 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. PERS may only be provided in conjunction with personal care (agency- or consumer-directed), respite (agency- or consumer-directed), or adult day health care. An individual may not receive PERS if he has a cognitive impairment as defined in 12 VAC 30-120-900.

1. PERS can be authorized when there is no one else, other than the individual, in the home who is competent and continuously available to call for help in an emergency. If the individual's caregiver has a business in the home, such as, but not limited to, a day care center, PERS will only be approved if the individual is evaluated as being dependent in the categories of "Behavior Pattern" and "Orientation" on the Uniform Assessment Instrument (UAI).

2. Medication monitoring units must be physician ordered. In order to receive medication monitoring services, an individual must also receive PERS services. The physician orders must be maintained in the individual's file.

D. Services units and services limitations.

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

2. PERS service must be capable of being activated by a remote wireless device and be connected to the individual'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 individual.

3. In cases where medication monitoring units must be filled by the provider, the person filling the unit must be a registered nurse, a licensed practical nurse, or a licensed pharmacist. The units can be refilled every 14 days. There must be documentation of this in the individual's record.

E. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based waiver participating providers as specified in 12 VAC 30-120-930, PERS providers must also meet the following qualifications and requirements:

1. A PERS provider must be either a personal care agency, a durable medical equipment provider, a hospital, a licensed home health provider, or a PERS manufacturer. All such providers shall have 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 with fully trained operators who are capable of (i) receiving signals for help from an individual's PERS equipment 24 hours a day, 365 or 366 days per year as appropriate; (ii) determining whether an emergency exists; and (iii) notifying an emergency response organization or an emergency responder that the PERS individual needs emergency help;

3. A PERS provider must comply with all applicable Virginia statutes, 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 individual's notification of a malfunction of the console unit, activating devices, or medication monitoring

unit and shall provide temporary equipment while the original equipment is being repaired;

5. The PERS provider must properly install all PERS equipment into a PERS individual's functioning telephone line within seven days of the request unless there is appropriate documentation of why this timeframe cannot be met. The PERS provider must furnish all supplies necessary to ensure that the system is installed and working properly. The PERS provider must test the PERS device monthly, or more frequently if needed, to ensure that the device is fully operational;

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

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

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

8. The PERS provider must have backup monitoring capacity in case the primary system cannot handle incoming emergency signals;

9. 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 Safety Standard Number 1637 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 a manual reset by the individual;

10. A PERS provider must furnish education, data, and ongoing assistance to DMAS and the designated preauthorization contractor to familiarize staff with the services, allow for ongoing evaluation and refinement of the program, and instruct the individual, caregiver, and responders in the use of the PERS services;

11. The emergency response activator must be activated either by breath, by touch, or by some other means, and must be usable by individuals who are visually or hearing impaired or physically disabled. The emergency response

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communicator must be capable of operating without external power during a power failure at the individual's home for a minimum period of 24 hours and automatically transmit a low battery alert signal to the response center if the backup battery is low. The emergency response console unit must also be able to self-disconnect and redial the backup monitoring site without the individual resetting the system in the event it cannot get its signal accepted at the response center;

12. PERS providers 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 monitoring agency's equipment meets the following requirements. The PERS provider must be capable of simultaneously responding to multiple signals for help from individuals' PERS equipment. The PERS provider's equipment must include the following:

- a. A primary receiver and a backup receiver, which must be independent and interchangeable;
- b. A backup information retrieval system;
- c. A clock printer, which must print out the time and date of the emergency signal, the PERS individual's identification code, and the emergency code that indicates whether the signal is active, passive, or a responder test;
- d. A backup 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 backup 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;

13. The PERS provider must maintain detailed technical and operation manuals that describe PERS elements, including the installation, functioning, and testing of PERS equipment; emergency response protocols; and recordkeeping and reporting procedures;

14. The PERS provider shall document and furnish within 30 days of the action taken a written report for each emergency signal that results in action being taken on behalf of the individual. This excludes test signals or activations made in error. This written report shall be furnished to the personal care provider, the respite care provider, the CD services facilitation provider, or in cases where the individual only receives ADHC services, to the ADHC provider;

15. The PERS provider is prohibited from performing any type of direct marketing activities to Medicaid individuals; and

16. The PERS provider must obtain and keep on file a copy of the most recently completed Patient Information form

(DMAS-122). Until the PERS provider obtains a copy of the DMAS-122 form, the PERS provider must clearly document efforts to obtain the completed DMAS-122 form from the personal care provider, respite care provider, the CD services facilitation provider, or the ADHC provider.

12 VAC 30-120-980. Consumer-directed services: personal care and respite services.

A. Service description.

1. Consumer-directed personal care services and respite care services are comprised of hands-on care of either a supportive or health-related nature and may include, but are not limited to, assistance with activities of daily living, access to the community, monitoring of self-administration of medications or other medical needs, monitoring health status and physical condition, and personal care services provided in a work environment. Where the individual requires assistance with activities of daily living, and where specified in the plan of care, such supportive services may include assistance with instrumental activities of daily living. This service does not include skilled nursing services with the exception of skilled nursing tasks (e.g., catheterization) that may be delegated pursuant to 18 VAC 90-20-420 through 18 VAC 90-20-460.

2. Consumer-directed respite services are specifically designed to provide temporary, periodic, or routine relief to the unpaid, live-in, primary caregiver of an individual. This service may be provided in the individual's home or other community settings.

3. DMAS shall either provide for fiscal agent services or contract for the services of a fiscal agent for consumer-directed services. The fiscal agent will be reimbursed by DMAS (if the service is contracted) to perform certain tasks as an agent for the individual/employer who is receiving consumer-directed services. The fiscal agent will handle responsibilities for the individual 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.

4. Individuals choosing consumer-directed services must receive support from a CD services facilitator. This is not a separate waiver service, but is required in conjunction with consumer-directed services. The CD services facilitator is responsible for assessing the individual's particular needs for a requested CD service, assisting in the development of the plan of care, providing training to the individual and family/caregiver on his responsibilities as an employer, and providing ongoing support of the consumer-directed services. The CD services facilitator cannot be the individual, direct service provider, spouse, or parent of the individual who is a minor child, or a family/caregiver employing the aide.

B. Criteria.

1. In order to qualify for consumer-directed personal care services, the individual must demonstrate a need for personal care services as defined in 12 VAC 30-120-900.

2. Consumer-directed respite services may only be offered to individuals who have an unpaid primary caregiver living in the home who requires temporary relief to avoid institutionalization of the individual. Respite services are designed to focus on the need of the unpaid primary caregiver for temporary relief and to help prevent the breakdown of the unpaid primary caregiver due to the physical burden and emotional stress of providing continuous support and care to the individual.

3. DMAS will also pay, consistent with the approved plan of care, for personal care that the personal care aide provides to the enrolled individual to assist him at work or postsecondary school. DMAS will not duplicate services that are required as a reasonable accommodation as a part of the Americans with Disabilities Act (ADA) (42 USC §§ 12131 through 12165) or the Rehabilitation Act of 1973.

a. DMAS or the designated preauthorization contractor will review the individual's needs and the complexity of the disability, as applicable, when determining the services that will be provided to him in the workplace or postsecondary school or both.

b. DMAS will not pay for the personal care aide to assist the enrolled individual with any functions related to the individual completing his job or postsecondary school functions or for supervision time during work or school or both.

4. Individuals who are eligible for consumer-directed services must have, or have a family/caregiver who has, the capability to hire and train their own personal care aides and supervise the aide's performance. If an individual is unable to direct his own care or is under 18 years of age, a family/caregiver may serve as the employer on behalf of the individual.

5. The individual, or if the individual is unable, a family/caregiver, shall be the employer of consumer-directed services and, therefore, shall be responsible for hiring, training, supervising, and firing personal care aides. Specific employer duties include checking references of personal care aides, determining that personal care aides meet basic qualifications, and maintaining copies of timesheets to have available for review by the CD services facilitator and the fiscal agent on a consistent and timely basis. The individual or family/caregiver must have a backup plan for the provision of services in case the aide does not show up for work as expected or terminates employment without prior notice.

C. Service units and limitations.

1. The unit of services for consumer-directed respite services is one hour. Consumer-directed respite services are limited to a maximum of 720 hours per calendar year. Individuals who receive consumer-directed respite services, agency-directed respite services and/or facility-based respite services may not receive more than 720 hours combined, regardless of service delivery method.

2. The unit of service for consumer-directed personal care services is one hour.

D. Provider qualifications. In addition to meeting the general conditions and requirements for home and community-based services participating providers as specified in 12 VAC 30-120-930, the CD services facilitator must meet the following qualifications:

1. To be enrolled as a Medicaid CD services facilitator and maintain provider status, the CD services facilitator shall have sufficient resources to perform the required activities. In addition, the CD services facilitator must have the ability to maintain and retain business and professional records sufficient to fully and accurately document the nature, scope, and details of the services provided.

2. It is preferred that the CD services facilitator possess, at a minimum, 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 CD services facilitator have at least two years of satisfactory experience in a human services field working with individuals who are disabled or elderly. The CD services facilitator must possess a combination of work experience and relevant education that indicates possession of the following knowledge, skills, and abilities. Such knowledge, skills and abilities must be documented on the CD services facilitator's application form, found in supporting documentation, or be observed during a 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 may occur in individuals who are elderly or individuals with disabilities, as well as strategies to reduce limitations and health problems;

(2) Physical care that may be required by individuals who are elderly or individuals with disabilities, such as transferring, bathing techniques, bowel and bladder care, and the approximate time those activities normally take;

(3) Equipment and environmental modifications that may be required by individuals who are elderly or individuals with disabilities that reduce the need for human help and improve safety;

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

(5) Elderly or Disabled with Consumer-Direction Waiver requirements, as well as the administrative duties for which the services facilitator will be responsible;

(6) How to conduct assessments (including environmental, psychosocial, health, and functional factors) and their uses in services planning;

(7) Interviewing techniques;

(8) The individual's right to make decisions about, direct the provisions of, and control his consumer-

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directed services, including hiring, training, managing, approving time sheets, and firing an aide;

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

(10) General principles of record documentation.

b. Skills in:

(1) Negotiating with individuals, family/caregivers and service providers;

(2) Assessing, supporting, observing, recording, and reporting behaviors;

(3) Identifying, developing, or providing services to individuals who are elderly or individuals with disabilities; and

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

c. Abilities to:

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

(2) Demonstrate a positive regard for individuals 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

(6) Develop a rapport and communicate with individuals from diverse cultural backgrounds.

3. If the CD services facilitator is not a registered nurse, the CD services facilitator must inform the individual's primary health care provider that services are being provided and request consultation as needed.

4. Initiation of services and service monitoring.

a. For consumer-directed services, the CD services facilitator must make an initial comprehensive home visit to collaborate with the individual and family/caregiver to identify the needs, assist in the development of the plan of care with the individual or family/caregiver, and provide employee management training within seven days of the initial visit. The initial comprehensive home visit is done only once per provider upon the individual's entry into CD services. If the individual changes CD services facilitator, the new CD services facilitator must complete a reassessment visit in lieu of a comprehensive visit.

b. After the initial visit, the CD services facilitator will continue to monitor the plan of care on an as-needed basis, but in no event less frequently than quarterly for personal care. The CD services facilitator will review the utilization of consumer-directed respite services, either every six months or upon the use of 300 respite services hours, whichever comes first.

c. A CD services facilitator must conduct face-to-face meetings with the individual or family/caregiver at least every six months for respite services and quarterly for personal care to ensure appropriateness of any consumer-directed services received by the individual.

5. During visits with the individual, the CD services facilitator must observe, evaluate, and consult with the individual or family/caregiver, and document the adequacy and appropriateness of consumer-directed services with regard to the individual's current functioning and cognitive status and medical and social needs. The CD services facilitator's written summary of the visit must include, but is not necessarily limited to:

a. A discussion with the individual or family/caregiver concerning whether the service is adequate to meet the individual's needs;

b. Any suspected abuse, neglect, or exploitation and who it was reported to;

c. Any special tasks performed by the aide and the aide's qualifications to perform these tasks;

d. The individual's or family/caregiver's satisfaction with the service;

e. Any hospitalization or change in medical condition, functioning, or cognitive status; and

f. The presence or absence of the aide in the home during the CD services facilitator's visit.

6. The CD services facilitator must be available to the individual or family/caregiver by telephone.

7. The CD services facilitator must request a criminal record check and a sex offender record check pertaining to the aide on behalf of the individual and report findings of these records checks to the individual or the family/caregiver and the program's fiscal agent. If the individual is a minor, the aide must also be screened through the DSS Child Protective Services Central Registry. The criminal record check and DSS Child Protective Services Registry finding must be requested by the CD services facilitator prior to beginning CD services. Aides will not be reimbursed for services provided to the individual effective on the date that the criminal record check confirms an aide has been found to have been convicted of a crime as described in § 37.2-416 of the Code of Virginia or if the aide has a confirmed record on the DSS Child Protective Services Central Registry.

8. The CD services facilitator shall review copies of timesheets during the face-to-face visits to ensure that the number of plan of care-approved hours are being provided and are not exceeded. If discrepancies are identified, the CD services facilitator must discuss these with the individual or family/caregiver to resolve discrepancies and must notify the fiscal agent.

9. The CD services facilitator must maintain records of each individual. At a minimum these records must contain:

- a. Results of the initial comprehensive home visit completed prior to or on the date services are initiated and subsequent reassessments and changes to the supporting documentation;
 - b. The personal care plan of care goals, objectives, and activities must be reviewed by the provider quarterly, annually, and more often as needed, and modified as appropriate. Respite plan of care goals, objectives, and activities must be reviewed by the provider annually and every six months or when 300 service hours have been used. For the annual review and in cases where the plan of care is modified, the plan of care must be reviewed with the individual;
 - c. CD services facilitator's dated notes documenting any contacts with the individual or family/caregiver and visits to the individual's home;
 - d. All correspondence to and from the individual, the designated preauthorization contractor, and DMAS;
 - e. Records of contacts made with the individual, family/caregiver, physicians, formal and informal service providers, and all professionals concerning the individual;
 - f. All training provided to the aides on behalf of the individual or family/caregiver;
 - g. All employee management training provided to the individual or family/caregiver, including the individual's or family/caregiver's receipt of training on their responsibility for the accuracy of the aide's timesheets;
 - h. All documents signed by the individual or the individual's family/caregiver that acknowledge the responsibilities as the employer; and
 - i. All copies of the completed Uniform Assessment Instrument (UAI), the Medicaid Funded Long-Term Care Service Authorization Form (DMAS-96), the Screening Team Plan of Care form (DMAS-97), all Consumer-Directed Personal Assistance Plans of Care forms (DMAS-97B), all Patient Information Forms (DMAS-122), the DMAS-95 Addendum, the Outline and Checklist for Consumer-Directed Recipient Comprehensive Training, and the Services Agreement Between the Consumer and the Services Facilitator.
10. For consumer-directed personal care and consumer-directed respite services, individuals or family/caregivers will hire their own personal care aides and manage and supervise their performance. The aide must meet the following requirements:
- a. Be 18 years of age or older;
 - b. Have the required skills to perform consumer-directed services as specified in the individual's supporting documentation;
 - c. Be able to read and write in English to the degree necessary to perform the tasks expected;
 - d. Possess basic math, reading, and writing skills;
 - e. Possess a valid Social Security number;
 - f. Submit to a criminal records check and, if the individual is a minor, consent to a search of the DSS Child Protective Services Central Registry. The aide will not be compensated for services provided to the individual if either of these records checks verifies the aide has been convicted of crimes described in § 37.2-416 of the Code of Virginia or if the aide has a founded complaint confirmed by the DSS Child Protective Services Central Registry;
 - g. Be willing to attend training at the individual's or family/caregiver's request;
 - h. Understand and agree to comply with the DMAS Elderly or Disabled with Consumer Direction Waiver requirements; and
 - i. Receive periodic tuberculosis (TB) screening, cardiopulmonary resuscitation (CPR) training and an annual flu shot (unless medically contraindicated).
11. Aides may not be the parents of individuals who are minors or the individuals' spouses or the family/caregivers that are directing the individual's care. Payment may not be made for services furnished by other family/caregivers living under the same roof as the individual being served unless there is objective written documentation as to why there are no other providers available to provide the care.
12. Family/caregivers who are reimbursed to provide consumer-directed services must meet the aide qualifications.
13. If the individual is consistently unable to hire and retain the employment of a personal care aide to provide consumer-directed personal care or respite services, the CD services facilitator will make arrangements to have the services transferred to an agency-directed services provider of the individual's choice or to discuss with the individual or family/caregiver other service options.
14. The CD services facilitator is required to submit to DMAS biannually, for every individual, an individual progress report, the most recently updated UAI, and any monthly visit/progress reports. This information is used to assess the individual's ongoing need for Medicaid-funded long-term care and appropriateness and adequacy of services rendered.
- D. Individual responsibilities.
- 1. The individual must be authorized for consumer-directed services and successfully complete management training performed by the CD services facilitator before the individual can hire a personal care aide for Medicaid reimbursement. Individuals who are eligible for consumer-directed services must have the capability to hire and train their own personal care aides and supervise aides' performance. Individuals with cognitive impairments who are unable to manage their own care may have a family/caregiver serve as the employer on behalf of the individual.
 - 2. Individuals will acknowledge that they will not knowingly continue to accept consumer-directed personal care services when the service is no longer appropriate or

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necessary for their care needs and will inform the services facilitator. If consumer-directed services continue after services have been terminated by DMAS or the designated preauthorization contractor, the individual will be held liable for employee compensation.

NOTICE: The forms used in administering 12 VAC 30-120, Waivered Services, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

FORMS

Virginia Uniform Assessment Instrument (UAI) (1994).

Consent to Exchange Information, DMAS-20 (rev. 4/03).

Provider Aide/LPN Record Personal/Respite Care, DMAS-90 (rev. 12/02).

LPN Skilled Respite Record, DMAS-90A (eff. 7/05).

Personal Assistant/Companion Timesheet, DMAS-91 (rev. 8/03).

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).

Medicaid Funded Long-Term Care Service Authorization Form, DMAS-96 (rev. 3/03).

Screening Team Plan of Care for Medicaid-Funded Long Term Care, DMAS-97 (rev. 12/02).

Provider Agency Plan of Care, DMAS-97A (rev. 9/02).

Consumer Directed Services Plan of Care, DMAS-97B (rev. 1/98).

Community-Based Care Recipient Assessment Report, DMAS-99 (rev. 4/03).

Consumer-Directed Personal Attendant Services Recipient Assessment Report, DMAS-99B (rev. 8/03).

MI/MR Level I Supplement for EDCD Waiver Applicants, DMAS-101A (rev. 10/04).

Assessment of Active Treatment Needs for Individuals with MI, MR, or RC Who Request Services under the Elder or Disabled with Consumer-Direction Waivers, DMAS-101B (rev. 10/04).

AIDS Waiver Evaluation Form for Enteral Nutrition, DMAS-116 (6/03).

Patient Information Form, DMAS-122 (rev. 12/98).

Technology Assisted Waiver/EPSTDT Nursing Services Provider Skills Checklist for Individuals Caring for Tracheostomized and/or Ventilator Assisted Children and Adults, DMAS-259.

Home Health Certification and Plan of Care, CMS-485 (rev. 2/94).

LPN SKILLED RESPITE RECORD

Recipient's Name: _____ Phone: _____

Address: _____

Reason for Skilled Respite: _____

DAY:	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
DATE (Month/Day/Year):	/ /	/ /	/ /	/ /	/ /	/ /	/ /
NEUROLOGICAL							
LOC							
A/O x3, Asleep, Awake							
CARDIAC							
Rhythm							
NSR, No Murmur							
Pulse / Quality							
Palpable in Extremities							
Edema / Cap Refill							
Invasive Lines							
None/CVL/PIV							
RESPIRATORY							
Rate							
Breath Sounds							
Secretions							
Chest PT							
Trach Care / Change							
Suction / Times per shift							
MONITORS							
Cardiac/Apnea – Settings							
Type / Oxygen Amt							
Vent – Settings							
C-Pap / Bi-Pap							
Blood Sugar Levels							
GASTROINTESTINAL							
Abdomen Assessment							
Bowel Sounds							
GT/NGT / Tube Patient							
TPN							
Feeds Tolerated							
GENTIOURINARY							
Spon. Voids/Diaper/Cath							
Catheter Care							
Intermittent Cath							
OTHER							
Complete/Partial Bath							
Oral Care							
Skin Care							
Skin Tugor							
Wound Care							
Turn & Position							
Medication							
Need for POC changes							
New MD Orders							

TIME IN							
TIME OUT							
NUMBER OF HOURS							

MI/MR LEVEL I SUPPLEMENT FOR EDCD WAIVER APPLICANTS

A. This section is to be completed by the Pre-admission Screening Committee.

Name: _____ Date of Birth: _____ Date PAS Request Received _____

Social Security No. _____ Medicaid No. _____ Responsible CSB _____

1. DOES THE INDIVIDUAL MEET NURSING FACILITY CRITERIA?

Yes No (Check "Yes" only if both a and b below are answered "Yes".)

a. Does the individual meet the program criteria for the Elderly or Disabled With Consumer-Direction Waiver AND is the individual at imminent risk? Yes No

b. Can a safe and appropriate plan of care be developed to meet all medical/nursing/custodial care needs? Yes No

(If "Yes", this form must be completed. If "No", do not complete Level I screening and do not refer for assessment of active tx needs. Individuals who do not meet the above criteria cannot be approved for Medicaid funded waiver services.)

2. DOES THE INDIVIDUAL HAVE A CURRENT SERIOUS MENTAL ILLNESS (MI)? Yes No

(Check "Yes" only if answers a, b, and c below are "Yes". If "No", do not refer for assessment of active tx needs for MI Diagnosis.)

a. Is this major mental disorder diagnosable under DSM-IV (e.g., schizophrenia, mood, paranoid, panic, or other serious anxiety disorder; somatoform disorder; personality disorder; other psychotic disorder; or other mental disorder that may lead to a chronic disability)?

Yes No

b. Has the disorder resulted in functional limitations in major life activities within the past 3-6 months, particularly with regard to interpersonal functioning; concentration, persistence, or pace; and adaptation to change? Yes No

c. Does the treatment history indicate that the individual has experienced psychiatric treatment more intensive than outpatient care more than once in the past 2 years or the individual has experienced within the last 2 years an episode of significant disruption to the normal living situation due to the mental disorder? Yes No

3. DOES THE INDIVIDUAL HAVE A DIAGNOSIS OF MENTAL RETARDATION (MR) WHICH WAS MANIFESTED BEFORE AGE 18?

Yes No

4. DOES THE INDIVIDUAL HAVE A RELATED CONDITION? Yes No

(Check "Yes" only if each item below is Checked "Yes". If "No", do not refer for Level II PAS for related condition.)

a. Is the condition attributable to any other condition (e.g. cerebral palsy, epilepsy, autism, muscular dystrophy, multiple sclerosis, Frederick's ataxia, spina beftida), other than MI, found to be closely related to MR because this condition may result in impairment of general intellectual functioning or adaptive behavior similar to that of MR persons and requires treatment of services similar to those for these persons? Yes No

b. Has the condition manifested before age 22? Yes No

c. Is the condition likely to continue indefinitely? Yes No

d. Has the condition resulted in substantial limitations in 3 or more of the following areas of major life activity; self-care understanding and use of language, learning, mobility, self-direction, and capacity for independent living? Yes (If yes, circle applicable areas) No

5. RECOMMENDATION (Either "a" or "b" must be checked.)

a. Refer for Level II assessment for **:

MI (# 2 above is checked "Yes")

MR or Related Condition (# 3 or # 4 is checked "Yes")

Dual diagnosis (MI and MR/Related Condition categories are checked)

** NOTE: If 5a is checked, the individual may NOT be authorized for Medicaid-funded waiver until the CSB has completed the DMAS-101B.

b. No referral for active treatment needs assessment required because individual:

Does not meet the applicable criteria for serious MI or MR or related condition

Has a primary diagnosis of dementia (including Alzheimer's disease) and does not have a diagnosis of MR

Has a primary diagnosis of dementia (including Alzheimer's disease) AND has a secondary diagnosis of a serious MI

Has a severe physical illness (e.g. documented evidence of coma, functioning at brain-stem level, or other conditions which result in a level of impairment so severe that the individual could not be expected to benefit from specialized services.)

Is terminally ill (note: a physician must have documented that individual's life expectancy is six (6) months or less)

Signature & Title: _____ Screening Committee: _____

Date: _____ Telephone #: _____ Street Address: _____

DMAS-101A (rev. 10/04)

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INSTRUCTIONS FOR COMPLETION OF THE DMAS 101B
PROCESS FOR AUTHORIZING CBC SERVICES FOR PERSONS WITH MI/MR CONDITION

The pre-admission screening team must have this form completed when the person being screened has a condition of mental illness or mental retardation and the person is requesting community-based care services (Personal Care, Adult Day Health Care, Respite Care). Once the screening team determines that the person meets the criteria for CBC services (meets NF or Pre-NF criteria and is at risk of NF placement unless CBC services are offered) the screening team must complete the top portion of the DMAS 101, attach a copy of the UAI and send the two forms to the CSB for an evaluation of the person's need for MH/MR services. This must be done before the screening team completes the DMAS 96 to authorize services.

Any time the screening team has the CSB complete the MH/MR Service Needs Summary Form, *a copy must be attached* to the packet submitted to DMAS for reimbursement and a copy to the Elderly or Disabled With Consumer-Direction Waiver provider if services through this Waiver are authorized.

Assessment of Active Treatment Needs for Individuals with MI, MR, or RC who Request services under the Elder or Disabled with Consumer-Direction Waivers

Attached is an assessment completed by _____ Preadmission Screening Team to determine the need and appropriateness of community-based services under the Elder or Disabled with Consumer-Direction (EDCD) Waiver (personal care, adult day health care, consumer-directed services, and /or respite care) for _____ (Person Applying for Service)

As part of our assessment process, we have determined that the individual has:
___ A condition of mental illness which requires assessment for services needed
___ A condition of mental retardation which requires assessment for services needed

Please complete the information below and return it to _____ within 72 hours of the date referred _____ so that the assessment and authorization process can be completed. (Name of Screener Making Referral & Phone #)

TO BE COMPLETED BY THE COMMUNITY SERVICES BOARD (Attach additional information as needed.)
The _____ Community Services Board assessed the needs of the individual referenced above on _____ (Name of CSB) (Date assessment completed).
1. The individual does have a condition of mental illness or mental retardation and has the following active treatment needs:

a. Active Treatment needs will be met by:

b. If active treatment needs are met by a third party, please attach verification from the third party that all active treatment needs are being met. Also, if active treatment needs are being met by the school system, please explain how active treatment needs will be met during summer vacation:

2. The individual does have a condition of mental illness or mental retardation, but could not benefit from services. Please explain. (Note if this block is checked, but there is no explanation, services under the ED CD Waiver cannot be authorized.)

3. The individual does not have a condition of mental illness or mental retardation and therefore does not need treatment or services from the CSB.
Name of individual who completed assessment: (Please print name) _____
Signature of individual who completed assessment: _____
Phone Number: _____ Date Signed: _____
DMAS 101B revised 10/04

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TITLE. 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

Titles of Regulations: 18 VAC 110-20. Regulations Governing the Practice of Pharmacy (amending 18 VAC 110-20-20; repealing 18 VAC 110-20-630, 18 VAC 110-20-640, 18 VAC 110-20-660 and 18 VAC 110-20-670).

18 VAC 110-50. Regulations Governing Wholesale Distributors, Manufacturers and Warehousemen (adding 18 VAC 110-50-10 through 18 VAC 110-50-150).

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

Public Hearing Date: December 1, 2005 - 9 a.m.

Public comments may be submitted until December 2, 2005.

(See Calendar of Events section for additional information)

Agency Contact: Elizabeth Scott Russell, RPh, Executive Director, Board of Pharmacy, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9911, FAX (804) 662-9313, or e-mail elizabeth.russell@dhp.virginia.gov.

Basis: Chapter 24 (§ 54.1-2400 et seq.) of Title 54.1 of the Code of Virginia establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) The specific statutory authority for the Board of Pharmacy to regulate the practice of pharmacy including the manufacturing and wholesale distribution of controlled substances is found in § 54.1-3307 of the Code of Virginia.

Purpose: Counterfeiting of prescription drugs is a growing risk to the public health and safety and a potentially lucrative source of criminal activity. Over the past several years the incidences of counterfeit prescription drug products detected in the U.S. legitimate drug supply system has been increasing. In the 1990s, the average number of counterfeit drugs found in the supply system was approximately five per year. According to FDA, this number has jumped to over 20 a year since 2001.

Of the drugs that have been found to be counterfeited, many are expensive injectable drugs used to treat our sickest population, patients undergoing cancer chemotherapy, AIDS patients, and patients with kidney disease undergoing renal dialysis. Undertreatment or nontreatment in these patients due to receiving counterfeit drug products would lead to exacerbation of the disease state or other symptoms, and possibly death. In at least one case, a counterfeit product purporting to be Procrit was not only found to contain little to no active drug, but was also contaminated with acinetobacter and pseudomonas bacteria, which could easily lead to a deadly infection in a normal patient, and is much more dangerous to a patient who already has a compromised immune system.

Counterfeiting has become very sophisticated in that often the counterfeit products look almost identical to the real product. Much of the counterfeiting takes place in garage labs where there is no consideration of maintaining even sanitary conditions much less sterile conditions. The counterfeiting business is very lucrative. There is little overhead, and with the high cost of some prescription drugs, very profitable. In one Florida case, one company selling counterfeit drugs to a Tennessee wholesaler received \$17 million in wire transfers. It has become more lucrative than dealing in illegal street drugs and less risky in terms of penalties if caught.

Florida hosted the majority of these criminal enterprises up until about two years ago when it increased its oversight of the wholesale distributor business and began serious enforcement efforts. Now these businesses are looking for other states with less strict laws and regulations. It is important for Virginia to act now to strengthen and clarify its rules as a deterrent to counterfeiters.

The Board of Pharmacy is proposing amendments to increase its oversight of the wholesale distribution market in order to prevent opportunities for counterfeiting of drugs and ensure the integrity, safety and efficacy of drugs or devices distributed in the Commonwealth. While current regulations require persons engaged in the wholesale distribution of drugs to hold a permit issued by the board and to adhere to certain rules for safeguarding drugs from diversion, additional requirements are needed to adequately protect the public from the distribution of counterfeited, adulterated, misbranded, or otherwise unfit drugs.

Substance: The board has adopted requirements for the licensure and regulations of wholesale distributors and manufacturers as a new chapter, 18 VAC 110-50, Regulations Governing the Licensure of Wholesale Distributors, Manufacturers and Warehousemen. In doing so, current rules for permits, fees, and security for wholesale distributors and manufacturers would be eliminated in Chapter 20 and moved to the new chapter. Rules for manufacturers are identical to those currently found in 18 VAC 110-20, but the rules for wholesale distributors include additional application and practice requirements.

The proposed action for wholesale distributors encompasses some of the Model Rules of the National Association of Boards of Pharmacy, includes some definitions for terms not currently defined in the Drug Control Act, specific criteria for an application for licensure to include detailed information about the distribution operation, provisions for inspections and requirements for personnel, security, anticounterfeiting measures, recordkeeping, and quality control.

Issues: The primary advantage to the public is additional protection from the consequences of misbranded, adulterated, or counterfeited prescription drugs. In an increasingly complex environment for the marketing and distribution of prescription drugs and devices, the Board of Pharmacy has an obligation to be proactive in ensuring the safety, integrity and quality of controlled substances that are distributed in the Commonwealth. In instances where due diligence has not been observed in other states, drugs that were adulterated or counterfeited have entered the consumer market and resulted in harm to the public. Harm may come from an adulterated or

counterfeited drug or device to which a patient has an adverse reaction or that does not have the strength or quality to achieve the intended result from pharmacotherapy.

It is the board's responsibility to set out rules that minimize opportunities for counterfeiting of the drug supply, ensure that records are being adequately maintained, and ensure that there is sufficient oversight to deter adulteration or counterfeiting. With the adoption of new regulations for wholesale distributors, the board intends to add rules that offer clear standards of practice that provide for both deterrence and enforcement.

There are no disadvantages to the public or the agency. There will be some increased effort and cost associated with expanded application and oversight requirements, but the board intends to issue limited-use permits to the majority of its currently licensed wholesale distributors who only engage in the distribution of medical gases. The availability of a limited-use permit will allow the board to focus on a small number of entities that are actually distributing the full range of prescription drugs in Virginia.

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 § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H 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. Currently, regulations for wholesale distributors, manufacturers and warehouseers of pharmaceuticals are within 18 VAC 110-20, Regulations Governing the Practice of Pharmacy. The Board of Pharmacy (board) proposes to create a new chapter, 18 VAC 110-50, for the regulation of wholesale distributors, manufacturers and warehouseers. In doing so, the board proposes to delete language on wholesale distributors, manufacturers and warehouseers of pharmaceuticals from Chapter 18 VAC 110-20. Additionally, the board proposes numerous amendments, including to: no longer permit wholesale distributors, manufacturers or warehouseers to operate from a private dwelling, create a limited-use wholesale distributor license for entities who only distribute medical gases or over-the-counter drugs, require new detailed information from nonresident wholesale distributors, require criminal background checks for wholesale distributors' responsible party, and establish due diligence requirements for wholesale distributors purchasing prescription drugs from another wholesale distributor not residing in and licensed in Virginia.

Estimated economic impact. The board proposes several amendments designed "to increase its oversight of the wholesale distribution market in order to prevent opportunities for counterfeiting of drugs and ensure the integrity, safety and

efficacy of drugs or devices distributed in the Commonwealth." According to the Department of Health Professions (department):

Over the past several years the incidences of counterfeit prescription drug products detected in the U.S. legitimate drug supply system has been increasing. In the 1990s, the average number of counterfeit drugs found in the supply system was approximately five per year. According to FDA, this number has jumped to over 20 a year since 2001.

Of the drugs which have (been) found to be counterfeited, many are expensive injectable drugs used to treat our sickest population, patients undergoing cancer chemotherapy, AIDS patients, and patients with kidney disease undergoing renal dialysis. Undertreatment or nontreatment in these patients due to receiving counterfeit drug products would lead to exacerbation of the disease state or other symptoms, and possibly death. In at least one case, a counterfeit product purporting to be Procrit, was not only found to contain little to no active drug, but was also contaminated with acinetobacter and pseudomonas bacteria, which could easily lead to a deadly infection in a normal patient, and is much more dangerous to a patient who already has a compromised immune system.

Counterfeiting has become very sophisticated in that often the counterfeit products look almost identical to the real product. Much of the counterfeiting takes place in garage labs where there is no consideration of maintaining even sanitary conditions much less sterile conditions. The counterfeiting business is very lucrative. There is little overhead, and with the high cost of some prescription drugs, very profitable. In one Florida case, one company selling counterfeit drugs to a Tennessee wholesaler received \$17 million in wire transfers. It has become more than dealing in illegal street drugs and less risky in terms of penalties if caught.

Since the costs of counterfeit drugs to patients' health can be quite serious, and the risk of counterfeit drugs being distributed in Virginia seems more than negligible, proposed regulations that could effectively deter the distribution of counterfeit drugs in Virginia would be significantly beneficial.

Under the current regulations, wholesale distributors, manufacturers and warehouseers are allowed to operate from a private dwelling if there is a separate business entrance and it is open for inspection at all times during normal business hours. The board is now proposing to prohibit the basing of these types of businesses out of homes due to news of illegal activities in other states. For example, in Florida there have been several instances of counterfeit prescription drug businesses that operated from a garage and did not maintain a legitimate business address.¹ According to the department, now that Florida increased its oversight of the wholesale distributor business and began serious enforcement efforts, these businesses are looking for other states with less strict laws and regulations. Under the proposed regulations if a licensee's business is limited to medical gases or over-the-

¹ Source: Department of Health Professions

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counter drugs, an applicant could apply for a limited-use license that would allow operation from a residence.

It is conceivable that a legitimate wholesale distributor, for example, may wish to operate out of a large private dwelling. The cost of switching operations to a different location to avoid violating the proposed prohibition from home operation would be substantial. However, the department is not aware of any wholesale distributors, manufacturers or warehousemen having ever operated out of a dwelling in Virginia. To the extent that this proposed prohibition is enforced, it will raise costs for those businesses that would have otherwise operated out of a dwelling (except for businesses limited to medical gases or over-the-counter drugs). Based upon available information, only counterfeiters² have operated out of private dwellings. Thus, this proposal would likely raise costs primarily for counterfeiters, potentially discouraging their operation in Virginia. Thus, this proposal has the potential to provide a net benefit for the Commonwealth.

The proposal also produces a potential cost for Virginia. If at some point in the future a legitimate nonexempted business found that it would be cost effective to operate out of a residence, this would be prohibited under the proposed language. If the board believed it could effectively keep out counterfeiters without simultaneously limiting legitimate businesses, that would be preferred. Nevertheless, to the extent that it does discourage the manufacture and distribution of counterfeit drugs in Virginia, the proposed prohibition of the operation of wholesale distributors, manufacturers and warehousemen from a private dwelling, other than businesses limited to medical gases or over-the-counter drugs, will likely provide a net benefit for the Commonwealth.

As mentioned above, the board proposes to create a limited-use wholesale distributor license for entities who only distribute medical gases or over-the-counter drugs. In addition to being permitted to operate out of a residence if desired, businesses with such a limited-use wholesale distributor license will save some staff time due to not being required to report the full set of information required for full wholesale distributor licensees. Specifically, the proposed regulations state that "The board ... may waive certain requirements of regulation based on the limited nature of such distribution." The department has indicated that the certain requirements that may be waived refer to reporting information that is not considered necessary for these limited-use wholesalers to report to maintain safety for the public. Thus, the proposed limited-use wholesale distributor license will provide a net benefit.

The board also proposed to require new detailed information from nonresident wholesale distributors, including the address, square footage, security and alarm system description, temperature and humidity control, and other relevant information of the facility or warehouse space used for prescription drug storage and distribution. The nonresident wholesale distributors should be able to easily collect and report this information in less than a day. The board believes the information will allow the department to be better able to

monitor for product integrity and protect the public from counterfeiting. To the extent that the information does improve monitoring and reduces the probability of counterfeiting, the proposed requirements will likely provide a net benefit.

Additionally, the board proposes to require that applications for a new wholesale distributor license or for registration as a nonresident wholesale distributor, or for any change of ownership, include a criminal history record check for the wholesale distributor's responsible party. According to the department, the criminal background check costs \$15. This is pertinent information for the board to monitor the industry in Virginia. Given the small cost to businesses, it will likely provide a net benefit for the Commonwealth.

The board proposes due diligence requirements for wholesale distributors purchasing prescription drugs from another wholesale distributor not residing in and licensed in Virginia. Specifically, prior to the initial purchase of prescription drugs from another wholesale distributor not residing and licensed in Virginia, a wholesale distributor shall obtain, and update annually, the following information from the selling wholesale distributor:

1. A copy of the license to wholesale distribute from the resident state;
2. The most recent facility inspection report, if available;
3. A list of other names under which the wholesale distributor is doing business, or was formerly known as;
4. A list of principals, directors, officers, or any shareholder who owns 10% or more of outstanding stock in any nonpublicly held corporation;
5. A list of all disciplinary actions by state and federal agencies;
6. A description, including the address, dimensions, and other relevant information, of each facility or warehouse used for drug storage and distribution;
7. A listing of any manufacturers for whom the wholesale distributor is an authorized distributor of record.

Prior to the first purchase of drugs from another wholesale distributor not residing in and licensed in Virginia, the purchasing wholesale distributor shall secure a national criminal background check of all of the wholesale distributor's owners, corporate officers, and the person named as the responsible party with the resident board or licensing agency.

The Healthcare Distribution Management Association has stated that legitimate businesses already do this type of due diligence as a matter of practice.³ For businesses that already ask for all of this information and secure the criminal background checks, there will be no new cost. Businesses that do not already ask for all of this information or do not conduct the criminal background checks will incur new costs. As stated earlier, the criminal background checks cost \$15 per person. The purchasing business will need to spend a small amount of time requesting the information. If the out-of-state

² Other than the exempted businesses limited to medical gases or over-the-counter drugs.

³ Source: Department of Health Professions

wholesale distributor has sold to legitimate businesses in the past, it should have most or all of the requested information readily available.⁴ Thus, based on the Healthcare Distribution Management Association's statement, the proposed due diligence requirements will not produce significant new costs for legitimate businesses. The due diligence requirements essentially require that wholesale distributors who purchase prescription drugs from another wholesale distributor not residing in and licensed in Virginia, be knowledgeable about the backgrounds of the sellers. Given this responsibility, the purchaser may be more careful concerning the source of the products that they will sell in Virginia. This can potentially decrease the likelihood that counterfeit drugs will be sold in the Commonwealth. To the extent that the proposed due diligence requirements do decrease the likelihood that counterfeit prescription drugs are sold in Virginia, the benefits of the proposal will likely exceed the costs.

Businesses and entities affected. The proposed regulations affect the 125 wholesale distributors, 558 nonresident wholesale distributors, 92 manufacturers, and 29 warehouse licensed in Virginia.⁵

Localities particularly affected. The proposed regulations affect localities throughout the Commonwealth.

Projected impact on employment. The proposed amendments will not likely significantly affect employment levels.

Effects on the use and value of private property. The proposed amendments will not likely have a large impact on the use and value of private property for most wholesale distributors, manufacturers, and warehouse. Wholesale distributors who only distribute medical gases or over-the-counter drugs save some staff time due to not being required to report the full set of information required for full wholesale distributor licensees. The proposal to require that applications for a new wholesale distributor license or for registration as a nonresident wholesale distributor, or for any change of ownership include a criminal history record check for the wholesale distributor's responsible party will cost these businesses \$15.

Wholesale distributors who purchase prescription drugs from another wholesale distributor not residing in and licensed in Virginia, and who currently do not conduct criminal background checks of the owners, corporate officers, and the person named as the responsible party, will need to conduct these checks, costing \$15 per owner, corporate officer, and responsible party (if not an owner or corporate officer). Out-of-state wholesale distributors who do not currently provide the full set of proposed required due diligence information when selling to Virginia wholesalers will need to spend additional staff time assembling the required information.

Small businesses: Costs and other effects. The department has stated that it is not aware of any wholesale distributors, manufacturers or warehouse having ever operated out of a dwelling in Virginia. If in the future such a business wished to

operate out of a residence, the prohibition on this activity would clearly be costly. The firm would need to obtain access to additional property.

The proposed creation of a limited-use wholesale distributor license for entities who only distribute medical gases or over-the-counter drugs will save these businesses some staff time due to not being required to report the full set of information required for full wholesale distributor licensees.

The proposal to require that applications for a new wholesale distributor license or for registration as a nonresident wholesale distributor, or for any change of ownership include a criminal history record check for the wholesale distributor's responsible party will cost these businesses \$15.

Wholesale distributors who purchase prescription drugs from another wholesale distributor not residing in and licensed in Virginia, and who currently do not conduct criminal background checks of the owners, corporate officers, and the person named as the responsible party, will need to conduct these checks, costing \$15 per owner, corporate officer, and responsible party (if not an owner or corporate officer). Out-of-state wholesale distributors who do not currently provide the full set of proposed required due diligence information when selling to Virginia wholesalers will need to spend additional staff time assembling the required information.

Small businesses: Alternative method that minimizes adverse impact. All of the proposed new requirements are designed to decrease the likelihood of the manufacture, distribution and sale of counterfeit drugs in Virginia. It is possible that not all of the proposed requirements are required to effectively prevent this illegal activity. If in the future, for example, it is believed that an applicant who can demonstrate possession of all of the equipment and designations required for legitimate business to be conducted wishes to operate from property that includes living quarters, perhaps the board would allow such business to take place. At this time, though, it is not known whether fewer restrictions would effectively minimize counterfeiting activity in the Commonwealth.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Pharmacy concurs with the analysis of the Department of Planning and Budget (DPB) for amendments to 18 VAC 110-20 and promulgation of 18 VAC 110-50, related to regulation of wholesale distributors, warehouse, and manufacturers.

Summary:

Since regulations governing the practice of pharmacy have become so extensive and complex, the board has proposed the adoption of a new chapter (Chapter 50) for the regulation of wholesale distributors and manufacturers and the amendment of applicable sections of Chapter 20 to delete requirements for those entities in the regulations governing the practice of pharmacy.

For manufacturers, warehouse and wholesale distributors, the new chapter will include applicable definitions, fees, and policies for renewal and reinstatement. Requirements are set out for issuance of a license, including inspection of the facility and compliance with applicable laws relating to the business of distributing controlled substances. Safeguards

⁴ This statement is based on the statement by the Healthcare Distribution Management Association (via the Department of Health Professions) that legitimate businesses already do this type of due diligence as a matter of practice.

⁵ Figures from the Department of Health Professions

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against drug diversion or possession by unauthorized persons are established, along with requirements for storage that protect the safety and efficacy of the drugs.

For wholesale distributors, the new regulations set out the information verifying the legitimacy of the business and its owners that must be provided in order to obtain a license to distribute drugs in Virginia. There are also requirements for the minimum qualifications and responsibilities for the person named as the responsible party and minimum requirements for storage, handling and transporting of drugs. To protect the integrity and safety of drugs in the wholesale distribution system, the regulations establish requirements for examination of drug shipments and documents, the handling of damaged or adulterated drugs, policies and procedures for the operation of the business, recordkeeping, and due diligence in regard to the purchase of drugs from another wholesale distributor not licensed in Virginia.

For manufacturers, the federal rule entitled *The Good Manufacturing Practice for Finished Pharmaceuticals* (21 CFR Part 211) is adopted by reference.

18 VAC 110-20-20. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Unless otherwise provided, any fees for taking required examinations shall be paid directly to the examination service as specified by the board.

C. Initial application fees.

1. Pharmacist license	\$180
2. Pharmacy intern registration	\$15
3. Pharmacy technician registration	\$25
4. Pharmacy permit	\$270
5. Permitted physician licensed to dispense drugs	\$270
6. Nonrestricted manufacturer permit	\$270
7. Restricted manufacturer permit	\$180
8. Wholesale distributor license	\$270
9. Warehouser permit	\$270
10. 6. Medical equipment supplier permit	\$180
11. 7. Humane society permit	\$20
12. 8. Nonresident pharmacy	\$270
13. Nonresident wholesale distributor	\$270
14. 9. Controlled substances registrations	\$90
15. 10. Robotic pharmacy system approval	\$150
16. 11. Innovative program approval	\$250

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 also be paid by the applicant in addition to the application fee.

~~12. Approval of a pharmacy technician training program~~ \$150

~~13. Approval of a continuing education program~~ \$100

D. Annual renewal fees.

1. Pharmacist active license	\$90
2. Pharmacist inactive license	\$45
3. Pharmacy technician registration	\$25
4. Pharmacy permit	\$270
5. Physician permit to practice pharmacy	\$270
6. Nonrestricted manufacturer permit	\$270
7. Restricted manufacturer permit	\$180
8. Wholesale distributor license	\$270
9. Warehouser permit	\$270
10. 6. Medical equipment supplier permit	\$180
11. 7. Humane society permit	\$20
12. 8. Nonresident pharmacy	\$270
13. Nonresident wholesale distributor	\$270
14. 9. Controlled substances registrations	\$90
15. 10. Innovative program continued approval based on board order not to exceed \$200 per approval period.	

E. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired license within one year of the expiration date. In addition, engaging in activities requiring a license, permit, or registration after the expiration date of such license, permit, or registration shall be grounds for disciplinary action by the board.

1. Pharmacist license	\$30
2. Pharmacist inactive license	\$15
3. Pharmacy technician registration	\$10
4. Pharmacy permit	\$90
5. Physician permit to practice pharmacy	\$90
6. Nonrestricted manufacturer permit	\$90
7. Restricted manufacturer permit	\$60
8. Wholesale distributor license	\$90
9. Warehouser permit	\$90
10. 6. Medical equipment supplier permit	\$60
11. 7. Humane society permit	\$5
12. 8. Nonresident pharmacy	\$90
13. Nonresident wholesale distributor	\$90

44. 9. Controlled substances registrations \$30

F. Reinstatement fees. Any person or entity attempting to renew a license, permit, or registration more than one year after the expiration date shall submit an application for reinstatement with any required fees. Reinstatement is at the discretion of the board and, except for reinstatement following license revocation or suspension, may be granted by the executive director of the board upon completion of an application and payment of any required fees.

- 1. Pharmacist license \$210
- 2. Pharmacist license after revocation or suspension \$500
- 3. Pharmacy technician registration \$35
- 4. Pharmacy technician registration after revocation or suspension \$125

5. Facilities or entities that cease operation and wish to resume shall not be eligible for reinstatement but shall apply for a new permit or registration. Facilities or entities that failed to renew and continued to operate for more than one renewal cycle shall pay the current and all back renewal fees for the years in which they were operating plus the following reinstatement fees:

- a. Pharmacy permit \$240
- b. Physician permit to practice pharmacy \$240
- ~~e. Nonrestricted manufacturer permit \$240~~
- ~~d. Restricted manufacturer permit \$240~~
- ~~e. Wholesale distributor license \$240~~
- ~~f. Warehouser permit \$240~~
- ~~g. c. Medical equipment supplier permit \$210~~
- ~~h. d. Humane society permit \$30~~
- ~~i. e. Nonresident pharmacy \$115~~
- ~~j. Nonresident wholesale distributor \$115~~
- ~~k. f. Controlled substances registration \$180~~

G. Application for change or inspection fees for facilities or other entities.

- 1. Change of pharmacist-in-charge \$50
- 2. Change of ownership for any facility \$50
- 3. Inspection for remodeling or change of location for any facility \$150
- 4. Reinspection of any facility \$150
- 5. Board-required inspection for a robotic pharmacy system \$150
- 6. Board-required inspection of an innovative program location \$150
- 7. Change of pharmacist responsible for an approved innovative program \$25

H. Miscellaneous fees.

- 1. Duplicate wall certificate \$25
- 2. Returned check \$25

PART XVI.
~~MANUFACTURERS, WHOLESALE DISTRIBUTORS,
 WAREHOUSERS, AND MEDICAL EQUIPMENT
 SUPPLIERS.~~

~~18 VAC 110-20-630. Licenses and permits generally. (Repealed.)~~

~~A license or permit shall not be issued to any manufacturer, wholesale distributor, warehouser, or medical equipment supplier to operate from a private dwelling, unless a separate business entrance is provided, and the place of business is open for inspection at all times during normal business hours. The applicant shall comply with all other federal, state and local laws and ordinances before any license or permit is issued.~~

~~18 VAC 110-20-640. Safeguards against diversion of drugs. (Repealed.)~~

~~The following requirements shall apply to manufacturers, wholesale distributors, or warehouse of prescription drugs:~~

- ~~1. The holder of the permit shall restrict all areas in which prescription drugs are manufactured, stored, or kept for sale, to only designated and necessary persons.~~
- ~~2. The holder of the permit shall provide reasonable security measures for all drugs in the restricted area.~~
- ~~3. The holder of the permit, except for those manufacturers or distributors of only medical gases other than nitrous oxide, shall install a device for the detection of breaking subject to the following conditions:~~
 - ~~a. The device shall be a sound, microwave, photoelectric, ultrasonic, or any other generally accepted and suitable device.~~
 - ~~b. The installation shall be hard wired and both the installation and device shall be based on accepted burglar alarm industry standards.~~
 - ~~c. The device shall be maintained in operating order and shall have an auxiliary source of power.~~
 - ~~d. The device shall fully protect all areas where prescription drugs are stored and shall be capable of detecting breaking by any means when activated.~~
 - ~~e. Access to the alarm system shall be restricted to only designated and necessary persons, and the system shall be activated whenever the drug storage areas are closed for business.~~
- ~~4. The holder of the permit shall not deliver any drug to a licensed business at which there is no one in attendance at the time of the delivery nor to any person who may not legally possess such drugs.~~

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18 VAC 110-20-660. ~~Good manufacturing practices. (Repealed.)~~

~~A. The Good Manufacturing Practice for Finished Pharmaceuticals regulations set forth in 21 CFR 211 are adopted by reference.~~

~~B. Each manufacturer of drugs shall comply with the requirements set forth in the federal regulations referred to in subsection A of this section.~~

18 VAC 110-20-670. ~~Prescription drug marketing act. (Repealed.)~~

~~A. The requirements for wholesale distribution of prescription drugs set forth in the federal Prescription Drug Marketing Act of 1987 (21 USC § 321; 21 CFR 205) are adopted by reference.~~

~~B. Each wholesale distributor of prescription drugs shall comply with minimum requirements for qualifications, personnel, storage, handling, and records as set forth in the federal regulations referred to in subsection A of this section.~~

NOTICE: The forms used in administering 18 VAC 110-20, Regulations Governing the Practice of Pharmacy, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Application for Registration as a Pharmacy Intern (rev. 6/04).

Affidavit of Practical Experience, Pharmacy Intern (rev. 12/02).

Application for Licensure as a Pharmacist by Examination (rev. 10/02).

Application to Reactivate Pharmacist License (rev. 10/02).

Application for Approval of a Continuing Education Program (rev. 11/02).

Application for Approval of ACPE Pharmacy School Course(s) for Continuing Education Credit (rev. 11/02).

Application for License to Dispense Drugs (permitted physician) (rev. 10/02).

Application for a Pharmacy Permit (rev. 11/02).

Application for a Nonresident Pharmacy Registration (rev. 10/02).

Application for a Permit as a Medical Equipment Supplier (rev. 10/02).

~~Application for a Permit as a Restricted Manufacturer (rev. 10/02).~~

~~Application for a Permit as a Nonrestricted Manufacturer (rev. 10/02).~~

~~Application for a Permit as a Warehouseman (rev. 10/02).~~

~~Application for a License as a Wholesale Distributor (rev. 10/02).~~

~~Application for a Nonresident Wholesale Distributor Registration (rev. 10/02).~~

Application for a Controlled Substances Registration Certificate (rev. 10/02).

Renewal Notice and Application, 0201 Pharmacy (rev. 12/02).

Renewal Notice and Application, 0202 Pharmacist (rev. 12/02).

Renewal Notice and Application, 0205 Permitted Physician (rev. 12/02).

Renewal Notice and Application, 0206 Medical Equipment Supplier (rev. 12/02).

~~Renewal Notice and Application, 0207 Restricted Manufacturer (rev. 12/02).~~

~~Renewal Notice and Application, 0208 Non-Restricted Manufacturer (rev. 12/02).~~

Renewal Notice and Application, 0209 Humane Society (rev. 12/02).

Renewal Notice and Application, 0214 Non-Resident Pharmacy (rev. 12/02).

~~Renewal Notice and Application, 0215 Wholesale Distributor (rev. 12/02).~~

~~Renewal Notice and Application, 0216 Warehouseman (rev. 12/02).~~

~~Renewal Notice and Application, 0219 Non-Resident Wholesale Distributor (rev. 12/02).~~

Renewal Notice and Application, 0220 Business CSR (rev. 12/02).

Renewal Notice and Application, 0228 Practitioner CSR (rev. 12/02).

Application to Reinstate a Pharmacist License (rev. 11/02).

Application for a Permit as a Humane Society (rev. 10/02).

Application for Registration as a Pharmacy Intern for Graduates of a Foreign College of Pharmacy (rev. 6/04).

Closing of a Pharmacy (rev. 3/03).

Application for Approval of a Robotic Pharmacy System (rev. 11/02).

Notice of Inspection Fee Due for Approval of Robotic Pharmacy System (rev. 11/02).

Application for Approval of an Innovative (Pilot) Program (rev. 11/02).

Application for Registration as a Pharmacy Technician (12/02).

Application for Approval of a Pharmacy Technician Training Program (12/02).

Application for Registration for Volunteer Practice (eff. 12/02).

Sponsor Certification for Volunteer Registration (eff. 1/03).

CHAPTER 50.
WHOLESALE DISTRIBUTORS, MANUFACTURERS, AND
WAREHOUSERS.

PART I.
GENERAL PROVISIONS.

18 VAC 110-50-10. Definitions.

In addition to words and terms defined in §§ 54.1-3300 and 54.1-3401 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"DEA" means the United States Drug Enforcement Administration.

"Expiration date" means that date placed on a drug package by the manufacturer or repacker beyond which the product may not be dispensed or used.

"FDA" means the United States Food and Drug Administration.

"USP-NF" means the United States Pharmacopeia-National Formulary.

"Control number" means the unique identifying customer number assigned by the Virginia Department of Motor Vehicles to an individual when issuing a driver's license, learner's permit, or official identification card. This number is displayed on the driver's license or ID card in lieu of the social security number.

18 VAC 110-50-20. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Initial application fees.

1. Nonrestricted manufacturer permit	\$270
2. Restricted manufacturer permit	\$180
3. Wholesale distributor license	\$270
4. Warehouser permit	\$270
5. Nonresident wholesale distributor	\$270
6. Controlled substances registration	\$90

C. Annual renewal fees.

1. Nonrestricted manufacturer permit	\$270
2. Restricted manufacturer permit	180
3. Wholesale distributor license	\$270
4. Warehouser permit	\$270
5. Nonresident wholesale distributor	\$270
6. Controlled substances registration	\$90

D. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired license within one year of the expiration date. In addition, engaging in activities requiring a license, permit, or registration after the

expiration date of such license, permit, or registration shall be grounds for disciplinary action by the board.

1. Nonrestricted manufacturer permit	\$90
2. Restricted manufacturer permit	\$60
3. Wholesale distributor license	\$90
4. Warehouser permit	\$90
5. Nonresident wholesale distributor	\$90
6. Controlled substances registration	\$30

E. Reinstatement fees.

1. Any entity attempting to renew a license, permit, or registration more than one year after the expiration date shall submit an application for reinstatement with any required fees. Reinstatement is at the discretion of the board and, except for reinstatement following license revocation or suspension, may be granted by the executive director of the board upon completion of an application and payment of any required fees.

2. Engaging in activities requiring a license, permit, or registration after the expiration date of such license, permit, or registration shall be grounds for disciplinary action by the board. Facilities or entities that cease operation and wish to resume shall not be eligible for reinstatement, but shall apply for a new permit or registration.

3. Facilities or entities that failed to renew and continued to operate for more than one renewal cycle shall pay the current and all back renewal fees for the years in which they were operating plus the following reinstatement fees:

a. Nonrestricted manufacturer permit	\$240
b. Restricted manufacturer permit	\$210
c. Wholesale distributor license	\$240
d. Warehouser permit	\$240
e. Nonresident wholesale distributor	\$240
f. Controlled substances registration	\$180

F. Application for change or inspection fees.

1. Reinspection fee	\$150
2. Inspection fee for change of location, structural changes, or security system changes	\$150
3. Change of ownership fee	\$50
4. Change of responsible party	\$50

G. The fee for a returned check shall be \$25.

18 VAC 110-50-30. Application; location of business; inspection required.

A. Any person or entity desiring to obtain a license as a wholesale distributor, registration as a nonresident wholesale distributor, or permit as a manufacturer or warehouser shall file an application with the board on a form approved by the board. An application shall be filed for a new license, registration, or

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permit, or for acquisition of an existing wholesale distributor, manufacturer, or warehouse.

B. A licensee or permit holder proposing to change the location of an existing license or permit, or make structural or security system changes to an existing location, shall file an application for approval of the changes following an inspection conducted by an authorized agent of the board.

C. The proposed location, structural changes, or security system changes shall be inspected by an authorized agent of the board prior to issuance of a license.

1. Applications that indicate a requested inspection date, or requests that are received after the application is filed, shall be honored provided a 14-day notice is allowed prior to the requested inspection date.

2. Requested inspection dates that do not allow a 14-day notice to the board may be adjusted by the board to provide 14 days for the scheduling of the inspection.

3. At the time of the inspection, the proposed prescription drug storage area shall comply with 18 VAC 110-50-40 and 18 VAC 110-50-50, and wholesale distributors shall meet the requirements of 18 VAC 110-50-90.

4. If an applicant substantially fails to meet the requirements for issuance of a permit and a reinspection is required, or if the applicant is not ready for the inspection on the established date and fails to notify the inspector or the board at least 24 hours prior to the inspection, the applicant shall pay a reinspection fee as specified in 18 VAC 110-50-20 prior to a reinspection being conducted.

D. Prescription drugs shall not be stocked within the proposed location or moved to a new location until approval is granted by the inspector or board staff.

18 VAC 110-50-40. Safeguards against diversion of drugs.

A. The holder of the license shall restrict all areas in which prescription drugs are stored or kept for sale to only designated and necessary persons and provide reasonable security measures to include appropriate locking devices on all access doors to these areas and adequate lighting both inside and outside the facility to deter unauthorized entry and diversion.

B. The holder of the license or permit, except for those distributors of only medical gases other than nitrous oxide, shall install a device for the detection of breaking subject to the following conditions:

1. The device shall be a sound, microwave, photoelectric, ultrasonic, or any other generally accepted and suitable device.

2. The installation shall be hardwired and both the installation and device shall be based on accepted burglar alarm industry standards.

3. The device shall be maintained in operating order and shall have an auxiliary source of power.

4. The device shall fully protect all areas where prescription drugs are stored and shall be capable of detecting breaking by any means when activated.

5. Access to the alarm system shall be restricted to only designated and necessary persons, and the system shall be activated whenever the drug storage areas are closed for business.

C. Distribution or delivery of prescription drugs shall be accomplished in a manner to prevent diversion or possession of drugs by unauthorized persons.

1. The holder of the license or permit shall only deliver prescription drugs to a person authorized to possess such drugs at a location where the person is authorized to possess such drugs, and only at a time when someone authorized to possess such drugs is in attendance.

2. The holder of the license or permit shall affirmatively verify that the person to whom prescription drugs are delivered is authorized by law to receive such drugs.

3. Prescription drugs may be transferred to an authorized agent of a person who may lawfully possess prescription drugs on the premises of the holder of the license or permit provided the identity and authorization of the agent is verified, and provided such delivery is only used to meet the immediate needs of a patient or patients.

18 VAC 110-50-50. Storage.

A. All prescription drugs and devices shall be stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such drugs, or with requirements of USP-NF.

B. If no specific storage requirements are established for a drug or a device, it may be held at controlled room temperature, as defined in USP-NF, to help ensure that its identity, strength, quality, and purity are not adversely affected.

C. Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, or logs shall be utilized to document proper storage of prescription drugs.

D. Packaging of the prescription drugs should be in accordance with USP-NF standards.

E. Schedule II - V controlled substances shall be separated from Schedule VI prescription drugs and stored in a secure area in accordance with DEA security requirements and standards.

F. Any facility shall be of adequate size and construction and have the proper equipment necessary for the proper storage of prescription drugs and devices as set forth in this section.

PART II. WHOLESALE DISTRIBUTORS.

18 VAC 110-50-60. Special or limited-use licenses.

The board may issue a limited-use wholesale distributor license to entities that do not engage in the wholesale distribution of prescription drugs except medical gases and may waive certain requirements of regulation based on the limited nature of such distribution.

18 VAC 110-50-70. Minimum required information.

A. Any person or entity wishing to (i) obtain a new license as a wholesale distributor or register as a nonresident wholesale distributor, (ii) engage in the acquisition of an existing wholesale distributor, (iii) change the location or make structural changes to the prescription drug storage space of an existing wholesale distributor, or (iv) make changes to a previously approved security system shall file an application with the board on a form approved by the board.

B. Forms for new licenses or registration, or any change of ownership shall include at least the following information:

1. The name, full business address, and telephone number of the applicant or licensee and name and telephone number of a designated contact person;

2. All trade or business names used by the applicant or licensee (including "is doing business as," and "formerly known as") that cannot be identical to the name used by another unrelated wholesale distributor licensed to purchase or sell drugs in Virginia;

3. The federal employer identification number of the applicant or licensee;

4. The type of ownership and name(s) of the owner of the entity, including:

a. If an individual, the name, address, social security number or control number;

b. If a partnership, the name, address, and social security number or control number of each partner, and the name of the partnership and federal employer identification number;

c. If a corporation:

(1) The name and address of the corporation, federal employer identification number, state of incorporation, the name and address of the resident agent of the corporation;

(2) The name, address, social security number or control number, and title of each corporate officer and director;

(3) For nonpublicly held corporations, the name and address of each shareholder that owns 10% or more of the outstanding stock of the corporation.

(4) The name, federal employer identification number, and state of incorporation of the parent company.

d. If a sole proprietorship, the full name, address, and social security number or control number of the sole proprietor and the name and federal employer identification number of the business entity;

e. If a limited liability company, the name and address of each member, the name and address of each manager, the name of the limited liability company and federal employer identification number, the name and address of the resident agent of the limited liability company, and the name of the state in which the limited liability company was organized;

5. Name, business address and telephone number, and social security number or control number, and documentation of required qualifications as stated in 18 VAC 110-50-80 of the person who will serve as the responsible party;

6. A list of all states in which the entity is licensed to purchase, possess and distribute prescription drugs, and into which it ships prescription drugs;

7. A list of all disciplinary actions imposed against the entity by state or federal regulatory bodies, including any such actions against the responsible party, principals, owners, directors, or officers over the last seven years;

8. A full description, for nonresident wholesale distributors, including the address, square footage, security and alarm system description, temperature and humidity control, and other relevant information of the facility or warehouse space used for prescription drug storage and distribution; and

9. An attestation providing a complete disclosure of any past criminal convictions and violations of the state and federal laws regarding drugs or devices or an affirmation and attestation that the applicant has not been involved in, or convicted of, any criminal or prohibited acts. Such attestation shall include the responsible party, principals, owners, directors, or officers.

C. An applicant or licensee shall notify the board of any changes to the information required in this section within 30 days of such change.

18 VAC 110-50-80. Minimum qualifications, eligibility, and responsible party.

A. The board shall use the following factors in determining the eligibility for and renewal of licensure of wholesale distributors:

1. The existence of grounds to deny an application as set forth in § 54.1-3435.1 of the Code of Virginia;

2. The applicant's past experience in the manufacture or distribution of drugs or devices;

3. Compliance with the recordkeeping requirements;

4. Prior disciplinary action by a regulatory authority, prior criminal convictions, or ongoing investigations related to the manufacturing, distribution, prescribing, or dispensing of drugs by the responsible party or immediate family members of the responsible party, and owners, directors, or officers; and

5. The responsible party's credentials as set forth in subsection C of this section.

B. The applicant shall provide a national criminal background check of the person named as the responsible party to assist the board in determining whether an applicant has committed criminal acts that would constitute grounds for denial of licensure. The background check will be conducted in compliance with any applicable state laws, at the applicant's expense, and will be sufficient to include all states of residence for the past 10 years or since the person has been an adult, whichever is less.

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C. Requirements for the person named as the responsible party.

1. The responsible party shall be the primary contact person for the board as designated by the wholesale distributor, who shall be responsible for managing the wholesale distribution operations at that location;
2. The responsible party shall have a minimum of two years of verifiable experience in a pharmacy or wholesale distributor licensed in Virginia or another state where the person's responsibilities included, but were not limited to, managing or supervising the recordkeeping, storage, and shipment for drugs or devices;
3. A person may only serve as the responsible party for one wholesale distributor license at any one time;
4. The responsible party shall be employed full time in a managerial position and actively engaged in daily operations of the wholesale distributor;
5. The responsible party shall be present on a full-time basis at the location of the wholesale distributor during normal business hours, except for time periods when absent due to illness, family illness or death, vacation, or other authorized absence; and
6. The responsible party shall be aware of, and knowledgeable about, all policies and procedures pertaining to the operations of the wholesale distributor and all applicable state and federal laws related to wholesale distribution of prescription drugs.

D. The person named as the responsible party on the application shall submit the following with the application:

1. A passport size and quality photograph taken within 30 days of submission of the application;
2. A resume listing employment, occupations, or offices held for the past seven years including names, addresses, and telephone numbers of the places listed;
3. A description of any involvement by the person with any business, including any investments, other than the ownership of stock in publicly traded company or mutual fund, during the past seven years, which manufactured, administered, prescribed, distributed, or stored drugs and devices and any lawsuits, regulatory actions, or criminal convictions related to drug laws or laws concerning wholesale distribution of prescription drugs in which such businesses were named as a party; and
4. Any additional information deemed by the board to be relevant to determining eligibility of a responsible party.

E. Responsibilities of the responsible party.

1. Ensuring that any employee engaged in operations is adequately trained in the requirements for the lawful and appropriate wholesale distribution of prescription drugs;
2. Ensuring that any employee who has access to prescription drugs has not been convicted of any federal or state drug law or any law relating to the wholesale distribution of prescription drugs;

3. Maintaining current working knowledge of requirements for wholesale distributors and assuring continued training for employees;

4. Maintaining proper security, storage and shipping conditions for all prescription drugs;

5. Maintaining all required records.

F. Each nonresident wholesale distributor shall designate a registered agent in Virginia for service of any notice or other legal document. Any nonresident wholesale distributor that does not so designate a registered agent shall be deemed to have designated the Secretary of the Commonwealth to be its true and lawful agent, upon who may be served all legal process in any action or proceeding against such nonresident wholesale distributor. A copy of any such service of legal documents shall be mailed to the nonresident wholesale distributor by the board by certified mail at the address of record.

18 VAC 110-50-90. Minimum requirements for the storage, handling, transport, and shipment of prescription drugs.

A. All locations where prescription drugs are received, stored, warehoused, handled, held, offered, marketed, displayed, or transported from shall:

1. Be of suitable construction to ensure that all drugs and devices in the facilities are maintained in accordance with the labeling of such drugs and devices or with official USP-NF compendium standards;
2. Be of suitable size and construction to facilitate cleaning, maintenance, and proper wholesale distribution operations;
3. Have adequate storage areas to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security conditions;
4. Have a quarantine area for storage of drugs and devices that are outdated, damaged, deteriorated, misbranded, adulterated, counterfeit or suspected of being counterfeit, otherwise unfit for distribution, or that are in immediate or sealed secondary containers that have been opened;
5. Be maintained in a clean and orderly condition; and
6. Be free from infestation of any kind.

B. The facility shall provide for the secure and confidential storage of information with restricted access and policies and procedures to protect the integrity and confidentiality of the information.

C. The facility shall provide and maintain appropriate inventory controls in order to detect and document any theft, counterfeiting, or diversion of prescription drugs.

18 VAC 110-50-100. Examination of drug shipments and accompanying documents.

A. Upon receipt, each shipping container shall be visually examined for identity to determine if it may contain contaminated, contraband, counterfeit, suspected of being counterfeit, or damaged drugs, or drugs or devices that are otherwise unfit for distribution. This examination shall be adequate to reveal container damage that would suggest

possible contamination, adulteration, misbranding, counterfeiting, suspected counterfeiting, or other damage to the contents.

B. Upon receipt of drugs, a wholesale distributor must review records for accuracy, completeness, and the integrity of the drugs considering the total facts and circumstances surrounding the transactions and the wholesale distributors involved.

C. The drugs found to be unacceptable under subsection A of this section shall be quarantined from the rest of stock until the examination and determination is made that the drugs are safe for distribution.

D. Each outgoing shipment shall be carefully inspected for identity of the drugs and to ensure that there is no delivery of drugs that have been damaged in storage or held under improper conditions.

18 VAC 110-50-110. Returned, damaged and counterfeit drugs; investigations.

A. Any drug or device returned to a manufacturer or another wholesale distributor shall be kept under the proper conditions and documentation showing that proper conditions were maintained shall be provided to the manufacturer or wholesale distributor to which the drugs are returned.

B. Any drug or device that, or any drug whose immediate or sealed outer or secondary container or labeling, is outdated, damaged, deteriorated, misbranded, adulterated, counterfeited, suspected of being counterfeited or adulterated, or otherwise deemed unfit for human consumption shall be quarantined and physically separated from other drugs and devices until its appropriate disposition.

C. When a drug or device is adulterated, misbranded, counterfeited or suspected of being counterfeit, or when the immediate or sealed outer or secondary container or labeling of any drug or device is adulterated, misbranded other than misbranding identified by the manufacturer through a recall or withdrawal, counterfeited, or suspected of being counterfeit, the wholesale distributor shall:

1. Provide notice to the board and the manufacturer or wholesale distributor from which such drug or device was acquired within three business days of that determination.
2. Maintain any such drug or device, its containers and labeling, and its accompanying documentation or any evidence of criminal activity until its disposition by the appropriate state and federal government authorities.

D. The wholesale distributor shall fully cooperate with authorities conducting any investigation of counterfeiting or suspected counterfeiting to include the provision of any records related to receipt or distribution of the suspect drug or device.

18 VAC 110-50-120. Policies and procedures.

All wholesale distributors shall establish, maintain, and adhere to written policies and procedures for the proper receipt, security, storage, inventory, and distribution of prescription drugs. Wholesale distributors shall include in their policies and procedures at least the following:

1. A procedure for reporting thefts or losses of prescription drugs to the board and other appropriate authorities;

2. A procedure whereby the oldest approved stock of a prescription drug is distributed first. The procedure may permit deviation from this process provided the deviation is temporary and appropriate for the distribution;

3. A procedure for handling recalls and withdrawals of prescription drugs and devices;

4. Procedures for preparing for, protecting against, and handling emergency situations that affect the security and integrity of drugs or the operations of the wholesale distributor;

5. A procedure to ensure that outdated drugs are segregated from other drugs to include the disposition of such drugs;

6. A procedure to ensure initial and ongoing training of all employees;

7. A procedure for ensuring, both initially and on an ongoing basis, that persons with access to prescription drugs have not been convicted of a drug law or any law related to wholesale distribution of prescription drugs; and

8. A procedure for reporting counterfeit or suspected counterfeit prescription drugs or counterfeiting or suspected counterfeiting activities to the board and other appropriate law enforcement or regulatory agencies.

18 VAC 110-50-130. Recordkeeping.

A. All records and documentation required in this subsection shall be maintained and made available for inspection and photocopying by an authorized agent of the board for a period of three years following the date the record was created or received by the wholesale distributor. A wholesale distributor shall establish and maintain the following:

1. Inventories and records of all transactions regarding the receipt and distribution, or other disposition of all prescription drugs, including the dates of receipt and distribution or other disposition;

2. Records documenting monitoring of environmental conditions to ensure compliance with the storage requirements as required in 18 VAC 110-50-50;

3. Documentation of visual inspection of drugs and accompanying documents required in 18 VAC 110-50-100, including the date of such inspection and the identity of the person conducting the inspection;

4. Documentation of quarantine of any product and steps taken for the proper reporting and disposition of the product shall be maintained, including the handling and disposition of all outdated, damaged, deteriorated, misbranded, or adulterated drugs;

5. An ongoing list of persons or entities from whom it receives prescription drugs and persons or entities to whom it distributes prescription drugs;

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6. Copies of the mandated report of thefts or unusual losses of Schedule II - V controlled substances in compliance with the requirements of § 54.1-3404 of the Code of Virginia; and

7. A copy of any written report to the board of any significant shortages or losses of prescription drugs.

B. Records shall either (i) be kept at the inspection site or immediately retrievable by computer or other electronic means and made readily available at the time of inspection or (ii) if kept at a central location and not electronically retrievable at the inspection site, be made available for inspection within 48 hours of a request by an authorized agent of the board.

C. All facilities shall have adequate backup systems to protect against the inadvertent loss or deliberate destruction of data.

18 VAC 110-50-140. Due diligence.

A. Prior to the initial purchase of prescription drugs from another wholesale distributor not residing and licensed in Virginia, a wholesale distributor shall obtain, and update annually, the following information from the selling wholesale distributor:

1. A copy of the license to wholesale distribute from the resident state;
2. The most recent facility inspection report from the resident board or licensing agency;
3. A list of other names under which the wholesale distributor is doing business, or was formerly known as;
4. A list of corporate officers;
5. A list of all disciplinary actions by state and federal agencies;
6. A description, including the address, dimensions, and other relevant information, of each facility or warehouse used for drug storage and distribution; and
7. A statement as to whether and for whom the wholesale distributor is an authorized distributor of record.

B. If the selling wholesale distributor's facility has not been inspected by the resident board or the board's agent within three years of the contemplated purchase, the purchasing wholesale distributor may conduct an inspection of the wholesale distributor's facility prior to the first purchase of drugs or devices from another wholesale distributor to ensure compliance with applicable laws and regulations relating to the storage and handling of drugs or devices. A third party may be engaged to conduct the site inspection on behalf of the purchasing wholesale distributor.

C. Prior to the first purchase of drugs from another wholesale distributor not residing in and licensed in Virginia, the purchasing wholesale distributor shall secure a national criminal background check of all of the wholesale distributor's owners, corporate officers, and the person named as the responsible party with the resident board or licensing agency.

PART III. MANUFACTURERS.

18 VAC 110-50-150. Good manufacturing practices.

A. The Good Manufacturing Practice for Finished Pharmaceuticals regulations set forth in 21 CFR Part 211 are adopted by reference.

B. Each manufacturer of drugs shall comply with the requirements set forth in the federal regulations referred to in subsection A of this section.

NOTICE: The forms used in administering 18 VAC 110-50, Regulations Governing Wholesale Distributors, Manufacturers and Warehousemen, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Application for a Permit as a Restricted Manufacturer (rev. 9/05).

Application for a Permit as a Nonrestricted Manufacturer (rev. 9/05).

Application for a Permit as a Warehouseman (rev. 9/05).

Application for a License as a Wholesale Distributor (rev. 9/05).

Application for a Nonresident Wholesale Distributor Registration (rev. 9/05).

Application for a License as a Wholesale Distributor - Limited Use for Distribution of Medical Gases Only (rev. 9/05).

Renewal Notice and Application, 0207 Restricted Manufacturer (rev. 12/02).

Renewal Notice and Application, 0208 Nonrestricted Manufacturer (rev. 12/02).

Renewal Notice and Application, 0215 Wholesale Distributor (rev. 12/02).

Renewal Notice and Application, 0216 Warehouseman (rev. 12/02).

Renewal Notice and Application, 0219 Nonresident Wholesale Distributor (rev. 12/02).

VA.R. Doc. No. R04-242; Filed September 14, 2005, 10:08 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 9. ENVIRONMENT

STATE WATER CONTROL BOARD

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The State Water Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 9 VAC 25-630. Virginia Pollution Abatement General Permit Regulation for Poultry Waste Management (9 VAC 25-630-50).

Statutory Authority: §§ 62.1-44.15 and 62.1-44.17:1.1 of the Code of Virginia.

Effective Date: November 2, 2005.

Agency Contact: Neil Zahradka, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4102 or e-mail nrzahradka@deq.virginia.gov.

Summary:

This permit regulation governs authorization to manage pollutants from confined poultry feeding operations. Chapter 78 of the 2005 Acts of Assembly made changes to the requirements by which nutrient management plans (NMPs) are developed. Prior to this Act of Assembly, § 62.1-44.17:1.1 C 2 d of the Code of Virginia required that NMPs specify phosphorus application rates that do not exceed the greater of crop nutrient needs or crop nutrient removal. The Virginia Department of Conservation and Recreation is amending the nutrient management training and certification regulations to include a phosphorus index as an alternate method to determine phosphorus application rates, and Chapter 78 requires that all NMPs developed for confined poultry feeding operations follow the revised criteria by October 31, 2005, or the effective date of the revised regulation, whichever is later.

9 VAC 25-630-50. Contents of the general permit.

Any poultry grower whose registration statement is accepted by the board will receive the following general permit and shall comply with the requirements therein and be subject to the VPA Permit Regulation, 9 VAC 25-32.

General Permit No. VPG2
Effective Date: December 1, 2000
Modification Date: January 1, 2006
Expiration Date: November 30, 2010

GENERAL PERMIT FOR POULTRY WASTE MANAGEMENT AT CONFINED POULTRY FEEDING OPERATIONS

AUTHORIZATION TO MANAGE POLLUTANTS UNDER THE VIRGINIA POLLUTION ABATEMENT PROGRAM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the State Water Control Law and State Water Control Board regulations adopted pursuant thereto, owners of confined poultry feeding operations having 200 or more animal units are authorized to manage pollutants within the boundaries of the Commonwealth of Virginia, except where board regulations or policies prohibit such activities.

The authorized pollutant management activities shall be in accordance with the registration statement and supporting documents submitted to the Department of Environmental Quality; , this cover page, and Part I - Pollutant Management and Monitoring Requirements and Part II - Conditions Applicable to All VPA Permits, as set forth herein.

PART I POLLUTANT MANAGEMENT AND MONITORING REQUIREMENTS

A. Pollutant management authorization and monitoring requirements.

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to manage pollutants at the location or locations identified in the registration statement and the facility's approved nutrient management plan.
2. If poultry waste is land applied, it shall be applied at the rates specified in the facility's approved nutrient management plan.
3. Soil at the land application sites shall be monitored as specified below. Additional soils monitoring may be required in the facility's approved nutrient management plan.

SOILS MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
pH	NL	SU	1/3 years	Composite
Phosphorus	NL	ppm or lbs/ac	1/3 years	Composite
Potash	NL	ppm or lbs/ac	1/3 years	Composite
Calcium	NL	ppm or lbs/ac	1/3 years	Composite
Magnesium	NL	ppm or lbs/ac	1/3 years	Composite

NL = No limit, this is a monitoring requirement only.
SU = Standard Units

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4. Poultry waste shall be monitored as specified below. Additional waste monitoring may be required in the facility's approved nutrient management plan.

WASTE MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Total Kjeldahl Nitrogen	NL	*	1/3 years	Composite
Ammonia Nitrogen	NL	*	1/3 years	Composite
Total Phosphorus	NL	*	1/3 years	Composite
Total Potassium	NL	*	1/3 years	Composite
Moisture Content	NL	%	1/3 years	Composite

NL = No limit, this is a monitoring requirement only.

* Parameters for waste may be reported as a percent, as lbs/ton or lbs/1000 gallons, or as ppm where appropriate.

5. Analysis of soil and waste shall be according to methods specified in the facility's approved nutrient management plan.

6. All monitoring data required by Part I A shall be maintained on site in accordance with Part II B. Reporting of results to the department is not required; however, the monitoring results shall be made available to department personnel upon request.

B. Other requirements or special conditions.

1. The confined poultry feeding operation shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is ice covered, snow covered or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste.

2. Poultry waste shall be stored according to the nutrient management plan and in a manner that prevents contact with surface water and ground water. Poultry waste that is stockpiled outside of the growing house for more than 14 days shall be kept in a facility that provides adequate storage. Adequate storage shall, at a minimum, include the following:

- a. Poultry waste shall be covered to protect it from precipitation and wind;
- b. Storm water shall not run onto or under the stored poultry waste; and
- c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored poultry waste. All poultry waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the

seasonal high water table and the impermeable barrier. "Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table. Impermeable barriers must be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour (1×10^{-6} centimeters per second).

3. Poultry waste storage facilities constructed after December 1, 2000, shall not be located within a 100-year floodplain unless the poultry grower has no land outside the floodplain on which to construct the facility and the facility is constructed so that the poultry waste is stored above the 100-year flood elevation or otherwise protected from floodwaters through the construction of berms or similar best management flood control structures. New, expanded or replacement poultry growing houses that are constructed after December 1, 2000, shall not be located within a 100-year floodplain unless they are part of an existing, ongoing confined poultry feeding operation and are constructed so that the poultry and poultry litter are housed above the 100-year flood elevation or otherwise protected from floodwaters through construction of berms or similar best management flood control structures.

4. Poultry waste may be transferred from a permitted poultry grower to another person or broker without the requirement for the identification of fields where such waste will be applied in the facility's approved nutrient management plan if the following conditions are met:

a. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry grower shall provide that person a copy of the most recent nutrient analysis for the poultry waste and a fact sheet approved by the department, in consultation with the Department of Conservation and Recreation, that includes appropriate practices for proper storage and management of the waste. The person or broker receiving the waste shall provide the poultry grower:

- (1) His name and address,
- (2) Written acknowledgement of receipt of the waste,
- (3) The nutrient analysis of the waste, and
- (4) The fact sheet.

If the person receiving the waste is a poultry waste broker, then he shall also certify in writing that he will provide a copy of the nutrient analysis and fact sheet to each end user to whom he transfers poultry waste.

b. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry grower shall keep a record of the following:

- (1) The amount of poultry waste received by the person,

- (2) The date of the transaction,
- (3) The nutrient analysis of the waste,
- (4) The locality in which the recipient intends to utilize the waste (i.e. nearest town or city and zip code),
- (5) The name of the stream or waterbody known to the recipient that is nearest to the waste utilization site, and
- (6) The signed waste transfer acknowledgement.

These records shall be maintained on site for three years after the transaction and shall be made available to department personnel upon request.

c. Poultry waste generated by this facility shall not be applied to fields owned by or under the operational control of either the poultry grower or a legal entity in which the poultry grower has an ownership interest unless the fields are included in the facility's approved nutrient management plan.

5. Confined poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit for routine disposal of daily poultry mortalities by a permittee shall be considered a violation of this permit. This prohibition does not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to § 3.1-726 or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia.

6. The poultry grower shall implement a nutrient management plan (NMP) approved by the Department of Conservation and Recreation and maintain the plan on site. All NMP's written after December 31, 2005, shall be developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia. The NMP shall be enforceable through this permit. The NMP shall contain at a minimum the following information:

- a. Site map indicating the location of the waste storage facilities and the fields where waste generated by this facility will be applied by the poultry grower. The location of fields as identified in Part I subdivision B 4 c shall also be included;
- b. Site evaluation and assessment of soil types and potential productivities;
- c. Nutrient management sampling including soil and waste monitoring;
- d. Storage and land area requirements for the grower's poultry waste management activities;
- e. Calculation of waste application rates; and
- f. Waste application schedules.

7. When the poultry waste storage facility is no longer needed, the permittee shall close it in a manner that: (i) minimizes the need for further maintenance and (ii) controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste

decomposition products to the ground water, surface water or the atmosphere. At closure, the permittee shall remove all poultry waste residue from the waste storage facility. At waste storage facilities without permanent covers and impermeable ground barriers, all residual poultry waste shall be removed from the surface below the stockpile when the poultry waste is taken out of storage. Removed waste materials shall be utilized according to the NMP.

8. Nitrogen application rates contained in the NMP shall not exceed crop nutrient needs as determined by the Department of Conservation and Recreation. The application of poultry waste shall be managed to minimize runoff, leachate, and volatilization losses, and reduce adverse water quality impacts from nitrogen.

9. For all NMPs developed after October 1, 2001, *and on or before December 31, 2005*, phosphorus application rates shall not exceed the greater of crop nutrient needs or crop nutrient removal as determined by the Department of Conservation and Recreation. For all NMPs developed after December 31, 2005, phosphorus application rates shall ~~not exceed the greater of crop nutrient needs or crop nutrient removal as determined by the Department of Conservation and Recreation and shall be in accordance with~~ conform solely to the Department of Conservation and Recreation's regulatory criteria and standards in effect at the time the NMP is written. The application of poultry waste shall be managed to minimize runoff and leaching and reduce adverse water quality impacts from phosphorous.

10. The timing of land application of poultry waste shall be according to the schedule contained in the NMP, except that no waste may be applied to ice or snow covered ground or to soils that are saturated. Poultry waste may be applied to frozen ground within the NMP scheduled times only under the following conditions:

- a. Slopes are not greater than 6.0%;
- b. A minimum of a 200-foot vegetative or adequate crop residue buffer is maintained between the application area and all surface water courses;
- c. Only those soils characterized by USDA as "well drained" with good infiltration are used; and
- d. At least 60% uniform cover by vegetation or crop residue is present in order to reduce surface runoff and the potential for leaching of nutrients to ground water.

11. Buffer zones at waste application sites shall, at a minimum, be maintained as follows:

- a. Distance from occupied dwellings not on the permittee's property: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);
- b. Distance from water supply wells or springs: 100 feet;
- c. Distance from surface water courses: 100 feet (without a permanent vegetated buffer) or 35 feet (if a permanent vegetated buffer exists).

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Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer.

d. Distance from rock outcropping (except limestone): 25 feet;

e. Distance from limestone outcroppings: 50 feet; and

f. Waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.

12. Records shall be maintained to demonstrate where and at what rate waste has been applied, that the application schedule has been followed, and what crops have been planted. These records shall be maintained on site for a period of three years after recorded application is made and shall be made available to department personnel upon request.

13. Each poultry grower covered by this general permit shall complete the training program offered or approved by the Department of Conservation and Recreation within one year of filing the registration statement has been submitted for general permit coverage.

PART II CONDITIONS APPLICABLE TO ALL VPA PERMITS

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.

2. Monitoring shall be conducted according to procedures listed under 40 CFR Part 136 unless other procedures have been specified in this permit.

3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

B. Records.

1. Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The name of the individual(s) who performed the sampling or measurements;

c. The date(s) analyses were performed;

d. The name of the individual(s) who performed the analyses;

e. The analytical techniques or methods used, with supporting information such as observations, readings, calculations and bench data; and

f. The results of such analyses.

2. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by

this permit, and records of all data used to complete the application for this permit for a period of at least three years from the date of the sample, measurement, report or application. This period of retention may be extended by request of the board at any time.

C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after the monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

2. Monitoring results shall be reported on forms provided or specified by the department.

3. If the permittee monitors the pollutant management activity, at a sampling location specified in this permit, for any pollutant more frequently than required by the permit using approved analytical methods, the permittee shall report the results of this monitoring on the monitoring report.

4. If the permittee monitors the pollutant management activity, at a sampling location specified in this permit, for any pollutant that is not required to be monitored by the permit, and uses approved analytical methods, the permittee shall report the results with the monitoring report.

5. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information which the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the department, upon request, copies of records required to be kept by the permittee. Plans, specifications, maps, conceptual reports and other relevant information shall be submitted as requested by the board prior to commencing construction.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized discharges. Except in compliance with this permit, or another permit issued by the board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or

2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows (i) a discharge of sewage,

industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part II F or (ii) a discharge that may reasonably be expected to enter state waters in violation of Part II F shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part II I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the treatment works; and
4. Flooding or other acts of nature.

I. Reports of noncompliance. The permittee shall report any noncompliance which may adversely affect state waters or may endanger public health.

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information which shall be reported within 24 hours under this paragraph:

- a. Any unanticipated bypass; and
 - b. Any upset which causes a discharge to surface waters.
2. A written report shall be submitted within five days and shall contain:
 - a. A description of the noncompliance and its cause;
 - b. The period of noncompliance, including exact dates and times, and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
 - c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board may waive the written report on a case-by-case basis for reports of noncompliance under Part II I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report all instances of noncompliance not reported under Part II I 1 or 2 in writing at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part II I 2.

NOTE: The immediate (within 24 hours) reports required in Parts II F, G and H may be made to the department's regional office. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Services maintains a 24-hour telephone service at 1-800-468-8892.

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the design or operation of the pollutant management activity.
2. The permittee shall give at least 10 days advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Applications. All permit applications shall be signed as follows:
 - a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;
 - b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

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c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes: (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports, etc. All reports required by permits, and other information requested by the board shall be signed by a person described in Part II K 1, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part II K 1;

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

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part II K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part II K 2 shall be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

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

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. Compliance with a permit during its term constitutes compliance, for purposes of enforcement, with the State Water Control Law.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit. All permittees with a currently effective permit shall submit a

new application at least 180 days before the expiration date of the existing permit unless permission for a later date has been granted by the board. The board shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state or local law or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the federal Clean Water Act. Except as provided in permit conditions on bypassing (Part II U), and upset (Part II V), nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. Proper operation and maintenance. The permittee shall be responsible for the proper operation and maintenance of all treatment works, systems and controls which are installed or used to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures.

R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any pollutant management activity in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

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

U. Bypass.

1. Prohibition. "Bypass" means intentional diversion of waste streams from any portion of a treatment works. A bypass of the treatment works is prohibited except as provided herein.

2. Anticipated bypass. If the permittee knows in advance of the need for a bypass, he shall notify the department promptly at least 10 days prior to the bypass. After

considering its adverse effects, the board may approve an anticipated bypass if:

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

b. There are no feasible alternatives to bypass such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment downtime. However, if bypass occurs during normal periods of equipment downtime or preventive maintenance and in the exercise of reasonable engineering judgment the permittee could have installed adequate backup equipment to prevent such bypass, this exclusion shall not apply as a defense.

3. Unplanned bypass. If an unplanned bypass occurs, the permittee shall notify the department as soon as possible, but in no case later than 24 hours, and shall take steps to halt the bypass as early as possible. This notification will be a condition for defense to an enforcement action that an unplanned bypass met the conditions in paragraphs U 2 a and b and in light of the information reasonably available to the permittee at the time of the bypass.

V. Upset. A permittee may claim an upset as an affirmative defense to an action brought for noncompliance. In any enforcement proceedings a permittee shall have the burden of proof to establish the occurrence of any upset. In order to establish an affirmative defense of upset, the permittee shall present properly signed, contemporaneous operating logs or other relevant evidence that shows:

1. That an upset occurred and that the cause can be identified;
2. That the permitted facility was at the time being operated efficiently and in compliance with proper operation and maintenance procedures;
3. That the 24-hour reporting requirements to the department were met; and
4. That the permittee took all reasonable steps to minimize or correct any adverse impact on state waters resulting from noncompliance with the permit.

W. Inspection and entry. Upon presentation of credentials, any duly authorized agent of the board may, at reasonable times and under reasonable circumstances:

1. Enter upon any permittee's property, public or private and have access to records required by this permit;
2. Have access to, inspect and copy any records that must be kept as part of permit conditions;

3. Inspect any facility's equipment (including monitoring and control equipment) practices or operations regulated or required under the permit; and

4. Sample or monitor any substances or parameters at any locations for the purpose of assuring permit compliance or as otherwise authorized by the State Water Control Law.

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

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause upon the request of the permittee or interested persons, or upon the board's initiative. If a permittee files a request for a permit modification, revocation, or termination, or files a notification of planned changes, or anticipated noncompliance, the permit terms and conditions shall remain effective until the request is acted upon by the board. This provision shall not be used to extend the expiration date of the effective VPA permit.

Y. Transfer of permits.

1. Permits are not transferable to any person except after notice to the department. The board may require modification or revocation and reissuance of the permit to change the name of the permittee and to incorporate such other requirements as may be necessary. Except as provided in Part II Y 2, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified to reflect the transfer or has been revoked and reissued to the new owner or operator.

2. As an alternative to transfers under Part II Y 1, this permit shall be automatically transferred to a new permittee if:

- a. The current permittee notifies the department at least 30 days in advance of the proposed transfer of the title to the facility or property;
- b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
- c. The board does not, within the 30-day time period, notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit.

Z. Severability. The provisions of this permit are severable and, if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

VA.R. Doc. No. R06-39; Filed September 7, 2005, 12:48 p.m.

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REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 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 State Water Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 9 VAC 25-720. Water Quality Management Planning Regulation (amending 9 VAC 25-720-50, 9 VAC 25-720-90, and 9 VAC 25-720-130).

Statutory Authority: § 62.1-44.15 of the Code of Virginia and 33 USC § 1313(e) of the Clean Water Act.

Effective Date: November 2, 2005.

Agency Contact: Charles Martin, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4462, FAX (804) 698-4136 or e-mail chmartin@deq.virginia.gov.

Summary:

The amendments to the state's Water Quality Management Planning Regulation (9 VAC 25-720) include three new and one amended Total Maximum Daily Load (TMDL) wasteload allocations. The amendments are to the following river basins: Potomac-Shenandoah River Basin (9 VAC 25-720-50 A), Tennessee-Big Sandy River Basin (9 VAC 25-720-90 A), and New River Basin (9 VAC 25-720-130 A). The new TMDLs are for Abrams Creek (Frederick County) and Opequon Creek (Clarke and Frederick counties) in the Shenandoah River Basin, and Hunting Camp Creek (Bland County) in the New River Basin and the modification is for the sediment TMDL for Lewis Creek (Russell County) in the Tennessee-Big Sandy River Basin.

9 VAC 25-720-50. Potomac-Shenandoah River Basin.

A. Total Maximum Daily Load (TMDLs).

TMDL #	Stream Name	TMDL Title	City/County	WBID	Pollutant	WLA	Units
1.	Muddy Creek	Nitrate TMDL Development for Muddy Creek/Dry River, Virginia	Rockingham	B21R	Nitrate	49,389.00	LB/YR
2.	Blacks Run	TMDL Development for Blacks Run and Cooks Creek	Rockingham	B25R	Sediment	32,844.00	LB/YR
3.	Cooks Creek	TMDL Development for Blacks Run and Cooks Creek	Rockingham	B25R	Sediment	69,301.00	LB/YR
4.	Cooks Creek	TMDL Development for Blacks Run and Cooks Creek	Rockingham	B25R	Phosphorus	0	LB/YR
5.	Muddy Creek	TMDL Development for Muddy Creek and Holmans Creek, Virginia	Rockingham	B22R	Sediment	286,939.00	LB/YR
6.	Muddy Creek	TMDL Development for Muddy Creek and Holmans Creek, Virginia	Rockingham	B22R	Phosphorus	38.00	LB/YR
7.	Holmans Creek	TMDL Development for Muddy Creek and Holmans Creek, Virginia	Rockingham/Shenandoah	B45R	Sediment	78,141.00	LB/YR
8.	Mill Creek	TMDL Development for Mill Creek and Pleasant Run	Rockingham	B29R	Sediment	276.00	LB/YR
9.	Mill Creek	TMDL Development for Mill Creek and Pleasant Run	Rockingham	B29R	Phosphorus	138.00	LB/YR
10.	Pleasant Run	TMDL Development for Mill Creek and Pleasant Run	Rockingham	B27R	Sediment	0.00	LB/YR
11.	Pleasant Run	TMDL Development for Mill Creek and Pleasant Run	Rockingham	B27R	Phosphorus	0.00	LB/YR
12.	Linville Creek	Total Maximum Load Development for Linville Creek: Bacteria and Benthic Impairments	Rockingham	B46R	Sediment	5.50	TONS/YR
13.	Quail Run	Benthic TMDL for Quail Run	Rockingham	B35R	Ammonia	7,185.00	KG/YR
14.	Quail Run	Benthic TMDL for Quail Run	Rockingham	B35R	Chlorine	27.63	KG/YR
15.	Shenandoah River	Development of Shenandoah River PCB TMDL (South Fork and Main Stem)	Warren & Clarke	B41R B55R B57R B58R	PCBs	179.38	G/YR
16.	Shenandoah River	Development of Shenandoah River PCB TMDL (North Fork)	Warren & Clarke	B51R	PCBs	0.00	G/YR
17.	Shenandoah River	Development of Shenandoah River PCB TMDL (Main Stem)	Warren & Clarke	WV	PCBs	179.38	G/YR
18.	Cockran Spring	Benthic TMDL Reports for Six Impaired Stream Segments in the Potomac-Shenandoah and James River Basins	Augusta	B10R	Organic Solids	1,556.00	LB/YR

19.	Lacey Spring	Benthic TMDL Reports for Six Impaired Stream Segments in the Potomac-Shenandoah and James River Basins	Rockingham	B47R	Organic Solids	680.00	LB/YR
20.	Orndorff Spring	Benthic TMDL Reports for Six Impaired Stream Segments in the Potomac-Shenandoah and James River Basins	Shenandoah	B52R	Organic Solids	103.00	LB/YR
21.	Toms Brook	Benthic TMDL for Toms Brook in Shenandoah County, Virginia	Shenandoah	B50R	Sediment	8.1	T/YR
22.	Goose Creek	Benthic TMDLs for the Goose Creek Watershed	Loudoun, Fauquier	A08R	Sediment	1,587	T/YR
23.	Little River	Benthic TMDLs for the Goose Creek Watershed	Loudoun	A08R	Sediment	105	T/YR
24.	Christians Creek	Fecal Bacteria and General Standard Total Maximum Daily Load Development for Impaired Streams in the Middle River and Upper South River Watersheds, Augusta County, VA	Augusta	B14R	Sediment	145	T/YR
25.	Moffett Creek	Fecal Bacteria and General Standard Total Maximum Daily Load Development for Impaired Streams in the Middle River and Upper South River Watersheds, Augusta County, VA	Augusta	B13R	Sediment	0	T/YR
26.	Upper Middle River	Fecal Bacteria and General Standard Total Maximum Daily Load Development for Impaired Streams in the Middle River and Upper South River Watersheds, Augusta County, VA	Augusta	B10R	Sediment	1.355	T/YR
27.	Mossy Creek	Total Maximum Daily Load Development for Mossy Creek and Long Glade Run: Bacteria and General Standard (Benthic) Impairments	Rockingham	B19R	Sediment	0.04	T/YR
28.	Smith Creek	Total Maximum Daily Load (TMDL) Development for Smith Creek	Rockingham, Shenandoah	B47R	Sediment	353,867	LB/YR
29.	Abrams Creek	<i>Opequon Watershed TMDLs for Benthic Impairments: Abrams Creek and Lower Opequon Creek, Frederick and Clarke counties, Virginia</i>	<i>Frederick</i>	<i>B09R</i>	<i>Sediment</i>	<i>478</i>	<i>T/YR</i>
30.	Lower Opequon Creek	<i>Opequon Watershed TMDLs for Benthic Impairments: Abrams Creek and Lower Opequon Creek, Frederick and Clarke counties, Virginia</i>	<i>Frederick, Clarke</i>	<i>B09R</i>	<i>Sediment</i>	<i>1,039</i>	<i>T/YR</i>

EDITOR'S NOTE: Subsection B is not amended; therefore, the text of subsection B is not set out.

9 VAC 25-720-90. Tennessee-Big Sandy River Basin.

A. Total Maximum Daily Load (TMDLs).

TMDL #	Stream Name	TMDL Title	City/County	WBID	Pollutant	WLA	Units
1.	Guest River	Guest River Total Maximum Load Report	Wise	P11R	Sediment	317.52	LB/YR
2.	Cedar Creek	Total Maximum Daily Load (TMDL) Development for Cedar Creek, Hall/Byers Creek and Hutton Creek	Washington	O05R	Sediment	1,789.93	LB/YR
3.	Hall/Byers Creek	Total Maximum Daily Load (TMDL) Development for Cedar Creek, Hall/Byers Creek and Hutton Creek	Washington	O05R	Sediment	57,533.49	LB/YR
4.	Hutton Creek	Total Maximum Daily Load (TMDL) Development for Cedar Creek, Hall/Byers Creek and Hutton Creek	Washington	O05R	Sediment	91.32	LB/YR
5.	Clinch River	Total Maximum Daily Load Development for the Upper Clinch River Watershed	Tazewell	P01R	Sediment	206,636	LB/YR
6.	Lewis Creek	Total Maximum Daily Load Development for the Lewis Creek Watershed	Russell	P04R	Sediment	21,732 40,008	LB/YR
7.	Black Creek	General Standard Total Maximum Daily Load Development for Black Creek, Wise County, Virginia	Wise	P17R	Manganese	2,127	KG/YR
8.	Dumps Creek	General Standard Total Maximum Daily Load Development for Dumps Creek, Russell County, Virginia	Russell	P08R	Total Dissolved Solids	1,631,575	KG/YR
9.	Dumps Creek	General Standard Total Maximum Daily Load Development for Dumps Creek, Russell County, Virginia	Russell	P08R	Total Suspended Solids	316,523	KG/YR
10.	Beaver Creek	Total Maximum Daily Load Development for the Beaver Creek Watershed	Washington	O07R	Sediment	784,036	LB/YR

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EDITOR'S NOTE: Subsection B is not amended; therefore, the text of subsection B is not set out.

9 VAC 25-720-130. New River.

A. Total Maximum Daily Load (TMDLs).

TMDL #	Stream Name	TMDL Title	City/County	WBID	Pollutant	WLA	Units
1.	Stroubles Creek	Benthic TMDL for Stroubles Creek in Montgomery County, Virginia	Montgomery	N22R	Sediment	233.15	T/YR
2.	Back Creek	Fecal Bacteria and General Standard Total Maximum Daily Load Development for Back Creek Watershed, Pulaski County, VA	Pulaski	N22R	Sediment	0.28	T/YR
3.	Crab Creek	Fecal Bacteria and General Standard Total Maximum Daily Load Development for Crab Creek Watershed, Montgomery County, VA	Montgomery	N18R	Sediment	77	T/YR
4.	Peak Creek	Fecal Bacteria and General Standard Total Maximum Daily Load Development for Peak Creek Watershed, Pulaski County, VA	Pulaski	N17R	Copper	12	KG/YR
5.	Peak Creek	Fecal Bacteria and General Standard Total Maximum Daily Load Development for Peak Creek Watershed, Pulaski County, VA	Pulaski	N17R	Zinc	57	KG/YR
6.	Bluestone River	Fecal Bacteria and General Standard Total Maximum Daily Load Development for Bluestone River	Tazewell	N36R	Sediment	81.4	T/YR
7.	Hunting Camp Creek	Total Maximum Daily Load (TMDL) Development for Hunting Camp Creek Aquatic Life Use (Benthic) and <i>E. coli</i> (Bacteria) Impairments	Bland	N31R	Sediment	0	LB/YR

EDITOR'S NOTE: Subsection B is not amended; therefore, the text is not set out.

VA.R. Doc. No. R06-40; Filed September 7, 2005, 12:48 p.m.

Title of Regulation: **9 VAC 25-780. Local and Regional Water Supply Planning (adding 9 VAC 25-780-10 through 9 VAC 25-780-190).**

Statutory Authority: §§ 62.1-44.15 and 62.1-44.38:1 of the Code of Virginia.

Effective Date: November 2, 2005.

Agency Contact: Scott Kudlas, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4456, FAX (804) 698-4347, or e-mail swkudlas@deq.virginia.gov.

Summary:

The regulation establishes a planning process and criteria that all local governments will use in the development of local or regional water plans. These plans will be reviewed by the Department of Environmental Quality and a determination will be made by the State Water Control Board on whether the plans comply with this regulation. Within five years of a compliance determination by the board, the plans will be reviewed to assess adequacy and significant changes will require the submission of an amended plan and review by the board. All local programs will be reviewed, revised and resubmitted to the Department of Environmental Quality every 10 years after the last approval.

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.

CHAPTER 780.

LOCAL AND REGIONAL WATER SUPPLY PLANNING.

9 VAC 25-780-10. Application.

A. All counties, cities and towns (hereinafter "local governments") in the Commonwealth of Virginia shall submit a local water supply plan or shall participate in a regional planning unit in the submittal of a regional water supply plan to the board in accordance with this chapter.

B. The provisions of this regulation shall not affect any water supply project for which a permit application was submitted prior to January 1, 2003, to any state or federal agency. The provisions of this regulation shall not affect any water supply project for which an application for grant, loan or other funding has been made to a state or federal agency prior to January 1, 2003. All projects shall remain subject to applicable federal and state regulatory requirements.

C. Nothing in this chapter shall be construed as altering or authorizing any alteration of any existing surface, ground water or common law water rights of any property owner within the Commonwealth, except as required by federal or state law.

D. The review required by 9 VAC 25-780-140 shall not be a prerequisite for applying for a permit from the Commonwealth of Virginia for a water supply project.

9 VAC 25-780-20. Purpose of chapter.

The purpose of this chapter is to establish a comprehensive water supply planning process for the development of local, regional, and state water supply plans. This process shall be designed to (i) ensure that adequate and safe drinking water is available to all citizens of the Commonwealth; (ii) encourage, promote, and protect all other beneficial uses of the Commonwealth's water resources; and (iii) encourage, promote, and develop incentives for alternative water sources, including but not limited to desalinization.

This chapter establishes the required planning process and criteria that local governments shall use in the development of the local and regional plans.

9 VAC 25-780-30. Definitions.

Unless otherwise defined in this chapter or unless the context clearly indicates otherwise, the terms used in this regulation shall have the meanings ascribed to them by the State Water Control Law, Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia; the Ground Water Management Act of 1992, Chapter 2.5 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia; the Virginia Water Protection Permit Regulation, 9 VAC 25-210 (2004); and the Surface Water Management Area Regulation, 9 VAC 25-220 (2004), including any general permits issued thereunder.

"Beneficial use" means both instream and offstream uses. Instream beneficial uses include, but are not limited to, the protection of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. Offstream beneficial uses include, but are not limited to, domestic (including public water supply), agricultural, electric power generation, and commercial and industrial uses.

"Board" means the State Water Control Board.

"Community water system" means a waterworks that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents, and is regulated by the Virginia Department of Health Waterworks Regulation (12 VAC 5-590).

"Conservation" means practices, techniques, and technologies that improve the efficiency of water use.

"Department" means the Department of Environmental Quality.

"Local government" means a city, incorporated town or county.

"Local program" means the combined water plan, resource conditions, and drought response and contingency plan developed in compliance with this regulation. The term "local program" will be used in this regulation to mean either local or regional programs. The term "program" implies the institution of a continuous planning process for maintenance of these documents.

"Planning area" means the geographical area as defined by local government boundaries that is included in a local or regional water supply plan.

"Planning period" means the 30- to 50-year time frame used by the locality to project future water demand in accordance with 9 VAC 25-780-100 B.

"Regional planning unit" means a collection of local governments who have voluntarily elected to develop and submit a regional water plan. A regional planning unit may be composed of all local governments located within the bounds of a planning district, any subset of local governments within the bounds of a planning district, or any group of local governments within multiple planning districts.

"Regional water plan" means a water plan developed and submitted by two or more cities or counties or both. Two or more towns may develop and submit a regional water plan where the plan results in the proposed development of future water supply projects that supply the water supply demands of the affected towns. Such plans developed by two or more towns may be included in regional water plans developed and submitted by counties or cities. Regional water plans shall be developed and submitted in conjunction with all public service authorities operating community water systems within the regional planning unit, if applicable.

~~["Safe yield of a complex intake (impoundments in conjunction with streams)" means the minimum withdrawal rate available to withstand the worst drought of record in Virginia since 1930. If actual gauge records are not available, correlation is to be made with a similar watershed and numbers synthesized in order to develop the report. Local governments may request this aid from the board.~~

~~"Safe yield of a simple intake (free-flowing stream)" means the minimum withdrawal rate available during a day and recurring every 30 years (30 year one day low flow). To generate the report for this, data is to be used to illustrate the worst drought of record in Virginia since 1930. If actual gauge records are not available for this, gauges are to be correlated from similar watersheds and numbers are to be synthesized. Local governments may request this aid from the board.]~~

"Self-supplied user" means any person making a withdrawal of surface water or ground water from an original source (e.g., a river, stream, lake, aquifer, or reservoir fed by any such water body) for their own use. Self-supplied users do not receive water from a community water system.

"Service area" means the geographical area served by a community water system.

"Technical evaluation committee" means a committee of state agencies, including but not limited to the Department of Health, the Department of Conservation and Recreation, the Marine Resources Commission, the Department of Historic Resources, and the Department of Game and Inland Fisheries, convened by the Department of Environmental Quality in accordance with subdivision 8 of 9 VAC 25-780-60 to provide comments on the impacts to or conflicts among instream and offstream uses resulting from proposed alternatives for meeting projected water demands.

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"Unaccounted for losses" means the difference between a community water system's billing records for volumes of water distributed and production records for volumes of water treated.

"Water demand management" means plans for water conservation, reuse, and reducing unaccounted for water losses contained in a local program.

"Water plan" means a document developed in compliance with this regulation. The term "water plan" will be used in this regulation to mean either local or regional water plans.

"Water sources" means wells, stream intakes, and reservoirs that serve as sources of water supplies.

9 VAC 25-780-40. Program development.

Local governments shall develop programs for local or regional water plans that are necessary to comply with this chapter. Local governments shall consult and coordinate with all community water systems in the planning area during the preparation of local or regional programs. Community water systems within the planning area shall cooperate and participate with the locality during preparation of the local program. Counties, cities, and towns are encouraged to develop regional programs. Local programs shall be designed to (i) ensure that adequate and safe drinking water is available, (ii) encourage and protect all beneficial uses, (iii) encourage and promote alternative water sources, and (iv) promote conservation.

9 VAC 25-780-50. Preparation and submission of a program.

A. Local governments must adopt a local program as defined in this section, including any revisions to comprehensive plans, water supply plans, water and sewer plans, and other local authorities necessary to implement this chapter. A local public hearing consistent with § 15.2-1427 of the Code of Virginia is required during the development of the local program. The public hearing may be combined with other public hearings that may be required.

B. All local governments shall submit a local program to the department in accordance with the following schedule:

1. Local governments with populations in excess of 35,000 persons based on the most recent U.S. Census shall do so no later than [~~three years after the effective date of this regulation~~ November 2, 2008].

2. Local governments with populations in excess of 15,000 persons but no more than 35,000 persons based on the most recent U.S. Census shall do so no later than [~~four years after the effective date of this regulation~~ November 2, 2009].

3. Local governments with populations less than or equal to 15,000 persons based on the most recent U.S. Census shall do so no later than [~~five years after the effective date of this regulation~~ November 2, 2010].

4. Notwithstanding the above, local governments may elect to participate in the submittal of regional water supply plans. [~~Within three years of the effective date of this regulation~~ By November 2, 2008], local governments participating in a

regional plan shall provide notice to the department of the intent to participate in a regional plan and shall include the names of the other participating localities. Such regional plans shall be submitted no later than [~~six years after the effective date of this regulation~~ November 2, 2011].

Nothing in this section shall be construed as limiting the submittal of local or regional water supply plans before the date when such plans are due.

C. Local programs shall contain the elements listed below. This information may be derived from existing, readily available information and additional detailed studies shall not be required.

1. A description of existing water sources in accordance with the requirements of 9 VAC 25-780-70;

2. A description of existing water use in accordance with the requirements of 9 VAC 25-780-70;

3. A description of existing water resource conditions in accordance with the requirements of 9 VAC 25-780-90;

4. An assessment of projected water demand in accordance with the requirements of 9 VAC 25-780-100;

5. A description of water management actions in accordance with the requirements of 9 VAC 25-780-110 and 9 VAC 25-780-120;

6. A statement of need in accordance with the requirements of 9 VAC 25-780-130;

7. An alternatives analysis that identifies potential alternatives to address projected deficits in water supplies in accordance with the requirements of 9 VAC 25-780-130;

8. A map or maps identifying important elements of the program that may include existing environmental resources, existing water sources, significant existing water uses, and proposed new sources;

9. A copy of the adopted program documents including any local plans or ordinances or amendments that incorporate the local program elements required by this chapter;

10. A resolution approving the plan from each local government that is party to the plan; and

11. A record of the local public hearing, a copy of all written comments and the submitter's response to all written comments received.

D. All local programs shall be reviewed no later than five years after a compliance determination by the board in accordance with 9 VAC 25-780-140 F. Revised plans shall be submitted when this review indicates that circumstances have changed or new information has been made available that will result in water demands that will not be met by alternatives contained in the water plan. These circumstances may be caused by changes in demands, the availability of the anticipated source, cumulative impacts, in-stream beneficial uses, or other factors. In the case where the review by the local government or regional planning unit indicates that the circumstances have not changed sufficiently to warrant a revision of the water plan after five years, the locality shall notify the department that the existing plan is still in effect.

E. Notwithstanding subsection D of this section, all local programs shall be reviewed, revised and resubmitted to the department every 10 years after the date of last approval.

9 VAC 25-780-60. State role in program preparation.

To assist local governments in the development of local programs, the board will:

1. Provide technical and financial assistance;
2. Provide guidance on compliance options;
3. Facilitate acquisition of existing resource conditions (the department shall prepare and post on its website a list of readily available sources for the items identified in 9 VAC 25-780-90 B);
4. Facilitate acquisition of existing use information that has been reported to the department;
5. Facilitate acquisition of water management information (the department shall prepare and post on its website a list of acceptable practices that are used with regard to the topics in 9 VAC 25-780-110);
6. Identify acceptable methods for the projection of future water demands as per 9 VAC 25-780-100;
7. Provide any information regarding known conflicts relating to the development of alternatives;
8. At the request of the applicant, convene a technical evaluation committee meeting; and
9. Provide notice of local public hearings on the local program upon notification by the locality.

9 VAC 25-780-70. Existing water source information.

A. A water plan shall include current information on existing water sources.

B. A water plan shall include, for community water systems using ground water, the name and identification number of the well or wells, the well depth, the casing depth, the screen depth (top and bottom) or water zones, the well diameter, the design capacity for the average daily withdrawal and maximum daily withdrawal, the system capacity permitted by Department of Health, and the annual and monthly permitted amounts contained in ground water withdrawal permits for all wells located within ground water management areas.

C. A water plan shall include, for community water systems using surface water reservoirs, the name of the reservoirs, the sub-basins in which the reservoirs are located, the drainage area, the amount of on-stream storage available for water supply, the design capacity for average daily and maximum daily withdrawals from the reservoirs, the safe yield of the reservoirs, the capacity of any associated water treatment plant, the Department of Health permitted capacity of the systems, and any limitations on withdrawal established by permits issued by the board. For a community water system that operates a system of interconnected reservoirs, the reporting of the design capacity for withdrawals, designed average daily withdrawal, the designed maximum daily withdrawal and the safe yield may be for the entire system or may be reported as subsets of the system. The plan shall

designate which reservoirs and which intakes constitute a system for the purposes of this paragraph. The plan must report the drainage area and amount of storage available for water supply from each reservoir independently.

D. A water plan shall include, for community water systems using stream intakes, the name of the stream or river, the drainage area of the intake, the sub-basin in which the intake is located, the design capacity for average daily and designed maximum daily withdrawal from the stream, the safe yield, [the lowest daily flow of record,] the design capacity of the pump station, the design capacity of the water treatment plant, the capacity of the system permitted by the Department of Health, and any limitation on withdrawals established by permits issued by the board.

E. To the extent that information is available, a water plan shall include a list of all self-supplied users of more than 300,000 gallons per month of surface water for nonagricultural uses, the name of the water body utilized, the design capacity for the average daily and maximum daily withdrawal, and any limitation on withdrawals established by permits issued by the board, the Department of Health or any other agency.

F. To the extent that information is available, a water plan shall include, for all self-supplied users of more than 300,000 gallons per month of ground water for nonagricultural uses, the name and identification number of the well or wells, the well depth, the casing depth, the screen depth (top and bottom) or water zones, the well diameter, the design capacity for the average daily and maximum daily withdrawal and any limitation on withdrawal established by permits issued by the board.

G. A water plan shall include the amount of ground or surface water to be purchased from water supply systems outside the geographic boundaries of the planning area on a maximum daily and average annual basis, any contractual limitations on the purchase of the water including but not limited to the term of any contract or agreement, the recipient(s) or areas served by the water purchased, and the name(s) of the supplier(s).

H. A plan shall include the amount of water available to be purchased outside the planning area from any source with the capacity to withdraw more than 300,000 gallons per month of surface and ground water, reported on a maximum daily and average annual basis and any contractual limitations on the purchase of the water including but not limited to the term of any contract or agreement, the geographic region(s) that receive the water purchased, and the name(s) of the supplier(s).

I. A water plan shall include, to the extent possible, a list of agricultural users who utilize more than 300,000 gallons per month, an estimate of total agricultural usage by source, whether the use is irrigation or nonirrigation, and whether the source is surface or ground water.

J. A water plan shall include an estimate of the number of residences and businesses that are self-supplied by individual wells withdrawing less than 300,000 gallons per month and an estimate of the population served by individual wells.

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K. When available, a water plan shall include a summary of findings and recommendations from applicable source water assessment plans or wellhead protection programs.

9 VAC 25-780-80. Existing water use information.

A. A water plan shall include, at a minimum, current information documenting existing water use as listed below. Water use information shall be obtained from Department of Health waterworks permit compliance reports, the department ground water permit compliance reports or department water use reports. Information shall be reported for the most recent previous annual compilation of such data that is available on the date of submission of the water plan.

B. A water plan shall include the following information for community water systems:

1. The population within the planning area served by each community water system.
2. The number of connections within the planning area for each community water system.
3. The average and maximum daily withdrawal for each community water system within the planning area.
4. The amount of water used within the planning area on an annual average basis, and on an average monthly basis for each community water system expressed in terms of million gallons per day.
5. The peak day water use by month for each community water system within the planning area.
6. An estimate of the water used on an average annual basis by self-supplied nonagricultural users of more than 300,000 gallons per month of surface and ground water within the service area of each community water system.
7. An estimate of the amount of water used on an average annual basis by self-supplied agricultural users of more than 300,000 gallons per month of surface and ground water within the service area of each community water supply.
8. An estimate of the number of self-supplied users of less than 300,000 gallons per month of ground water and an estimate of the total amount of water used by them on an annual average basis within the service area of each community water supply.
9. For each community water system included in the water plan, the plan shall include an estimate of the disaggregated amounts of water used in categories of use appropriate for the system. Typical categories may include:
 - a. Residential use;
 - b. Commercial institutional and light industrial (CIL) use;
 - c. Heavy industrial use;
 - d. Military water use;
 - e. Water used in water production processes;
 - f. Unaccounted for losses;
 - g. Sales to other community water systems and the names of such systems; or

h. Subtotals of the above categories for all community water systems

10. To the extent that information is available pursuant to 9 VAC 25-780-60 and other sources, for each community water system included in the water plan using stream intakes, the plan shall include a qualitative description of existing in-stream beneficial uses within the planning area or outside the planning area that may be affected by the point of stream withdrawal.

C. A water plan shall include an estimate of the water used on an average annual basis by self-supplied nonagricultural user of more than 300,000 gallons per month of surface and ground water outside the service areas of community water systems.

D. A water plan shall include an estimate of the amount of water used on an average annual basis by self-supplied agricultural users of more than 300,000 gallons per month of surface and ground water outside the service areas of community water systems.

E. A water plan shall include an estimate of the number of self-supplied users of less than 300,000 gallons per month of ground water and an estimate of the total amount of water used by them on an annual average basis outside the service areas of community water systems.

9 VAC 25-780-90. Existing resource information.

A. A program shall include a description of existing geologic, hydrologic, and meteorological conditions within the planning area, and in proximity to the point of withdrawal if it is outside the planning area.

B. A program shall include a description of existing environmental conditions that pertain to, or may affect, instream flow, instream uses, and sources that provide the current supply. This description of conditions may be provided in a distinct section of the plan document or as a part of the existing water sources information required pursuant to 9 VAC 25-780-70. This information may be derived from existing, readily available information and additional detailed studies shall not be required. The description of conditions shall include the following items, as they are applicable:

1. State or federal listed threatened or endangered species or habitats of concern;
2. Anadromous, trout and other significant fisheries;
3. River segments that have recreational significance including state scenic river status;
4. Sites of historic or archaeological significance;
5. Unusual geologic formations or special soil types;
6. Wetlands;
7. Riparian buffers and conservation easements;
8. Land use and land coverage including items such as percentage of impervious cover within a watershed and areas where new development may impact water quality of the source;

9. The presence of impaired streams and the type of impairment;

10. The location of point source discharges; and

11. Potential threats to the existing water quantity and quality, other than those from above.

9 VAC 25-780-100. Projected water demand information.

A. A water plan shall include projections of future water demand as listed below. Population in aggregate and disaggregate formulations should be estimated according to information from the U.S. Census Bureau, Bureau of Economic Analysis, the Virginia Employment Commission, or other accepted source of population information, including but not limited to, local or regional sources. Demand projection methodologies should be consistent with those outlined in the American Water Works Association or American Society of Civil Engineers manuals. Sources of information and methodologies used in projecting future water demand shall be documented.

B. A water plan shall estimate water demand within the planning area for [a minimum of] 30 to [a maximum of] 50 years into the future. [While not required, localities are encouraged to plan for the maximum planning period to ensure that the most appropriate and sustainable alternatives are identified.]

C. A water plan shall include an estimated future water use projected at the beginning of each decade (2010, 2020, 2030, etc.) within the planning period.

D. A water plan shall include the following projections for community water systems:

1. An estimate of population within the planning area served by each community water system;
2. A map depicting the proposed service area of each existing or proposed community water system;
3. Estimated water demand for each existing or proposed community water system on both an annual average and peak monthly basis;
4. Estimated water demand for each existing or proposed community water system disaggregated into categories of use appropriate for the system. Typical categories may include:
 - a. Residential use;
 - b. Commercial institutional and light industrial (CIL) use;
 - c. Heavy industrial use;
 - d. Military water use;
 - e. Water used in water production processes;
 - f. Unaccounted for losses;
 - g. Sales to other community water systems and the names of such systems; or
 - h. Subtotals of the above categories for all community water systems; and

5. Total projected water demand for all existing or proposed community water systems disaggregated into the categories used in subdivision 4 of this subsection.

E. A water plan shall include a projection of water demand within the planning area on an annual average basis for each existing and any proposed self-supplied nonagricultural user of more than 300,000 gallons per month of surface and ground water located outside the service areas of community water systems.

F. A water plan shall include a projection of the amount of water use on an annual average basis for each existing and any projected self-supplied agricultural user of more than 300,000 gallons per month of surface and ground water located outside the service areas of community water systems.

G. A water plan shall include a projection of the number of self-supplied users of less than 300,000 gallons per month of ground water and a projection of the amount of water used on an annual average basis outside the service areas of community water systems.

H. A water plan shall include, if available, any cumulative demand, use conflict, or in-stream flow information developed pursuant to 9 VAC 25-780-140 G.

I. A water plan shall explain how the projected needs of domestic consumption, in-stream uses, and economic development have been accounted for in the demand projection for the planning period.

9 VAC 25-780-110. Water demand management information.

A. As part of a long-term strategy, a water plan shall address conservation as a part of overall water demand management in accordance with the following requirements:

1. A water plan shall include information that describes practices for more efficient use of water that are used within the planning area. The type of measures to be described may include, but are not limited to, the adoption and enforcement of the Virginia Uniform Statewide Building Code sections that limit maximum flow of water closets, urinals and appliances; use of low-water use landscaping; and increases in irrigation efficiency.

2. A water plan shall include information describing the water conservation measures used within the planning area to conserve water through the reduction of use. The types of measures to be described may include, but are not limited to, technical, educational and financial programs.

3. A water plan shall include information that describes, within the planning area, the practices to address water loss in the maintenance of water systems to reduce unaccounted for water loss. The types of items to be described may include, but are not limited to: leak detection and repair and old distribution line replacement.

B. Current conservation practices, techniques, and technologies shall be considered in projecting water demand pursuant to 9 VAC 25-780-100 D.

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9 VAC 25-780-120. Drought response and contingency plans.

A program that includes community water systems and self-supplied users who withdraw more than an average of 300,000 gallons per month of surface water and ground water shall contain drought response and contingency plans in accordance with the following requirements:

1. Drought response and contingency plans shall be structured to address the unique characteristics of the water source that is being utilized and the nature of the beneficial use of water.

2. Drought response and contingency plans shall contain, at a minimum, the following three graduated stages of responses to the onset of drought conditions:

a. Drought watch stage responses are generally responses that are intended to increase awareness in the public and private sector to climatic conditions that are likely to precede the occurrence of a significant drought event. Public outreach activities shall be identified to inform the population served by a community water system of the potential for drought conditions to intensify and potential water conservation activities that may be utilized.

b. Drought warning stage responses are generally responses that are required when the onset of a significant drought event is imminent. Voluntary water conservation activities shall be identified with the goal of reducing water use by 5-10%.

c. Drought emergency stage responses are generally responses that are required during the height of a significant drought event. Mandatory water conservation activities shall be identified with the goal of reducing water use by 10-15%.

3. Drought response and contingency plans shall include references to local ordinances, if adopted, and procedures for the implementation and enforcement of drought response and contingency plans.

9 VAC 25-780-130. Statement of need and alternatives.

A. A water plan shall determine the adequacy of existing water sources to meet current and projected demand by preparing a clear statement of need that is derived from an evaluation of the information required by 9 VAC 25-780-70 through 9 VAC 25-780-110. The statement of need shall contain, at a minimum, a determination of whether the existing source(s) is adequate to meet current and projected demands.

B. If the determination is that the existing source is inadequate to meet projected demands during the planning period, the program shall include an alternative analysis of potential sources that includes the following information:

1. A description of potential water savings from water demand management actions including an estimated volume for each action;

2. A description of potential sources for new supplies including an estimated volume from each source; and

3. A description of potential resource issues or impacts, identified in accordance with 9 VAC 25-780-140 G, known for each potential new source that any future water project will need to consider in its development.

C. Potential alternatives considered shall include water demand management alternatives as well as more traditional means of increasing supply, i.e., wells, reservoirs, impoundments and stream intakes. Where appropriate, the program shall consider nontraditional means of increasing supplies such as interconnection, desalination, recycling and reuse. The analysis of potential alternatives may include a combination of short-term and long-term alternatives. The result of this analysis shall be provided as part of the submission required by 9 VAC 25-780-50 C 7.

9 VAC 25-780-140. Review of local programs.

A. The board shall review all programs to determine compliance with this regulation and consistency with the State Water Resources Plan. The board will review adopted elements of a local program according to review policies adopted by the board. Copies of the adopted local program documents and subsequent changes thereto shall be provided to the board.

B. To assist in the review of the program, the board shall provide the Department of Health and other agencies listed in 9 VAC 25-780-150 B along with any other agency the board deems appropriate, 90 days to evaluate the program. Comments must be received from the Department of Health or other agency by the deadline stipulated in the written notification from the board.

C. The board will assess the compliance of submitted programs with these regulations. The board shall prepare a tentative statement of findings on whether the program has demonstrated compliance with the following:

1. All elements of a local program identified in 9 VAC 25-780-50 have been submitted;

2. The program was developed through a planning process consistent with this chapter;

3. The results of any evaluation conducted pursuant to subsection G of this section have been appropriately accommodated;

4. The existing sources information complies with 9 VAC 25-780-70;

5. The existing water use information complies with 9 VAC 25-780-80;

6. The existing resources information complies with 9 VAC 25-780-90;

7. The projected water demand is based on an accepted methodology and complies with 9 VAC 25-780-100;

8. The water demand management information complies with 9 VAC 25-780-110;

9. The drought response and contingency plan complies with 9 VAC 25-780-120;

10. The statement of need complies with 9 VAC 25-78-130 A;

11. When required, the alternatives comply with 9 VAC 25-780-130;

12. The local program is consistent with 9 VAC 25-390-20, § 62.1-11 of the Code of Virginia and Chapter 3.2 (§ 62.1-44.36 et seq.) of Title 62.1 of the Code of Virginia.

D. If the board's tentative decision is to find the local program in compliance with subsection C of this section, the board shall provide public notice of its findings pursuant to this section.

E. If the tentative decision of the board is to find the local program in noncompliance with subsection C of this section, the board shall identify (i) the reason for the finding of noncompliance, (ii) what is required for compliance, and (iii) the right to an informational proceeding under Article 3 (§ 2.2-4018 et seq.) of Chapter 40 of the Virginia Administrative Process Act.

F. The board shall make a final decision on whether the local program is in compliance with this chapter after completing review of the submitted program, any agency comments received, and any public comment received from a public meeting held pursuant to 9 VAC 25-780-160.

G. In conjunction with the compliance determination made by the board, the state will develop additional information and conduct additional evaluation of local or regional alternatives in order to facilitate continuous planning. This additional information shall be included in the State Water Resources Plan and used by localities in their program planning. This information shall include:

1. A cumulative demand analysis, based upon information contained in the State Water Resources Plan and other sources;
2. The evaluation of alternatives prepared pursuant to 9 VAC 25-780-130 B and C;
3. The evaluation of potential use conflicts among projected water demand and estimates of requirements for in-stream flow; and
4. An evaluation of the relationship between the local plan and the State Water Resources Plan.

H. The board may facilitate information sharing and discussion among localities when potential conflicts arise with regard to demands upon a source.

I. A local program's information shall be included in the State Water Resource Plan when determined to be in compliance by the board.

9 VAC 25-780-150. Public notice and public comment period.

A. The board shall give public notice on the department website for every tentative and final decision to determine local program compliance.

B. The board shall give public notice to the Department of Health, the Department of Conservation and Recreation, the

Marine Resources Commission, the Department of Historic Resources, and the Department of Game and Inland Fisheries for every tentative and final decision on program compliance. The agencies shall have 90 days to submit written comment. At the request of the applicant, the board will convene a technical evaluation committee meeting to facilitate receipt of these comments.

C. The board shall provide a comment period of at least 30 days following the date of the public notice for interested persons to submit written comments on the tentative or final decision. All written comments submitted during the comment period shall be retained by the board and considered during its final decision.

D. Commenters may request a public meeting when submitting comments. In order for the board to grant a public meeting, there must be a substantial public interest and a factual basis upon which the commenter believes that the proposed program might be contrary to the purposes stated in 9 VAC 25-780-20.

E. The contents of the public notice of a proposed program compliance determination shall include:

1. Name(s) and address(es) of the locality(ies) that submitted the local or regional water plan;
2. Brief synopsis of the proposed plan including any identified future alternatives;
3. The name(s) of the principal water supply sources;
4. A statement of the tentative determination to certify or deny consistency with the regulation;
5. A brief description of the final determination procedure;
6. The address, e-mail address and phone number of a specific person at the state office from whom further information may be obtained; and
7. A brief description on how to submit comments and request a public meeting.

9 VAC 25-780-160. Public meetings.

A. Public notice of any public meeting held pursuant to 9 VAC 25-780-150 shall be circulated as follows:

1. Notice shall be published on the department website;
2. Notice shall be published once in a newspaper of general circulation in the county, city, or town where the local or regional water plan is in effect; and
3. Notice of the public meeting shall be sent to all persons and government agencies that requested a public meeting or have commented in response to the public notice.

B. Notice shall be effected pursuant to subdivisions A 1 through 3 of this section at least 30 days in advance of the public meeting.

C. The content of the public notice of any public meeting held pursuant to this section shall include at least the following:

1. Name and address of the localities who prepared the program;

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2. The planning area covered by the program;
3. A brief reference to the public notice issued for the comment period including the date of issuance unless the public notice includes the public meeting notice;
4. Information regarding the time and location for the public meeting;
5. The purpose of the public meeting;
6. A concise statement of the relevant water resources planning, water quality, or fish and wildlife resource issues raised by the persons requesting the public meeting;
7. Contact person and the address, e-mail address and phone number of the department office at which the interested persons may obtain further information or request a copy of the draft statement of findings prepared pursuant to 9 VAC 25 780-140 D; and
8. A brief reference to the rules and procedures to be followed at the public meeting.

9 VAC 25-780-170. Appeals.

All appeals taken from actions of the board or the director relative to the provisions of this chapter shall be governed by the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

9 VAC 25-780-180. Enforcement.

Enforcement of this chapter will be in accordance with §§ 62.1-44.15, 62.1-44.23, and 62.1-44.32 of the Code of Virginia.

9 VAC 25-780-190. Delegation of authority.

The executive director, or his designee, may perform any action of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

VA.R. Doc. No. R03-214; Filed September 13, 2005, 4:05 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 7 of the Code of Virginia, which excludes regulations of the regulatory boards served by the Department of Health Professions pursuant to Title 54.1 that are limited to reducing fees charged to regulants and applicants. The Board of Pharmacy will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 18 VAC 110-20. Regulations Governing the Practice of Pharmacy (amending 18 VAC 110-20-20).

Statutory Authority: §§ 54.1-103 and 54.1-2400 of Chapters 33 (§ 54.1-3300 et seq.) and 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia.

Effective Date: November 2, 2005.

Agency Contact: Elizabeth Scott Russell, R.Ph., Executive Director, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9911, FAX (804) 662-9313 or email elizabeth.russell@dhp.virginia.gov.

Summary:

In order to reduce an accumulated surplus in the budget of the Board of Pharmacy, a one-time reduction in renewal fees is adopted. The annual renewal fee for pharmacists is reduced from \$90 to \$50, and the annual renewal for pharmacy technicians is reduced from \$25 to \$15. Fees for inactive licensure, which are approximately one-half the active renewal fee, are reduced correspondingly.

Renewal fees for facilities are reduced from \$270 to \$210 (pharmacies, physician permit, nonrestricted manufacturers, wholesale distributors, warehouse) and for restricted manufacturers or medical equipment suppliers renewal fees are reduced from \$180 to \$140. The percentage of reduction is less for facilities because the board must continue to conduct routine inspections every two years at a cost of approximately \$350 to \$400 per inspection. The facility renewal fees must offset those costs, as well of expenditures related to the licensing and discipline work of the board and the department.

18 VAC 110-20-20. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Unless otherwise provided, any fees for taking required examinations shall be paid directly to the examination service as specified by the board.

C. Initial application fees

1. Pharmacist license	\$180
2. Pharmacy intern registration	\$15
3. Pharmacy technician registration	\$25
4. Pharmacy permit	\$270
5. Permitted physician licensed to dispense drugs	\$270
6. Nonrestricted manufacturer permit	\$270
7. Restricted manufacturer permit	\$180
8. Wholesale distributor license	\$270
9. Warehouse permit	\$270
10. Medical equipment supplier permit	\$180
11. Humane society permit	\$20
12. Nonresident pharmacy	\$270
13. Nonresident wholesale distributor	\$270

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<p>14. Controlled substances registrations \$90 <i>(Between November 2, 2005, and December 31, 2006, the application fee for a controlled substance registration shall be \$50)</i></p> <p>15. Robotic pharmacy system approval \$150</p> <p>16. Innovative program approval \$250 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 also be paid by the applicant in addition to the application fee.</p> <p>17. Approval of a pharmacy technician training program \$150</p> <p>18. Approval of a continuing education program \$100</p> <p>D. Annual renewal fees:</p> <p>1. Pharmacist active license \$90</p> <p>2. Pharmacist inactive license \$45</p> <p>3. Pharmacy technician registration \$25</p> <p>4. Pharmacy permit \$270</p> <p>5. Physician permit to practice pharmacy \$270</p> <p>6. Nonrestricted manufacturer permit \$270</p> <p>7. Restricted manufacturer permit \$180</p> <p>8. Wholesale distributor license \$270</p> <p>9. Warehouser permit \$270</p> <p>10. Medical equipment supplier permit \$180</p> <p>11. Humane society permit \$20</p> <p>12. Nonresident pharmacy \$270</p> <p>13. Nonresident wholesale distributor \$270</p> <p>14. Controlled substances registrations \$90</p> <p>15. Innovative program continued approval based on board order not to exceed \$200 per approval period</p> <p>E. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired license within one year of the expiration date. In addition, engaging in activities requiring a license, permit, or registration after the expiration date of such license, permit, or registration shall be grounds for disciplinary action by the board.</p> <p>1. Pharmacist license \$30</p> <p>2. Pharmacist inactive license \$15</p> <p>3. Pharmacy technician registration \$10</p> <p>4. Pharmacy permit \$90</p> <p>5. Physician permit to practice pharmacy \$90</p> <p>6. Nonrestricted manufacturer permit \$90</p> <p>7. Restricted manufacturer permit \$60</p> <p>8. Wholesale distributor license \$90</p>	<p>9. Warehouser permit \$90</p> <p>10. Medical equipment supplier permit \$60</p> <p>11. Humane society permit \$5</p> <p>12. Nonresident pharmacy \$90</p> <p>13. Nonresident wholesale distributor \$90</p> <p>14. Controlled substances registrations \$30</p> <p>F. Reinstatement fees. Any person or entity attempting to renew a license, permit, or registration more than one year after the expiration date shall submit an application for reinstatement with any required fees. Reinstatement is at the discretion of the board and, except for reinstatement following license revocation or suspension, may be granted by the executive director of the board upon completion of an application and payment of any required fees.</p> <p>1. Pharmacist license \$210</p> <p>2. Pharmacist license after revocation or suspension \$500</p> <p>3. Pharmacy technician registration \$35</p> <p>4. Pharmacy technician registration after revocation or suspension \$125</p> <p>5. Facilities or entities that cease operation and wish to resume shall not be eligible for reinstatement, but shall apply for a new permit or registration. Facilities or entities that failed to renew and continued to operate for more than one renewal cycle shall pay the current and all back renewal fees for the years in which they were operating plus the following reinstatement fees:</p> <p>a. Pharmacy permit \$240</p> <p>b. Physician permit to practice pharmacy \$240</p> <p>c. Nonrestricted manufacturer permit \$240</p> <p>d. Restricted manufacturer permit \$210</p> <p>e. Wholesale distributor license \$240</p> <p>f. Warehouser permit \$240</p> <p>g. Medical equipment supplier permit \$210</p> <p>h. Humane society permit \$30</p> <p>i. Non-resident pharmacy \$115</p> <p>j. Non-resident wholesale distributor \$115</p> <p>k. Controlled substances registration \$180</p> <p>G. Application for change or inspection fees for facilities or other entities.</p> <p>1. Change of pharmacist-in-charge \$50</p> <p>2. Change of ownership for any facility \$50</p> <p>3. Inspection for remodeling or change of location for any facility \$150</p> <p>4. Reinspection of any facility \$150</p> <p>5. Board-required inspection for a robotic</p>
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pharmacy system	\$150	Application for License to Dispense Drugs (permitted physician) (rev. 10/02).
6. Board-required inspection of an innovative program location	\$150	Application for a Pharmacy Permit (rev. 11/02).
7. Change of pharmacist responsible for an approved innovative program	\$25	Application for a Nonresident Pharmacy Registration (rev. 10/02).
H. Miscellaneous fees.		Application for a Permit as a Medical Equipment Supplier (rev. 10/02).
1. Duplicate wall certificate	\$25	Application for a Permit as a Restricted Manufacturer (rev. 10/02).
2. Returned check	\$25	Application for a Permit as a Nonrestricted Manufacturer (rev. 10/02).
I. For the annual renewal due on or before December 31, 2005, the following fees shall be imposed for a license, permit or registration:		Application for a Permit as a Warehouser (rev. 10/02).
1. Pharmacist active license	\$50	Application for a License as a Wholesale Distributor (rev. 10/02).
2. Pharmacist inactive license	\$25	Application for a Nonresident Wholesale Distributor Registration (rev. 10/02).
3. Pharmacy technician registration	\$15	Application for a Controlled Substances Registration Certificate (rev. 10/02 3/05).
4. Pharmacy permit	\$210	Renewal Notice and Application, 0201 Pharmacy (rev. 12/02).
5. Physician permit to practice pharmacy	\$210	Renewal Notice and Application, 0202 Pharmacist (rev. 12/02).
6. Nonrestricted manufacturer permit	\$210	Renewal Notice and Application, 0205 Permitted Physician (rev. 12/02).
7. Restricted manufacturer permit	\$140	Renewal Notice and Application, 0206 Medical Equipment Supplier (rev. 12/02).
8. Wholesale distributor license	\$210	Renewal Notice and Application, 0207 Restricted Manufacturer (rev. 12/02).
9. Warehouser permit	\$210	Renewal Notice and Application, 0208 Non-Restricted Manufacturer (rev. 12/02).
10. Medical equipment supplier permit	\$140	Renewal Notice and Application, 0209 Humane Society (rev. 12/02).
11. Humane society permit	\$20	Renewal Notice and Application, 0214 Non-Resident Pharmacy (rev. 12/02).
12. Nonresident pharmacy	\$210	Renewal Notice and Application, 0215 Wholesale Distributor (rev. 12/02).
13. Nonresident wholesale distributor	\$210	Renewal Notice and Application, 0216 Warehouser (rev. 12/02).
14. Controlled substances registrations	\$50	Renewal Notice and Application, 0219 Non-Resident Wholesale Distributor (rev. 12/02).

NOTICE: The forms used in administering 18 VAC 110-20, Regulations Governing the Practice of Pharmacy, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Department of Health Professions, 6603 West Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Application for Registration as a Pharmacy Intern (rev. 6/04).	Renewal Notice and Application, 0220 Business CSR (rev. 12/02).
Affidavit of Practical Experience, Pharmacy Intern (rev. 12/02).	Renewal Notice and Application, 0228 Practitioner CSR (rev. 12/02).
Application for Licensure as a Pharmacist by Examination (rev. 10/02).	Application to Reinstate a Pharmacist License (rev. 11/02).
Application to Reactivate Pharmacist License (rev. 10/02).	Application for a Permit as a Humane Society (rev. 10/02).
Application for Approval of a Continuing Education Program (rev. 11/02).	Application for Registration as a Pharmacy Intern for Graduates of a Foreign College of Pharmacy (rev. 6/04).
Application for Approval of ACPE Pharmacy School Course(s) for Continuing Education Credit (rev. 11/02).	

- Closing of a Pharmacy (rev. 3/03).
- Application for Approval of a Robotic Pharmacy System (rev. 11/02).
- Notice of Inspection Fee Due for Approval of Robotic Pharmacy System (rev. 11/02).
- Application for Approval of an Innovative (Pilot) Program (rev. 11/02).
- Application for Registration as a Pharmacy Technician (12/02).
- Application for Approval of a Pharmacy Technician Training Program (12/02).
- Application for Registration for Volunteer Practice (eff. 12/02).
- Sponsor Certification for Volunteer Registration (eff. 1/03).

VA.R. Doc. No. R06-46; Filed September 14, 2005, 10:05 a.m.

BOARD OF COUNSELING

REGISTRAR'S NOTICE: The following regulatory actions are exempt from the Administrative Process Act in accordance with § 2.2-4006 A 7 of the Code of Virginia, which excludes regulations of the regulatory boards served by the Department of Professional and Occupational Regulation pursuant to Title 54.1 that are limited to reducing fees charged to regulants and applicants. The Board of Counseling will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18 VAC 115-20. Regulations Governing the Practice of Professional Counseling (amending 18 VAC 115-20-20).**

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

Effective Date: January 14, 2006.

Agency Contact: Evelyn B. Brown, Executive Director, Board of Counseling, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9133, FAX (804) 662-9943 or e-mail evelyn.brown@dhp.virginia.gov.

Supplemental Information:

The Board of Counseling currently has a contract with the Center for Credentialing and Education (CCE) to administer the National Clinical Mental Health Counselor Examination; register supervisors for applicants obtaining practical experience; and receive, process, review and approve applications for licensure. No significant problems have been identified with the examination services provided by CCE, but recent delays and mistakes in handling and reviewing applicants have resulted in frustration, dissatisfaction, and increased calls and complaints to the board. The number of appeals to the Credentials Committee resulting from decisions made by CCE on applicants has increased from six appeals in June 2004 to 43 appeals in June 2005 (including counselors and substance abuse counselors).

Current regulations allow the board to charge applicants fees "in appropriate amounts as specified in the application instructions" (18 VAC 115-20-20 B). Those fees must be paid to the board or its contractor as specified in the instructions. Currently, the application instructions require a fee of \$105 for the application and \$65 for the licensure for a total of \$170. The instructions also provide a \$75 fee for registration of supervision.

Fees currently charged by contractor:

Initial registration of supervisor	\$75 (Proposed fee would be \$50)
Application fee	\$105
Licensure fee	\$65 (Combined proposed fee would be \$140)

As a result, the board has voted to discontinue its relationship with CCE for applications and bring the review process back to the board. However, the CCE will continue to administer the examination. The board has successfully handled applications for other professions by using professional experts to review course work and supervisory contracts with assistance from staff. The Board of Psychology and the Board of Social Work have effectively processed applications with the same procedures and staff.

Summary:

The amendments set the fee for application processing and initial licensure of Marriage and Family Therapists, Licensed Substance Abuse Treatment Practitioners and Licensed Professional Counselors at \$140. The fees for registration of supervision are set at \$50 and for a subsequent change in supervision at \$25.

18 VAC 115-20-20. Fees required by the board.

A. The board has established the following fees applicable to licensure as a professional counselor:

Active annual license renewal	\$105
Inactive annual license renewal	\$55
Initial licensure by examination: <i>Application processing and initial licensure</i>	\$65 \$140
Initial licensure by endorsement: <i>Application processing and initial licensure</i>	\$65 \$140
Registration of supervision	\$50
Add or change supervisor	\$25
Duplicate license	\$5
Verification of licensure to another jurisdiction	\$25
Late renewal	\$35
Reinstatement of a lapsed license	\$165
Replacement of or additional wall certificate	\$15
Returned check	\$25
Reinstatement following revocation or suspension	\$500

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~~B. Fees shall be paid 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 determined and made payable as determined by the board.

VA.R. Doc. No. R06-43; Filed September 13, 2005, 10:25 a.m.

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Title of Regulation: 18 VAC 115-30. Regulations Governing the Certification of Substance Abuse Counselors and Substance Abuse Counseling Assistants (amending 18 VAC 115-30-30).

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

Effective Date: January 21, 2006.

Agency Contact: Evelyn B. Brown, Executive Director, Board of Counseling, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9133, FAX (804) 662-9943 or e-mail evelyn.brown@dhp.virginia.gov.

Supplemental Information:

The Board of Counseling currently has a contract with the Center for Credentialing and Education (CCE) to administer the Certification of Substance Abuse Counselors Examination; register supervisors for applicants obtaining practical experience; and receive, process, review and approve applications for certification. No significant problems have been identified with the examination services provided by CCE, but recent delays and mistakes in handling and reviewing applicants have resulted in frustration, dissatisfaction, and increased calls and complaints to the board. The number of appeals to the Credentials Committee resulting from decisions made by CCE on applicants has increased from six appeals in June 2004 to 43 appeals in June 2005 (including counselors and substance abuse counselors).

Current regulations allow the board to charge applicants fees "in appropriate amounts as specified in the application instructions" (18 VAC 115-30-30 B). Those fees must be paid to the board or its contractor as specified in the instructions. Currently, the application instructions require a fee of \$105 for the application and \$40 for the certification for a total of \$145. The instructions also provide a \$75 fee for registration of supervision.

Fees currently charged by contractor:

Initial registration of supervisor	\$75 (Proposed fee would be \$50)
Application fee	\$105
Licensure fee	\$40 (Combined proposed fee would be \$90)

As a result, the board has voted to discontinue its relationship with CCE for applications and bring the review process back to the board. However, the CCE will continue to administer the examination. The board has successfully handled applications for other professions by using

professional experts to review course work and supervisory contracts with assistance from staff. The Board of Psychology and the Board of Social Work have effectively processed applications with the same procedures and staff.

Summary:

The amendments set the fee for application processing and initial certification by examination of Substance Abuse Counselors and Substance Abuse Counseling Assistants, and for application processing and initial certification by endorsement of Substance Abuse Counselors at \$90. The fees for registration of supervision are set at \$50 and for a subsequent change in supervision at \$25.

18 VAC 115-30-30. Fees required by the board.

A. The board has established the following fees applicable to the certification of substance abuse counselors and substance abuse counseling assistants:

Substance abuse counselor annual certification renewal	\$55
Substance abuse counseling assistant annual certification renewal	\$40
Substance abuse counselor initial certification by examination: Application processing and initial certification	\$40 \$90
Substance abuse counseling assistant initial certification by examination: Application processing and initial certification	\$40 \$90
Initial certification by endorsement of substance abuse counselors: Application processing and initial certification	\$40 \$90
Registration of supervision	\$50
Add or change supervisor	\$25
Duplicate license	\$5
Late renewal	\$20
Reinstatement of a lapsed certificate	\$100
Replacement of or additional wall certificate	\$15
Returned check	\$25
Reinstatement following revocation or suspension	\$500

~~B. Fees shall be paid to the board or its contractor or both in appropriate amounts as specified in the application instructions. All fees are nonrefundable.~~

VA.R. Doc. No. R06-44; Filed September 13, 2005, 10:26 a.m.



TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

REGISTRAR'S NOTICE: The State Board of Social Services has claimed an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 3 and A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved and those changes that consist only of changes in style or form or corrections of technical errors. The State Board of Social Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **22 VAC 40-730. Investigation of Child Abuse and Neglect in Out of Family Complaints (amending 22 VAC 40-730-10 and 22 VAC 40-730-115).**

Statutory Authority: § 63.2-1511 of the Code of Virginia.

Effective Date: November 2, 2005.

Agency Contact: Rita Katzman, Child Protective Services Program Manager, Department of Social Services, 7 North 8th Street, Richmond, VA 23219, telephone (804) 726-7554, FAX (804) 726-7895 or e-mail rita.katzman@dss.virginia.gov.

Summary:

The purpose of the proposed action is to incorporate changes into the regulation that are required by Chapters 767 and 806 of the 2005 Acts of Assembly. These changes pertain to clarification of procedures for conducting a Child Protective Services investigation of a teacher, principal, or other person employed by a local school board or employed in a school operated by the Commonwealth of Virginia.

The action provides that if, after an investigation of a child protective services complaint, the local department of social services determines that the actions or omissions of a teacher, principal, or other person employed by a local school board or employed in a school operated by the Commonwealth were within such employee's scope of employment and were taken in good faith in the course of supervision, care, or discipline of students, then the standard in determining if a report of abuse or neglect is founded is whether such acts or omissions constituted gross negligence or willful misconduct.

22 VAC 40-730-10. Definitions.

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

"Caretaker," for the purpose of this chapter, means any individual determined to have the responsibility of caring for a child.

~~"Child Protective Services" means the identification, receipt and immediate investigation of complaints and reports of child abuse and neglect for children under 18 years of age. It also includes documenting, arranging for, and providing social~~

~~casework and other services for the child, his family, and the alleged abuser.~~

~~"Complaint" means a valid report of suspected child abuse or neglect which must be investigated by the local department of social services.~~

"Child day center" means a child day program operated in other than the residence of the provider or any of the children in care, responsible for the supervision, protection, and well-being of children during absence of a parent or guardian, as defined in § 63.2-100 of the Code of Virginia. For the purpose of this chapter, the term shall be limited to include only state licensed child day centers and religiously exempted child day centers.

"Child Protective Services" means the identification, receipt and immediate investigation of complaints and reports of child abuse and neglect for children under 18 years of age. It also includes documenting, arranging for, and providing social casework and other services for the child, his family, and the alleged abuser.

"Complaint" means a valid report of suspected child abuse or neglect which must be investigated by the local department of social services.

"Department" means the Department of Social Services.

"Disposition" means the determination of whether abuse or neglect occurred.

"Facility" means the generic term used to describe the setting in out of family abuse or neglect and for the purposes of this regulation includes schools (public and private), private or state-operated hospitals or institutions, child day centers, state regulated family day homes, and residential facilities.

"Facility administrator" means the on-site individual responsible for the day-to-day operation of the facility.

"Family day home," for the purpose of this chapter, means a child day program as defined in § 63.2-100 of the Code of Virginia where the care is provided in the provider's home and is state regulated; locally approved or regulated homes are not included in this definition.

"Founded" means that a review of the facts shows by a preponderance of the evidence that child abuse and/or neglect has occurred. A determination that a case is founded shall be based primarily on first source evidence; in no instance shall a determination that a case is founded be based solely on indirect evidence or an anonymous complaint.

"Local agency" means the local department of social services responsible for conducting investigations of child abuse or neglect complaints as per § 63.2-1503 of the Code of Virginia.

"Participate" means to take part in the activities of the joint investigation as per a plan for investigation developed by the CPS worker with the facility administrator or regulatory authority or both.

"Physical plant" means the physical structure/premises of the facility.

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"Regulatory authority" means the department or state board that is responsible under the Code of Virginia for the licensure or certification of a facility for children.

"Residential facility" means a publicly or privately owned facility, other than a private family home, where 24-hour care is provided to children separated from their legal guardians, that is subject to licensure or certification pursuant to the provisions of the Code of Virginia and includes, but is not limited to, group homes, group residences, secure custody facilities, self-contained residential facilities, temporary care facilities, and respite care facilities.

22 VAC 40-730-115. Procedures for conducting an investigation of a teacher, principal or other person employed by a local school board or employed in a nonresidential school operated by the Commonwealth.

A. Each local department of social services and local school division shall adopt a written interagency agreement as a protocol for investigating child abuse and neglect reports against school personnel. The interagency agreement shall be based on recommended procedures for conducting investigations developed by the Departments of Education and Social Services.

B. These procedures for investigating school personnel amplify or clarify other Child Protection Services (CPS) regulations.

1. *In determining the validity of a report of suspected abuse or neglect pursuant to § 63.2-1511 of the Code of Virginia, the local department must consider whether the school employee used reasonable and necessary force. The use of reasonable and necessary force does not constitute a valid report.*

2. The local department shall conduct a face-to-face interview with the person who is the subject of the complaint or report.

~~2-~~ 3. At the onset of the initial interview with the alleged abuser or neglecter, the local department shall notify him in writing of the general nature of the complaint and the identity of the alleged child victim regarding the purpose of the contacts.

~~3-~~ 4. The written notification shall include the information that the alleged abuser or neglecter has the right to have an attorney or other representative of his choice present during his interviews. However, the failure by a representative of the Department of Social Services to so advise the subject of the complaint shall not cause an otherwise voluntary statement to be inadmissible in a criminal proceeding.

5. *The standard for determining a founded finding of abuse or neglect is whether such acts or omissions constituted gross negligence or willful misconduct, otherwise such acts should be considered within the employee's scope of employment and taken in good faith in the course of supervision, care, or discipline of students.*

~~4-~~ 6. Written notification of the findings shall be submitted to the alleged abuser or neglecter. The notification shall include a summary of the investigation and an explanation of how the information gathered supports the disposition.

~~5-~~ 7. The written notification of the findings shall inform the alleged abuser or neglecter of his right to appeal.

~~6-~~ 8. The written notification of the findings shall inform the alleged abuser or neglecter of his right to review information about himself in the record with the following exceptions:

- a. The identity of the person making the report.
- b. Information provided by any law-enforcement official.
- c. Information that may endanger the well-being of the child.
- d. The identity of a witness or any other person if such release may endanger the life or safety of such witness or person.

No information shall be released by the local department in cases that are being criminally investigated unless the release is authorized by the investigating law-enforcement officer or his supervisor or the local attorney for the Commonwealth.

VA.R. Doc. No. R06-48; Filed September 14, 2005, 10:17 a.m.



FAST-TRACK REGULATIONS

Section 2.2-4012.1 of the Code of Virginia provides an exemption from certain provisions of the Administrative Process Act for agency regulations deemed by the Governor to be noncontroversial. To use this process, Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations will become effective on the date noted in the regulatory action if no objections to using the process are filed in accordance with § 2.2-4012.1.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

Title of Regulation: 18 VAC 85-120. Regulations Governing the Licensure of Athletic Trainers (amending 18 VAC 85-120-50).

Statutory Authority: §§ 54.1-2400, 54.1-2912.1 and 54.1-2957.4 of the Code of Virginia.

Public Hearing Date: December 1, 2005 - 9 a.m.

Public comments may be submitted until December 2, 2005.

(See Calendar of Events section for additional information)

Effective Date: December 17, 2005.

Agency Contact: William L. Harp, M.D., Executive Director, Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, or e-mail william.harp@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system.

The specific mandate for evidence of continued competency is found in § 54.1-2912.1 of the Code of Virginia. Section 54.1-2912.1 of the Code of Virginia provides specific authority to the board to promulgate regulations for the licensure of athletic trainers.

Purpose: Current regulations require the applicant to have attained NATABOC certification but do not require that it be current at the time of application. However, in order to renew board licensure each biennium, an athletic trainer must attest that his NATABOC is current as evidence of continuing competency. That may place the trainer in the position of being licensed but unable to renew that license two years later. Therefore, the board has determined that current certification should be a requirement for initial licensure.

The intent is to ensure that the athletic trainer has not only been deemed initially competent, by completion of an accredited educational program and passage of the certification examination, but continues to be competent through continuing education required for maintaining NATABOC certification. Athletes of all ages can be permanently injured or harmed by an incompetent trainer. Athletic trainers are usually the first responders when there is an injury and are also the persons responsible for the prevention of injury and rehabilitation of an injury. For that reason, licensure of trainers and evidence of continued competency are mandated by the Code of Virginia. The mechanism for assuring continued competency is NATABOC

certification, so the board has determined that it is necessary to protect the health and safety of consumers who receive services from an athletic trainer.

Substance: The proposed fast-track action amends 18 VAC 85-120-50 by adding a subdivision to require that an applicant submit evidence of current NATABOC certification.

Issues: There are no disadvantages to the public of this amendment. Current certification is an indicator of continued competency and is required for renewal of licensure in Virginia. If an athletic trainer has not maintained NATABOC certification, there is no evidence that he has maintained current knowledge and skills involved with the profession. The public is better protected by licensing individuals who have continued to take courses and learn new techniques as evidence of minimal competency to practice.

There are no disadvantages to the agency or the Commonwealth; the proposed regulation is consistent with the board's intent of licensing individuals who have NATABOC certification.

Rationale for Using Fast-Track Process: The fast-track process is being used to promulgate the amendment because it is strongly recommended by the Advisory Board on Athletic Training to clarify the intent of the regulation, which currently requires NATABOC certification for licensure. It was the Board of Medicine's intent that the NATABOC be current at the time of licensure, but the regulation does not state that, so the regulation needs to be appropriately amended. Of the 749 persons who have been licensed as athletic trainers, only one applicant met all qualifications but did not have current NATABOC certification. It was necessary to license that person even though he cannot be renewed until he is recertified by NATABOC.

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 § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H 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 Medicine (board) proposes to require applicants for athletic trainer licensure hold current National Athletic Trainers' Association Board of Certification (NATABOC) credentials at the time of their initial application.

Estimated Economic Impact

Fast-Track Regulations

Under current regulations, individuals applying for initial athletic trainer licensure in the Commonwealth must certify that they have:

"... met the educational requirement necessary to hold current credentialing as a Certified Athletic Trainer (ATC) from NATABOC or another credentialing body approved by the board."

There is no explicit requirement that applicants have current credentials from any approved credentialing body; they need only have the education required to attain credentialing.

Athletic trainers applying for license renewal, however, are unambiguously required to have current NATABOC credentials. This means that under current regulatory requirements individuals who are initially licensed by the Commonwealth may delay getting NATABOC credentials until their biannual license renewal. The board asserts that they did not intend for this discontinuity between requirements for initial licensure and renewal of licensure to exist.

Assuming that individuals who apply to the board for athletic trainer licensure intend to continue practicing their trade in the Commonwealth for more than two years, the added cost associated with the proposed change in regulation is equal to the benefit that might have accrued from alternate uses of the \$160 National Athletic Trainer Association membership fee over the period between initial licensure and renewal of license. Current regulation mandates that potential licensees attain all the training hours required for NATABOC credentialing before applying for athletic training licensure so there are no extra educational costs associated with the proposed regulation.

Individuals who intend to attain an athletic trainer license in the Commonwealth for just the initial 2+ year period but do not intend to renew their license¹ will have to pay an additional \$160 for National Athletic Trainer Association membership under the requirements of the proposed regulation

The board feels that current NATABOC certification is a good proxy for competence in the field of athletic training. Assuming this, the public is better served by regulations that require NATABOC credentials both for initial licensing and for license renewal. Given the small costs involved, this proposed regulatory change will likely provide a net benefit for the citizens of the Commonwealth.

Businesses and entities affected. The proposed regulatory change will affect individuals who apply for athletic trainer licensure after this regulation is promulgated. The board issued licenses to 149 individuals in 2004 and expects that between 100 and 150 individuals will be licensed this year.

Localities particularly affected. The proposed regulation will affect all localities in the Commonwealth.

Projected impact on employment. The proposed regulation will have little or no impact on employment in the Commonwealth.

¹ Only one person has ever sought athletic trainer licensure from the board without having current NATABOC credentials. The longer term career intentions of this individual are unknown.

Effects on the use and value of private property. To the extent that NATABOC credentials allow athletic trainers to demand a higher wage, their net worth will increase.

Small Businesses: Reporting, Recordkeeping, and Administrative costs. Upon promulgation of the proposed regulation, individual athletic trainers will have to provide evidence of current NATABOC credentials when they initially apply for an athletic trainer license. If the application intake office does not allow use of their Xerox™ machine or if the application is mailed in, the applicant will have to pay \$0.15 (on average) to copy their proof of current certification.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There are no alternate methods of reporting NATABOC certification status that are less costly.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Medicine has one comment about the analysis of the Department of Planning and Budget for amendments to 18 VAC 85-120 for a fast-track change in the regulations.

On page two of the EIA, the statement is made that "Individuals who intend to attain an athletic trainer license in the Commonwealth for just the initial 2+ year period but do not intend to renew their license will have to pay an additional \$160 for the National Athletic Trainer Association membership under the requirements of the proposed regulation." In fact, an individual who does not intend to renew his athletic trainer license has no obligation to be a member of NATA or maintain NATABOC certification. Only those ATs who intend to maintain active practice in the Commonwealth, which requires an active license, need to meet the requirement for renewal.

Summary:

The proposed action requires an applicant for licensure as an athletic trainer to provide evidence of current certification by the National Athletic Trainers' Association Board of Certification (NATABOC).

18 VAC 85-120-50. Application.

An applicant for licensure shall submit the following on forms provided by the board:

1. A completed application and fee as prescribed in 18 VAC 85-130-150;
2. Verification of professional education in athletic training as required in 18 VAC 85-130-60;
3. Verification of professional activity as required on the application form;
4. Documentation of passage of the national examination as required in 18 VAC 85-130-70; ~~and~~
5. *Evidence of current NATABOC certification; and*
- ~~5.~~ 6. If licensed or certified in any other jurisdiction, documentation of practice as an athletic trainer and verification as to whether there has been any disciplinary action taken or pending in that jurisdiction.

VA.R. Doc. No. R06-45; Filed September 14, 2005, 10:06 a.m.

EMERGENCY REGULATIONS

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: 12 VAC 30-120. Waivered Services: Alzheimer's/Dementia Assisted Living Waiver (adding 12 VAC 30-120-1600 through 12 VAC 30-120-1660).

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Effective Dates: September 14, 2005, through September 13, 2006.

Agency Contact: Teja Stokes, Project Manager, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-0527, FAX (804) 786-1680, or e-mail teja.stokes@dmas.virginia.gov.

Preamble:

Section 2.2-4011 of the Administrative Process Act states that an emergency situation is: (i) a situation involving an imminent threat to public health or safety or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. This suggested emergency regulation meets the standard at § 2.2-4011 (ii) of the Code of Virginia as discussed below:

The Department of Medical Assistance Services was directed in Chapter 951 of the 2005 Acts of the Assembly, Item 326 SS, to develop a home and community-based care waiver for individuals with Alzheimer's and related dementias who choose to live in an assisted living facility. Chapter 951 requires the agency to "promulgate emergency regulations to become effective within 280 days or less from the enactment of this act."

The purpose of this action is to establish a new waiver program to provide additional services to residents of assisted living facilities who receive an auxiliary grant, who meet nursing facility criteria, who are age 55 and older and who have a diagnosis of Alzheimer's or a related dementia. Related dementia is defined as an individual with a diagnosis of Dementia of the Alzheimer's Type as defined by the Diagnostic and Statistical Manual of Mental Disorders. Individuals eligible to be placed on the AAL Waiver are currently either (i) remaining at home where a spouse or adult child is typically serving as primary care giver; (ii) residing in an assisted living facility possibly without the benefit of specialized services, which are not provided for in the auxiliary grant payment; or (iii) residing in a more restrictive setting such as a nursing facility. Through the proposed Alzheimer's Assisted Living (AAL) Waiver, recipients would be able to receive an appropriate level of care within special care units of assisted living facilities.

PART XIII.

ALZHEIMER'S/DEMENTIA ASSISTED LIVING WAIVER.

12 VAC 30-120-1600. Definitions.

"Activities of daily living" or "ADLs" means bathing, dressing, toileting, transferring, and eating/feeding. An individual's degree of independence in performing these activities is a part of determining appropriate level of care and service needs.

"Administrator" means the person who oversees the day-to-day operation of the facility, including compliance with all regulations for licensed assisted living facilities.

"Alzheimer's and Related Dementias Assisted Living Waiver" or "AAL waiver" means the CMS-approved waiver that covers a range of community support services offered to individuals who have a diagnosis of Alzheimer's or a related dementia who meet nursing facility level of care.

"Americans with Disabilities Act" or "ADA" means the United States Code pursuant to 42 USC § 12101 et seq., as amended.

"Appeal" means the process used to challenge adverse actions regarding services, benefits, and reimbursement provided by Medicaid pursuant to 12 VAC 30-110-10 et seq. and 12 VAC 30-20-500 through 12 VAC 30-20-560.

"Assisted living facility" means a congregate residential setting as defined in § 63.2-100 of the Code of Virginia, as amended.

"Auxiliary Grant Program" means a state and locally funded assistance program to supplement the income of a Supplemental Security Income (SSI) recipient or an adult who would be eligible for SSI except for excess income and who resides in a licensed assisted living facility with an approved rate.

"Barrier crime" means those crimes as defined in § 37.1-183.3 of the Code of Virginia, as amended.

"Comprehensive Assessment" means the gathering of the relevant social, psychological, medical, and Uniform Assessment Instrument information by the assisted living facility RN for use in the development and updates of the plan of care.

"CMS" means the Centers for Medicare and Medicaid Services, which is the unit of the U.S. Department of Health and Human Services that administers the Medicare and Medicaid programs.

"DMAS" means the Department of Medical Assistance Services.

"DMAS staff" means persons employed by the Department of Medical Assistance Services.

"DSS" means the Department of Social Services.

"Designated preauthorization contractor" means DMAS or the entity that has been contracted by DMAS to perform preauthorization of services.

"Home and community-based waiver services" or "waiver services" means the range of community support services approved by the CMS pursuant to § 1915(c) of the Social

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Security Act to be offered to persons who are elderly or disabled who would otherwise require the level of care provided in a nursing facility. DMAS or the designated preauthorization contractor shall only give preauthorization for medically necessary Medicaid reimbursed home and community care.

"Individual" means the person receiving the services established in these regulations.

"Participating provider" means an entity that meets the standards and requirements set forth by DMAS, and has a current, signed provider participation agreement with DMAS.

"Plan of care" means the written plan developed by the provider related solely to the specific services required by the individual to ensure optimal health and safety while remaining in the assisted living facility.

"Preadmission screening" means the process to: (i) evaluate the functional, nursing, and social supports of individuals referred for preadmission screening; (ii) assist individuals in determining what specific services the individuals need; (iii) evaluate whether a service or a combination of existing community services are available to meet the individuals' needs; and (iv) refer individuals to the appropriate provider for Medicaid-funded nursing facility or home and community-based care for those individuals who meet nursing facility level of care.

"Preadmission Screening Committee/Team" means the entity contracted with DMAS that is responsible for performing preadmission screening pursuant to COV § 32.1-330.

"Related Dementia" means a diagnosis of Dementia of the Alzheimer's Type as defined by the Diagnostic and Statistical Manual of Mental Disorders.

"Resident" means any individual who: (i) meets the eligibility criteria for residing in a safe, secure environment as described in 22 VAC 40-71-700 (C)(1); (ii) meets eligibility criteria for the AAL waiver and, (iii) resides in a safe, secure environment of an assisted living facility.

"Safe, secure environment" means a self-contained special care unit as defined in 22 VAC 40-71-10.

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

"Uniform Assessment Instrument" or "UAI" means the standardized multidimensional questionnaire, that is completed by the Preadmission Screening Team, which assesses an individual's physical health, mental health, social, and functional abilities to determine if the individual meets the nursing facility level of care.

12 VAC 30-120-1610. Individual eligibility requirements.

A. Waiver service population. The AAL Waiver shall be available through a §1915(c) of the Social Security Act waiver to eligible aged and disabled Auxiliary Grant recipients who are age 55 or over and reside in licensed assisted living facilities.

B. Eligibility Criteria. To qualify for AAL Waiver services, individuals must meet all of the following criteria.

1. The individual must be either:

- a. Elderly as defined by the Social Security Act § 1614; or
- b. Disabled as defined by the Social Security Act § 1614.

The individual must meet the criteria for admission to a nursing facility as determined by a preadmission screening team using the full UAI.

The individual must have a diagnosis of Alzheimer's or a related dementia as diagnosed by a licensed clinical psychologist or a licensed physician. The individual must not have a diagnosis of mental retardation as defined by the American Association on Mental Retardation or a serious mental illness as defined in 42 CFR 483.102(b).

2. The individual must be receiving an Auxiliary Grant, and residing in or seeking admission to a safe, secure unit of a DMAS-approved assisted living facility;

3. The individual must be at least 55 years of age at admission to the waiver.

C. Assessment. Medicaid will not pay for any AAL Waiver services delivered prior to the date of the preadmission screening by the Preadmission Screening Team and the physician signature on the Medicaid Funded Long-Term Care Services Authorization Form (DMAS-96). Medicaid will not pay for any AAL Waiver services delivered prior to the individual establishing Medicaid eligibility.

D. Enrollment. After an initial 60-day application period and a lottery to determine the order in which eligible individuals will be served by this waiver, individuals will be served on a first-come, first-served basis in accordance with available waiver funding. Individuals shall not be placed on the waiting list prior to his or her 55th birthday.

E. Preauthorization. Before Medicaid will assume payment responsibility of AAL Waiver services, preauthorization must be obtained from DMAS. Providers must submit all required information to the designated preauthorization contractor within ten business days of initiating care. If the provider submits all required information to the designated preauthorization contractor within ten business days of initiating care, services may be authorized beginning from the date the provider initiated services but not preceding the date of the physician's signature on the Medicaid-Funded Long-Term Care Services Authorization Form (DMAS-96). If the provider does not submit all required information to the designated preauthorization contractor within ten business days of initiating care, the services may be authorized beginning with the date all required information was received by the designated preauthorization contractor, but in no event preceding the date of the Preadmission Screening Team physician's signature on the DMAS-96.

F. Review of level of care. This review is based on the documentation submitted by the provider. The level of care assessments are performed to ensure that individuals receiving services in the waiver continue to meet the criteria for the waiver.

G. *Termination of services.* In the case of termination of AAL Waiver services by DMAS, individuals shall be notified of their appeal rights pursuant to 12 VAC 30-110-10 et seq. DMAS may terminate AAL care services for any of the following reasons:

1. The AAL Waiver is no longer the critical alternative to prevent or delay institutional placement;
2. The individual is no longer eligible for Medicaid;
3. The individual is no longer eligible to receive an Auxiliary Grant;
4. The individual no longer meets waiver criteria;
5. The individual has been absent from the assisted living facility for greater than 30 days;
6. The individual's environment does not provide for his health, safety, and welfare; or
7. The assisted living facility no longer meets safe and secure licensing standards set by DSS or standards set by DMAS for service providers.

12 VAC 30-120-1620. Covered services.

A. *Assisted living: personal care and services, homemaker, chore, attendant care, and companion services.* This service includes 24-hour on-site response staff to meet scheduled or unpredictable needs in a way that promotes maximum dignity and independence, and to provide supervision, safety and security.

B. *For purposes of these regulations, assisted living services shall also include:*

1. *Medication administration.* Medication administration shall be by licensed professionals (physicians, physician assistants, pharmacists, nurse practitioners, RNs, and LPNs);
2. *Nursing evaluations.* The RN must complete a comprehensive assessment of each resident upon admission and when a significant change in health status or behavior occurs in one of the following areas: weight loss, elopements, behavioral symptoms, or adverse reactions to prescribed medication. A RN shall identify resident care problem areas and formulate interventions to address those problems and to evaluate if the planned interventions were successful;
3. *Skilled nursing services.* Nursing services that are used to complete resident assessments and administer medications, and provide training, consultation, and oversight of direct care staff. Skilled nursing services must be provided by a RN or by a LPN under the supervision of a RN who is licensed to practice in the state and provided in accordance and within the scope of practice specified by state law; and
4. *Therapeutic social and recreational programming.* An activity program must be designed to meet the individual needs of each resident and to provide daily activities appropriate to residents with dementia.
 - a. This program shall be individualized and properly implemented, followed, and reviewed as changes are needed.

b. *Residents who have wandering behaviors shall have an activity program to address these behaviors.*

c. *There shall be a minimum of 19 hours of planned group programming each week, not to include activities of daily living.*

d. *Each resident must receive at least one hour of one-on-one activity per week, not to include activities of daily living. This activity must be provided exclusively by activities staff.*

e. *Group activities must be provided by individuals assigned responsibility for the activities.*

12 VAC 30-120-1630. General requirements for participating providers.

A. *Requests for participation will be screened by DMAS to determine whether the provider applicant meets the requirements for participation. Requests for participation must be accompanied by verification of the facility's current licensure from DSS.*

B. *For DMAS to approve provider agreements with AAL waiver providers, providers must meet staffing, financial solvency and disclosure of ownership requirements. Approved providers must:*

1. *Assure freedom of choice to individuals in seeking services 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 are performed;*
2. *Assure the individual's freedom to refuse medical care, treatment, and services;*
3. *Accept referrals for services only when staff is available to initiate and perform such services on an ongoing basis;*
4. *Provide services and supplies to individuals in full compliance with Title VI of the Civil Rights Act of 1964, as amended (42 USC § 2000 et seq.), which prohibits discrimination on the grounds of race, color, religion, or national origin; the Virginians with Disabilities Act (§ 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 of 1990, as amended (42 USC § 12101 et seq.), which provides comprehensive civil rights protections to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications;*
5. *Provide services and supplies to individuals of the same quality as is provided to the general public;*
6. *Submit charges to DMAS for the provision of services and supplies to individuals in amounts not to exceed the provider's usual and customary charges to the general public and accept as payment in full the amount established by DMAS beginning with the individual's authorization date for the waiver services;*
7. *Use only DMAS-designated forms for service documentation. The provider must not alter the DMAS forms in any manner unless approval from DMAS is obtained prior to using the altered forms. If there is no designated DMAS form*

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for service documentation, the provider must include all elements required by DMAS in the provider's service documentation;

8. Use DMAS-designated billing forms for submission of charges;

9. Not perform any type of direct marketing activities to Medicaid individuals;

10. Maintain and retain business and professional records sufficient to document fully and accurately the nature, scope, and details of the services provided:

a. In general, such records shall be retained for at least six 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;

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

11. 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;

12. 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;

13. Pursuant to 42 CFR 431.300, et. seq., 12 VAC 30-20-90, and any other applicable federal or state law, all providers shall hold confidential and use for authorized DMAS purposes only all medical assistance information regarding individuals served. A provider shall disclose information in his possession only when the information is used in conjunction with a claim for health benefits, or the data is necessary for the functioning of DMAS in conjunction with the cited laws;

14. Notify DMAS in writing as least 15 days before ownership or management of the facility changes;

15. Pursuant to § 63.2-1606 of the Code of Virginia (COV), if a participating provider knows or suspects that an AAL waiver services individual is being abused, neglected, or exploited, the party having knowledge or suspicion of the abuse, neglect, or exploitation must report this immediately from first knowledge to the local DSS or adult protective services hotline as applicable;

16. In addition to compliance with the general conditions and requirements, all providers enrolled by DMAS shall adhere to the conditions of participation outlined in the individual provider participation agreements and in the applicable DMAS provider manual. DMAS shall conduct ongoing monitoring of

compliance with provider participation standards and DMAS policies. A provider's noncompliance with DMAS policies and procedures may result in a retraction of Medicaid payment or termination of the provider agreement, or both;

17. All employees must have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of abuse, neglect, or exploitation of incapacitated or older adults and children. The criminal record check shall be available for review by DMAS staff who are authorized by the agency to review these files. DMAS will not reimburse the provider for any services provided by an employee who has committed a barrier crime as defined herein. Providers are responsible for complying with § 63.2-1720 of the Code of Virginia regarding criminal record checks; and

18. Immediately notify DMAS, in writing, of any change in the information that the provider previously submitted to DMAS.

C. Other than termination of a participation agreement with 30-days' written notice, a provider shall have the right to appeal adverse actions taken by DMAS. Provider appeals shall be considered pursuant to 12 VAC 30-10-1000 and 12 VAC 30-20-500 through 12 VAC 30-20-560.

D. The Medicaid provider agreement shall terminate upon conviction of the provider of a felony pursuant to § 32.1-325 of the Code of Virginia. A provider convicted of a felony in Virginia or in any other of the 50 states, the District of Columbia or, the U.S. territories, must, within 30 days, notify the Virginia Medicaid Program of this conviction and relinquish the provider agreement.

E. Provider's Responsibility for the Patient Information Form (DMAS-122). It shall be the responsibility of the service provider to notify DSS and DMAS, in writing, when any of the following circumstances occur.

1. AAL waiver services are implemented;

2. An individual dies;

3. An individual is discharged from the provider; or

4. Any other circumstances (including hospitalization) that cause AAL waiver services to cease or be interrupted for more than 30 days.

F. Termination of waiver services.

1. In a nonemergency situation, i.e. when the health and safety of the individual or provider personnel is not endangered, the participating provider shall give the individual or family/caregiver, or both, at least 30 days written notification plus three days for mailing of the intent to discontinue services. The notification letter shall provide the reasons for and the effective date the provider is discontinuing services. The effective date shall be at least 30 days plus three days for mailing from the date of the notification letter.

2. In an emergency situation when the health and safety of the individual or provider personnel is endangered, DMAS must be notified prior to discontinuing services. The written notification period shall not be required. If appropriate, the local DSS Adult Protective Services must be notified immediately.

12 VAC 30-120-1640. Participation standards for provision of services.

A. Facilities must have a provider agreement approved by DMAS to provide AAL Waiver services.

B. The facility must provide a safe, secure environment for waiver recipients. There may be one or more self-contained special care units in a facility or the whole facility may be a special care unit. Personalized care must be furnished to individuals who reside in their own living units, with semi-private rooms limited to two people and a maximum of two individuals sharing a bathroom.

C. Care in a facility must be furnished in a way that fosters the independence of each individual to facilitate aging in place. Routines of care provision and service delivery must be consumer driven to the maximum extent possible and treat each person with dignity and respect.

D. The medical care of residents must be under the direction and supervision of a physician. This can be the individual's private physician. The facility must ensure that residents have appointments with their physicians at least annually and as needed as determined by the physician.

E. Administrators.

1. Administrators of participating assisted living facilities must have current licensure as nursing home administrators from the state board licensing nursing home and assisted living administrators. The following qualifications may be substituted for nursing home administrator licensure;

a. A bachelor's degree from an accredited college or university and two years of experience working with older adults or persons with disabilities. This may be paid full-time employment or its equivalent in part-time employment, volunteer work, or internship; or

b. Current licensure in Virginia as a registered nurse.

2. The administrator shall demonstrate knowledge, skills and abilities in the administration and management of an assisted living facility program including:

a. Knowledge and understanding of impaired elderly or disabled individuals;

b. Supervisory and interpersonal skills;

c. Ability to plan and implement the program; and

d. Knowledge of financial management sufficient to ensure program development and continuity.

3. The administrator shall demonstrate knowledge of supervisory and motivational techniques sufficient to:

a. Accomplish day-to-day work;

b. Train, support and develop staff; and

c. Plan responsibilities for auxiliary staff to ensure that services are provided to participants.

4. The administrator shall complete 20 hours of continuing education annually to maintain and develop skills. This

training shall be in addition to first aid, CPR, or orientation training.

F. Nursing staff requirements.

1. Each facility shall have at least one registered nurse (RN) awake, on duty, and on-site in the facility for at least eight hours a day for five days each week and on call 24 hours a day. The person on call must be able to arrive at the facility within one hour.

2. The RN is responsible for staff training, resident assessment, plans of care, and medication oversight.

3. Assessments.

a. Comprehensive assessment. The RN must complete a comprehensive assessment of each resident upon admission. The comprehensive assessment includes the UAI and relevant social, psychological, and medical information. The comprehensive assessment must also include the physician's assessment information as contained in 22 VAC 40-71-150 L. The comprehensive assessment must be updated yearly and when a significant change in health status or behavior occurs. The information gathered during the comprehensive assessment is used to create the resident's plan of care as contained in 22 VAC 40-71-170 C-D.

b. Plan of care. Based on the individual resident assessment and the UAI, the RN, in coordination with other caregivers including the resident's authorized representative:

(1) Shall develop the resident's plan of care and formulate interventions to address the specific problems identified;

(2) Shall evaluate both the facility's implementation and the resident's response to the plan of care;

(3) Shall review and update the plan of care at least quarterly and more often when necessary to meet the needs of the resident.

c. Monthly assessments. The RN or an LPN under the supervision of the RN must complete a monthly assessment. Significant changes documented on the monthly assessment must be addressed in an updated plan of care. The comprehensive assessment information shall also be updated as needed. At a minimum, the monthly assessment contains the following elements:

(1) Weight loss;

(2) Falls;

(3) Elopements;

(4) Behavioral symptoms;

(5) Adverse reactions to prescribed medications;

(6) Dehydration;

(7) Pressure ulcers;

(8) Fecal impaction;

(9) Cognitive changes;

(10) Change in diagnoses;

(11) Change in dependence on ADLs;

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4. In a facility with less than 16 beds, the facility's RN may also serve as the administrator and/or unit coordinator. In a facility with more than 16 beds, the facility's RN may also serve as the administrator or the unit coordinator, but not as both. In all instances where the facility's RN is assigned other duties as an administrator, unit coordinator, or both, the facility must assure that the RN devotes sufficient time and effort to all clinical duties.

G. Unit coordinator.

1. Facilities must have a unit coordinator, awake and on-site in the unit, who will manage the daily routine operation of the specialty unit.

2. The unit coordinator must be available to the facility 24 hours a day.

3. At a minimum, the unit coordinator must be a Certified Nursing Aide (CNA) with at least one year of experience in an assisted living facility or nursing home.

4. The unit coordinator may be an RN or an LPN, who is serving as the assisted living facility's daily nurse, the administrator, or the activities director.

5. In the event the unit coordinator is not available, an alternate qualified staff member may serve in this capacity. Each assisted living facility must establish its own written protocol and assure that only qualified staff fulfill this requirement.

6. In all instances where the facility's RN is assigned other duties as an administrator, unit coordinator, or both, the facility must assure that the RN devotes sufficient time and effort to all clinical duties.

H. Structured activities program. There shall be a designated employee responsible for managing or coordinating the structured activities program. This employee shall be on-site in the special care unit at least 20 hours a week, shall maintain personal interaction with the residents and familiarity with their needs and interests, and shall meet at least one of the following qualifications:

1. Be a qualified therapeutic recreation specialist or activities professional;

2. Be eligible for certification as a therapeutic recreation specialist or an activities professional by a recognized accrediting body;

3. Have one year full-time work experience, within the last five years, in an activities program in an adult care setting;

4. Be a qualified occupational therapist or an occupational therapy assistant; or

5. Prior to or within six months of employment, have successfully completed 40 hours of DSS approved training.

I. Certified nursing aides. In order to provide services in this waiver, the assisted living facility must use certified nursing aides (CNA) in the specialty unit at all times.

J. The assisted living facility must have sufficient qualified and trained staff to meet the needs of the residents at all times.

K. There must be at least two awake direct care staff in the special care unit at all times and more if dictated by the needs of the residents.

L. Training requirements for all staff.

1. All staff who have contact with residents, including the administrator, shall have completed 12 hours of dementia-specific training prior to resident contact. A health care educator, adult education professional or a licensed professional, not employed by the assisted living facility, with expertise in dementia must conduct this training. The health care educator, adult education professional or licensed professional must be acting within the scope of the requirements of his profession and have had at least 12 hours of training in the care of individuals with cognitive impairments due to dementia prior to performing the training.

2. All direct care staff must receive annual training in accordance with 22 VAC 40-71-630, with at least eight hours of training in the care of residents with dementia and medical nursing needs. This training may be incorporated into the existing training program and must address the medical nursing needs specific to each resident in the special care unit. This training must also incorporate problem areas which may include weight loss, falls, elopements, behavioral symptoms, and adverse reactions to prescribed medications. A health care educator, adult education professional or licensed professional with expertise in dementia must conduct this training. The health care educator, adult education professional or licensed professional must be acting within the scope of his profession and have had at least 12 hours of training in the care of individuals with cognitive impairments due to dementia prior to performing the training.

3. The individual conducting the training must have at least 3 years of experience in the healthcare or dementia care field. In addition to health care educators and adult education professionals, licensed professionals eligible to conduct the training include: physicians, psychologists, registered nurses, occupational therapists, physical therapists, speech/language pathologists, licensed clinical social workers, and licensed professional counselors.

M. Documentation. The assisted living facility shall maintain the following documentation for review by DMAS staff for each assisted living resident:

1. All UAIs, authorization forms, plans of care and assessments completed for the resident maintained for a period not less than five years from the recipient's start of care in that facility.

2. All written communication related to the provision of care between the facility and the assessor, licensed health care professional, DMAS, DSS, the recipient, or other related parties.

3. A log which documents each day that the recipient is present in the facility.

12 VAC 30-120-1650. Payment for services.

A. DMAS shall pay the facility a per diem fee for each recipient authorized to receive assisted living services. Except for 14 days of leave each calendar year as described

in section C, payment of the per diem fee is limited to the days in which the recipient is physically present in the facility.

B. The services that are provided as a part of the Auxiliary Grant rate will not be included for payment from the waiver.

C. Periods of absence from the assisted living facility.

1. An assisted living facility AAL Waiver bed may be held for leave when the resident's plan of care provides for such leave. Leave includes visits with relatives and friends or admission to a rehabilitation center for up to seven days for an evaluation. Leave does not include periods of absence due to an admission to a hospital or nursing facility.

2. Leave is limited to 14 days in any 12-month period. Leave is resident-specific and is counted from the first occurrence of overnight leave that a resident takes. From that date, a resident has 14 days of leave available during the next 365 days.

3. After the 14 days of leave have been exhausted and during periods of absence due to a hospital or nursing facility admission, the assisted living facility may choose to hold the bed for the resident, but the waiver will not pay for the service. The resident's authorized representative may choose to pay to hold the bed by paying the assisted living facility directly using other funds. The rate shall be negotiated between the resident's authorized representative and the assisted living facility.

4. During periods of absence for any reason, DMAS shall hold the waiver slot for the resident for a total of 30 consecutive days. If the resident's absence exceeds 30 days, DMAS shall terminate AAL waiver services and assign the slot to the next person on the waiting list.

12 VAC 30-120-1660. Utilization review.

A. DMAS shall conduct audits of the services billed to DMAS and interview recipients to ensure that services are being provided and billed in accordance with DMAS policies and procedures.

B. DMAS will review all facilities providing services in this waiver. All utilization reviews will be performed annually and will be performed on site.

DOCUMENTS INCORPORATED BY REFERENCE

The Art of Readable Writing, Rudolf Flesch, Ph.D., 1949, revised 1962, Collier Books.

Elderly and Disabled Waiver Services Manual, First Edition, Department of Medical Assistance Services, published July 1, 2002.

UL1635, Standard for Safety for Digital Alarm Communicator System Units, copyright 2002, Underwriters Laboratories, Inc.

UL1637, Standard for Safety for Home Health Care Signaling Equipment, copyright 2002, Underwriters Laboratories, Inc.

Diagnostic and Statistical Manual of Mental Disorders (DSM-IV), Fourth Edition, pages 139-143, American Psychiatric Association.

VA.R. Doc. No. R06-51; Filed September 14, 2005, 11:06 a.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Title of Regulation: **22 VAC 40-71. Standards and Regulations for Licensed Assisted Living Facilities (amending 22 VAC 40-71-10, 22 VAC 40-71-50, 22 VAC 40-71-60, 22 VAC 40-71-80, 22 VAC 40-71-120, 22 VAC 40-71-130, 22 VAC 40-71-150, 22 VAC 40-71-400, 22 VAC 40-71-630, 22 VAC 40-71-650, 22 VAC 40-71-670 and 22 VAC 40-71-700; adding 22 VAC 40-71-55, 22 VAC 40-71-65, 22 VAC 40-71-485; repealing 22 VAC 40-71-660).**

Statutory Authority: §§ 63.2-217 and 63.2-1732 of the Code of Virginia.

Effective Dates: December 28, 2005, through December 27, 2006.

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Preamble:

Chapter 924 of the 2005 Acts of Assembly provides that action must be effective within 280 days from enactment of the legislation. The substantive changes to the existing assisted living facility regulation are as follows: applicants for licensure will be required to obtain a background check, qualifications and training for the administrator and direct care staff will be enhanced, a medication management plan will be required, smaller homes may share an administrator, information on facilities will be disclosed to prospective residents, and evaluation and notification requirements for residents with mental illness will be increased.

22 VAC 40-71-10. Definitions.

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

"Activities of daily living (ADLs)" means bathing, dressing, toileting, transferring, bowel control, bladder control and eating/feeding. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Administer medication" means to open a container of medicine or to remove the prescribed dosage and to give it to the resident for whom it is prescribed.

"Administrator" means the licensee or a person designated by the licensee who oversees the day-to-day operation of the facility, including compliance with all regulations for licensed assisted living facilities.

"Ambulatory" means the condition of a resident who is physically and mentally capable of self-preservation by

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evacuating in response to an emergency to a refuge area as defined by the Uniform Statewide Building Code without the assistance of another person, or from the structure itself without the assistance of another person if there is no such refuge area within the structure, even if such resident may require the assistance of a wheelchair, walker, cane, prosthetic device, or a single verbal command to evacuate.

"Assisted living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require at least moderate assistance with the activities of daily living. Included in this level of service are individuals who are dependent in behavior pattern (i.e., abusive, aggressive, disruptive) as documented on the uniform assessment instrument.

"Assisted living facility" means, as defined in § 63.2-100 of the Code of Virginia, any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Mental Health, Mental Retardation and Substance Abuse Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational program for the handicapped pursuant to § 22.1-214 of the Code of Virginia, when such facility is licensed by the department as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia, but including any portion of the facility not so licensed; and (iv) any housing project for persons 62 years of age or older or the disabled that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development including, but not limited to, U.S. Department of Housing and Urban Development Sections 8, 202, 221(d)(3), 221(d)(4), 231, 236 or 811 housing, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults.

"Building" means a structure with exterior walls under one roof.

"Cardiopulmonary resuscitation (CPR)" means an emergency procedure consisting of external cardiac massage and artificial respiration; the first treatment for a person who has collapsed and has no pulse and has stopped breathing; attempts to restore circulation of the blood and prevent death or brain damage due to lack of oxygen.

"Case management" means multiple functions designed to link clients to appropriate services. Case management may include a variety of common components such as initial screening of needs, comprehensive assessment of needs, development and implementation of a plan of care, service monitoring, and client follow-up.

"Case manager" means an employee of a public human services agency who is qualified and designated to develop and coordinate plans of care.

"Chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms, including when the drug is used in one or more of the following ways:

1. In excessive dose (including duplicate drug therapy);
2. For excessive duration;
3. Without adequate monitoring;
4. Without adequate indications for its use;
5. In the presence of adverse consequences which indicate the dose should be reduced or discontinued; and
6. In a manner that results in a decline in the resident's functional status.

"Community services board" means a citizens' board established pursuant to § 37.1-195 of the Code of Virginia that provides mental health, mental retardation and substance abuse programs and services within the political subdivision or political subdivisions participating on the board.

"Conservator" means a person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person and, where the context plainly indicates, includes a "limited conservator" or a "temporary conservator." The term includes a local or regional program designated by the Department for the Aging as a public conservator pursuant to Article 2 (§ 2.2-711 et seq.) of Chapter 7 of Title 2.2 of the Code of Virginia.

"Continuous licensed nursing care" means around-the-clock observation, assessment, monitoring, supervision, or provision of medical treatments provided by a licensed nurse. Residents requiring continuous licensed nursing care may include:

1. Individuals who have a medical instability due to complexities created by multiple, interrelated medical conditions; or
2. Individuals with a health care condition with a high potential for medical instability.

"Department" means the Virginia Department of Social Services.

"Department's representative" means an employee of the Virginia Department of Social Services, acting as the authorized agent in carrying out the duties specified in the Code of Virginia.

"Direct care staff" means supervisors, assistants, aides, or other employees of a facility who assist residents in their daily living activities. Examples are likely to include nursing staff, geriatric assistants and mental health workers but are not likely to include waiters, chauffeurs, and cooks.

"Discharge" means the movement of a resident out of the assisted living facility.

"Emergency" means, as it applies to restraints, a situation which may require the use of a restraint where the resident's behavior is unmanageable to the degree an immediate and serious danger is presented to the health and safety of the resident or others.

"Emergency placement" means the temporary status of an individual in an assisted living facility when the person's health and safety would be jeopardized by not permitting entry into the facility until the requirements for admission have been met.

"Extended license" means a license that is granted for more than one year's duration because the facility demonstrated a pattern of strong compliance with licensing standards.

"Good character and reputation" means findings have been established and knowledgeable, reasonable, and objective people agree that the individual (i) maintains business or professional, family, and community relationships that are characterized by honesty, fairness, truthfulness, and dependability; and (ii) has a history and pattern of behavior that demonstrates the individual is suitable and able to administer a program for the care, supervision, and protection of adults. Relatives by blood or marriage and persons who are not knowledgeable of the individual, such as recent acquaintances, may not act as references.

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

"Habilitative service" means activities to advance a normal sequence of motor skills, movement, and self-care abilities or to prevent unnecessary additional deformity or dysfunction.

"Health care provider" means a person, corporation, facility or institution licensed by this Commonwealth to provide health care or professional services such as a physician or hospital, dentist, pharmacist, registered or licensed practical nurse, optometrist, podiatrist, chiropractor, physical therapist, physical therapy assistant, clinical psychologist, or health maintenance organization. This list is not all inclusive.

"High risk behavior" means any behavior, including an expressed intent, that exposes, or has the potential to expose, the person exhibiting the behavior, or those being exposed to the behavior, to harm. Examples of high risk behaviors include, but are not limited to, the following: physically assaulting others or gesturing, making suicidal attempts, verbalizing a threat to harm self or others, verbalizing an unrealistic fear of being harmed by others, destroying property that exposes self or others to harm, wandering in or outside of the facility, being intrusive in the personal space of others, putting objects or liquids in the mouth that are mistaken as food or consumable fluids, increased physical activity such as floor pacing that might indicate anxiety or stress, increased or confusing speech pattern or communications that might indicate a disorder of thought process, decreased physical

activity such as staying in bed, not eating, or not communicating that might indicate depression.

"Household member" means any person domiciled in an assisted living facility other than residents or staff.

"Human subject research" means any medical or psychological research which utilizes human subjects who may be exposed to the possibility of physical or psychological injury as a consequence of participation as subjects and which departs from the application of those established and accepted methods appropriate to meet the subject's needs but does not include (i) the conduct of biological studies exclusively utilizing tissue or fluids after their removal or withdrawal from a human subject in the course of standard medical practice, (ii) epidemiological investigations, or (iii) medical treatment of an experimental nature intended to save or prolong the life of the subject in danger of death, to prevent the subject from becoming disfigured or physically or mentally incapacitated or to improve the quality of the subject's life pursuant to § 37.1-234 of the Code of Virginia.

"Independent clinical psychologist" means a clinical psychologist who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer or employee or as an independent contractor with the facility.

"Independent living environment" means one in which the resident or residents perform all activities of daily living and instrumental activities of daily living for themselves without requiring the assistance of any staff member in the assisted living facility.

"Independent living status" means that the resident is assessed as capable of performing all activities of daily living and instrumental activities of daily living for himself without requiring the assistance of any staff member in the assisted living facility. (If the policy of a facility dictates that medications are administered or distributed centrally without regard for the residents' capacity, this shall not be considered in determining independent status.)

"Independent physician" means a physician who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the facility.

NOTE: "Physician" is defined later in this section.

"Individualized service plan" means the written description of actions to be taken by the licensee to meet the assessed needs of the resident.

"Instrumental activities of daily living (IADLs)" means meal preparation, housekeeping, laundry, and managing money. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Intermittent intravenous therapy" means therapy provided by a licensed health care professional at medically predictable intervals for a limited period of time on a daily or periodic basis.

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"Licensee" means any person, association, partnership or corporation to whom the license is issued.

"Licensed health care professional" means any health care professional currently licensed by the Commonwealth of Virginia to practice within the scope of his profession, such as a clinical social worker, dentist, licensed practical nurse, nurse practitioner, occupational therapist, pharmacist, physical therapist, physician, physician assistant, psychologist, registered nurse, and speech-language pathologist.

NOTE: Responsibilities of physicians contained within this chapter may be implemented by nurse practitioners or physician assistants as assigned by the supervising physician and within the parameters of professional licensing.

"Maintenance or care" means the protection, general supervision and oversight of the physical and mental well-being of the aged, infirm or disabled individual. Assuming responsibility for the well-being of residents, either directly or through contracted agents, is considered "general supervision and oversight."

"Mandated reporter" means any person licensed to practice medicine or any of the healing arts, any hospital resident or intern, any person employed in the nursing profession, any person employed by a public or private agency or facility and working with adults, any person providing full-time or part-time care to adults for pay on a regularly scheduled basis, any person employed as a social worker, any mental health professional and any law-enforcement officer, in his professional or official capacity, who has reason to suspect that an adult is an abused, neglected or exploited adult. This is pursuant to § 63.2-1606 of the Code of Virginia.

"Maximum physical assistance" means that an individual has a rating of total dependence in four or more of the seven activities of daily living as documented on the uniform assessment instrument.

NOTE: An individual who can participate in any way with performance of the activity is not considered to be totally dependent.

"Medication aide" means a staff person who has successfully completed the medication training program developed by the department and approved by the Board of Nursing.

"Mental impairment" means a disability which reduces an individual's ability to reason or make decisions.

"Mentally ill" means any person afflicted with mental disease to such an extent that for his own welfare or the welfare of others he requires care and treatment, or with mental disorder or functioning classifiable under the diagnostic criteria from the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association, Fourth Edition, Text Revision, 1994, or subsequent editions, that affects the well-being or behavior of an individual.

"Mentally retarded" means substantial sub-average general intellectual functioning that originates during the development period and is associated with impairment in adaptive behavior. It exists concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-

direction, health and safety, functional academics, leisure, and work.

"Minimal assistance" means dependency in only one activity of daily living or dependency in one or more of the instrumental activities of daily living as documented on the uniform assessment instrument.

"Moderate assistance" means dependency in two or more of the activities of daily living as documented on the uniform assessment instrument.

"Nonambulatory" means the condition of a resident who by reason of physical or mental impairment is not capable of self-preservation without the assistance of another person.

"Nonemergency" means, as it applies to restraints, circumstances which may require the use of a restraint for the purpose of providing support to a physically weakened resident.

"Personal representative" means the person representing or standing in the place of the resident for the conduct of his affairs. This may include a guardian, conservator, attorney-in-fact under durable power of attorney, next of kin, decedent, trustee, or other person expressly named by the resident as his agent.

"Physical impairment" means a condition of a bodily or sensory nature that reduces an individual's ability to function or to perform activities.

"Physical restraint" means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove easily, which restricts freedom of movement or access to his body.

"Physician" means an individual licensed to practice medicine in any of the 50 states or the District of Columbia.

"Psychopharmacologic drug" means any drug prescribed or administered with the intent of controlling mood, mental status or behavior. Psychopharmacologic drugs include not only the obvious drug classes, such as antipsychotic, antidepressants, and the anti-anxiety/hypnotic class, but any drug that is prescribed or administered with the intent of controlling mood, mental status, or behavior, regardless of the manner in which it is marketed by the manufacturers and regardless of labeling or other approvals by the Food and Drug Administration (FDA).

"Public pay" means a resident of an adult care facility eligible for benefits under the Auxiliary Grants Program.

"Qualified" means having appropriate training and experience commensurate with assigned responsibilities; or if referring to a professional, possessing an appropriate degree or having documented equivalent education, training or experience.

"Qualified mental health professional" means a clinician in the health professions who is trained and experienced in providing psychiatric or mental health services to individuals who have a psychiatric diagnosis, including and limited to (i) a physician: a doctor of medicine or osteopathy; (ii) a psychiatrist: a doctor of medicine or osteopathy, specializing in psychiatry and licensed in Virginia; (iii) a psychologist: an individual with a

master's degree in psychology from a college or university accredited by an association recognized by the U.S. Secretary of Education, with at least one year of clinical experience; (iv) a social worker: an individual with at least a bachelor's degree in human services or related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, or human services counseling) from a college or university accredited by an association recognized by the U.S. Secretary of Education, with at least one year of clinical experience providing direct services to persons with a diagnosis of mental illness; (v) a Registered Psychiatric Rehabilitation Provider (RPRP) registered with the International Association of Psychosocial Rehabilitation Services (IAPRS); (vi) a registered nurse licensed in the Commonwealth of Virginia with at least one year of clinical experience working in a mental health treatment facility or agency; (vii) any other licensed mental health professional; or (viii) any other person deemed by the Department of Mental Health, Mental Retardation and Substance Abuse Services as having qualifications equivalent to those described in this definition.

"Qualified assessor" means an entity contracting with the Department of Medical Assistance Services to perform nursing facility preadmission screening or to complete the uniform assessment instrument for a home- and community-based waiver program, including an independent physician contracting with the Department of Medical Assistance Services to complete the uniform assessment instrument for residents of assisted living facilities, or any hospital which has contracted with the Department of Medical Assistance Services to perform nursing facility preadmission screenings.

"Rehabilitative services" means activities that are ordered by a physician or other qualified health care professional which are provided by a rehabilitative therapist (physical therapist, occupational therapist or speech-language pathologist). These activities may be necessary when a resident has demonstrated a change in his capabilities and are provided to enhance or improve his level of functioning.

"Resident" means any aged, infirm, or disabled adult residing in an assisted living facility for the purpose of receiving maintenance or care.

"Residential living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living. Included in this level of service are individuals who are dependent in medication administration as documented on the uniform assessment instrument. This definition includes the services provided by independent living facilities that voluntarily become licensed.

"Respite care" means services provided for maintenance and care of aged, infirm or disabled adults for temporary periods of time, regularly or intermittently. Facilities offering this type of care are subject to this chapter.

"Restorative care" means activities designed to assist the resident in reaching or maintaining his level of potential. These activities are not required to be provided by a rehabilitative therapist and may include activities such as range of motion, assistance with ambulation, positioning,

assistance and instruction in the activities of daily living, psychosocial skills training, and reorientation and reality orientation.

"Safe, secure environment" means a self-contained special care unit for individuals with serious cognitive impairments due to a primary psychiatric diagnosis of dementia who cannot recognize danger or protect their own safety and welfare. Means of egress that lead to unprotected areas must be monitored or secured through devices that conform to applicable building and fire safety standards, including but not limited to, door alarms, cameras, constant staff oversight, security bracelets that are part of an alarm system, pressure pads at doorways, delayed egress mechanisms, locking devices or perimeter fence gates. There may be one or more self-contained special care units in a facility or the whole facility may be a special care unit. NOTE: Nothing in this definition limits or contravenes the privacy protections set forth in § 63.2-1808 of the Code of Virginia.

"Serious cognitive impairment" means severe deficit in mental capability of a chronic, enduring or long term nature that affects areas such as thought processes, problem-solving, judgment, memory, and comprehension and that interferes with such things as reality orientation, ability to care for self, ability to recognize danger to self or others, and impulse control. Such cognitive impairment is not due to acute or episodic conditions, nor conditions arising from treatable metabolic or chemical imbalances or caused by reactions to medication or toxic substances.

"Skilled nursing treatment" means a service ordered by a physician which is provided by and within the scope and practice of a licensed nurse.

"Substance abuse" means the use, without compelling medical reason, of alcohol or other legal or illegal drugs that results in psychological or physiological dependency or danger to self or others as a function of continued use in such a manner as to induce mental, emotional or physical impairment and cause socially dysfunctional or socially disordering behavior.

"Systems review" means a physical examination of the body to determine if the person is experiencing problems or distress, including cardiovascular system, respiratory system, gastrointestinal system, urinary system, endocrine system, musculoskeletal system, nervous system, sensory system and the skin.

"Transfer" means movement of a resident to a different assigned living area within the same licensed facility.

"Transfer trauma" means feelings or symptoms of stress, emotional shock or disturbance, hopelessness, or confusion resulting from the resident being moved from one residential environment to another.

"Uniform assessment instrument (UAI)" means the department designated assessment form. There is an alternate version of the form which may be used for private pay residents, i.e., those not eligible for benefits under the Auxiliary Grants Program. Social and financial information which is not relevant because of the resident's payment status is not included on the private pay version of the form.

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22 VAC 40-71-50. Licensee.

A. The licensee shall ensure compliance with all regulations for licensed assisted living facilities and terms of the license issued by the department; with other relevant federal, state or local laws and regulations; and with the facility's own policies.

B. The licensee shall meet the following requirements:

1. The licensee shall give evidence of financial responsibility.
2. The licensee shall be of good character and reputation.

NOTE: Character and reputation investigation includes, but is not limited to, background checks as required by §§ 63.2-1702 and 63.2-1721 of the Code of Virginia.

3. *The licensee shall meet the requirements specified in the Regulation for Background Checks for Assisted Living Facilities and Adult Day Care Centers (22 VAC 40-90-10 et seq.).*

~~3.~~ 4. The licensee shall protect the physical and mental well-being of residents.

4. 5. The licensee shall keep such records and make such reports as required by this chapter for licensed assisted living facilities. Such records and reports may be inspected at any reasonable time in order to determine compliance with this chapter.

~~5.~~ 6. The licensee shall meet the qualifications of the administrator if he assumes those duties.

C. An assisted living facility sponsored by a religious organization, a corporation or a voluntary association shall be controlled by a governing board of directors that shall fulfill the duties of the licensee.

D. Upon initial application for an assisted living facility license, any person applying to operate such a facility who has not previously owned or managed or does not currently own or manage a licensed assisted living facility shall be required to undergo training by the commissioner or his designated agents. Such training shall be required of those owners and currently employed administrators of an assisted living facility at the time of initial application for a license.

1. The commissioner may also approve training programs provided by other entities and allow owners or administrators to attend such approved training programs in lieu of training by the department.
2. The commissioner may also approve for licensure applicants who meet requisite experience criteria as established by the board.
3. The training programs shall focus on the health and safety regulations and resident rights as they pertain to assisted living facilities and shall be completed by the owner or administrator prior to the granting of an initial license.
4. The commissioner may, at his discretion, issue a license conditioned upon the owner or administrator's completion of the required training.

22 VAC 40-71-55. Disclosure.

A. *The assisted living facility shall prepare and provide a statement to the prospective resident and his legal representative, if any, that discloses information about the facility. The statement shall be on a form developed by the department and shall:*

1. *Disclose information fully and accurately in plain language;*
2. *Be provided to the prospective resident and his legal representative at least five days in advance of the planned admission date and prior to signing an admission agreement or contract;*
3. *Be provided to a resident or his legal representative upon request; and*
4. *Disclose the following information, which shall be kept current:*
 - a. *Name of the facility;*
 - b. *Name of the licensee;*
 - c. *Names of any other facilities for which the licensee has been issued a license by the Commonwealth of Virginia;*
 - d. *Ownership structure of the facility, i.e., individual, partnership, corporation, limited liability company, unincorporated association or public agency;*
 - e. *Owner of the property, if it is leased;*
 - f. *Name of management company that operates the facility, if other than the licensee;*
 - g. *Licensed capacity of the facility and description of the characteristics of the resident population;*
 - h. *Description of all accommodations, services, and care that the facility offers;*
 - i. *Fees charged for accommodations, services, and care, including clear information about what is included in the base fee and any fees for additional accommodations, services, and care;*
 - j. *Policy regarding increases in charges and length of time for advance notice of intent to increase charges;*
 - k. *Amount of an advance or deposit payment and refund policy for such payment;*
 - l. *Criteria for admission to the facility and any restrictions on admission;*
 - m. *Criteria for transfer to a different living area within the same facility, including transfer to another level of care within the same facility or complex;*
 - n. *Criteria for discharge, including the actions, circumstances, or conditions that would result or might result in the resident's discharge from the facility;*
 - o. *Requirements or rules regarding resident conduct and other restrictions and special conditions;*
 - p. *Range, categories, frequency, and number of activities provided for residents;*

q. General number, functions, and qualifications of staff on each shift;

r. Indication of whether contractors are used to provide any essential services to residents and, if used, provide names of contractors upon request; and

s. Address of the website of the Virginia Department of Social Services, with a note that additional information about the facility may be obtained from the website, including type of license, special services, and compliance history that includes information after July 1, 2003.

B. If a prospective resident is admitted to the facility, written acknowledgement of the receipt of the disclosure by the resident or his legal representative shall be retained in his record.

EXCEPTION: If circumstances are such that resident admission to a facility prevents disclosure of the information at least five days in advance, then the information shall be disclosed at the earliest possible time prior to signing an admission agreement or contract. The circumstances causing the delay shall be documented.

C. The information required in this section shall also be available to the general public.

22 VAC 40-71-60. Administrator.

A. Each facility shall have an administrator of record. This does not prohibit the administrator from serving more than one facility.

B. The administrator shall meet the following minimum qualifications and requirements:

1. The administrator shall be at least 21 years of age.
2. The administrator shall be able to read and write, and understand this chapter.
3. The administrator shall be able to perform the duties and to carry out the responsibilities required by this chapter.
4. The administrator shall be a high school graduate or shall have a General Education Development Certificate (GED), and have completed at least one year of successful post secondary education from an accredited college or institution or at least one year of administrative or supervisory experience in caring for adults in a group care facility. The following exception applies: Administrators employed prior to February 1, 1996, shall be a high school graduate or shall have a GED, or shall have completed one year of successful experience in caring for adults in a group care facility.
5. The administrator shall meet the requirements stipulated for all staff in subsection A of 22 VAC 40-71-70.
6. The administrator shall not be a resident of the facility.

C. Any person meeting the qualifications for a licensed nursing home administrator pursuant to § 54.1-3103 of the Code of Virginia may (i) serve as an administrator of an assisted living facility and (ii) serve as the administrator of both an assisted living facility and a licensed nursing home,

provided the assisted living facility and licensed nursing home are part of the same building.

D. The administrator shall demonstrate basic respect for the dignity of residents by ensuring compliance with residents' rights.

E. The facility licensee/operator, facility administrator, relatives of the licensee/operator or administrator, or facility employees shall not act as, seek to become, or become the conservator or guardian of any resident unless specifically so appointed by a court of competent jurisdiction pursuant to Chapter 4 (§ 37.1-134.6 et seq.) of Title 37.1 of the Code of Virginia.

F. Facility owners shall notify the licensing agency of a change in a facility's administrator. The notifications shall be sent to the licensing agency in writing within 10 working days of the change.

G. It shall be the duty of the administrator to oversee the day-to-day operation of the facility. This shall include, but shall not be limited to, responsibility for:

1. Services to residents;
2. Maintenance of buildings and grounds;
3. Supervision of assisted living facility staff.

H. Either the administrator or a designated assistant who meets the qualifications of the administrator shall be awake and on duty on the premises at least 40 hours per week.

1. No fewer than 24 of those hours shall be during the day shift on week days.

2. There shall be a written schedule of the on-site presence of the administrator and if applicable, the designated assistant or the manager. The schedule shall be retained for two years.

EXCEPTIONS:

Subsection L of this section allows a shared administrator for smaller facilities.

I. When an administrator terminates employment, a new administrator shall be hired within 90 days from the date of termination. *Unless a new administrator is employed immediately, a qualified acting administrator shall be appointed when the administrator terminates employment.*

J. The administrator shall attend at least 20 hours of training related to management or operation of a residential facility for adults or client specific training needs within each 12-month period. When adults with mental impairments reside in the facility, at least five of the required 20 hours of training shall focus on the resident who is mentally impaired. Documentation of attendance shall be retained at the facility and shall include title of course, location, date and number of hours.

K. If medication is administered to residents by medication aides as allowed in 22 VAC 40-71-400 H, the administrator shall successfully complete a medication training program approved by the Board of Nursing. The training shall be completed within four months of employment as an administrator and may be counted toward the annual training

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requirement for the first year. Administrators employed prior to the effective date of these standards have six months from the effective date of these standards to successfully complete the medication training program. The following exceptions apply:

1. The administrator is licensed by the Commonwealth of Virginia to administer medications, or
2. Medication aides are supervised by an individual employed full time at the facility who is licensed by the Commonwealth of Virginia to administer medications.

L. Shared administrator for smaller facilities.

The administrator may be awake and on duty on the premises for fewer than the minimum 40 hours per week, without a designated assistant, under the following conditions:

1. In facilities licensed for 10 or fewer residents:
 - a. The administrator shall be awake and on duty on the premises of each facility for at least 10 hours a week; and
 - b. The administrator shall serve no more than four facilities;
2. In facilities licensed for 11-19 residents:
 - a. The administrator shall be awake and on duty on the premises of each facility for at least 20 hours a week; and
 - b. The administrator shall serve no more than two facilities.
3. In facilities licensed for 10 or fewer residents as specified in subdivision 1 of this subsection and in facilities licensed for 11-19 residents as specified in subdivision 2 of this subsection:
 - a. The administrator shall serve as a full time administrator, i.e., shall be awake and on duty on the premises of more than one assisted living facility for at least 40 hours a week;
 - b. Each of the facilities served shall be within a 30 minute average travel time of the other facilities;
 - c. When not present at a facility, the administrator shall be on call to that facility during the hours he is working as an administrator and shall maintain such accessibility through suitable communication devices;
 - d. A designated assistant may act in place of the administrator during the required minimum of 40 hours only if the administrator is ill or on vacation and for a period of time that shall not exceed four weeks. The designated assistant shall meet the qualifications of the administrator.
 - e. There shall be a designated person who shall serve as manager and who shall be awake and on duty on the premises of each facility for the remaining part of the 40 required hours when the administrator is not present at the facility and who shall be supervised by the administrator. The manager shall meet the following minimum qualifications and requirements:

- (1) The manager shall be at least 21 years of age.

- (2) The manager shall be able to read and write, and understand this chapter.

- (3) The manager shall be able to perform the duties and to carry out the responsibilities of his position.

- (4) The manager shall:

- (a) Be a high school graduate or shall have a General Education Development Certificate (GED); and

- (b) Have successfully completed at least 30 credit hours of post secondary education from a college or university accredited by an association recognized by the U.S. Secretary of Education; or

- (c) Have successfully completed a department-approved course specific to the administration of an assisted living facility; and

- (d) Have at least one year of administrative or supervisory experience in caring for adults in a group care facility.

- (5) The manager shall not be a resident of the facility.

- f. The manager shall complete the training specified in 22 VAC 40-71-50 D within two months of employment as manager. The training may be counted toward the annual training requirement for the first year.

- g. Managers shall be required to complete refresher training when standards are revised, unless the department determines that such training is not necessary.

- h. The manager shall attend at least 16 hours of training related to management or operation of a residential facility for adults or relevant to the population in care within each 12-month period. When adults with mental impairments reside in the facility, at least four of the required 16 hours of training shall focus on residents who are mentally impaired. Documentation of attendance shall be retained at the facility and shall include title of course, name of the institution that provided the training, date and number of hours.

- i. There shall be a written management plan for each facility that includes written policies and procedures that describe how the administrator shall oversee the care and supervision of the residents and the day-to-day operation of the facility.

- j. Each facility shall maintain a schedule that specifies for both the administrator and the manager the days and times each shall be awake and on duty on the premises. Any changes shall be noted on the schedule, which shall be retained for two years.

- k. The minimum of 40 hours required for the administrator or manager to be awake and on duty on the premises of a facility shall include at least 24 hours being during the day shift on week days.

4. This section shall not apply to an administrator who serves both an assisted living facility and a nursing home, as provided for in subsection M of this section.

~~K~~. *M.* Whenever an assisted living facility and a licensed nursing home have a single administrator, there shall be a written management plan that addresses the care and supervision of the assisted living facility residents. The management plan shall include, but not be limited to, the following:

1. Written policies and procedures that describe how the administrator will oversee the care and supervision of the residents and the day-to-day operation of the facility;
2. If the administrator does not provide the direct management of the assisted living facility, the plan shall specify a designated individual who shall serve as manager and who shall be directly supervised by the administrator;
3. A current organizational chart that depicts the lines of responsibility; and
4. A position description for the administrator, and if applicable, for the manager.

~~L~~. *N.* The manager referred to in subdivision ~~K~~ *M* 2 of this section shall meet the following minimum qualifications and requirements:

1. The manager shall be at least 21 years of age;
2. The manager shall be able to read and write, and understand this chapter;
3. The manager shall be able to perform the duties and carry out the responsibilities of his position;
4. The manager shall be a high school graduate or shall have a General Education Development Certificate (GED), and have completed at least one year of successful post secondary education from an accredited college or institution or at least one year of administrative or supervisory experience in caring for adults in a group care facility;
5. The manager shall not be a resident of the facility; and
6. The manager shall attend at least eight hours of training related to management or operation of a residential facility for adults or client specific training needs within each 12-month period. When adults with mental impairments reside in the facility, at least two of the required eight hours of training shall focus on residents who are mentally impaired. Documentation of attendance shall be retained at the facility and shall include title of course, sponsor, date and number of hours.

22 VAC 40-71-65. Designated staff person in charge.

A. When the administrator or designated assistant who meets the qualifications of the administrator or the manager who meets the qualifications specified in 22 VAC 40-71-60 is not awake and on duty on the premises, there shall be a designated direct care staff member in charge, who has specific duties and responsibilities as determined by the administrator.

B. Prior to being placed in charge, the staff member shall be informed of and receive training on his duties and responsibilities, and be provided written documentation of such duties and responsibilities.

C. The staff member shall be awake and on duty on the premises while in charge.

D. The staff member in charge shall be capable of protecting the physical and mental well-being of the residents.

E. The administrator shall ensure that the staff member in charge is prepared to carry out his duties and responsibilities and respond appropriately in case of an emergency.

F. The staff member in charge shall not be a resident of the facility.

22 VAC 40-71-80. Staff training and orientation.

A. All employees shall be made aware of:

1. The purpose of the facility;
2. The services provided;
3. The daily routines; and
4. Required compliance with regulations for assisted living facilities as it relates to their duties and responsibilities.

B. All personnel shall be trained in the relevant laws, regulations, and the facility's policies and procedures sufficiently to implement the following:

1. Emergency and disaster plans for the facility;
2. Techniques of complying with emergency and disaster plans including evacuating residents when applicable;
3. Use of the first aid kit and knowledge of its location;
4. Confidential treatment of personal information;
5. Observance of the rights and responsibilities of residents;
6. Procedures for detecting and reporting suspected abuse, neglect, or exploitation of residents and for mandated reporters, the consequences for failing to make a required report. (NOTE: Section 63.2-1606 of the Code of Virginia specifies procedures for reporting and consequences for not reporting.) (NOTE: See 22 VAC 40-71-10 for a definition of mandated reporter);
7. Techniques for assisting residents in overcoming transfer trauma; and
8. Specific duties and requirements of their positions.

C. The training and orientation required in subsections A and B of this section shall occur within the first seven days of employment and prior to assuming job responsibilities unless under the sight supervision of a trained staff person.

D. Within the first 30 days of employment, all direct care staff shall be trained to have general knowledge in the care of aged, infirm or disabled adults with due consideration for their individual capabilities and their needs.

E. On an annual basis, all direct care staff shall attend at least eight hours of training, which shall begin not later than 60 days after employment.

1. The training shall be relevant to the population in care and shall be provided through in-service training programs or institutes, workshops, classes, or conferences.

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2. When adults with mental impairments reside in the facility, at least two of the required eight hours of training shall focus on the resident who is mentally impaired.

3. Documentation of this training shall be kept by the facility in a manner that allows for identification by individual employee.

22 VAC 40-71-120. First aid qualifications and supplies.

A. There shall be at least one staff member on the premises at all times who ~~shall have a current first aid certificate which has been issued within the past three years by the~~ *has current certification in first aid from the American Red Cross, American Heart Association, National Safety Council, or who has current first aid certification issued within the past three years by a community college, a hospital, a volunteer rescue squad, a fire department, or a similarly approved other designated program approved by the Department of Social Services, unless the facility has an on duty registered nurse or licensed practical nurse. The certification must either be in Adult First Aid or include Adult First Aid.*

B. There shall be at least one staff member on the premises at all times who has ~~current certification in cardiovascular pulmonary cardiopulmonary resuscitation (CPR) issued within the current year by~~ *current certification in first aid from the American Red Cross, American Heart Association, National Safety Council, or who has current CPR certification issued within the past two years by a community college, a hospital, a volunteer rescue squad, a fire department, or a similarly approved other designated program approved by the Department of Social Services. The CPR certificate must be approved annually. The certification must either be in Adult CPR or include Adult CPR.*

C. *Each direct care staff member shall receive certification in first aid from an organization listed in 22 VAC 40-71-120 A and maintain current certification in first aid as specified in 22 VAC 40-71-120 A.*

1. *Staff employed on or after the effective date of these standards shall receive the certification within 60 days of employment.*

2. *Staff employed prior to the effective date of these standards shall receive the certification within 60 days of the effective date of these standards.*

NOTE: This subsection does not negate the requirement of subsection A to have at least one staff member on the premises at all times who has current certification in first aid, unless the facility has an on-duty registered nurse or licensed practical nurse.

D. *In facilities licensed for over 100 residents, at least one additional employee who meets the requirements of 22 VAC 40-71-120 B shall be available for every 100 residents, or portion thereof. More employees who meet the requirements of 22 VAC 40-71-120 B shall be available if necessary to assure quick access to residents in the event of the need for CPR.*

E. *A listing of all employees who have current certification in first aid or CPR, in conformance with 22 VAC 40-72-120 A, B, C, and D shall be posted in the facility so that the information is readily available to all employees at all times. The listing*

must indicate by employee whether the certification is in first aid or CPR or both and must be kept up to date.

F. *An employee with current certification in first aid and CPR shall be present during facility-sponsored activities off the facility premises.*

G. *An employee with current certification in first aid and CPR shall be present when an employee transports a resident.*

~~G. H.~~ *A complete first aid kit shall be on hand at the facility, located in a designated place that is easily accessible. The kit shall include, but not be limited to, the following items:*

Activated charcoal, adhesive tape, antiseptic ointment, band-aids (assorted sizes), blankets (disposable or other), cold pack, disposable gloves, gauze pads and roller gauze (assorted sizes), hand cleaner (e.g., antiseptic towelettes), plastic bags, scissors, small flashlight and extra batteries, syrup of ipecac, triangular bandage, and tweezers.

22 VAC 40-71-130. Standards for staffing.

A. *The assisted living facility shall have staff adequate in knowledge, skills, and abilities and sufficient in numbers to provide services to attain and maintain the physical, mental and psychosocial well-being of each resident as determined by resident assessments and individualized service plans, and to assure compliance with this chapter.*

B. *There shall be sufficient staff on the premises at all times to implement the approved fire plan.*

C. *There shall be at least one staff member awake and on duty at all times in each building when at least one resident is present.*

~~EXCEPTION: In buildings that house 19 or fewer residents, the staff member on duty does not have to be awake during the night if none of the residents requires a staff member awake and on duty at night.~~

22 VAC 40-71-150. Admission and retention of residents.

A. *No resident shall be admitted or retained for whom the facility cannot provide or secure appropriate care, or who requires a level of service or type of service for which the facility is not licensed or which the facility does not provide, or if the facility does not have the staff appropriate in numbers and with appropriate skill to provide such services.*

B. *Assisted living facilities shall not admit an individual before a determination has been made that the facility can meet the needs of the resident. The facility shall make the determination based upon:*

1. *The completed UAI;*

2. *The physical examination report; and*

3. *An interview between the administrator or a designee responsible for admission and retention decisions, the resident and his personal representative, if any.*

NOTE: In some cases, medical conditions may create special circumstances which make it necessary to hold the interview on the date of admission.

4. An assessment of psychological, behavioral, and emotional functioning, conducted by a qualified mental health professional, if recommended by the UAI assessor, a health care professional, or the administrator or designee responsible for the admission and retention decision. This includes meeting the requirements of subsection P of this section.

C. Upon receiving the UAI prior to admission of a resident, the assisted living facility administrator shall provide written assurance to the resident that the facility has the appropriate license to meet his care needs at the time of admission. Copies of the written assurance shall be given to the personal representative, if any, and case manager, if any, and shall be kept on file at the facility.

D. All residents shall be 18 years of age or older.

E. No person shall be admitted without his consent and agreement, or that of his personal representative, if applicable.

F. Assisted living facilities shall not admit or retain individuals with any of the following conditions or care needs:

1. Ventilator dependency;
2. Dermal ulcers III and IV except those stage III ulcers which are determined by an independent physician to be healing, as permitted in subsection G of this section;
3. Intravenous therapy or injections directly into the vein, except for intermittent intravenous therapy managed by a health care professional licensed in Virginia as permitted in subsection H or subsection I of this section;
4. Airborne infectious disease in a communicable state that requires isolation of the individual or requires special precautions by the caretaker to prevent transmission of the disease, including diseases such as tuberculosis and excluding infections such as the common cold;
5. Psychotropic medications without appropriate diagnosis and treatment plans;
6. Nasogastric tubes;
7. Gastric tubes except when the individual is capable of independently feeding himself and caring for the tube or as permitted in subsection I of this section;
8. Individuals presenting an imminent physical threat or danger to self or others;
9. Individuals requiring continuous licensed nursing care;
10. Individuals whose physician certifies that placement is no longer appropriate;
11. Unless the individual's independent physician determines otherwise, individuals who require maximum physical assistance as documented by the UAI and meet Medicaid nursing facility level of care criteria as defined in the State Plan for Medical Assistance (12 VAC 30-10);
12. Individuals whose health care needs cannot be met in the specific assisted living facility as determined by the facility.

G. When a resident has a stage III dermal ulcer that has been determined by an independent physician to be healing, periodic observation and any necessary dressing changes shall be performed by a licensed health care professional under a physician's treatment plan.

H. Intermittent intravenous therapy may be provided to a resident for a limited period of time on a daily or periodic basis by a licensed health care professional under a physician's treatment plan. When a course of treatment is expected to be ongoing and extends beyond a two-week period, evaluation is required at two-week intervals by the licensed health care professional.

I. At the request of the resident, care for the conditions or care needs specified in subdivisions F 3 and F 7 of this section may be provided to a resident in an assisted living facility by a physician licensed in Virginia, a nurse licensed in Virginia under a physician's treatment plan or by a home care organization licensed in Virginia when the resident's independent physician determines that such care is appropriate for the resident. This standard does not apply to recipients of auxiliary grants.

J. When care for a resident's special medical needs is provided by licensed staff of a home care agency, the assisted living facility staff may receive training from the home care agency staff in appropriate treatment monitoring techniques regarding safety precautions and actions to take in case of emergency.

K. Notwithstanding § 63.2-1805 of the Code of Virginia, at the request of the resident, hospice care may be provided in an assisted living facility under the same requirements for hospice programs provided in Article 7 (§ 32.1-162.1 et seq.) of Chapter 5 of Title 32.1 of the Code of Virginia, if the hospice program determines that such program is appropriate for the resident.

L. A person shall have a physical examination by an independent physician, including screening for tuberculosis, within 30 days prior to the date of admission. The report of such examination shall be on file at the assisted living facility and shall contain the following:

1. The date of the physical examination;
2. Height, weight, and blood pressure;
3. Significant medical history;
4. General physical condition, including a systems review as is medically indicated;
5. Any diagnosis or significant problems;
6. Any allergies;
7. Any recommendations for care including medication, diet and therapy;
8. The type or types of tests for tuberculosis used and the results. This information shall include the results of a Mantoux tuberculin skin test, chest x-ray or bacteriological examination as deemed appropriate by a physician to rule out tuberculosis in a communicable form. Documentation is

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required that includes the information contained on the form recommended by the Virginia Department of Health;

9. A statement that the individual does not have any of the conditions or care needs prohibited by subsection F of this section;

10. A statement that specifies whether the individual is considered to be ambulatory or nonambulatory; and

11. Each report shall be signed by the examining clinician.

NOTE: See 22 VAC 40-71-10, definition of "licensed health care professional" for clarification regarding "physician."

M. When a person is accepted for respite care or on an intermittent basis, the physical examination report shall be valid for six months.

N. Subsequent tuberculosis evaluations.

1. Any resident who comes in contact with a known case of infectious tuberculosis shall be screened as deemed appropriate in consultation with the local health department.

2. Any resident who develops respiratory symptoms of three or more weeks duration shall be evaluated immediately for the presence of infectious tuberculosis.

3. If a resident develops an active case of tuberculosis, the facility shall report this information to the local health department.

O. The department, at any time, may request a report of a current psychiatric or physical examination, giving the diagnoses or evaluation or both, for the purpose of determining whether the resident's needs may continue to be met in an assisted living facility. When requested, this report shall be in the form specified by the department.

P. *Mental health assessment.*

1. *If there are observed behaviors or patterns of behavior indicative of mental illness, mental retardation, substance abuse, or behavioral disorders, as documented in the uniform assessment instrument, the facility administrator or designated staff member shall ensure that an evaluation of the individual is or has been conducted by a qualified mental health professional. The evaluation shall include an assessment of the person's psychological, behavioral, and emotional functioning. Conditions for which an evaluation is required include, but are not limited to:*

a. One or more acts of aggression against self, others, or property, that resulted in the resident being hospitalized, jailed, forced to leave a residence, or retained by the facility but managed using emergency measures;

b. Alcohol or drug abuse;

c. Noncompliant with psychotropic medications to the extent that intervention by a qualified mental health professional was required to prevent or reduce the risk of decompensation;

d. Disturbance in thinking, reasoning, and judgment that placed the resident or others at risk for harm;

e. Bizarre or maladaptive behavior such as reacting to irrational beliefs, visual or auditory hallucinations or engaging in behaviors such as pacing, rocking, mumbling to self, speaking incoherently, avoiding social interactions;

f. Significant dysfunction in two or more of the following areas: interpersonal communication, problem-solving, personal care, independent living, education, vocation, leisure, community awareness, self-direction, and self-preservation;

g. Any other condition for which an assessment is recommended by the administrator, a case manager or other assessor.

2. *The administrator or designated staff member shall ensure that an assessment of a person's psychological, behavioral, and emotional functioning is or has been conducted by a qualified mental health professional when at least one of the behaviors or conditions noted in subdivision 1 of this section has occurred within the past six months. The sources of such information regarding behaviors or conditions may include, but are not limited to, the uniform assessment instrument, family members, the referring agency, or a facility staff person.*

3. *The administrator shall ensure that the evaluation or assessment required by subdivisions 1 and 2 of this subsection meets the following criteria:*

a. If required for the purpose of making an admission decision, the assessment is not more than three months old;

b. The assessment covers at least the following areas of the person's current functioning and functioning for the six months prior to the date of the assessment:

(1) Cognitive functions;

(2) Thought and perception;

(3) Mood/affect;

(4) Behavior/psychomotor;

(5) Speech/language;

(6) Appearance;

(7) Alcohol and drug dependence/abuse;

(8) Medication compliance; and

(9) Psychosocial functioning.

c. The assessment is completed by a qualified mental health professional having no financial interest in the assisted living facility, directly or indirectly as an owner, officer, employee, or as an independent contractor with the facility.

d. A copy of the assessment, if the person is admitted or is a current resident, is filed in the resident's record.

4. *If the evaluation or assessment indicates a need for mental health, mental retardation, substance abuse, or behavioral disorder services, the facility shall provide:*

a. A notification of the resident's need for such services to the authorized contact person of record when available; and

b. A notification of the resident's need for such services to the community services board or behavioral health authority that serves the city or county in which the facility is located, or other appropriate licensed provider.

5. As part of the process for determining appropriateness of admission, when a person with a mental health disability is referred by a state or private hospital, community services board, behavioral health authority, or long-term care facility, collateral information and supporting documentation, e.g. progress notes, shall be collected on the person's psychological, behavioral, and emotional functioning. In the case where the person is coming from a private residence, only collateral information shall be required and may be gathered from an interview with someone involved in the primary care of the person.

a. The collateral information and supporting documentation shall cover a period of not less than six months of the person's care or treatment at the referring facility, or if the person's stay at the facility is less than six months, then the collateral information and documentation shall cover the person's entire stay.

b. The administrator shall document that the collateral information and supporting document were reviewed and used to help determine the appropriateness of the person's admission.

c. The administrator shall ensure that a copy of collateral information and supporting documentation, if the person is admitted, is filed in the resident's record.

NOTE: When applicable, see 22 VAC 40-71-485 regarding high risk behavior.

~~P.~~ Q. An assisted living facility shall only admit or retain residents as permitted by its use group classification and certificate of occupancy. The ambulatory/nonambulatory status of an individual is based upon:

1. Information contained in the physical examination report; and

2. Information contained in the most recent UAI.

~~Q.~~ R. An emergency placement shall occur only when the emergency is documented and approved by a Virginia adult protective services worker or case manager for public pay individuals or an independent physician or a Virginia adult protective services worker for private pay individuals.

~~R.~~ S. When an emergency placement occurs, the person shall remain in the assisted living facility no longer than seven working days unless all the requirements for admission have been met and the person has been admitted.

~~S.~~ T. Prior to or at the time of admission to an assisted living facility, the following personal and social data on a person shall be maintained in the individual's record:

1. Name;

2. Last home address, and address from which resident was received, if different;

3. Date of admission;

4. Social security number;

5. Birthdate (if unknown, estimated age);

6. Birthplace, if known;

7. Marital status, if known;

8. Name, address and telephone number of personal representative, or other person responsible;

9. Name, address and telephone number of next of kin, if known (two preferred);

10. Name, address and telephone number of personal physician, if known;

11. Name, address and telephone number of personal dentist, if known;

12. Name, address and telephone number of clergyman and place of worship, if applicable;

13. Name, address and telephone number of local department of social services or any other agency, if applicable, and the name of the case manager or caseworker;

14. Service in the Armed Forces, if applicable;

15. Special interests and hobbies; and

16. Information concerning advance directives, if applicable.

NOTE: For assisted living care facilities, 22 VAC 40-71-640 also applies.

~~T.~~ U. At or prior to the time of admission, there shall be a written agreement/acknowledgment of notification dated and signed by the resident/applicant for admission or the appropriate personal representative, and by the licensee or administrator. This document shall include the following:

1. Financial arrangement for accommodations, services and care which specifies:

a. Listing of specific charges for accommodations, services, and care to be made to the individual resident signing the agreement, the frequency of payment, and any rules relating to nonpayment;

b. Description of all accommodations, services, and care which the facility offers and any related charges;

c. The amount and purpose of an advance payment or deposit payment and the refund policy for such payment;

d. The policy with respect to increases in charges and length of time for advance notice of intent to increase charges;

e. If the ownership of any personal property, real estate, money or financial investments is to be transferred to the facility at the time of admission or at some future date, it shall be stipulated in the agreement; and

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f. The refund policy to apply when transfer of ownership, closing of facility, or resident transfer or discharge occurs.

2. Requirements or rules to be imposed regarding resident conduct and other restrictions or special conditions and signed acknowledgment that they have been reviewed by the resident or his appropriate personal representative.

3. Acknowledgment that the resident has been informed of the policy regarding the amount of notice required when a resident wishes to move from the facility.

4. Acknowledgment that the resident has been informed of the policy required by 22 VAC 40-71-490 J regarding weapons.

5. Those actions, circumstances, or conditions which would result or might result in the resident's discharge from the facility.

6. Acknowledgment that the resident has reviewed a copy of § 63.2-1808 of the Code of Virginia, Rights and Responsibilities of Residents of Assisted Living Facilities, and that the provisions of this statute have been explained to him.

7. Acknowledgment that the resident or his personal representative has reviewed and had explained to him the facility's policies and procedures for implementing § 63.2-1808 of the Code of Virginia, including the grievance policy and the transfer/discharge policy.

8. Acknowledgment that the resident has been informed of the bed hold policy in case of temporary transfer, if the facility has such a policy.

~~U~~. V. Copies of the signed agreement/acknowledgment of notification shall be provided to the resident and any personal representative and shall be retained in the resident's record.

~~V~~. W. A new agreement shall be signed or the original agreement shall be updated and signed by the licensee or administrator when there are changes in financial arrangements, services, or requirements governing the resident's conduct. If the original agreement provides for specific changes in financial arrangements, services, or requirements, this standard does not apply.

~~W~~. X. Upon admission and upon request, the assisted living facility shall provide in writing a description of the types of staff working in the facility and the services provided, including the hours such services are available.

~~X~~. Y. An assisted living facility shall establish a process to ensure that any resident temporarily detained in an inpatient facility pursuant to § 37.1-67.1 of the Code of Virginia is accepted back in the assisted living facility if the resident is not involuntarily committed pursuant to § 37.1-67.3 of the Code of Virginia.

~~Y~~. Z. If an assisted living facility allows for temporary movement of a resident with agreement to hold a bed, it shall develop and follow a written bed hold policy, which includes, but is not limited to, the conditions for which a bed will be held, any time frames, terms of payment, and circumstances under which the bed will no longer be held.

22 VAC 40-71-400. Administration of medications and related services.

A. Medication management plan and reference materials.

1. *The facility shall have, and keep current, a written plan for medication management. The facility's medication plan shall address procedures for administering medication and shall include:*

a. Methods to ensure an understanding of the responsibilities associated with medication management;

b. Standard operating procedures and any general restrictions specific to the facility;

c. Methods to prevent the use of outdated, damaged or contaminated medications;

d. Methods to maintain an adequate supply of medication;

e. Methods for verifying that medication orders have been accurately transcribed to Medication Administration Records (MARs);

f. Methods for monitoring medication administration and the effective use of the MARs for documentation;

g. Methods to ensure that employees who are responsible for administering medications meet the qualification and training requirements of this section;

h. Methods to ensure that employees who are responsible for administering medications are adequately supervised;

i. A plan for proper disposal of medication;

j. Identification of the employee responsible for routinely communicating the effectiveness of prescribed medications and any adverse reactions or suspected side effects to the prescribing physician.

2. *The facility's written medication management plan and any subsequent changes shall be approved by the department.*

3. *The administrator of a facility licensed for residential living only shall monitor, at least quarterly, conformance to the facility's medication management plan and the maintenance of required medication material, and shall document and resolve any concerns.*

4. *In addition to the facility's written medication management plan, the facility shall maintain, as reference materials for medication aides, a current copy of "A Resource Guide for Medication Management for Persons Authorized Under the Drug Control Act," approved by the Virginia Board of Nursing, and at least one pharmacy reference book, drug guide or medication handbook for nurses that is no more than two years old. Other information shall also be maintained to assist with safe administration of medication, such as pharmacy information sheets, product information from drug packages, or printed information from prescribing physicians.*

~~A~~. B. No medication, diet, medical procedure or treatment shall be started, changed or discontinued by the facility

without an order by the physician. The resident's record shall contain such written order or a dated notation of the physician's verbal order. Verbal orders shall be reviewed and signed by a physician within 10 working days.

NOTE: Medications include prescription, over-the counter and sample medications.

C. Whenever a resident is admitted to a hospital for treatment of any condition, the facility shall obtain new orders from a physician for all medications and treatments prior to or at the time of the resident's return to the facility. The facility shall ensure that the primary physician, if not the prescribing physician, is aware of all new medication orders.

D. Physician orders, both written and oral, for administration of all prescription and over-the-counter medications and dietary supplements shall include the name of the resident, the date of the order, the name of the drug, route, dosage, strength, how often medication is to be given, and identify the diagnosis, condition, or specific indications for administering each drug.

E. Physician's oral orders shall be charted by the individual who takes the order. That individual must be a licensed health care professional acting within the scope of his profession or an individual who has successfully completed the medication training program developed by the department and approved by the Board of Nursing.

~~B.~~ *F. A medicine cabinet, container or compartment shall be used for storage of medications prescribed for residents when such medications are administered by the facility.*

1. The storage area shall be locked.
2. *Controlled substances must be kept under a double lock, e.g., a locked cabinet within a locked storage area or a locked container within a locked cabinet.*
3. *The individual responsible for medication administration shall keep the keys to the storage area on his person.*
- ~~2.~~ 4. When in use, adequate illumination shall be provided in order to read container labels, but the storage area shall remain darkened when closed.
- ~~3.~~ 5. The storage area shall not be located in the kitchen or bathroom, but in an area free of dampness or abnormal temperatures unless the medication requires refrigeration.
6. *When required, medications shall be refrigerated.*
 - a. *It is permissible to store dietary supplements and foods and liquids used for medication administration in a refrigerator that is dedicated to medication storage, if the refrigerator is in a locked storage area.*
 - b. *When it is necessary to store medications in a refrigerator that is routinely used for food storage, the medications shall be stored together in a locked container in a clearly defined area.*

~~C.~~ *G. A resident may be permitted to keep his own medication in a secure place in his room if the UAI has indicated that the resident is capable of self-administering medication. This does not prohibit the facility from storing or administering all*

medication provided the provisions of subsection ~~D~~ *H* of this section are met.

~~D.~~ *H. Administration of medication.*

1. Drugs shall be administered to those residents who are dependent in medication administration as documented on the UAI, ~~provided subdivisions 2 and 3 of this subsection are met.~~

2. All staff responsible for medication administration shall have successfully completed a medication training program approved by the Board of Nursing or be licensed by the Commonwealth of Virginia to administer medications.

3. All medications shall be removed from the pharmacy container ~~by an authorized person and administered by the same authorized person within two hours.~~ *Pre-pouring is not permitted.*

4. All medications shall be administered in accordance with the physician's instructions and consistent with the standards of practice outlined in the current "A Resource Guide for Medication Management for Persons Authorized Under the Drug Control Act," approved by the Virginia Board of Nursing.

5. All medications shall remain in the pharmacy issued container, with the legible prescription label or direction label attached, until administered.

6. *Sample medications shall remain in the original packaging, labeled by a physician or pharmacist with the resident's name, the name of the medication, the strength, dosage, route and frequency of administration, until administered.*

7. *Over-the-counter medication shall remain in the original container, labeled with the resident's name, or in a pharmacy-issued container if unit dose packaging is used, until administered.*

I. All medication aides shall successfully complete annual in-service training provided by a licensed health care professional, acting within the scope of the requirements of his profession, on side effects of the medications prescribed to the residents in care and on recognizing and reporting adverse medication reactions.

J. A medication aide who completed a medication training program approved by the Board of Nursing or a department developed refresher course more than three years prior to the effective date of these standards shall successfully complete within a year from the effective date of these standards the most current refresher course developed by the department.

~~E.~~ *K. In the event of an adverse drug reaction or a medication error, first aid shall be administered as directed by the Virginia Poison Control Center, pharmacist, or physician. The resident's physician shall be notified as soon as possible and the actions taken by the staff person shall be documented.*

~~F.~~ *L. The facility shall document on a medication administration record (MAR) all medications administered to residents, including over-the-counter medications. This documentation The MAR shall include:*

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1. Name of the resident;
2. Date prescribed;
3. Drug product name;
4. Dosage;
5. Strength of the drug;
6. Route (for example, by mouth);
7. How often medication is to be taken;
8. *Diagnosis, condition, or specific indications for administering the drug or supplement;*
- ~~8-~~ 9. Date and time given and initials of staff administering the medication;
- ~~9-~~ 10. Dates the medication is discontinued or changed;
- ~~10-~~ 11. Any medication errors or omissions;
- ~~11-~~ 12. Significant adverse effects; ~~and~~
13. *For PRN medications:*
 - a. *Symptoms for which medication was given;*
 - b. *Exact dosage given; and*
 - c. *Effectiveness; and*
- ~~12-~~ 14. The name and initials of all staff administering medications.

~~G-~~ M. The facility shall have a plan for proper disposal of medications.

~~H-~~ N. The use of PRN (as needed) medications is prohibited, unless one or more of the following conditions exist:

1. The resident is capable of determining when the medication is needed;
2. Licensed health care professionals are responsible for medication management; or
3. The resident's physician has provided detailed written instructions or facility staff have telephoned the doctor prior to administering the medication, explained the symptoms and received a documented oral order to assist the resident in self-administration. The physician's instructions shall include symptoms that might indicate the use of the medication, exact dosage, the exact timeframes the medication is to be given in a 24-hour period, and directions as to what to do if symptoms persist.

O. *Medications ordered for PRN administration shall be available, properly labeled and properly stored at the facility.*

P. *An additional drug box called a stat-drug box may be prepared by a pharmacy to provide for initiating therapy prior to the receipt of ordered drugs from the pharmacy. A stat-drug box may be used in those facilities in which only those persons licensed to administer are administering drugs and shall be subject to the conditions specified in 18 VAC 110-20-550 of the Regulations of the Virginia Board of Pharmacy.*

NOTE: Stat-drug boxes may not be used in facilities in which medication aides administer medications. Medication aides hold a certificate, but are not licensed.

Q. *For each resident assessed for residential living care, except for those who self-administer all of their medications, a licensed health care professional, acting within the scope of the requirements of his profession, shall perform an annual review of all the medications of the resident.*

1. The medication review shall include both prescription and over-the-counter medications and supplements.

2. If deemed appropriate by the licensed health care professional, the review shall include observation of or interview with the resident.

3. The review shall include, but not be limited, to the following:

a. All medications that the resident is taking and medications that he could be taking if needed (PRNs).

b. An examination of the dosage, strength, route, how often, prescribed duration, and when the medication is taken.

c. Documentation of actual and consideration of potential interactions of drugs with one another.

d. Documentation of actual and consideration of potential interactions of drugs with foods or drinks.

e. Documentation of actual and consideration of potential negative affects of drugs resulting from a resident's medical condition other than the one the drug is treating.

f. Consideration of whether PRNs, if any, are still needed and if clarification regarding use is necessary.

g. Consideration of whether the resident needs additional monitoring or testing.

h. Documentation of actual and consideration of potential adverse effects or unwanted side effects of specific medications.

i. Identification of that which may be questionable, such as (i) similar medications being taken, (ii) different medications being used to treat the same condition, (iii) what seems an excessive number of medications, and (iv) what seems an exceptionally high drug dosage.

4. Any concerns or problems or potential problems shall be reported to the resident's attending physician and to the facility administrator.

5. The results of the review shall be documented, signed and dated by the health care professional, and retained in the resident's record. The health care professional shall also document any reports made as required in subsection 4 of this subsection. Action taken in response to the report shall also be documented. The documentation required by this subsection shall be retained in the resident's record.

~~R-~~ R. When oxygen therapy is provided, the following safety precautions shall be met and maintained:

1. The facility shall post "No Smoking-Oxygen in Use" signs and enforce the smoking prohibition in any room of a building where oxygen is in use.

2. The facility shall ensure that only oxygen from a portable source shall be used by residents when they are outside their rooms. The use of long plastic tether lines to the main source of oxygen is not permitted.

3. The facility shall make available to staff the emergency numbers to contact the resident's physician and the oxygen vendor for emergency service or replacement.

⚡ S. The performance of all medical procedures and treatments ordered by a physician shall be documented and the documentation shall be retained in the residents' record.

22 VAC 40-72-485. Intervention for high risk behavior.

A. At any time that facility staff observe that the resident is exhibiting or verbalizing an intent to engage in high risk behavior, and it is:

1. Believed that a crisis situation has occurred as a result of the person's behaviors or thinking that has caused harm or presents the potential to cause harm to the person or others, the administrator shall ensure that the local community services board (CSB) is immediately contacted to request an evaluation for emergency intervention services; or

2. Believed that the person's behaviors or thinking may not rise to the level that would require professional emergency intervention, the administrator shall ensure that the responsible mental health professional is contacted regarding the concerns with the person's behaviors or thinking within 24 hours of observation.

a. If there is no one currently responsible for the treatment of the person exhibiting the mental health disturbance, a referral shall be made within 24 hours of observing the disturbance to the local CSB, or to a qualified mental health professional of the resident's choice, to determine whether there is a need for mental health services.

b. The facility shall document the referral made to the CSB or other mental health agency and note the availability and date that services can be rendered.

B. Following the initial notification of the CSB or other qualified mental health professional, the facility and the mental health treatment provider shall decide on the need for an intervention plan that shall be designed for and implemented by the facility. If there is a need for an intervention plan, the plan shall:

1. Include a behavioral management tracking form that:

a. Is developed, in consultation with the facility, by a qualified mental health treatment provider and when possible, in consultation with the resident or his legal representative.

b. Incorporates, at a minimum, the following information:

(1) Target or problem behaviors identified;

(2) Identified triggers, motivators, behaviors or conditions associated with target behaviors, including medication side effects;

(3) Interventions prescribed by mental health professionals or a facility supervisor to be employed by direct care staff;

(4) Dates and times behaviors were last observed;

(5) Impact of interventions on behaviors, or if prescribed interventions were not used, an explanation of the reason;

(6) General description of, and detailed when possible, any subsequent actions that must be considered by the facility following a negative outcome of the prescribed interventions;

(7) General description of, and detailed when possible, any subsequent actions that must be considered by the mental health treatment provider based on the presentation of the problems by the facility;

(8) Consideration of the need for an updated mental health evaluation.

c. Is maintained at the facility with:

(1) The original being filed in the record with the ISP for each resident.

NOTE: Should the tracking forms exceed five, the facility may choose to maintain the five most recent forms in the resident's current record and all others in an overflow record maintained for each resident.

(2) A duplicate copy being filed for each resident, in an identifiable binder to permit timely access to information by facility employees so that it might be used to help manage or prevent problem behaviors from escalating or recurring.

2. Be referenced in the ISP;

3. Be reviewed and incorporated, to include information obtained from the behavioral management tracking form, in the written progress report required by 22 VAC 40-72-500 D 4.

C. The facility shall have procedures in place to ensure that direct care staff members who have direct care responsibilities for residents with high risk behaviors are:

1. Provided training on monitoring (such as when using the behavioral management tracking form) and intervening when high risk behaviors are exhibited;

2. Kept informed of the status of high risk behaviors exhibited by residents;

D. The facility shall not implement a restrictive behavioral management plan, which limits or prevents a person from freely exercising targeted rights or privileges, unless:

1. The resident or legal representative has been informed of the need and description of the plan,

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2. *The plan is approved and supervised by a qualified mental health professional with no financial interest in the facility.*

22 VAC 40-71-630. Personnel and staffing.

A. The administrator shall be a high school graduate or shall have a General Education Development Certificate (GED) and shall have successfully completed at least two years of post secondary education or one year of courses in human services or group care administration from an accredited college or institution or a department approved curriculum specific to the administration of an assisted living facility. The administrator also shall have completed at least one year of experience in caring for adults with mental or physical impairments, as appropriate to the population in care, in a group care facility. The following three exceptions apply:

1. Administrators employed prior to February 1, 1996, who do not meet the above requirement shall be a high school graduate or shall have a GED, or shall have completed at least one full year of successful experience in caring for adults in a group care facility;
2. Licensed nursing home administrators who maintain a current license from the Virginia Department of Health Professions;
3. Licensed nurses who meet the above experience requirements. The requirements in this standard are in lieu of the requirements specified in 22 VAC 40-71-60 B 4.

B. Any designated assistant administrator as referenced in 22 VAC 40-71-60 H, that is acting in place of the administrator for part or all of the 40 hours, shall meet the qualifications of the administrator, or if employed prior to the effective date of these standards, its exception, unless the designated assistant is performing as an administrator for fewer than 15 of the 40 hours referenced in 22 VAC 40-71-60 H or for fewer than four weeks due to the vacation or illness of the administrator, then the requirements of 22 VAC 40-71-60 B 4 shall be acceptable.

C. All direct care staff shall have satisfactorily completed, or within 30 days of employment shall enroll in and successfully complete within ~~four~~ two months of employment, a training program consistent with department requirements, except as noted in subsections D and E of this section. Department requirements shall be met in one of the following ~~four~~ five ways:

1. Registration *in Virginia* as a certified nurse aide.
2. Graduation from a Virginia Board of Nursing approved educational curriculum from a Virginia Board of Nursing accredited institution for nursing assistant, geriatric assistant or home health aide.
3. *Graduation from a personal care aide training program approved by the Virginia Department of Medical Assistance Services.*
- ~~3.~~ 4. Graduation from a department approved educational curriculum for nursing assistant, geriatric assistant or home health aide. The curriculum is provided by a hospital, nursing facility, or educational institution not approved by

the Virginia Board of Nursing, e.g., out-of-state curriculum. To obtain department approval:

- a. The facility shall provide to the licensing representative an outline of the course content, dates and hours of instruction received, the name of the institution which provided the training, and other pertinent information.
- b. The department will make a determination based on the above information and provide written confirmation to the facility when the course meets department requirements.

~~4.~~ 5. Successful completion of *the department approved assisted living facility offered forty-hour direct care staff training provided by a licensed health care professional acting within the scope of the requirements of his profession.* ~~To obtain department approval:~~

- ~~a. Prior to offering the course, the facility shall provide to the licensing representative an outline of the course content, the number of hours of instruction to be given, the name and professional status of the trainer, and other pertinent information.~~
- ~~b. The content of the training shall be consistent with the content of the personal care aide training course of the Department of Medical Assistance Services; a copy of the outline for this course is available from the licensing representative.~~
- ~~c. The training shall be provided by a licensed health care professional acting within the scope of the requirements of his profession.~~
- ~~d. The department will make a determination regarding approval of the training and provide written confirmation to the facility when the training meets department requirements.~~

D. Licensed health care professionals, acting within the scope of the requirements of their profession, are not required to complete the training in subsection C of this section.

E. Direct care staff of the facility employed prior to February 1, 1996, shall either meet the training requirements in subsection C of this section within one year of February 1, 1996, or demonstrate competency in the items listed on a skills checklist within the same time period. The following applies to the skills checklist:

1. The checklist shall include the content areas covered in the personal care aide training course. A department model checklist is available from the licensing representative.
2. A licensed health care professional, acting within the scope of the requirements of his profession, shall evaluate the competency of the staff person in each item on the checklist, document competency, and sign and date.

F. *In respect to the requirements of subsection C of this section,* The facility shall obtain a copy of the certificate issued to the certified nurse aide, the nursing assistant, geriatric assistant or home health aide, *personal care aide,* or documentation indicating ~~assisted living facility offered the department-approved forty-hour direct care staff training~~ has been successfully completed. The copy of the certificate or

the appropriate documentation shall be retained in the staff member's file. ~~Written confirmation of department course or training approval shall also be retained in the staff member's file, as appropriate.~~

G. When direct care staff are employed who have not yet successfully completed the training program as allowed for in subsection C of this section, the administrator shall develop and implement a written plan for supervision of these individuals.

H. On an annual basis, all direct care staff shall attend at least ~~42~~ 16 hours of training, *which shall begin not later than 60 days after employment*, and which focuses on the resident who is mentally or physically impaired, as appropriate to the population in care. This requirement is in lieu of the requirement specified in 22 VAC 40-71-80 ~~D~~ E.

Exception: Direct care staff who are licensed health care professionals or certified nurse aides shall attend at least 12 hours of annual training.

I. Documentation of the dates of the training received annually, number of hours and type of training shall be kept by the facility in a manner that allows for identification by individual employee.

J. Each assisted living facility shall retain a licensed health care professional, either by direct employment or on a contractual basis, to provide health care oversight. The licensed health care professional, acting within the scope of the requirements of his profession, shall be on-site at least quarterly and more often if indicated, based on his professional judgment of the seriousness of a resident's needs or the stability of a resident's condition. The responsibilities of the professional while on site shall include at least quarterly:

1. Recommending in writing changes to a resident's service plan whenever the plan does not appropriately address the current health care needs of the resident.
2. Monitoring of direct care staff performance of health-related activities, including the identification of any significant gaps in the staff person's ability to function competently.
3. Advising the administrator of the need for staff training in health-related activities or the need for other actions when appropriate to eliminate problems in competency level.
4. Providing consultation and technical assistance to staff as needed.
5. Directly observing every resident whose care needs are equivalent to the intensive assisted living criteria and recommending in writing any needed changes in the care provided or in the resident's service plan. For auxiliary grant recipients receiving intensive assisted living services, the monitoring will be in accordance with the specifications of the Department of Medical Assistance Services.
6. Reviewing documentation regarding health care services, including medication and treatment records to assess that services are being provided in accordance with physicians' orders, and informing the administrator of any problems.

7. *Monitoring of conformance to the facility's medication management plan and the maintenance of required medication reference materials, and advising the administrator of any concerns.*

~~7-~~ 8. Reviewing the current condition and the records of restrained residents to assess the appropriateness of the restraint and progress toward its reduction or elimination, and advising the administrator of any concerns.

K. A resident's need for skilled nursing treatments within the facility shall be met by facility employment of a licensed nurse or contractual agreement with a licensed nurse, or by a home health agency or by a private duty licensed nurse.

22 VAC 40-71-650. Resident care and related services.

A. There shall be at least 14 hours of scheduled activities available to the residents each week for no less than one hour each day. The activities shall be designed to meet the specialized needs of the residents and to promote maximum functioning in physical, mental, emotional, and social spheres. This requirement is in lieu of the requirement specified in 22 VAC 40-71-260 A.

B. Facilities shall assure that all restorative care and habilitative service needs of the residents are met. Staff who are responsible for planning and meeting the needs shall have been trained in restorative and habilitative care. Restorative and habilitative care includes, but is not limited to, range of motion, assistance with ambulation, positioning, assistance and instruction in the activities of daily living, psychosocial skills training, and reorientation and reality orientation.

C. In the provision of restorative and habilitative care, staff shall emphasize services such as the following:

1. Making every effort to keep residents active, within the limitations permitted by physicians' orders.
2. Encouraging residents to achieve independence in the activities of daily living.
3. Assisting residents to adjust to their disabilities, to use their prosthetic devices, and to redirect their interests if they are no longer able to maintain past involvement in activities.
4. Assisting residents to carry out prescribed physical therapy exercises between visits from the physical therapist.
5. Maintaining a bowel and bladder training program.

D. Facilities shall assure that the results of the restorative and habilitative care are documented in the service plan.

E. Facilities shall arrange for specialized rehabilitative services by qualified personnel as needed by the resident. Rehabilitative services include physical therapy, occupational therapy and speech-language pathology services. Rehabilitative services may be indicated when the resident has lost or has shown a change in his ability to respond to or perform a given task and requires professional rehabilitative services in an effort to regain lost function. Rehabilitative services may also be indicated to evaluate the appropriateness and individual response to the use of assistive technology.

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F. All rehabilitative services rendered by a rehabilitative professional shall be performed only upon written medical referral by a physician or other qualified health care professional.

G. The physician's orders, services provided, evaluations of progress, and other pertinent information regarding the rehabilitative services shall be recorded in the resident's record.

H. Direct care staff who are involved in the care of residents using assistive devices shall know how to operate and utilize the devices.

I. A licensed health care professional, acting within the scope of the requirements of his profession, shall perform an annual review every six months of all the medications of each resident, including both prescription and over-the-counter medications. The results of the review shall be documented, signed and dated by the health care professional, and retained in the resident's record. Any potential problems shall be reported to the resident's attending physician and to the facility administrator. Action taken in response to the report shall also be documented in the resident's record.

1. The medication review shall include both prescription and over-the-counter medications and supplements.

2. If deemed appropriate by the licensed health care professional, the review shall include observation of or interview with the resident.

3. The review shall include, but not be limited, to the following:

a. All medications that the resident is taking and medications that he could be taking if needed (PRNs).

b. An examination of the dosage, strength, route, how often, prescribed duration, and when the medication is taken.

c. Documentation of actual and consideration of potential interactions of drugs with one another.

d. Documentation of actual and consideration of potential interactions of drugs with foods or drinks.

e. Documentation of actual and consideration of potential negative affects of drugs resulting from a resident's medical condition other than the one the drug is treating.

f. Consideration of whether PRNs, if any, are still needed and if clarification regarding use is necessary.

g. Consideration of whether the resident needs additional monitoring or testing.

h. Documentation of actual and consideration of potential adverse effects or unwanted side effects of specific medications.

i. Identification of that which may be questionable, such as (i) similar medications being taken, (ii) different medications being used to treat the same condition, (iii) what seems an excessive number of medications, and (iv) what seems an exceptionally high drug dosage.

4. Any concerns or problems or potential problems shall be reported to the resident's attending physician and to the facility administrator.

5. The results of the review shall be documented, signed and dated by the health care professional, and retained in the resident's record. The health care professional shall also document any reports made as required in subdivision 4 of this subsection. Action taken in response to the report shall also be documented. The documentation required by this subsection shall be retained in the resident's record.

22 VAC 40-71-660. Psychiatric or psychological evaluation. (Repealed.)

~~A. When determining the appropriateness of admission for applicants with serious mental illness, mental retardation or a history of substance abuse, a current psychiatric or psychological evaluation may be needed. The need for this evaluation will be indicated by the UAI or based upon the recommendation of the resident's case manager or other assessor.~~

~~B. A current evaluation for an applicant with mental illness or a history of substance abuse shall be no more than 12 months old, unless the case manager or other assessor recommends a more recent evaluation.~~

~~C. A current evaluation for a person with mental retardation shall be no more than three years old, unless the case manager or other assessor recommends a more recent evaluation.~~

~~D. The evaluation shall have been completed by a person having no financial interest in the assisted living facility, directly or indirectly as an owner, officer, employee, or as an independent contractor with the facility.~~

~~E. A copy of the evaluation shall be filed in the resident's record.~~

22 VAC 40-71-670. Services agreement and coordination.

A. The facility shall enter into a written agreement with the local community mental health, mental retardation and substance abuse services board, or a public or private mental health clinic, treatment facility or agent to make services available to all residents. This agreement shall be jointly reviewed annually by the assisted living facility and the service entity.

NOTE: This requirement does not preclude a resident from engaging the services of a private psychiatrist or other appropriate professional.

B. Services to be included in the agreement shall at least be the following:

1. Diagnostic, evaluation and referral services in order to identify and meet the needs of the resident;

2. Appropriate community-based mental health, mental retardation and substance abuse services;

3. Services and support to meet emergency mental health needs of a resident; and

4. Completion of written progress reports specified in 22 VAC 40-71-680.

C. A copy of the agreement specified in subsections A and B of this section shall remain on file in the assisted living facility.

D. For each resident the services of the local community mental health, mental retardation and substance abuse services board, or a public or private mental health clinic, rehabilitative services agency, treatment facility or agent shall be secured as appropriate based on the resident's current evaluation.

E. If the facility is unsuccessful in obtaining the recommended services, it must document:

1. Whether it can continue to meet all other needs of the resident.

2. How it plans to ensure that the failure to obtain the recommended services will not compromise the health, safety, or rights of the resident and others who come in contact with the resident.

3. The offices, agencies and individuals who were contacted and explanation of outcomes.

4. Details of additional steps the facility will take to find alternative services to meet the resident's needs.

22 VAC 40-71-700. Adults with serious cognitive impairments.

A. All residents with serious cognitive impairments due to a primary psychiatric diagnosis of dementia who cannot recognize danger or protect their own safety and welfare shall be subject to either subsection B or C of this section. All residents with serious cognitive impairments due to any other diagnosis who cannot recognize danger or protect their own safety and welfare shall be subject to subsection B of this section.

NOTE: Serious cognitive impairment is defined in 22 VAC 40-71-10.

B. The following requirements apply when there is a mixed population consisting of any combination of (i) residents who have serious cognitive impairments due to a primary psychiatric diagnosis of dementia who are unable to recognize danger or protect their own safety and welfare and who are not in a special care unit as provided for in subsection C of this section; (ii) residents who have serious cognitive impairments due to any other diagnosis who cannot recognize danger or protect their own safety and welfare; and (iii) other residents. The following requirements also apply when all the residents have serious cognitive impairments due to any diagnosis other than a primary psychiatric diagnosis of dementia and cannot recognize danger or protect their own safety and welfare. Except for special care units covered by subsection C of this section, these requirements apply to the entire facility unless specified otherwise.

1. When residents are present, there shall be at least two direct care staff members awake and on duty at all times in each building who shall be responsible for the care and supervision of the residents.

~~NOTE: The exception to 22 VAC 40-71-130 C does not apply.~~

2. During trips away from the facility, there shall be sufficient staff to provide sight and sound supervision to all residents who cannot recognize danger or protect their own safety and welfare.

3. Commencing immediately upon employment and within six months, direct care staff shall attend four hours of training in cognitive impairment that meets the requirements of subdivision 5 of this subsection. This training is counted toward meeting the annual training requirement for the first year. Previous training that meets the requirements of subdivision 5 of this subsection and was completed in the year prior to employment is transferable if there is documentation of the training. The documented previous training is counted toward the required four hours but not toward the annual training requirement.

4. Commencing immediately upon employment and within three months, the administrator shall attend 12 hours of training in cognitive impairment. This training is counted toward the annual training requirement for the first year. Previous training that meets the requirements of subdivision 5 of this subsection and was completed in the year prior to employment is transferable if there is documentation of the training. The documented previous training is counted toward the required 12 hours but not toward the annual training requirement.

5. Curriculum for the training in cognitive impairment shall be developed by a qualified health professional or by a licensed social worker, shall be relevant to the population in care and shall include, but need not be limited to:

- a. Explanation of cognitive impairments;
- b. Resident care techniques;
- c. Behavior management;
- d. Communication skills;
- e. Activity planning; and
- f. Safety considerations.

6. Within the first month of employment, employees other than the administrator and direct care staff shall complete one hour of orientation on the nature and needs of residents with cognitive impairments relevant to the population in care.

7. Doors leading to the outside shall have a system of security monitoring of residents with serious cognitive impairments who cannot recognize danger or protect their own safety and welfare, such as door alarms, cameras, constant staff oversight, security bracelets that are part of an alarm system, or delayed egress mechanisms. Residents with serious cognitive impairments who cannot recognize danger or protect their own safety and welfare may be limited but not prohibited from exiting the facility or any part thereof. Before limiting any resident from freely leaving the facility, the resident's record shall reflect the behavioral observations or other bases for determining that the resident has a serious cognitive impairment and an

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inability to recognize danger or protect his own safety and welfare.

8. The facility shall have a secured outdoor area for the residents' use or provide staff supervision while residents with serious cognitive impairments who cannot recognize danger or protect their own safety and welfare are outside.

9. There shall be protective devices on the bedroom and the bathroom windows of residents with serious cognitive impairments who cannot recognize danger or protect their own safety and welfare and on windows in common areas accessible to these residents to prevent the windows from being opened wide enough for a resident to crawl through.

10. The facility shall provide to residents free access to an indoor walking corridor or other area that may be used for walking.

11. Special environmental precautions shall be taken by the facility to eliminate hazards to the safety and well-being of residents with serious cognitive impairments who cannot recognize danger or protect their own safety and welfare. Examples of environmental precautions include signs, carpet patterns and arrows that point the way; and reduction of background noise.

12. When there are indications that ordinary materials or objects may be harmful to a resident with a serious cognitive impairment who cannot recognize danger or protect his own safety and welfare, these materials or objects shall be inaccessible to the resident except under staff supervision.

EXCEPTION: This subsection does not apply when facilities are licensed for 10 or fewer residents if no more than three of the residents have serious cognitive impairments, when the residents cannot recognize danger or protect their own safety and welfare. Each prospective resident or his personal representative shall be so notified prior to admission.

C. In order to be admitted or retained in a safe, secure environment as defined in 22 VAC 40-71-10, a resident must have a serious cognitive impairment due to a primary psychiatric diagnosis of dementia and be unable to recognize danger or protect his own safety and welfare. The following requirements apply when such residents reside in a safe, secure environment. These requirements apply only to the safe, secure environment.

1. Prior to his admission to a safe, secure environment, the resident shall have been assessed by an independent clinical psychologist licensed to practice in the Commonwealth or by an independent physician as having a serious cognitive impairment due to a primary psychiatric diagnosis of dementia with an inability to recognize danger or protect his own safety and welfare. The physician shall be board certified or board eligible in a specialty or subspecialty relevant to the diagnosis and treatment of serious cognitive impairments, e.g., family practice, geriatrics, internal medicine, neurology, neurosurgery, or psychiatry. The physician's assessment shall be in writing and shall be maintained in the resident's record. The

assessment shall include, but not be limited to, the following areas:

- a. Cognitive functions, e.g., orientation, comprehension, problem-solving, attention/concentration, memory, intelligence, abstract reasoning, judgment, insight;
- b. Thought and perception, e.g., process, content;
- c. Mood/affect;
- d. Behavior/psychomotor;
- e. Speech/language; and
- f. Appearance.

2. Prior to placing a resident with a serious cognitive impairment due to a primary psychiatric diagnosis of dementia in a safe, secure environment, the facility shall obtain the written approval of one of the following persons, in the following order of priority:

- a. The resident, if capable of making an informed decision;
- b. A guardian or legal representative for the resident if one has been appointed;
- c. A relative who is willing and able to take responsibility to act as the resident's representative, in the following specified order, (i) spouse; (ii) adult child; (iii) parent; (iv) adult sibling; (v) adult grandchild; (vi) adult niece or nephew; (vii) aunt or uncle;
- d. If the resident is not capable of making an informed decision and a guardian, legal representative or relative is unavailable, an independent physician who is skilled and knowledgeable in the diagnosis and treatment of dementia.

The obtained written approval shall be retained in the resident's file.

NOTE: As soon as one of the persons in the order as prioritized above disapproves of placement or retention in the safe, secure environment, then the assisted living facility shall not place or retain the resident or prospective resident in the special care unit. If the resident is not to be retained in the unit, the discharge requirements specified in 22 VAC 40-71-160 apply.

3. The facility shall document that the order of priority specified in subdivision 2 of this subsection was followed and the documentation shall be retained in the resident's file.

4. Prior to admitting a resident with a serious cognitive impairment due to a primary psychiatric diagnosis of dementia to a safe, secure environment, the licensee/administrator or designee shall determine whether placement in the special care unit is appropriate. The determination and justification for the decision shall be in writing and shall be retained in the resident's file.

5. Six months after the completion of the initial uniform assessment instrument and thereafter at the time of completion of each subsequent uniform assessment

instrument as required in 22 VAC 40-71-170, the licensee/administrator or designee shall perform a review of the appropriateness of each resident's continued residence in the special care unit. The licensee/administrator or designee shall also perform a review of the appropriateness of continued residence in the unit whenever warranted by a change in a resident's condition. The review shall be performed in consultation with the following persons, as appropriate: - (i) the resident, (ii) a responsible family member, (iii) a guardian, (iv) a personal representative, (v) direct care staff who provide care and supervision to the resident, (vi) the resident's mental health provider, (vii) the licensed health care professional required in 22 VAC 40-71-630 J, (viii) the resident's physician, and (ix) any other professional involved with the resident. The licensee/administrator or designee shall make a determination as to whether continued residence in the special care unit is appropriate at the time of each review required by this subdivision. The determination and justification for the decision shall be in writing and shall be retained in the resident's file.

6. Each week a variety of scheduled activities shall be available that shall include, but not necessarily be limited to, the following categories:

- a. Cognitive/mental stimulation/creative activities, e.g., discussion groups, reading, reminiscing, story telling, writing;
- b. Physical activities (both gross and fine motor skills), e.g., exercise, dancing, gardening, cooking;
- c. Productive/work activities, e.g., practicing life skills, setting the table, making decorations, folding clothes;
- d. Social activities, e.g., games, music, arts and crafts;
- e. Sensory activities, e.g., auditory, visual, scent and tactile stimulation; and
- f. Outdoor activities, weather permitting; e.g., walking outdoors, field trips.

NOTE: Several of the examples listed above may fall under more than one category.

NOTE: These activities do not require additional hours beyond those specified in 22 VAC 40-71-650 A.

7. If appropriate to meet the needs of the resident with a short attention span, there shall be multiple short activities.

8. Staff shall regularly encourage residents to participate in activities and provide guidance and assistance, as needed.

9. In addition to the scheduled activities required by 22 VAC 40-71-650 A, there shall be unscheduled staff and resident interaction throughout the day that fosters an environment that promotes socialization opportunities for residents.

10. Residents shall be given the opportunity to be outdoors on a daily basis, weather permitting.

11. As appropriate, residents shall be encouraged to participate in supervised activities or programs outside the special care unit.

12. There shall be a designated employee responsible for managing or coordinating the structured activities program. This employee shall be on-site in the special care unit at least 20 hours a week, shall maintain personal interaction with the residents and familiarity with their needs and interests, and shall meet at least one of the following qualifications:

- a. Be a qualified therapeutic recreation specialist or an activities professional;
- b. Be eligible for certification as a therapeutic recreation specialist or an activities professional by a recognized accrediting body;
- c. Have one year full-time work experience, within the last five years, in an activities program in an adult care setting;
- d. Be a qualified occupational therapist or an occupational therapy assistant; or
- e. Prior to or within six months of employment, have successfully completed 40 hours of department approved training in adult group activities and in recognizing and assessing the activity needs of residents.

NOTE: The required 20 hours on-site does not have to be devoted solely to managing or coordinating activities, neither is it required that the person responsible for managing or coordinating the activities program conduct the activities.

13. The facility shall obtain documentation of the qualifications as specified in subdivision 12 of this subsection for the designated employee responsible for managing or coordinating the structured activities program. The documentation shall be retained in the staff member's file. Written confirmation of department approval of training provided for in subdivision 12 e of this subsection shall also be retained in the staff member's file, as appropriate.

14. When residents are present, there shall be at least two direct care staff members awake and on duty at all times in each special care unit who shall be responsible for the care and supervision of the residents.

EXCEPTION: Only one direct care staff member has to be awake and on duty in the unit if sufficient to meet the needs of the residents, if (i) there are no more than five residents present in the unit, and (ii) there are at least two other direct care staff members in the building, one of whom is readily available to assist with emergencies in the special care unit, provided that supervision necessary to ensure the health, safety and welfare of residents throughout the building is not compromised.

~~NOTE: The exception to 22 VAC 40-71-130 C does not apply.~~

15. During trips away from the facility, there shall be sufficient staff to provide sight and sound supervision to residents.

16. Commencing immediately upon employment and within two months, the administrator and direct care staff shall attend at least four hours of training in cognitive

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impairments due to dementia. This training is counted toward meeting the annual training requirement for the first year. The training shall cover the following topics:

- a. Information about the cognitive impairment, including areas such as cause, progression, behaviors, management of the condition;
- b. Communicating with the resident;
- c. Managing dysfunctional behavior; and
- d. Identifying and alleviating safety risks to residents with cognitive impairment.

Previous training that meets the requirements of this subdivision and subdivisions 18 and 19 of this subsection that was completed in the year prior to employment is transferable if there is documentation of the training. The documented previous training is counted toward the required four hours but not toward the annual training requirement.

NOTE: In this subdivision, for direct care staff, employment means employment in the safe, secure environment.

17. Within the first year of employment, the administrator and direct care staff shall attend at least six more hours of training, in addition to that required in subdivision 16 of this subsection, in caring for residents with cognitive impairments due to dementia. The training is counted toward meeting the annual training requirement for the first year. The training shall cover the following topics:

- a. Assessing resident needs and capabilities and understanding and implementing service plans;
- b. Resident care techniques for persons with physical, cognitive, behavioral and social disabilities;
- c. Creating a therapeutic environment;
- d. Promoting resident dignity, independence, individuality, privacy and choice;
- e. Communicating with families and other persons interested in the resident;
- f. Planning and facilitating activities appropriate for each resident;
- g. Common behavioral problems and behavior management techniques.

Previous training that meets the requirements of this subdivision and subdivisions 18 and 19 of this subsection that was completed in the year prior to employment is transferable if there is documentation of the training. The documented previous training is counted toward the required six hours but not toward the annual training requirement.

NOTE: In this subdivision, for direct care staff, employment means employment in the safe, secure environment.

18. The training required in subdivisions 16 and 17 of this subsection shall be developed by:

- a. A licensed health care professional acting within the scope of the requirements of his profession who has at least 12 hours of training in the care of individuals with cognitive impairments due to dementia; or
- b. A person who has been approved by the department to develop the training.

19. The training required in subdivisions 16 and 17 of this subsection shall be provided by a person qualified under subdivision 18 a of this subsection or a person who has been approved by the department to provide the training.

~~20. During the first year of employment, direct care staff shall attend at least 16 hours of training. Thereafter, the annual training requirement specified in 22 VAC 40-71-630 H applies.~~

~~24.~~ 20. Within the first month of employment, employees, other than the administrator and direct care staff, who will have contact with residents in the special care unit shall complete one hour of orientation on the nature and needs of residents with cognitive impairments due to dementia.

~~22.~~ 21. Doors that lead to unprotected areas shall be monitored or secured through devices that conform to applicable building and fire codes, including but not limited to, door alarms, cameras, constant staff oversight, security bracelets that are part of an alarm system, pressure pads at doorways, delayed egress mechanisms, locking devices or perimeter fence gates. Residents who reside in safe, secure, environments may be prohibited from exiting the facility or the special care unit, if applicable building and fire codes are met.

~~23.~~ 22. There shall be protective devices on the bedroom and bathroom windows of residents and on windows in common areas accessible to residents to prevent the windows from being opened wide enough for a resident to crawl through.

~~24.~~ 23. The facility shall have a secured outdoor area for the residents' use or provide staff supervision while residents are outside.

~~25.~~ 24. The facility shall provide to residents free access to an indoor walking corridor or other area that may be used for walking.

~~26.~~ 25. As of October 9, 2001, buildings approved for construction or change in use group, as referenced in the Virginia Uniform Statewide Building Code, shall have a glazed window area above ground level in at least one of the common rooms, e.g., living room, multipurpose room, dining room. The square footage of the glazed window area shall be at least 8.0% of the square footage of the floor area of the common room.

~~27.~~ 26. Special environmental precautions shall be taken by the facility to eliminate hazards to the safety and well-being of residents. Examples of environmental precautions include signs, carpet patterns and arrows that point the way, high visual contrast between floors and walls, and reduction of background noise.

28- 27. When there are indications that ordinary materials or objects may be harmful to a resident, these materials or objects shall be inaccessible to the resident except under staff supervision.

29- 28. Special environmental enhancements, tailored to the population in care, shall be provided by the facility to enable residents to maximize their independence and to promote their dignity in comfortable surroundings. Examples of environmental enhancements include memory boxes, activity centers, rocking chairs, and visual contrast between plates/eating utensils and the table.

EXCEPTION: A resident's spouse, parent, adult sibling or adult child who otherwise would not meet the criteria to reside in a safe, secure environment may reside in the special care unit if the spouse, parent, sibling or child so requests in writing, the facility agrees in writing and the resident, if capable of making the decision, agrees in writing. The written request and agreements must be maintained in the resident's file. The spouse, parent, sibling or child is considered a resident of the facility and as such 22 VAC 40-71 applies. The requirements of this subsection do not apply for the spouse, parent, adult sibling or adult child since that individual does not have a serious cognitive impairment due to a primary psychiatric diagnosis of dementia with an inability to recognize danger or protect his own safety and welfare.

/s/ Mark R. Warner
Governor
Date: September 13, 2005

DOCUMENTS INCORPORATED BY REFERENCE

U.S. Department of Agriculture, Food Guide Pyramid.

Diagnostic and Statistical Manual of Mental Disorders (DSM-IV), Fourth Edition, pages 139-143, American Psychiatric Association.

VA.R. Doc. No. R06-49; Filed September 14, 2005, 10:22 a.m.

* * * * *

Title of Regulation: 22 VAC 40-80. General Procedures and Information for Licensure (amending 22 VAC 40-80-120 and 22 VAC 40-80-340; adding 22 VAC 40-80-345).

Statutory Authority: § 63.2-217 of the Code of Virginia.

Effective Dates: December 28, 2005, through December 27, 2006.

Agency Contact: Kathryn Thomas, Program Development Consultant, State Board of Social Services, 7 N. Eighth Street, Richmond, VA 23219, telephone (804) 726-7158, FAX (804) 726-7132, or e-mail kathryn.thomas@dss.virginia.gov.

Preamble:

Chapter 924 of the 2005 Acts of Assembly, related to assisted living facilities, requires that the State Board of Social Services "promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment."

The key provisions of the changes to the regulation are:

1. Adding additional items to the list of documents that must be posted in a facility.
2. Adding additional administrative sanctions that the commissioner may impose upon licensed facilities when they fail to maintain compliance with regulations or laws.
3. Adding a new section that provides procedures for summary orders of suspension.

22 VAC 40-80-120. Terms of the license.

A. A facility or agency shall operate within the terms of its license, which are:

1. The operating name of the facility or agency;
2. The name of the individual, partnership, association, corporation, limited liability company, or public entity sponsoring the facility or agency;
3. The physical location of the facility or agency;
4. The maximum number of children or adults who may be in care at any time;
5. The period of time for which the license is effective;
6. For child care facilities or agencies, the age range of children for whom care may be provided; and
7. Any other limitations that the department may prescribe within the context of the regulations for any facility or agency.

B. The provisional license cites the standards with which the licensee is not in compliance.

C. The conditional license cites the standards with which the licensee must demonstrate compliance when operation begins, and also any standards with which the licensee is not in compliance.

D. Prior to changes in operation that would affect the terms of the license, the licensee shall secure a modification to the terms of the license from the department. (See 22 VAC 40-80-190.)

E. ~~The following documents shall be posted, when applicable, in a conspicuous place on the licensed premises so that they are visible to the public: Certain documents related to the terms of the license are required to be posted on the premises of each facility. These are:~~

1. The most recently issued license. Any provisional license shall be posted at each public entrance of the facility and a notice shall be prominently displayed next to the license that states that a description of specific violations of licensing standards to be corrected and the deadline for completion of such corrections is available for inspection at the facility or on the facility's website, if applicable;
2. The most recent violation notice findings of the most recent inspection of the facility;
3. Probationary status announcements;

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~~4. Denial and revocation notices; and 3. Notice of the commissioner's intent to revoke or deny renewal of the license of an assisted living facility. Such notice will be provided by the department and shall be posted in a prominent place at each public entrance of the facility to advise consumers of serious or persistent violations;~~

4. A copy of any final order of summary suspension of all or part of an assisted living facility's license shall be prominently displayed by the provider at each public entrance of the facility, or the provider may display a written statement summarizing the terms of the order, printed in clear and legible size and typeface, in a prominent location and identifying the location within the facility where the final order of summary suspension may be reviewed;

5. Notice of the commissioner's intent to take any of the actions enumerated in subdivisions B 1 through B 6 of § 63.2-1709.2 of the Code of Virginia. Such notice will be provided by the department and a copy of the notice shall be posted in a prominent place at each public entrance of the facility to advise consumers of serious or persistent violations;

6. A copy of any special order issued by the department shall be posted in a prominent place at each public entrance of the licensed premises to advise consumers of serious or persistent violations;

~~7.~~ 7. Any other documents required by the commissioner.

22 VAC 40-80-340. Administrative sanctions.

The commissioner may impose administrative sanctions or initiate court proceedings, severally or jointly, when appropriate in order to ensure prompt correction of violations involving noncompliance with state law or regulation in assisted living facilities, adult day care centers and child welfare agencies as discovered through any inspection or investigation conducted by the Department of Social Services, the Virginia Department of Health, the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services, or by state and local building or fire prevention officials. These administrative sanctions include:

1. Petitioning the court to appoint a receiver for any assisted living facility or adult day care center;

2. Revoking or denying renewal of a license for any assisted living facility or adult day care center that fails to comply with the limitations and standards set forth in its license for violation that adversely affects, or is an imminent and substantial threat to, the health, safety or welfare of residents, or for permitting, aiding or abetting the commission of any illegal act in an adult care facility;

3. Revoking or denying renewal of a license for any child welfare agency that fails to comply with the limitations and standards set forth in its license;

4. Requiring an assisted living facility to contract with an individual licensed by the Board of Long-Term Care Administrators to administer, manage or operate the facility on an interim basis if the commissioner receives information from any source indicating imminent and substantial risk of harm to residents. This action shall be an attempt to bring

the facility into compliance with all relevant requirements of law, regulation or any plan of correction approved by the commissioner. The contract shall be negotiated in accordance with the provisions of § 63.2-1709 of the Code of Virginia;

5. Issuing a summary order of suspension of the license to operate an assisted living facility pursuant to proceedings set forth in § 63.2-1709 C of the Code of Virginia in conjunction with any proceedings for revocation, denial, or other action when conditions or practices exist that pose an imminent and substantial threat to the health, safety and welfare of residents;

4. 6. Imposing administrative sanctions through the issuance of a special order as provided in § 63.2-1709 D of the Code of Virginia. These include:

a. Placing a licensee on probation upon finding that the licensee is substantially out of compliance with the terms of the license and that the health and safety of residents, participants or children are at risk;

b. Reducing the licensed capacity or prohibiting new admissions when the commissioner has determined that the licensee cannot make necessary corrections to achieve compliance with the regulations except by a temporary restriction of its scope of service;

~~c. Requiring that probationary status announcements, provisional licenses and denial and revocation notices be posted in a conspicuous place on the licensed premises and be of sufficient size and distinction to advise consumers of serious or persistent violation;~~

~~c.~~ c. Mandating training for the licensee or licensee's employees, with any costs to be borne by the licensee, when the commissioner has determined that the lack of such training has led directly to violations of regulations;

~~d.~~ d. Assessing civil penalties of not more than \$500 per inspection upon finding that the licensee of an adult day care center or child welfare agency is substantially out of compliance with the terms of its license and the health and safety of residents, participants or children are at risk;

e. Assessing a civil penalty for each day an assisted living facility is or was out of compliance with the terms of its license and the health, safety, and welfare of residents are at risk. The aggregate amount of such civil penalties shall not exceed \$10,000 in any 24-month period. Criteria for imposition of civil penalties and amounts, expressed in ranges, are developed by the board, and are to be based upon the severity, pervasiveness, duration and degree of risk to the health, safety, or welfare of residents. Such civil penalties shall be applied by the commissioner in a consistent manner;

f. Requiring licensees to contact parents, guardians or other responsible persons in writing regarding health and safety violations; and

g. Preventing licensees who are substantially out of compliance with the licensure terms or in violation of the regulations from receiving public funds.

22 VAC 40-80-345 Summary suspension procedures.

A. In conjunction with any proceeding for revocation, denial, or other action when conditions or practices exist that pose an imminent and substantial threat to the health, safety and welfare of the residents, the commissioner may issue a summary suspension of the license to operate an assisted living facility or of certain authority of the licensee to provide certain services or perform certain functions.

B. Upon determining that summary suspension is appropriate, the hearing coordinator will select a hearing officer from a list prepared by the Executive Secretary of the Supreme Court of Virginia and will schedule the time, date, and location of the hearing to determine whether the suspension is appropriate as required by § 63.2-1709 C.

C. Simultaneously with the issuance of a notice of revocation, denial or other action, the commissioner will issue to the licensee a notice of summary order of suspension setting forth the following:

1. The procedures for the summary order of suspension;
2. The hearing and appeal rights as set forth below;
3. Facts and evidence that formed the basis for which the summary order of suspension is sought; and
4. The time, date, and location of the hearing.

D. Notice of the summary order of suspension will be served on the licensee or his designee by personal service or by certified mail, return receipt requested, to the address of record of the licensee as soon as practicable after issuance thereof.

E. The hearing shall take place in the locality where the assisted living facility operates unless the licensee or his designee expressly waives this venue provision.

1. The hearing shall be held no later than 15 business days after service of notice on the licensee. The hearing officer may grant a continuance upon written request and for good cause shown. In no event shall any continuance exceed 10 business days after the initial hearing date.
2. The hearing coordinator will forward a copy of the relevant licensing standards to the hearing officer.
3. The hearing will be conducted in accordance with the procedures set forth in 22 VAC 40-80-480 through 22 VAC 40-80-500 of this chapter.
4. The department may be represented either by counsel or by agency staff authorized by § 2.2-509 of the Code of Virginia.

F. Within 10 days of the conclusion of the hearing, the hearing officer shall provide to the commissioner written findings and conclusions, together with a recommendation as to whether the license should be summarily suspended. The department shall have the burden of proof in any summary suspension hearing. The decision of the hearing officer shall be based on the preponderance of the evidence presented by the record and relevant to the basic law under which the agency is operating.

G. Within 10 days of receipt of the hearing officer's report and recommendation, the commissioner shall either (i) adopt the hearing officer's recommendation; or (ii) reject the hearing officer's recommendation if it would be an error of law or department policy to accept it.

H. The commissioner shall issue and shall serve on the licensee or his designee by personal service or by certified mail, return receipt requested either:

1. A final order of summary suspension including (i) a detailed statement of the basis for rejecting the hearing officer's recommendation, if applicable, and (ii) notice that the licensee may appeal the commissioner's decision to the appropriate circuit court no later than 10 days following service of the order; or
2. A final order that summary suspension is not warranted by the facts and circumstances presented.

I. A copy of any final order of suspension shall be prominently displayed at each public entrance of the facility as required in 22 VAC 40-80-120 of this chapter.

J. The signed, original case decision shall remain in the custody of the agency as a public record, subject to the agency's records retention policy.

/s/ Mark R. Warner
Governor

Date: September 13, 2005

VA.R. Doc. No. R06-47; Filed September 14, 2005, 10:20 a.m.

GOVERNOR

EXECUTIVE ORDER NUMBER 97 (2005)

DECLARATION OF A STATE OF EMERGENCY IN SUPPORT OF THE EMERGENCY MANAGEMENT ASSISTANCE COMPACT TO RESPOND TO THE IMPACT OF HURRICANE KATRINA

(Revised September 12, 2005)

On August 31, 2005, I verbally declared a state of emergency to exist for the Commonwealth in support of the Emergency Management Assistance Compact (EMAC), of which the Commonwealth of Virginia is a member, to assist the states of Louisiana, Mississippi, Alabama, and other affected states in responding to and recovering from the impact of Hurricane Katrina. In accordance with § 44-146.28:1, the Commonwealth will provide resources and assistance to the fullest extent possible to the impacted states that have suffered unprecedented damages from Hurricane Katrina. Moreover, Hurricane Katrina has had and will have far ranging effects throughout the nation, including the Commonwealth.

Therefore, by virtue of the authority vested in me by § 44-146.17 of the Code of Virginia, as Governor and as Director of Emergency Management, and by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia and by § 44-75.1 of the Code of Virginia, as Governor and Commander-in-Chief of the armed forces of the Commonwealth, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby confirm, ratify, and memorialize in writing my verbal orders issued August 31, 2005, wherein I proclaimed that a state of emergency exists and directed that appropriate assistance be rendered by agencies of the state government to respond to needs in the impacted states to alleviate adverse conditions created by the hurricane. Pursuant to § 44-75.1 A 3 and A 4 of the Code of Virginia, I directed that the Virginia National Guard be called forth to state duty to assist in providing such aid. This shall include such functions as the State Coordinator of Emergency Management, the Adjutant General, and the Secretary of Public Safety may find necessary.

In order to marshal all public resources and appropriate preparedness, response and recovery measures to meet this potential threat and recover from its effects, and in accordance with my authority contained in § 44-146.17 of the Emergency Services and Disaster Laws, I hereby order the following measures:

A. The limited implementation by agencies of the state and local governments of Volume 1 (Basic Plan) and Volume 2 (Disaster Recovery Plan) of the Virginia Emergency Operations Plan, as amended, along with other appropriate state agency plans.

B. Limited activation of the Virginia Emergency Operations Center (VEOC) and Virginia Emergency Response Team (VERT) to coordinate the provision of assistance to the impacted states. I am directing that the VEOC and VERT coordinate state operations in support of the EMAC agreement, other mission assignments to agencies

designated in the Commonwealth of Virginia Emergency Operations Plan (COVEOP) and other measures that may be identified by the State Coordinator of Emergency Management, in consultation with the Secretary of Public Safety, which are needed to provide assistance for the preservation of life, protection of property, and implementation of recovery activities.

C. The activation, implementation and coordination of appropriate mutual aid agreements and compacts, including the Emergency Management Assistance Compact (EMAC), and the authorization of the State Coordinator of Emergency Management to enter into any other supplemental agreements, pursuant to §§ 44-146.17(5) and 44-146.28:1 of the Code of Virginia to provide for the exchange of medical, fire, police, National Guard personnel and equipment, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies. The State Coordinator of Emergency Management is hereby designated as Virginia's authorized representative within the meaning of the Emergency Management Assistance Compact, § 44-146.28:1 of the Code of Virginia.

D. The authorization of the Departments of State Police, Transportation and Motor Vehicles to grant temporary overweight, overwidth, registration, or license exemptions to all carriers transporting essential commodities in and through any area of the Commonwealth in order to support the emergency conditions, regardless of their point of origin or destination.

The axle and gross weights shown below are the maximum allowed, unless otherwise posted.

Axle Size	Max. Weight
Any One Axle	24,000 Pounds
Tandem Axles (more than 40 inches but not more than 96 inches spacing between axle centers)	44,000 Pounds
Single Unit (2 Axles)	44,000 Pounds
Single Unit (3 Axles)	54,500 Pounds
Tractor-Semitrailer (4 Axles)	64,500 Pounds
Tractor-Semitrailer (5 or more Axles)	90,000 Pounds
Tractor-Twin Trailers (5 or more Axles)	90,000 Pounds
Other Combinations (5 or more Axles)	90,000 Pounds
Per Inch of Tire Width in Contact with Road Surface	850 Pounds

All overwidth loads, up to a maximum of 14 feet, must follow Virginia Department of Transportation (VDOT) hauling permit and safety guidelines.

In addition to described overweight/overwidth transportation privileges, carriers are also exempt from registration with the Department of Motor Vehicles. This includes the vehicles en route and returning to their home base. The above-cited agencies shall communicate this information to all staff

responsible for permit issuance and truck legalization enforcement.

This authorization shall apply to hours worked by any carrier when transporting passengers, property, equipment, food, fuel, construction materials and other critical supplies to or from any portion of the Commonwealth for purpose of providing relief or assistance as a result of this disaster, pursuant to § 52-8.4 of the Code of Virginia.

The foregoing overweight/overwidth transportation privileges, as well as the regulatory exemption provided by § 52-8.4 A of the Code of Virginia and implemented in 19 VAC 30-20-40 B of the "Motor Carrier Safety Regulations," shall remain in effect for 30 days from the onset of the disaster, or until emergency relief is no longer necessary, as determined by the Secretary of Public Safety in consultation with the Secretary of Transportation, whichever is earlier.

E. The discontinuance of provisions authorized in paragraph D above may be implemented and disseminated by publication of administrative notice to all affected and interested parties by the authority I hereby delegate to the Secretary of Public Safety, after consultation with other affected Cabinet-level Secretaries.

F. This state of emergency constitutes a major medical emergency under the Rules and Regulations of the Board of Health Governing Emergency Medical Services, pursuant to Article 3.01 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1, of the Code of Virginia, Statewide Emergency Medical Services System and Services, and exemptions specified in the Rules and Regulations regarding patient transport and provider certification in disasters apply.

G. The implementation by public agencies under my supervision and control of their emergency assignments as directed in the COVEOP without regard to normal procedures pertaining to performance of public work, entering into contracts, incurring of obligations, or other logistical and support measures of the Emergency Services and Disaster Laws, as provided in § 44-146.28 (b) of the Code of Virginia. Section 44-146.24 of the Code of Virginia also applies to the disaster activities of state agencies.

H. The temporary waiver by the Department of Agriculture and Consumer Services, and all other applicable state and local agencies, of enforcement of the provisions of § 3.1-949 of the Code of Virginia for retailers of petroleum products whose pumps are too antiquated to display accurately the current price of petroleum products. This limited waiver shall be effective for a period of 90 days from the effective date of this executive order and shall apply only to retailers whose pumps are mechanically unable to display accurately the current price of petroleum products due to the age and design of the pump.

The Commissioner, in consultation with the Secretary of Agriculture and Forestry, shall forthwith develop and issue guidelines allowing such retailers to use a "half pricing" technique for the sale of petroleum products. Any such retailer shall be required to display the actual price of the petroleum product on any applicable signage or advertisements in accordance with these guidelines. The Commissioner and Secretary shall consult with affected stakeholders in the development of such guidelines and shall make available

appropriate technical assistance to affected retailers as well as appropriate consumer education.

I. Designation of members and personnel of volunteer, auxiliary and reserve groups including Search and Rescue (SAR), Virginia Association of Volunteer Rescue Squads (VAVRS), Civil Air Patrol (CAP), member organizations of the Voluntary Organizations Active in Disaster (VOAD), Radio Amateur Civil Emergency Services (RACES), volunteer fire fighters, and others identified and tasked by the State Coordinator of Emergency Management for specific disaster-related mission assignments as representatives of the Commonwealth engaged in emergency services activities within the meaning of the immunity provisions of § 44-146.23 (a) of the Code of Virginia, in the performance of their specific disaster-related mission assignments.

J. I hereby authorize the Superintendent of Public Instruction to issue such guidance to local school divisions as may be necessary to facilitate enrollment of students displaced by Hurricane Katrina.

K. The temporary waiver, for the period that the applicable waiver from the federal government is in effect, of enforcement by the Department of Motor Vehicles and other applicable agencies of the prohibition on use of dyed fuel for on-road use. Nothing in this provision shall change any tax liability due from any person or entity.

L. The temporary waiver, for a period of 90 days, of the enforcement by the Board of Pharmacy of statutory and regulatory provisions which, in the judgment of the Director of the Department of Health Professions, impede the ability of Virginia pharmacies to provide assistance to patients who have been displaced by the effects of Hurricane Katrina.

M. The following conditions apply to the deployment of the Virginia National Guard:

1. The Adjutant General of Virginia, after consultation with the State Coordinator of Emergency Management, shall make available on state active duty such units and members of the Virginia National Guard and Virginia Defense Force and such equipment as may be necessary or desirable to assist in alleviating the human suffering and damage to property.

2. Pursuant to § 52-6 of the Code of Virginia, I authorize and direct the Superintendent of State Police to appoint and all such Virginia Army and Air National Guard personnel called to state active duty as additional police officers. These police officers shall have the same powers and perform the same duties as the regular State Police officers appointed by the Superintendent. However, they shall nevertheless remain members of the Virginia National Guard, subject to military command as members of the State Militia. Any bonds and/or insurance required by § 52-7 of the Code of Virginia shall be provided for them at the expense of the Commonwealth.

3. In all instances, members of the Virginia National Guard shall remain subject to military command as prescribed by § 44-78.1 of the Code of Virginia and not subject to the civilian authorities of county or municipal governments. This shall not be deemed to prohibit working in close cooperation

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with members of the Virginia Departments of State Police or Emergency Management or local law enforcement or emergency management authorities or receiving guidance from them in the performance of their duties.

4. Should service under this Executive Order result in the injury or death of any member of the Virginia National Guard, the following will be provided to the member and the member's dependents or survivors:

(a) Workers Compensation benefits provided to members of the National Guard by the Virginia Workers Compensation Act, subject to the requirements and limitations thereof; and, in addition,

(b) The same benefits, or their equivalent, for injury, disability and/or death, as would be provided by the federal government if the member were serving on federal active duty at the time of the injury or death. Any such federal-type benefits due to a member and his or her dependents or survivors during any calendar month shall be reduced by any payments due under the Virginia Workers Compensation Act during the same month. If and when the time period for payment of Workers Compensation benefits has elapsed, the member and his or her dependents or survivors shall thereafter receive full federal-type benefits for as long as they would have received such benefits if the member had been serving on federal active duty at the time of injury or death. Any federal-type benefits due shall be computed on the basis of military pay grade E-5 or the member's military grade at the time of injury or death, whichever produces the greater benefit amount. Pursuant to § 44-14 of the Code of Virginia, and subject to the availability of future appropriations that may be lawfully applied to this purpose, I now approve of future expenditures out of appropriations to the Department of Military Affairs for such federal-type benefits as being manifestly for the benefit of the military service.

5. The costs incurred by the Department of Military Affairs in performing these missions shall be paid from state funds.

N. The activation of the statutory provisions in § 59.1-525 et. seq. of the Code of Virginia related to price gouging. Price gouging at any time is unacceptable. Price gouging is even more reprehensible after a natural disaster. I have directed all applicable executive branch agencies to take immediate action to address any verified reports of price gouging of necessary goods or services. I make the same request of the Office of the Attorney General and appropriate local officials.

O. I hereby authorize the heads of executive branch agencies, acting when appropriate on behalf of their regulatory boards, to waive any state requirement or regulation for which the federal government has issued a waiver of the corresponding federal or state regulation based on the impact of Hurricane Katrina.

P. I hereby authorize the presidents of colleges and universities in the Commonwealth to waive the requirements of any state law or regulation for good cause to facilitate enrollment of students displaced by Hurricane Katrina.

Q. A state of emergency exists for the Commonwealth in support of the proper management, care and support of persons who have been displaced by Hurricane Katrina, evacuated from states impacted by Hurricane Katrina, and relocated to the Commonwealth (Evacuees). These evacuees will require a variety of emergency services including, but not limited to health and medical care, social services, transportation and security services. I hereby order the following measures:

1. Designation of physicians, nurses, and other licensed and nonlicensed health care providers and other individuals as well as hospitals, nursing facilities and other licensed and nonlicensed health care organizations, political subdivisions and other private entities by agencies of the Commonwealth, including but not limited to the Department of Health, Department of Mental Health, Mental Retardation and Substance Abuse Services, Department of Emergency Management, Department of Transportation, Department of State Police, Department of Motor Vehicles, and Department of Social Services, as representatives of the Commonwealth engaged in emergency services activities, at sites designated by the Commonwealth, within the meaning of the immunity provisions of § 44-146.23 (a) of the Code of Virginia, in the performance of their disaster-related mission assignments.

2. Authorization of the health regulatory boards within the Department of Health Professions to issue, under the direction of the Director of the Department and during the next 120 days, licenses, registrations, and certifications to practice in the Commonwealth, for a period not to exceed one year, to qualified health care practitioners who are displaced residents of Hurricane Katrina-affected states, who hold unrestricted licenses, registrations, or certifications in their resident states, and who may be unable to furnish or have furnished on their behalf complete documentation of their credentials and license status as otherwise required by Virginia law or regulation. The boards shall also have authority to defer the payment of licensing fees. Any license, registration or certification so issued may be revoked for cause without a hearing.

Upon my approval, the costs incurred by state agencies and other agents in performing mission assignments through the VEOC of the Commonwealth as defined herein and in § 44-146.28 of the Code of Virginia, other than costs defined in Item 5 of the paragraphs above pertaining to the Virginia National Guard, in performing these missions shall be paid from state funds. In addition, up to \$50,000 shall be made available for operation of the Emergency Operation Center.

This Executive Order shall be effective August 31, 2005, and shall remain in full force and effect until June 30, 2006, unless sooner amended or rescinded by further executive order. Termination of the Executive Order is not intended to terminate any Federal-type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 12th day of September 2005.

/s/ Mark R. Warner
Governor

EXECUTIVE ORDER NUMBER 98 (2005)

**DECLARATION OF A STATE OF EMERGENCY FOR
THE COMMONWEALTH OF VIRGINIA DUE TO THE
THREAT OF SIGNIFICANT FLOODING AND WIND
DAMAGE CAUSED BY TROPICAL
STORM/HURRICANE OPHELIA**

On September 12, 2005, I verbally declared a state of emergency to exist for the Commonwealth of Virginia based on current forecasts that indicate that Tropical Storm/Hurricane Ophelia could cause damaging high winds, flash flooding, and possible tornadoes throughout the state. The National Weather Service forecasts that Tropical Storm/Hurricane Ophelia will follow a north-northeast track over the Outer Banks of North Carolina and affect eastern and central Virginia during the next 72 hours resulting in the potential for significant rainfall causing river flooding and high wind damage in central and southeast Virginia.

The health and general welfare of the citizens of the Commonwealth require that state action be taken to help prepare, and if needed, alleviate the conditions caused by this situation. The potential effects of Tropical Storm/Hurricane Ophelia could constitute a natural disaster wherein human life and public and private property are imperiled, as described in § 44-146.16 of the Code of Virginia.

Therefore, by virtue of the authority vested in me by § 44-146.17 of the Code of Virginia, as Governor and as Director of Emergency Management, and by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia and by § 44-75.1 of the Code of Virginia, as Governor and Commander-in-Chief of the armed forces of the Commonwealth, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby confirm, ratify, and memorialize in writing my verbal orders issued September 12, 2005, wherein I proclaim that a state of emergency exists and direct that appropriate assistance be rendered by agencies of both state and local governments to prepare for potential impacts of the storm, to alleviate any conditions resulting from significant flooding, if any occurs, and to implement recovery and mitigation operations and activities, if required, so as to return impacted areas to pre-event conditions insofar as possible. Pursuant to § 44-75.1 A 3 and A 4 of the Code of Virginia, I also direct that the Virginia National Guard and the Virginia Defense Force be called forth to state duty to assist in providing any aid, as needed. This shall include Virginia National Guard assistance to the Virginia State Police to direct traffic, prevent looting, and perform such other law enforcement functions as the Superintendent of State Police, in consultation with the State Coordinator of Emergency Management, the Adjutant General, and the Secretary of Public Safety, may find necessary.

In order to marshal all public resources and appropriate preparedness, response and potential recovery measures to meet this potential threat and recover from its possible effects,

and in accordance with my authority contained in § 44-146.17 of the Emergency Services and Disaster Laws, I hereby order the following protective and potential restoration measures:

A. The full implementation by agencies of the state and local governments of Volume 1 (Basic Plan), Volume 5 (Hurricane Response Plan) and Volume 2 (Disaster Recovery Plan) of the Virginia Emergency Operations Plan, as amended, along with other appropriate state agency plans.

B. Full activation of the Virginia Emergency Operations Center (VEOC) and Virginia Emergency Response Team (VERT). Furthermore, I am directing that the VEOC and VERT coordinate state operations in support of potential affected localities and the Commonwealth, to include issuing mission assignments to agencies designated in the Commonwealth of Virginia Emergency Operations Plan (COVEOP) and others that may be identified by the State Coordinator of Emergency Management, in consultation with the Secretary of Public Safety, which are needed to provide for the preservation of life, protection of property, and implementation of possible recovery activities.

C. The authorization to assume control over the Commonwealth's state-operated telecommunications systems, as required by the State Coordinator of Emergency Management, in coordination with the Virginia Information Technology Agency, and with the consultation of the Secretary of Public Safety, making all systems assets available for use in providing adequate communications, intelligence and warning capabilities for the event, pursuant to § 44-146.18 of the Code of Virginia.

D. The evacuation of areas threatened or stricken by flooding or other effects of the storm. Following a declaration of a local emergency pursuant to § 44-146.21 of the Code of Virginia, if a local governing body determines that evacuation is deemed necessary for the preservation of life or other emergency mitigation, response or recovery, pursuant to § 44-146.17 (1) of the Code of Virginia, I direct the evacuation of all or part of the populace therein from such areas and upon such timetable as the local governing body, in coordination with the Virginia Emergency Operations Center (VEOC), acting on behalf of the State Coordinator of Emergency Management, shall determine. Notwithstanding the foregoing, I reserve the right to direct and compel evacuation from the same and different areas and determine a different timetable both where local governing bodies have made such a determination and where local governing bodies have not made such a determination. Violations of any order to citizens to evacuate shall constitute a violation of this Executive Order and are punishable as a Class 1 misdemeanor.

E. If the storm results in a natural disaster, the activation, implementation and coordination of appropriate mutual aid agreements and compacts, including the Emergency Management Assistance Compact (EMAC), and the authorization of the State Coordinator of Emergency Management to enter into any other supplemental agreements, pursuant to §§ 44-146.17(5) and 44-146.28:1 of the Code of Virginia, to provide for the evacuation and reception of injured and other persons and the exchange of medical, fire, police, National Guard personnel and equipment, public utility, reconnaissance, welfare,

Governor

transportation and communications personnel, and equipment and supplies. The State Coordinator of Emergency Management is hereby designated as Virginia's authorized representative within the meaning of the Emergency Management Assistance Compact, § 44-146.28:1 of the Code of Virginia.

F. If the storm results in a natural disaster, the authorization of the Departments of State Police, Transportation and Motor Vehicles to grant temporary overweight, overwidth, registration, or license exemptions to all carriers transporting essential emergency relief supplies in and through any area of the Commonwealth in order to support any disaster response and recovery, regardless of their point of origin or destination.

The axle and gross weights shown below are the maximum allowed, unless otherwise posted.

Axle Size	Max. Weight
Any One Axle	24,000 Pounds
Tandem Axles (more than 40 inches but not more than 96 inches spacing between axle centers)	44,000 Pounds
Single Unit (2 Axles)	44,000 Pounds
Single Unit (3 Axles)	54,500 Pounds
Tractor-Semitrailer (4 Axles)	64,500 Pounds
Tractor-Semitrailer (5 or more Axles)	90,000 Pounds
Tractor-Twin Trailers (5 or more Axles)	90,000 Pounds
Other Combinations (5 or more Axles)	90,000 Pounds
Per Inch of Tire Width in Contact with Road Surface	850 Pounds

All overwidth loads, up to a maximum of 14 feet, must follow Virginia Department of Transportation (VDOT) hauling permit and safety guidelines.

In addition to described overweight/overwidth transportation privileges, if appropriate, carriers may also be exempt from registration with the Department of Motor Vehicles. This includes the vehicles enroute and returning to their home base. The above-cited agencies shall communicate this information to all staff responsible for permit issuance and truck legalization enforcement.

This authorization shall apply to hours worked by any carrier when transporting passengers, property, equipment, food, fuel, construction materials and other critical supplies to or from any portion of the Commonwealth for purpose of providing relief or assistance as a result of this potential disaster, pursuant to § 52-8.4 of the Code of Virginia.

The foregoing overweight/overwidth transportation privileges as well as the regulatory exemption provided by § 52-8.4 A of the Code of Virginia, and implemented in 19 VAC 30-20-40 B of the "Motor Carrier Safety Regulations," shall remain in effect for 30 days from the onset of the potential disaster, or

until emergency relief is no longer necessary, as determined by the Secretary of Public Safety in consultation with the Secretary of Transportation, whichever is earlier.

G. The discontinuance of provisions authorized in paragraph F above may be implemented and disseminated by publication of administrative notice to all affected and interested parties by the authority I hereby delegate to the Secretary of Public Safety, after consultation with other affected Cabinet-level Secretaries.

H. If the storm results in a natural disaster, the authorization of appropriate oversight boards, commissions and agencies to ease building code restrictions, and to permit emergency demolition, hazardous waste disposal, debris removal, emergency landfill siting and operations and other activities necessary to address immediate health and safety needs without regard to time-consuming procedures or formalities and without regard to application or permit fees or royalties. If the storm results in a natural disaster, this state of emergency may constitute a major medical emergency under the Rules and Regulations of the Board of Health Governing Emergency Medical Services, pursuant to Article 3.01 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1, of the Code of Virginia, Statewide Emergency Medical Services System and Services, and exemptions specified in the Rules and Regulations regarding patient transport and provider certification in disasters apply.

I. The authorization of a maximum of \$100,000 for matching funds for the Individuals and Household Program, authorized by The Stafford Act (when presidentially authorized), to be paid from state funds.

J. The implementation by public agencies under my supervision and control of their emergency assignments as directed in the COVEOP without regard to normal procedures pertaining to performance of public work, entering into contracts, incurring of obligations, or other logistical and support measures of the Emergency Services and Disaster Laws, as provided in § 44-146.28 (b) of the Code of Virginia. Section 44-146.24 of the Code of Virginia also applies to any disaster related activities of state agencies.

K. Designation of members and personnel of volunteer, auxiliary and reserve groups including search and rescue (SAR), Virginia Associations of Volunteer Rescue Squads (VAVRS), Civil Air Patrol (CAP), member organizations of the Voluntary Organizations Active in Disaster (VOAD), Radio Amateur Civil Emergency Services (RACES), volunteer fire fighters, and others identified and tasked by the State Coordinator of Emergency Management for specific disaster preparedness or recovery related mission assignments as representatives of the Commonwealth engaged in emergency services activities within the meaning of the immunity provisions of § 44-146.23 (a) of the Code of Virginia, in the performance of their specific disaster preparedness or recovery related mission assignments.

The following conditions apply to the deployment of the Virginia National Guard and the Virginia Defense Force:

1. The Adjutant General of Virginia, after consultation with the State Coordinator of Emergency Management, shall make available on state active duty such units and

members of the Virginia National Guard and Virginia Defense Force and such equipment as may be necessary or desirable to assist in preparations and in alleviating the human suffering and damage to property.

2. Pursuant to § 52-6 of the Code of Virginia, I authorize and direct the Superintendent of State Police to appoint any and all such Virginia Army and Air National Guard personnel called to state active duty as additional police officers, as deemed appropriate. These police officers shall have the same powers and perform the same duties as the regular State Police officers appointed by the Superintendent. However, they shall nevertheless remain members of the Virginia National Guard, subject to military command as members of the State Militia. Any bonds and/or insurance required by § 52-7 of the Code of Virginia shall be provided for them at the expense of the Commonwealth.

3. In all instances, members of the Virginia National Guard and Virginia Defense Force shall remain subject to military command as prescribed by § 44-78.1 of the Code of Virginia and not subject to the civilian authorities of county or municipal governments. This shall not be deemed to prohibit working in close cooperation with members of the Virginia Departments of State Police or Emergency Management or local law enforcement or emergency management authorities or receiving guidance from them in the performance of their duties.

4. Should service under this Executive Order result in the injury or death of any member of the Virginia National Guard, the following will be provided to the member and the member's dependents or survivors:

(a) Workers Compensation benefits provided to members of the National Guard by the Virginia Workers Compensation Act, subject to the requirements and limitations thereof; and, in addition,

(b) The same benefits, or their equivalent, for injury, disability and/or death, as would be provided by the federal government if the member were serving on federal active duty at the time of the injury or death. Any such federal-type benefits due to a member and his or her dependents or survivors during any calendar month shall be reduced by any payments due under the Virginia Workers Compensation Act during the same month. If and when the time period for payment of Workers Compensation benefits has elapsed, the member and his or her dependents or survivors shall thereafter receive full federal-type benefits for as long as they would have received such benefits if the member had been serving on federal active duty at the time of injury or death. Any federal-type benefits due shall be computed on the basis of military pay grade E-5 or the member's military grade at the time of injury or death, whichever produces the greater benefit amount. Pursuant to § 44-14 of the Code of Virginia, and subject to the availability of future appropriations which may be lawfully applied to this purpose, I now approve of future expenditures out of appropriations to the Department of Military Affairs for such federal-type benefits as being manifestly for the benefit of the military service.

5. The costs incurred by the Department of Military Affairs and the Virginia Defense Force in performing these missions shall be paid from state funds.

The following conditions apply to service by the Virginia Defense Force:

1. Compensation shall be at a daily rate that is equivalent of base pay only for a National Guard Unit Training Assembly, commensurate with the grade and years of service of the member, not to exceed 20 years of service;

2. Lodging and meals shall be provided by the Adjutant General or reimbursed at standard state per diem rates;

3. All privately owned equipment, including, but not limited to, vehicles, boats, and aircraft, will be reimbursed for expense of fuel. Damage or loss of said equipment will be reimbursed, minus reimbursement from personal insurance, if said equipment was authorized for use by the Adjutant General in accordance with § 44-54.12 of the Code of Virginia; and

4. In the event of death or injury, benefits shall be provided in accordance with the Virginia Workers Compensation Act, subject to the requirements and limitations thereof.

Upon my approval, the costs incurred by state agencies and other agents in performing mission assignments through the VEOC of the Commonwealth as defined herein and in § 44-146.28 of the Code of Virginia, other than costs defined in Item 5 of the paragraphs above pertaining to the Virginia National Guard and the Virginia Defense Force, in performing these missions shall be paid from state funds. In addition, up to \$50,000 shall be made available for operation of the Emergency Operation Center.

This Executive Order shall be effective September 12, 2005, and shall remain in full force and effect until June 30, 2006, unless sooner amended or rescinded by further executive order. Termination of the Executive Order is not intended to terminate any Federal-type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 12th day of September 2005.

/s/ Mark R. Warner
Governor

GENERAL NOTICES/ERRATA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Development of a Cleanup Plan for Dumps Creek Watershed

Purpose of notice: The Department of Environmental Quality (DEQ), the Department of Mines, Minerals and Energy and the Department of Conservation and Recreation announce a public meeting to develop a cleanup plan for the Dumps Creek watershed in Southwest Virginia. The agencies invite public participation and comments for the purpose of reducing pollutants to Dumps Creek.

Public comment period: October 17, 2005, to November 17, 2005.

Public meeting: Cleveland Recreation Ball Park Facility in the Town of Cleveland, Virginia, on October 17, 2005, from 6:30 to 8:30 p.m.

Meeting description: This is the first public meeting on development of a watershed cleanup plan.

Description of cleanup plan: DEQ has developed a total maximum daily load, or a TMDL, for Dumps Creek, a contaminated stream in Russell County Virginia. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. The stream has sediment and total dissolved solids contamination that has harmed the aquatic life in the stream. To restore water quality, contamination levels need to be reduced to the TMDL amounts. The cleanup plan will define ways to reduce contamination.

Dumps Creek is located in Russell County and flows to the Clinch River between Carbo and Cleveland, Virginia. The stream was listed for violating the aquatic life use based on biological monitoring results that showed the bottom dwelling aquatic organisms did not represent a healthy stream. The TMDL study considered land uses in the entire 20,300 acre watershed.

How to comment: DEQ accepts written comments by e-mail, fax or postal mail. Written comments should include the name, address and telephone number of the person commenting and be received by DEQ during the comment period. DEQ also accepts written and oral comments at the public meeting announced in this notice. The TMDL report is available on the DEQ website at www.deq.virginia.gov. Additionally, information on implementation plans and how they are developed is also available at the DEQ website.

Contact for additional information: Nancy T. Norton, P.E., Virginia Department of Environmental Quality, Southwest Regional Office, P.O. Box 1688, Abingdon, VA 24212-1688, telephone: (276) 676-4807, FAX (276) 676-4899, or e-mail ntnorton@deq.virginia.gov.

Study to Restore Water Quality in the Jackson River Watershed

Public meeting: Alleghany County Governmental Complex - Board of Supervisors Room, 9212 Winterberry Avenue

located near Low Moor, Virginia, on Thursday November 10, 2005, from 4 p.m. to 6 p.m. Directions: From I-64 heading west, Take exit 21 (Route 696). Take a right of the exit onto 696, then an immediate right onto Winterberry Avenue (Route 1101). The Alleghany County Governmental Complex is located approximately 1/2 mile on the left side of the road.

Purpose of notice: The Virginia Department of Environmental Quality announces a public meeting to discuss a study to restore water quality in the Jackson River watershed.

Description of study: Virginia agencies are working to identify sources of pollution causing low dissolved oxygen levels and biological impairment (general standard) in the Jackson River watershed. Dissolved oxygen levels periodically fall below the minimum water quality standard, which decreases the suitability of the water to support aquatic life. The general standard indicates the water quality is unable to support a natural aquatic community.

The following is a list of the "impaired" waters, the length of the impaired segment, their location and the reason for the impairment: Jackson River (I04R-11.21 miles), Alleghany, Botetourt, Covington, dissolved oxygen; Jackson River (I04R-24.21 miles), Alleghany, Botetourt, Covington, benthic.

During the study, the state agencies will develop a total maximum daily load, or a TMDL, for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, contamination levels have to be reduced to the TMDL amount.

How to comment: DEQ accepts written comments by e-mail, fax or postal mail. Written comments should include the name, address and telephone number of the person commenting and be received by DEQ during the comment period. DEQ also accepts written and oral comments at the public meeting announced in this notice.

Contact for additional information: Jason R. Hill, Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, telephone (540) 562-6724, FAX (540) 562-6860, or e-mail jrhill@deq.virginia.gov.

Study to Restore Water Quality in the Pigg River and Old Womans Creek Watershed

Public meeting: Sontag Elementary School in Rocky Mount, Virginia, on October 27, 2005, from 7 p.m. to 9 p.m. Directions: From Rocky Mount, take 220 S and turn Left onto Sontag Road (Rt. 619). Follow Sontag Rd. for 3.2 miles and turn into Elementary School parking lot. From Martinsville area, take 220 N and turn right onto Sontag Road (Rt. 619). Follow Sontag Rd. for 3.2 miles and turn into elementary school parking lot.

Purpose of notice: The Virginia Department of Environmental Quality announces a public meeting and the start of a study to restore water quality in the Pigg River and Old Womans Creek watersheds.

Meeting description: Public meeting on a study to restore water quality in the Pigg River and Old Womans Creek watersheds.

Description of study: Virginia agencies are working to identify sources of bacterial pollution in the Pigg River and Old Womans Creek watersheds. This contamination exceeds water quality standards, which decreases the suitability of the water for swimming, kayaking and other recreational activities involving direct contact with the water.

The following is a list of the "impaired" waters, their location, the length of the impaired segment and the reason for the impairment: Pigg River, Franklin Co. and Pittsylvania Co., 63.98 miles, bacteria; Leesville Lake, Pittsylvania Co., 154 acres, bacteria; Storey Creek, Franklin Co., 11.60 miles, bacteria; Snow Creek, Franklin Co. and Pittsylvania Co., 10.98 miles, bacteria; Old Womans Creek, Campbell Co., 4.86 miles, bacteria; and Big Chestnut Creek, Franklin Co., 12.88 miles, bacteria.

During the study, the state agencies will develop a total maximum daily load, or a TMDL, for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, contamination levels to have to be reduced to the TMDL amount.

How to comment: DEQ accepts written comments by e-mail, fax or postal mail. Written comments should include the name, address and telephone number of the person commenting and be received by November 27, 2005. DEQ also accepts written and oral comments at the public meeting announced in this notice.

Contact for additional information: Mary R. Dail, Virginia Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, telephone (540) 562-6715, FAX (540) 562-6860, or e-mail mrtdail@deq.virginia.gov.

Notice of Citizen Nomination of Surface Waters for Water Quality Monitoring

In accordance with § 62.1-44.19:5 F of the Code of Virginia, the Water Quality Monitoring Information and Restoration Act, the Virginia Department of Environmental Quality (DEQ) has developed guidance for requests from the public regarding specific segments that can be nominated for consideration to be included in the Virginia Department of Environmental Quality annual Water Quality Monitoring Plan.

Any citizen of the Commonwealth who wishes to nominate a water body or stream segment for inclusion in DEQ's Water Quality Monitoring Plan should refer to the guidance in preparation and submittal of their requests. All nominations must be received by December 31, 2005, to be considered for the 2007 calendar year. Copies of the guidance document and nomination form are available online at <http://www.deq.virginia.gov/cmonitor>.

For more information, please contact: James Beckley, Water Quality Data Liaison, Department of Environmental Quality,

P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4025, or e-mail jebeckley@deq.virginia.gov.

Notice Seeking Individuals to Serve on the State Advisory Board on Air Pollution

At their meeting on March 2, 2005, the State Air Pollution Control (SAPCB) approved a new charter for the State Advisory Board on Air Pollution (SABAP). The terms of several members expire on December 31, 2005.

The Department of Environmental Quality (DEQ) is seeking individuals who are willing to serve as members of the SABAP. It is anticipated that the SAPCB will approve membership on the advisory board at their December meeting. At the same time we expect that the potential topics for the advisory board will also be selected.

DEQ is seeking membership from environmental and health organizations, academia, the legal profession, industry or trade associations that have a background in air quality technology, policies or programs to serve on the advisory board. If you are interested, please submit your name and a brief resume of your qualifications to John M. Daniel, Jr., Director, Air Division, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4311, FAX (804) 698-4510 or e-mail jmdaniel@deq.virginia.gov. Submissions are due by close of business on October 31, 2005.

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on September 13, 2005. The orders may be viewed at the State Lottery Department, 900 E. Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, Virginia.

Final Rules for Game Operation:

Director's Order Number Sixty (05)

Virginia's Instant Game Lottery 290; "Dash for Cash" (effective 8/25/05)

Director's Order Number Sixty-One (05)

Virginia's Instant Game Lottery 664; "In the Money" (effective 8/25/05)

Director's Order Number Sixty-Two(05)

Virginia's Instant Game Lottery 675; "Fantastic 4's" (effective 8/25/05)

Director's Order Number Sixty-Three (05)

Virginia's Instant Game Lottery 681; "\$150,000 Cash Galore" (effective 8/25/05)

General Notices/Errata

VIRGINIA CODE COMMISSION

Notice to State Agencies

Mailing Address: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, FAX (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://register.state.va.us>.

FORMS:

NOTICE of INTENDED REGULATORY ACTION-RR01
NOTICE of COMMENT PERIOD-RR02
PROPOSED (Transmittal Sheet)-RR03
FINAL (Transmittal Sheet)-RR04
EMERGENCY (Transmittal Sheet)-RR05
NOTICE of MEETING-RR06
AGENCY RESPONSE TO LEGISLATIVE OBJECTIONS-RR08
RESPONSE TO PETITION FOR RULEMAKING-RR13
FAST-TRACK RULEMAKING ACTION-RR14

ERRATA

CRIMINAL JUSTICE SERVICES BOARD

Title of Regulation: 6 VAC 20-230. Regulations Relating to Special Conservator of the Peace.

Publication: 21:26 VA.R. 3680-3691 September 5, 2005.

Corrections to Final Regulation:

Page 3686, in 6 VAC 20-230-160 C 2 b, strike "6 VAC 20-230-200" and insert "6 VAC 20-230-190"

Page 3686, in 6 VAC 20-230-160 C 2 c, strike "6 VAC 20-230-210" and insert "6 VAC 20-230-200"

Page 3688, in 6 VAC 20-230-210, line 4, strike "6 VAC 20-230-200" and insert "6 VAC 20-230-190" and strike "6 VAC 20-230-210" and insert "6 VAC 20-230-200"

VIRGINIA WASTE MANAGEMENT BOARD

Title of Regulation: 9 VAC 20-80. Solid Waste Management Regulations.

Publication: 21:26 VA.R. 3691-3701 September 5, 2005.

CALENDAR OF EVENTS

Symbol Key

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

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Virginia Wine Board

NOTE: CHANGE IN MEETING DATE AND TIME

† **October 14, 2005 - 11 a.m.** -- Open Meeting
Virginia Department of Forestry, 900 Natural Resources Drive, Charlottesville, Virginia.♿

A meeting to (i) approve the minutes of the last meeting held on June 29, 2005; (ii) review the board's financial statement; and (iii) discuss old business arising from the last meeting and any new business to 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 David Robishaw at least five days before the meeting date so that suitable arrangements can be made.

Contact: David Robishaw, Board Secretary, Virginia Wine Board, 900 Natural Resources Dr., Suite 300, Charlottesville, VA 22903, telephone (434) 984-0573, FAX (434) 984-4156, e-mail david.robishaw@vdacs.virginia.gov.

STATE AIR POLLUTION CONTROL BOARD

State Advisory Board on Air Pollution

October 26, 2005 - 10 a.m. -- Open Meeting
November 16, 2005 - 10 a.m. -- Open Meeting
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia.♿

A regular meeting.

Contact: Janet Wynne, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4140, e-mail jtwynne@deq.virginia.gov.

ALCOHOLIC BEVERAGE CONTROL BOARD

October 11, 2005 - 9 a.m. -- Open Meeting
October 24, 2005 - 9 a.m. -- Open Meeting
November 7, 2005 - 9 a.m. -- Open Meeting
November 21, 2005 - 9 a.m. -- Open Meeting
December 5, 2005 - 9 a.m. -- Open Meeting
December 19, 2005 - 9 a.m. -- Open Meeting
Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia.♿

An executive staff meeting to receive and discuss reports and activities from staff members and to discuss other matters not yet determined.

Contact: W. Curtis Coleburn, III, Secretary to the Board, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, (804) 213-4687/TTY☎, e-mail curtis.coleburn@abc.virginia.gov.

ALZHEIMER'S DISEASE AND RELATED DISORDERS COMMISSION

December 13, 2005 - 10 a.m. -- Open Meeting
Department for the Aging, 1610 Forest Avenue, Suite 100, Richmond, Virginia.♿ (Interpreter for the deaf provided upon request)

A regular meeting.

Contact: Cecily Slasor, I and R Specialist, Alzheimer's Disease and Related Disorders Commission, 1610 Forest Ave., Ste. 100, Richmond, VA 23229, telephone (804) 662-9338, FAX (804) 662-9354, toll-free (800) 552-3402, (804) 662-9333/TTY☎, e-mail cecily.slasor@vda.virginia.gov.

Calendar of Events

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

† **October 13, 2005 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

A meeting of the Photogrammetry Committee to draft regulation wording for consideration by the APELSCIDLA Board in order to establish a regulatory program for photogrammetrists pursuant to HB 2863 from the 2005 General Assembly session. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. 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, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail apelscidla@dpor.virginia.gov.

October 26, 2005 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

A meeting of the Architects Section to conduct board business. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. 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, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail apelscidla@dpor.virginia.gov.

October 31, 2005 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

A meeting of the Professional Engineers Section to conduct board business. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. 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, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail apelscidla@dpor.virginia.gov.

November 3, 2005 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

A meeting of the Landscape Architects Section to conduct board business. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. 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, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail apelscidla@dpor.virginia.gov.

November 8, 2005 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

A meeting of the Land Surveyors Section to conduct board business. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. 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, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail apelscidla@dpor.virginia.gov.

November 10, 2005 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

A meeting of the Interior Designers Section to conduct board business. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. 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, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified

Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail apelscidla@dpor.virginia.gov.

December 8, 2005 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ♿

A meeting to conduct any and all board business. A portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at (804) 367-8514 at least 10 days prior to this meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or e-mail apelscidla@dpor.virginia.gov.

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December 8, 2005 - 9 a.m. -- Public Hearing
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Richmond, Virginia. ♿

December 8, 2005 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects intends to amend regulations entitled **18 VAC 10-20, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Regulations**. The purpose of the proposed action is to make general clarifying changes to the regulation as well as clarifying the requirements relating to "responsible charge" and "direct control and personal supervision." Any other changes that may be necessary may also be considered.

Statutory Authority: §§ 54.1-201, 54.1-404 and 54.1-411 of the Code of Virginia.

Contact: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or e-mail apelscidla@dpor.virginia.gov.

ART AND ARCHITECTURAL REVIEW BOARD

October 7, 2005 - 10 a.m. -- Open Meeting
November 4, 2005 - 10 a.m. -- Open Meeting
December 2, 2005 - 10 a.m. -- Open Meeting
Science Museum of Virginia, 2500 West Broad Street,
Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A monthly meeting to review projects submitted by state agencies. Art and Architectural Review Board submittal forms and submittal instructions can be downloaded by visiting the DGS Forms Center at www.dgs.state.va.us. Request form #DGS-30-905 or submittal instructions #DGS-30-906. The deadline for submitting project datasheets and other required information is two weeks prior to the meeting date.

Contact: Richard L. Ford, AIA Chairman, Art and Architectural Review Board, 101 Shockoe Slip, 3rd Floor, Richmond, VA 23219, telephone (804) 648-5040, FAX (804) 225-0329, (804) 786-6152/TTY ☎, or e-mail rford@comarchs.com.

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

† **October 4, 2005 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Richmond, Virginia. ♿

Informal fact-finding conferences.

Contact: David Dick, Assistant Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail asbestos@dpor.virginia.gov.

November 2, 2005 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ♿

A meeting to conduct board business.

Contact: David E. Dick, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, FAX (804) 367-6128, (804) 367-9753/TTY ☎, e-mail alhi@dpor.virginia.gov.

COMPREHENSIVE SERVICES FOR AT-RISK YOUTH AND FAMILIES

State Executive Council

NOTE: CHANGE IN MEETING DATE AND TIME

November 14, 2005 - 6 p.m. -- Open Meeting
General Assembly Building, 910 Capitol Street, House Room D, Richmond, Virginia.

A regular meeting.

Contact: Kim McGaughey, Executive Director, Comprehensive Services for At-Risk Youth and Families, 1604 Santa Rosa Rd., Richmond, VA 23229, telephone (804) 662-9830, FAX (804) 662-9831.

Calendar of Events

AUCTIONEERS BOARD

October 6, 2005 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

A meeting to conduct board business. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at 804-367-8514 at least 10 days prior to this meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Marian H. Brooks, Regulatory Board Administrator, Auctioneers Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail auctioneers@dpor.virginia.gov.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

November 10, 2005 - 9:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Richmond, Virginia. 

A regular board meeting.

Contact: Elizabeth Young, Executive Director, Board of Audiology and Speech-Language Pathology, Alcoa Building, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9907, FAX (804) 662-9523, (804) 662-7197/TTY , e-mail elizabeth.young@dhp.virginia.gov.

VIRGINIA AVIATION BOARD

† **October 11, 2005 - 3 p.m.** -- Open Meeting
† **October 12, 2005 - 9 a.m.** -- Open Meeting
Bernard J. Dunn School of Pharmacy, 1775 North Sector
Court, Omps Room, Winchester, Virginia. 

A regular bimonthly meeting. Applications for state funding will be presented to the board and other matters of interest to the Virginia 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, Administrative Assistant, Virginia Aviation Board, 5702 Gulfstream Rd., Richmond, VA 23250, telephone (804) 236-3637, FAX (804) 236-3635, e-mail carolyn.toth@doav.virginia.gov.

BOARD FOR BARBERS AND COSMETOLOGY

October 17, 2005 - 10 a.m. -- Public Hearing
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

October 21, 2005 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board for Barbers and Cosmetology intends to adopt regulations entitled **18 VAC 41-50, Tattooing Regulations**. The purpose of the proposed regulations is to promulgate regulations governing the licensure and practice of tattooing as mandated by Chapter 869 of the 2002 Acts of Assembly.

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

Contact: William H. Ferguson II, Executive Director, Board for Barbers and Cosmetology, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590, FAX (804) 367-6295 or e-mail william.ferguson@dpor.virginia.gov.

October 31, 2005 - 9 a.m. -- CANCELED

December 5, 2005 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Conference Room 4W,
Richmond, Virginia. 

A meeting to conduct general business and consider regulatory issues as may be presented. A portion of the meeting may be held in closed session. A public comment period will be held at the beginning of the meeting. Any person desiring to attend the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Contact: William H. Ferguson II, Executive Director, Board for Barbers and Cosmetology, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY , e-mail barbercosmo@dpor.virginia.gov.

BOARD FOR THE BLIND AND VISION IMPAIRED

October 11, 2005 - 1 p.m. -- Open Meeting
Department for the Blind and Vision Impaired, Administrative
Headquarters Building, 397 Azalea Avenue, Richmond,
Virginia.  (Interpreter for the deaf provided upon request)

A meeting to review information regarding Department for the Blind and Vision Impaired activities and operations, review expenditures from board endowment fund, and discuss other issues raised for the board members.

Contact: Katherine C. Proffitt, Administrative Staff Assistant, Department for the Blind and Vision Impaired, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3145, FAX (804) 371-3157, toll-free (800) 622-2155, (804) 371-3140/TTY , e-mail kathy.proffitt@dbvi.virginia.gov.

BOARD FOR BRANCH PILOTS

November 1, 2005 - 10 a.m. -- Open Meeting
December 12, 2005 - 9 a.m. -- Open Meeting
Virginia Port Authority, 600 World Trade Center, Norfolk,
Virginia. 

A meeting to conduct board business. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Persons desiring to

participate in the meeting and requiring special accommodations or interpretive services should contact the department at 804-367-8514 at least 10 days prior to this meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Executive Director, Board for Branch Pilots, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail branchpilots@dpor.virginia.gov.

CEMETERY BOARD

October 19, 2005 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4 West Conference Room, Richmond, Virginia. ♿

A meeting to discuss board business.

Contact: Karen W. O'Neal, Regulatory Programs Coordinator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8537, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail oneal@dpor.virginia.gov.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

October 25, 2005 - 10 a.m. -- Open Meeting
Department of Conservation and Recreation, James Monroe Building, 101 North 14th Street, 17th Floor Conference Room, Richmond, Virginia.

The Northern Area Review Committee will conduct general business, including review of local Chesapeake Bay Preservation Area programs for the northern area.

Contact: David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, e-mail david.dowling@dcr.virginia.gov.

October 25, 2005 - 2 p.m. -- Open Meeting
Department of Conservation and Recreation, James Monroe Building, 101 North 14th St., 17th Floor Conference Room, Richmond, Virginia.

The Southern Area Review Committee will conduct general business, including review of local Chesapeake Bay Preservation Area programs for the southern area.

Contact: David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, e-mail david.dowling@dcr.virginia.gov.

December 5, 2005 - 10 a.m. -- Open Meeting
Location to be announced.

A regular business meeting and review of local programs.

Contact: David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, e-mail david.dowling@dcr.virginia.gov.

STATE CHILD FATALITY REVIEW TEAM

November 18, 2005 - 10 a.m. -- Open Meeting
Office of the Chief Medical Examiner, 400 East Jackson Street, Richmond, Virginia. ♿

The business portion of the meeting is open to the public. At the conclusion of the open meeting, the team will go into closed session for confidential case review.

Contact: Virginia Powell, Coordinator, Department of Health, 400 E. Jackson St., Richmond, VA 23219, telephone (804) 786-6047, FAX (804) 371-8595, toll-free (800) 447-1708, e-mail angela.myrick@vdh.virginia.gov.

VIRGINIA COLLEGE SAVINGS PLAN

October 6, 2005 - 10 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, 5th Floor, Virginia College Savings Plan Board Room, Richmond, Virginia. ♿

A regular meeting of the Board of Directors.

Contact: Nicole Douglas, Executive Assistant, Virginia Higher Education Tuition Trust Fund, James Monroe Building, 101 N. 14th St., 5th Floor, Richmond, VA, telephone (804) 786-3574, FAX (804) 786-2453, toll-free (888) 567-0540, (804) 786-2766/TTY ☎, e-mail vcspinfo@virginia529.com.

STATE BOARD FOR COMMUNITY COLLEGES

November 16, 2005 - 1:30 pm. -- Open Meeting
Virginia Community College System, James Monroe Building, 101 North 14th Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

Meetings of the Academic Committee, Student Affairs and Workforce Development Committee, and Budget and Finance Committee begin at 1:30 p.m. The Facilities Committee and the Audit Committee will meet at 3 p.m. The Personnel Committee will meet at 3:30 p.m. The Executive Committee will meet at 5 p.m.

Contact: D. Susan Hayden, Director of Public Affairs, Virginia Community College System, 101 N. 14th St., Richmond, VA 23219, telephone (804) 819-4961, FAX (804) 819-4768, (804) 371-8504/TTY ☎

November 17, 2005 - 9 a.m. -- Open Meeting
Danville Community College, 1008 South Main Street, Danville, Virginia. ♿

A meeting of the full board. Public comment may be received at the beginning of the meeting upon notification at least five working days prior to the meeting.

Contact: D. Susan Hayden, Director of Public Affairs, Virginia Community College System, 101 N. 14th St., 15th Floor,

Calendar of Events

Richmond, VA 23219, telephone (804) 819-4961, FAX (804) 819-4768, (804) 371-8504/TTY ☎

COMPENSATION BOARD

† **October 19, 2005 - 11 a.m.** -- Open Meeting
830 East Main Street, 2nd Floor, Richmond, Virginia. ♿

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 cindy.waddell@scb.virginia.gov.

DEPARTMENT OF CONSERVATION AND RECREATION

October 3, 2005 - 3 p.m. -- Open Meeting
October 3, 2005 - 7 p.m. -- Open Meeting
New River Valley Planning District Commission Office (PD4), 6580 Valley Center Drive, Radford, Virginia.

October 4, 2005 - 3 p.m. -- Open Meeting
October 4, 2005 - 7 p.m. -- Open Meeting
Middle Peninsula Planning District Commission Office (PD18), 125 Bowdeb Street, Saluda, Virginia.

October 4, 2005 - 3 p.m. -- Open Meeting
October 4, 2005 - 7 p.m. -- Open Meeting
Mount Rogers Planning District Commission Office (PD4), 1021 Terrace Drive, Marion, Virginia.

October 5, 2005 - 3 p.m. -- Open Meeting
October 5, 2005 - 7 p.m. -- Open Meeting
Cumberland Plateau Planning District Commission Office (PD2), 950 Clydesway Road, Lebanon, Virginia.

October 5, 2005 - 3 p.m. -- Open Meeting
October 5, 2005 - 7 p.m. -- Open Meeting
Richmond Regional District Planning Commission Office (PD15), 2104 West Laburnum Avenue, Suite 101, Richmond, Virginia.

October 6, 2005 - 3 p.m. -- Open Meeting
October 6, 2005 - 7 p.m. -- Open Meeting
Lenowisco Planning District Commission Office (PD1), Natural Tunnel State Park, Cove Ridge Center, Duffield, Virginia.

October 6, 2005 - 3 p.m. -- Open Meeting
October 6, 2005 - 7 p.m. -- Open Meeting
Northern Neck Planning District Commission Office (PD17), 457 Main Street, Warsaw, Virginia.

† **October 11, 2005 - 3 p.m.** -- Open Meeting
† **October 11, 2005 - 7 p.m.** -- Open Meeting
November 11, 2005 - 3 p.m. -- Open Meeting
November 11, 2005 - 7 p.m. -- Open Meeting
RADCO Planning District Commission Office (PD16), 3304 Bourbon Street, Fredericksburg, Virginia.

† **October 13, 2005 - 3 p.m.** -- Open Meeting
† **October 13, 2005 - 7 p.m.** -- Open Meeting
Northern Shenandoah Valley Region (R7), Warren County Government Center, 200 North Commerce Avenue, Community Room, Front Royal, Virginia.

† **October 18, 2005 - 3 p.m.** -- Open Meeting
† **October 18, 2005 - 7 p.m.** -- Open Meeting
Accomack-Northampton Planning District Commission Office (PD22), 23372 Front Street, Accomack, Virginia.

† **October 18, 2005 - 3 p.m.** -- Open Meeting
† **October 18, 2005 - 7 p.m.** -- Open Meeting
Hampton Roads Planning District Commission (PD23), Chesapeake Central Library, 298 Cedar Road, Chesapeake, Virginia.

† **October 18, 2005 - 3 p.m.** -- Open Meeting
† **October 18, 2005 - 7 p.m.** -- Open Meeting
Roanoke Valley/Alleghany Planning District Commission Office (PD5), 313 Luck Avenue, S.W., Roanoke, Virginia.

† **October 20, 2005 - 3 p.m.** -- Open Meeting
† **October 20, 2005 - 7 p.m.** -- Open Meeting
Central Shenandoah Planning District Commission (PD6), 1112 MacTanley Place, Staunton, Virginia.

† **October 25, 2005 - 3 p.m.** -- Open Meeting
† **October 25, 2005 - 7 p.m.** -- Open Meeting
Rappahannock-Rapidan Regional Council (R9), 420 Southridge Parkway, Suite 106, Culpeper, Virginia.

† **October 25, 2005 - 3 p.m.** -- Open Meeting
† **October 25, 2005 - 7 p.m.** -- Open Meeting
Northern Virginia Regional Council (R8), 3060 Williams Drive, Suite 510, Fairfax, Virginia.

† **October 26, 2005 - 3 p.m.** -- Open Meeting
† **October 26, 2005 - 7 p.m.** -- Open Meeting
Crater Planning District Commission Office (PD19), 1964 Wakefield Street, Petersburg, Virginia.

† **October 26, 2005 - 3 p.m.** -- Open Meeting
† **October 26, 2005 - 7 p.m.** -- Open Meeting
Thomas Jefferson Planning District Commission (PD10), 401 East Water Street, Charlottesville, Virginia.

† **November 1, 2005 - 3 p.m.** -- Open Meeting
† **November 1, 2005 - 7 p.m.** -- Open Meeting
Region 2000 Local Government Council (R11), 915 Main Street, Suite 202, Lynchburg, Virginia.

† **November 2, 2005 - 3 p.m.** -- Open Meeting
† **November 2, 2005 - 7 p.m.** -- Open Meeting
Commonwealth Regional Council (PD14), 102-1/2 High Street, Farmville, Virginia.

† **November 2, 2005 - 3 p.m.** -- Open Meeting
† **November 2, 2005 - 7 p.m.** -- Open Meeting
West Piedmont Planning District Commission (PD12), Henry County Administration Building, 3300 Kings Mountain, Board Room, Martinsville, Virginia.

† **November 3, 2005 - 3 p.m.** -- Open Meeting
† **November 3, 2005 - 7 p.m.** -- Open Meeting
Southside Planning District Commission (PD13), 200 South Mecklenburg Avenue, South Hill, Virginia.

A 2007 Virginia Outdoors Plan citizen input meeting. State planners from the Virginia Department of Conservation and Recreation are developing Virginia's comprehensive plan for the acquisition, development and management of outdoor recreation and open space resources. Virginia has produced a Virginia Outdoors Plan every five years since 1966; this will be the 9th edition. At 22 locations across the state, DCR staff will inform citizens of the progress of developing the 2007 Virginia Outdoors Plan and provide opportunity for citizen input on issues of interest. DCR is accepting written comments on the update of the 2007 Virginia Outdoors Plan at VOP Comments, DCR, 203 Governor Street, Suite 326, Richmond, VA 23219. Comments will also be accepted via e-mail at vop@dcr.virginia.gov.

Contact: Robert Munson, Planning Bureau Manager, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-6140, FAX (804) 371-7899, e-mail robert.munson@dcr.virginia.gov.

October 13, 2005 - Noon -- Open Meeting

November 10, 2005 - Noon -- Open Meeting

December 8, 2005 - Noon -- Open Meeting

Richmond City Hall, 5th Floor Conference Room, Richmond, Virginia.

A regular meeting of the Falls of the James River Scenic Advisory Committee to discuss river issues.

Contact: David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, e-mail david.dowling@dcr.virginia.gov.

December 1, 2005 - 10 a.m. -- Open Meeting
Location to be announced.

A regular business meeting of the Virginia Land Conservation Foundation to review and approve grant applications.

Contact: David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, e-mail david.dowling@dcr.virginia.gov.

Virginia Soil and Water Conservation Board

November 17, 2005 - 9:30 a.m. -- Open Meeting
Location to be determined.

A regular business meeting to discuss soil and water, stormwater management and dam safety issues.

Contact: David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, e-mail david.dowling@dcr.virginia.gov.

BOARD FOR CONTRACTORS

October 4, 2005 - 9 a.m. -- Open Meeting

October 6, 2005 - 9 a.m. -- Open Meeting

† **October 13, 2005 - 9 a.m.** -- Open Meeting

October 18, 2005 - 9 a.m. -- Open Meeting

October 18, 2005 - 2 p.m. -- Open Meeting

† **October 20, 2005 - 9 a.m.** -- Open Meeting

† **October 27, 2005 - 9 a.m.** -- Open Meeting

Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Richmond, Virginia. 

Informal fact-finding conferences.

Contact: Eric L. Olson, Executive Director, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-9753/TTY , e-mail contractors@dpor.virginia.gov.

October 18, 2005 - 9 a.m. -- Open Meeting

November 16, 2005 - 9 a.m. -- Open Meeting

December 13, 2005 - 9 a.m. -- Open Meeting

Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

A regular meeting to address policy and procedural issues and review and render decisions on matured complaints against licensees. The meeting is open to the public; however, a portion of the board's business may be conducted in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to this meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Eric L. Olson, Executive Director, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-9753/TTY , e-mail contractors@dpor.virginia.gov.

November 16, 2005 - 10 a.m. -- CANCELED

Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

A meeting of the Tradesman Education Committee to conduct committee business has been canceled. The department fully complies with the Americans with Disabilities Act.

Contact: Eric L. Olson, Executive Director, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-9753/TTY , e-mail contractors@dpor.virginia.gov.

BOARD OF CORRECTIONS

November 15, 2005 - 10 a.m. -- Open Meeting

Department of Corrections, 6900 Atmore Drive, 3rd Floor Board Room, Richmond, Virginia. 

A meeting of the Liaison Committee to discuss correctional matters of interest to the board.

Contact: Barbara Woodhouse, Administrative Staff Assistant, Department of Corrections, 6900 Atmore Dr., Richmond, VA

Calendar of Events

23225, telephone (804) 674-3124, FAX (804) 674-3236, e-mail barbara.woodhouse@vadoc.virginia.gov.

November 15, 2005 - 1 p.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, 3rd Floor, Room 3054, Richmond, Virginia. 

A meeting of the Correctional Services/Policy and Regulations Committee to discuss correctional services and policy/regulation matters to be considered by the board.

Contact: Barbara Woodhouse, Administrative Staff Assistant, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3124, FAX (804) 674-3236, e-mail barbara.woodhouse@vadoc.virginia.gov.

November 16, 2005 - 9:30 a.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, 3rd Floor Board Room, Richmond, Virginia. 

A meeting of the Administration Committee to discuss administrative matters to be considered by the board.

Contact: Barbara Woodhouse, Administrative Staff Assistant, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3124, FAX (804) 674-3236, e-mail barbara.woodhouse@vadoc.virginia.gov.

November 16, 2005 - 10 a.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, 3rd Floor Board Room, Richmond, Virginia. 

A regular meeting of the full board to review and discuss all matters considered by board committees that require action by the board.

Contact: Barbara Woodhouse, Administrative Staff Assistant, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3124, FAX (804) 674-3236, e-mail barbara.woodhouse@vadoc.virginia.gov.

BOARD OF COUNSELING

November 3, 2005 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 3, Richmond, Virginia. 

A meeting of the Credentials Review Committee to review the files of applicants to determine if they have met the requirements for licensure.

Contact: Evelyn B. Brown, Executive Director, Board of Counseling, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9912, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail evelyn.brown@dhp.virginia.gov.

November 4, 2005 - 9:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia. 

A quarterly meeting to conduct board business.

Contact: Evelyn B. Brown, Executive Director, Board of Counseling, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9912, FAX

(804) 662-9943, (804) 662-7197/TTY , e-mail evelyn.brown@dhp.virginia.gov.

CRIMINAL JUSTICE SERVICES BOARD

December 8, 2005 - 9 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia.

A meeting of the Committee on Training.

Contact: Leon D. Baker, Jr., Division Director, Criminal Justice Services Board, Eighth St. Office Bldg., 805 E. Broad St., 10th Floor, Richmond, VA 23219, telephone (804) 225-4086, FAX (804) 786-0588, e-mail lbaker@dcjs.state.va.us.

December 8, 2005 - 11 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia.

A meeting to conduct general business.

Contact: Leon D. Baker, Jr., Division Director, Criminal Justice Services Board, Eighth St. Office Bldg., 805 E. Broad St., 10th Floor, Richmond, VA 23219, telephone (804) 225-4086, FAX (804) 786-0588, e-mail lbaker@dcjs.state.va.us.

BOARD OF DENTISTRY

† **October 28, 2005 - 9 a.m.** -- Open Meeting

† **November 4, 2005 - 9 a.m.** -- Open Meeting

† **December 2, 2005 - 9 a.m.** -- Open Meeting

Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 

A meeting of the Special Conference Committee to hold informal conferences. There will not be a public comment period.

Contact: Cheri Emma-Leigh, Operations Manager, Board of Dentistry, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9906, FAX (804) 662-7246, (804) 662-7197/TTY , e-mail cheri.emma-leigh@dhp.virginia.gov.

† **December 8, 2005 - 9 a.m.** -- Open Meeting

Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 

Formal hearings. There will not be a public comment period.

Contact: Cheri Emma-Leigh, Operations Manager, Board of Dentistry, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9906, FAX (804) 662-7246, (804) 662-7197/TTY , e-mail cheri.emma-leigh@dhp.virginia.gov.

December 9, 2005 - 9 a.m. -- Open Meeting

Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 

A meeting to discuss business issues. There will be a public comment period at the beginning of the meeting.

Contact: Sandra Reen, Executive Director, Board of Dentistry, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9906, FAX

(804) 662-9943, (804) 662-7197/TTY ☎, e-mail sandra.reen@dhp.virginia.gov.

DESIGN-BUILD/CONSTRUCTION MANAGEMENT REVIEW BOARD

October 20, 2005 - 11 a.m. -- Open Meeting

November 17, 2005 - 11 a.m. -- Open Meeting

Department of General Services, Eighth Street Office Building, 805 East Broad Street, 3rd Floor, Richmond, Virginia. ♿
(Interpreter for the deaf provided upon request)

December 15, 2005 - 11 a.m. -- Open Meeting

202 North 9th Street, Room 412, 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. Contact the Division of Engineering and Building to confirm the meeting.

Contact: Rhonda M. Bishton, Administrative Assistant, Department of General Services, 805 E. Broad Street, Room 101, Richmond, VA 23219, telephone (804) 786-3263, FAX (804) 371-7934, (804) 786-6152/TTY ☎, or e-mail rhonda.bishton@dgs.virginia.gov.

BOARD OF EDUCATION

October 11, 2005 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Education intends to adopt regulations entitled **8 VAC 20-660, Regulations Governing Reenrollment Plans**. The General Assembly established the requirements for regulations in response to a study regarding the transfer of students between public schools, detention homes and juvenile correctional centers. This study recommended establishment of a reenrollment plan to share information about the student's public and correctional education and to facilitate the student's reenrollment in public schools upon release from commitment.

Statutory Authority: §§ 16.1-293, 22.1-17.1 and 22.1-343 of the Code of Virginia.

Contact: Dr. Cynthia Cave, Director of Student Services, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 225-2818, FAX (804) 225-2524 or e-mail ccave@mail.vak12ed.edu.

October 26, 2005 - 9 a.m. -- Open Meeting

November 30, 2005 - 9 a.m. -- Open Meeting

James Monroe Building, 101 North 14th Street, Main Lobby Level, Conference Rooms C and D, Richmond, Virginia. ♿

A regular business meeting of the board. The public is urged to confirm arrangements prior to each meeting by viewing the Department of Education's public meeting calendar at <http://www.pen.k12.va.us/VDOE/meetings.html>. This site will contain the latest information on the meeting arrangements and will note any last minute changes in time

or location. Persons who wish to speak or who require the services of an interpreter for the deaf should contact the agency at least 72 hours in advance.

Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department of Education, P.O. Box 2120, James Monroe Bldg., 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail margaret.roberts@doe.virginia.gov.

Advisory Board on Teacher Education and Licensure

† **November 21, 2005 - 9 a.m.** -- Open Meeting

Location to be announced.

A regular meeting. The public is urged to confirm arrangements prior to each meeting by viewing the Department of Education's public meeting calendar at <http://www.pen.k12.va.us/VDOE/meetings.html>. This site will contain the latest information on the meeting arrangements and will note any last-minute changes in time or location. Please note that persons requesting the services of an interpreter for the deaf are asked to do so at least 72 hours in advance so that the appropriate arrangements may be made.

Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department of Education, P.O. Box 2120, James Monroe Bldg., 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail margaret.roberts@doe.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

October 4, 2005 - 7 p.m. -- Open Meeting

Auburn High School Auditorium, 4069 Riner Road, Riner, Virginia. ♿

The first public meeting on the development of the implementation plan for the bacteria TMDL on Mill Creek in Montgomery County. The public notice appears in the Virginia Register on September 19, 2005. The public comment period begins on October 4, 2005, and ends on November 4, 2005.

Contact: Theresa Carter, Department of Conservation and Recreation, 252 W. Main St., Suite 3, Abingdon, VA 24210, telephone (276) 676-5418, FAX (276) 676-5527, e-mail theresa.carter@dcr.virginia.gov.

October 6, 2005 - 7 p.m. -- Open Meeting

Floyd County High School Library, 721 Baker Street, SW, Floyd, Virginia. ♿

The first public meeting on the development of the TMDL implementation plan for Dodd Creek located in Floyd County. The public notice appears in the Virginia Register of Regulations on September 19, 2005. The public comment period begins on October 6, 2005, and ends on November 6, 2005.

Contact: Theresa Carter, Department of Conservation and Recreation, 252 W. Main St., Suite 3, Abingdon, VA 24210,

Calendar of Events

telephone (276) 676-5418, FAX (276) 676-5527, e-mail theresa.carter@dcr.virginia.gov.

† **October 17, 2005 - 6:30 p.m.** -- Open Meeting
Cleveland Recreation Ball Park Facility, Cleveland, Virginia. ♿

The first public meeting on the development of a watershed cleanup plan for sediment and total dissolved solids TMDLs for Dumps Creek in Russell County. The public notice appears in the Virginia Register of Regulations on October 3, 2005, and the comment period begins on October 17, 2005, and closes on November 17, 2005.

Contact: Nancy T. Norton, Department of Environmental Quality, P.O. Box 1688, Abingdon, VA 24212, telephone (276) 676-4807, FAX (276) 676-4899, e-mail ntnorton@deq.virginia.gov.

† **October 27, 2005 - 7 p.m.** -- Open Meeting
Sontag Elementary School, Sontag Road, Rocky Mount, Virginia. ♿

A public meeting on the development of bacteria TMDLs for impaired waters in the Pigg River and Old Womans Creek watersheds located in Franklin, Pittsylvania, and Campbell counties. The public notice appears in the Virginia Register of Regulations on October 3, 2005. The comment period begins on October 27, 2005, and closes on November 27, 2005.

Contact: Mary R. Dail, Department of Environmental Quality, 3019 Peters Creek Rd., Roanoke, VA 24019, telephone (540) 562-6715, FAX (540) 562-6860, e-mail mrtdail@deq.virginia.gov.

† **November 10, 2005 - 4 p.m.** -- Open Meeting
Alleghany County Governmental Complex, 9212 Winterberry Avenue, Board of Supervisors Room, Low Moor, Virginia. ♿

A public meeting on the development of dissolved oxygen and benthic TMDLs for segments of the Jackson River in Alleghany and Botetourt counties and in Covington. The public notice appears in the Virginia Register of Regulations on October 3, 2005. The comment period begins on November 10, 2005, and ends on December 12, 2005.

Contact: Jason R. Hill, Department of Environmental Quality, 3019 Peters Creek Rd., Roanoke, VA 24019, telephone (540) 562-6724, FAX (540) 562-6860, e-mail jrhill@deq.virginia.gov.

November 15, 2005 - 9 a.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. ♿

A regular meeting of the Ground Water Protection Steering Committee.

Contact: Mary Ann Massie, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4042, FAX (804) 698-4116, e-mail mamassie@deq.virginia.gov.

Litter Control and Recycling Fund Advisory Board

October 12, 2005 - 10:30 a.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia.

A regular meeting.

Contact: G. Steven Coe, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4029, FAX (804) 698-4224, e-mail gscoe@deq.virginia.gov.

VIRGINIA FIRE SERVICES BOARD

† **October 13, 2005 - 10 a.m.** -- Open Meeting
Redi Center Complex, 44983 Knoll Square, 2nd Floor, Ashburn, Virginia. ♿ (Interpreter for the deaf provided upon request)

Meetings of the following committees:

10 a.m. - Committee on Fire Education and Training
1 p.m. - Committee on Fire Prevention and Control
2:30 p.m. - Committee on Administration, Policy and Finance

Contact: Nausheen Khan, VFSB Clerk and Research Assistant, Department of Fire Programs, 1005 Technology Park Dr., Glen Allen, VA 23059, telephone (804) 371-0220, e-mail nausheen.khan@vdfp.virginia.gov.

† **October 14, 2005 - 9 a.m.** -- Open Meeting
Redi Center Complex, 44983 Knoll Square, 2nd Floor, Ashburn, Virginia. ♿ (Interpreter for the deaf provided upon request)

A full board meeting.

Contact: Nausheen Khan, VFSB Clerk and Research Assistant, Department of Fire Programs, 1005 Technology Park Dr., Glen Allen, VA 23059, telephone (804) 371-0220, e-mail nausheen.khan@vdfp.virginia.gov.

CHARITABLE GAMING BOARD

December 6, 2005 - 10 a.m. -- Open Meeting
Science Museum of Virginia, 2500 West Broad Street, Discovery Room, Richmond, Virginia. ♿

A regular quarterly meeting.

Contact: Clyde E. Cristman, Director, Charitable Gaming Board, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 786-1681, FAX (804) 786-1079, e-mail clyde.cristman@dgc.virginia.gov.

BOARD FOR GEOLOGY

October 12, 2005 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting to conduct board business.

Contact: David E. Dick, Executive Director, Board for Geology, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, FAX (804) 367-6128, (804) 367-9753/TTY ♿, e-mail geology@dpor.virginia.gov.

STATE BOARD OF HEALTH

October 21, 2005 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Health intends to amend regulations entitled **12 VAC 5-410, Regulations for the Licensure of Hospitals in Virginia**. The purpose of the proposed action is to require a registered nurse, qualified by education and experience in perioperative nursing, to be present as a circulating nurse in each operating room during surgical procedures conducted in inpatient hospitals and outpatient surgical centers. This amendment is the result of a petition for rulemaking received from the Virginia Council of Perioperative Nurses.

Statutory Authority: §§ 32.1-12 and 32.1-127 of the Code of Virginia.

Contact: Carrie Eddy, Senior Policy Analyst, Center for Quality Health Care Services, Department of Health, 3600 W. Broad St., Suite 216, Richmond, VA 23230, telephone (804) 367-2157, FAX (804) 367-2149 or e-mail carrie.eddy@vdh.virginia.gov.

November 4, 2005 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Health intends to amend regulations entitled **12 VAC 5-90, Regulations Governing Disease Reporting and Control**. The purpose of the proposed action is to (i) establish isolation and quarantine requirements, (ii) insert and clarify definitions, (iii) clarify the reportable disease list, (iv) update the conditions that are reportable by laboratories and to the tests used to confirm those conditions, (v) revise information to be included on a disease report, and (vi) update tuberculosis reporting and control requirements.

Statutory Authority: §§ 32.1-12 and 32.1-35 of the Code of Virginia.

Contact: Diane Woolard, Ph.D., Director, Division of Surveillance and Investigation, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-8141, FAX (804) 864-8139 or e-mail diane.woolard@vdh.virginia.gov.

DEPARTMENT OF HEALTH

† **October 6, 2005 - 10 a.m.** -- Open Meeting
Virginia Hospital and Health Care Association, 4200 Innslake Drive, Glen Allen, Virginia.

A meeting of the Aids Drug Assistance Program Advisory Committee.

Contact: Faye Bates, RN, ADAP Coordinator, Department of Health, 109 Governor St., Room 326, Richmond, VA 23219, telephone (804) 864-8019, FAX (804) 864-7983, e-mail faye.bates@vdh.virginia.gov.

October 21, 2005 - 10 a.m. -- Open Meeting
December 9, 2005 - 10 a.m. -- Open Meeting
Virginia Hospital and Healthcare Association, 4200 Innslake Drive, Glen Allen, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the Virginia Early Hearing Detection and Intervention Program Advisory Committee to assist the Virginia Department of Health in the implementation of the Virginia Early Hearing Detection and Intervention Program. The advisory committee meets four times a year.

Contact: Pat T. Dewey, Program Manager, Department of Health, 109 Governor St., 8th Floor, Richmond, VA 23219, telephone (804) 864-7713, FAX (804) 864-7721, toll-free (866) 493-1090, (800) 828-1120/TTY , e-mail pat.dewey@vdh.virginia.gov.

† **November 17, 2005 - 3 p.m.** -- Open Meeting
The Place at Innsbrook, Glen Allen, Virginia. 

A meeting of the Regulation and Policy Committee of the EMS Advisory Board to conduct regular business, accept reports from staff regarding implementation of civil penalties, and receive an update on NOIRA processes.

Contact: Michael D. Berg, Manager, Regulation and Compliance, Department of Health, 109 Governor St., UB-55, Richmond, VA 23219, telephone (804) 864-7600, FAX (804) 864-7580, toll-free (800) 523-6019, e-mail michael.berg@vdh.virginia.gov.

December 14, 2005 - 1:30 p.m. -- Open Meeting
Madison Building, 109 Governor Street, Richmond, Virginia. 

A meeting of the Newborn Screening Regulations Advisory Group to allow and invite public participation in the development of proposed regulations.

Contact: Nancy Ford, Pediatric Screening and Genetic Services, Department of Health, 109 Governor St., 8th Floor, Richmond, VA 23219, telephone (804) 864-7691, FAX (804) 864-7022, e-mail nancy.ford@vdh.virginia.gov.

BOARD OF HEALTH PROFESSIONS

October 21, 2005 - 9 a.m. -- Open Meeting
December 16, 2005 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, Board Room 3, Richmond, Virginia. 

A meeting of the Health Practitioners' Intervention Program Committee.

Contact: Peggy W. Call, Intervention Program Manager, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9424, FAX (804) 662-7358, e-mail peggy.call@dhp.virginia.gov.

BOARD FOR HEARING AID SPECIALISTS

November 7, 2005 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation
3600 West Broad Street, 4th Floor Richmond, Virginia. 

Calendar of Events

A general business meeting including consideration of regulatory issues as may be presented on the agenda. The meeting is open to the public; however, a portion of the board's business may be conducted in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to this meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: William H. Ferguson, II, Executive Director, Board for Hearing Aid Specialists, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY ☎, e-mail hearingaidspec@dpor.virginia.gov.

VIRGINIA INFORMATION TECHNOLOGIES AGENCY

Information Technology Investment Board

October 5, 2005 - 1 p.m. -- Open Meeting
Virginia Information Technologies Agency Operations Center, 110 South 7th Street, 4th Floor Auditorium, Richmond, Virginia. ♿

A regular meeting.

Contact: Jennifer W. Hunter, Interim IT Investment Board Executive Director, Virginia Information Technologies Agency, 110 S. 7th St., 3rd Floor, Richmond, VA 23219, telephone (804) 343-9012, FAX (804) 343-9015, e-mail jenny.hunter@vita.virginia.gov.

E-911 Wireless Services Board

November 9, 2005 - 9 a.m. -- Open Meeting
110 South 7th Street, 1st Floor, Telecommunications Conference Room, Suite 100, Richmond, Virginia.

A subcommittee meeting. A request will be made to hold the meeting in closed session.

Contact: Steve Marzolf, Public Safety Communications Coordinator, Virginia Information Technologies Agency, 110 S. 7th St., 3rd Floor, Richmond, VA 23219, telephone (804) 371-0015, FAX (804) 371-2277, toll-free (866) 482-3911, e-mail steve.marzolf@vita.virginia.gov.

November 9, 2005 - 10 a.m. -- Open Meeting
110 South 7th Street, 4th Floor Auditorium, Richmond, Virginia.

A regular board meeting.

Contact: Steve Marzolf, Public Safety Communications Coordinator, Virginia Information Technologies Agency, 110 S. 7th St., 3rd Floor, Richmond, VA 23219, telephone (804) 371-0015, FAX (804) 371-2277, toll-free (866) 482-3911, e-mail steve.marzolf@vita.virginia.gov.

JAMESTOWN-YORKTOWN FOUNDATION

NOTE: CHANGE IN MEETING DATE

October 12, 2005 - Noon -- Open Meeting

December 9, 2005 - 2 p.m. -- Open Meeting

Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting of the Executive Committee of the Jamestown 2007 Steering Committee. Call contact below for specific meeting location.

Contact: Judith Leonard, Administrative Office Manager, Jamestown-Yorktown Foundation, 410 W. Francis St., Williamsburg, VA 23185, telephone (757) 253-4253, FAX (757) 253-4950, (757) 253-5110/TTY ☎, e-mail judith.leonard@jyf.virginia.gov.

November 21, 2005 - 10 a.m. -- Open Meeting

November 22, 2005 - 8 a.m. -- Open Meeting

Williamsburg Hospitality House, 415 Richmond Road, Williamsburg, Virginia. ♿ (Interpreter for the deaf provided upon request)

A semiannual two-day meeting of the Board of Trustees and the board's standing committees. Time listed above is approximate as a detailed schedule is yet to be determined. Opportunity for public comment will be included on the November 22 business meeting agenda.

Contact: Laura W. Bailey, Executive Assistant to the Boards, Jamestown-Yorktown Foundation, P.O. Box 1607, Williamsburg, VA 23187, telephone (757) 253-7285, FAX (757) 253-5299, toll-free (888) 593-4682, (757) 253-5110/TTY ☎, e-mail laura.bailey@jyf.virginia.gov.

BOARD OF JUVENILE JUSTICE

November 9, 2005 - 10 a.m. -- Public Hearing
Department of Juvenile Justice, 700 East Franklin Street, 4th Floor, Richmond, Virginia.

November 25, 2005 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Juvenile Justice intends to amend regulations entitled **6 VAC 35-10, Public Participation Guidelines**. The purpose of the proposed action is to update the regulation to reflect technological and statutory changes since the original regulation was adopted in 1991.

Statutory Authority: §§ 2.2-4007 and 66-3 of the Code of Virginia.

Public comments may be submitted until November 25, 2005, to Patricia Rollston, P.O. Box 1110, Richmond, VA 23219-1110.

Contact: Donald R. Carignan, Regulatory Coordinator, Department of Juvenile Justice, P.O. Box 1110, Richmond, VA 23219-1110, telephone (804) 371-0743, FAX (804) 371-0773 or e-mail don.carignan@djj.virginia.gov.

DEPARTMENT OF LABOR AND INDUSTRY

Virginia Apprenticeship Council

December 8, 2005 - 10 a.m. -- Open Meeting
Location to be announced. (Interpreter for the deaf provided upon request)

A regular meeting to discuss general business.

Contact: Beverley Donati, Program Director, 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.

STATE LIBRARY BOARD

† **October 19, 2005 - 10 a.m.** -- Open Meeting
The Library of Virginia, 800 East Broad Street, Richmond, Virginia.

A meeting of the Virginia Circuit Court Records Preservation Grant Review Board to review, evaluate, and appropriately award grant applications submitted by circuit court clerks to undertake records preservation projects in their offices.

Contact: Jean H. Taylor, Executive Secretary Senior, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-8000, telephone (804) 692-3535, FAX (804) 692-3594, (804) 692-3976/TTY, e-mail jtaylor@lva.lib.va.us.

November 14, 2005 - 8:15 a.m. -- Open Meeting
The Library of Virginia, 800 East Broad Street, Richmond, Virginia.

Meetings of the board to discuss matters pertaining to the Library of Virginia and the 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. - Library Board, Conference Room, 2M

Contact: Jean H. Taylor, Executive Secretary to the Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-8000, telephone (804) 692-3535, FAX (804) 692-3594, (804) 692-3976/TTY, e-mail jtaylor@lva.lib.va.us.

BOARD OF LONG-TERM CARE ADMINISTRATORS

October 12, 2005 - 9:30 a.m. -- CANCELED
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.

The meeting to discuss general board business is canceled.

Contact: Sandra Reen, Executive Director, Board of Long-Term Care Administrators, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-7457, FAX (804) 662-9943, (804) 662-7197/TTY, e-mail sandra.reen@dhp.virginia.gov.

† **October 24, 2005 - 9:30 a.m.** -- Open Meeting

October 27, 2005 - 9:30 a.m. -- Open Meeting

† **November 21, 2005 - 9:30 a.m.** -- Open Meeting

† **December 12, 2005 - 9:30 a.m.** -- Open Meeting

Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.

The Long-Term Care Administrators Task Force will meet to discuss development of regulations. There will be a public comment period during the first 15 minutes of the meeting.

Contact: Sandra Reen, Executive Director, Board of Long-Term Care Administrators, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-7457, FAX (804) 662-9943, (804) 662-7197/TTY, e-mail sandra.reen@dhp.virginia.gov.

November 29, 2005 - 9:30 a.m. -- Open Meeting

Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.

The board will meet to discuss general business matters and receive information from the Long-Term Care Administrators Task Force. There will be a 15-minute public comment period during the beginning of the meeting.

Contact: Sandra Reen, Executive Director, Board of Long-Term Care Administrators, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-7457, FAX (804) 662-9943, (804) 662-7197/TTY, e-mail sandra.reen@dhp.virginia.gov.

MARINE RESOURCES COMMISSION

October 25, 2005 - 9:30 a.m. -- Open Meeting

November 22, 2005 - 9:30 a.m. -- Open Meeting

† **December 20, 2005 - 9:30 a.m.** -- Open Meeting

Marine Resources Commission, 2600 Washington Avenue, 4th Floor, Newport News, Virginia. (Interpreter for the deaf provided upon request)

A monthly commission meeting.

Contact: Jane McCroskey, Commission Secretary, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2215, FAX (757) 247-8101, toll-free (800) 541-4646, (757) 247-2292/TTY, e-mail jane.mccroskey@mrc.virginia.gov.

Calendar of Events

BOARD OF MEDICAL ASSISTANCE SERVICES

December 13, 2005 - 10 a.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor Conference Room, Richmond, Virginia. 

A routine quarterly meeting required in the BMAS bylaws.

Contact: Nancy Malczewski, Board Liaison, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-8096, FAX (804) 371-4981, (800) 343-0634/TTY , e-mail nancy.malczewski@dmas.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

† October 19, 2005 - 9 a.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor, Richmond, Virginia. 

A meeting of the Pharmacy and Therapeutics Committee to conduct an annual review of Phase I PDL Drug Classes and Review of New Drugs and New Drug Classes.

Contact: Katina Goodwyn, Pharmacy Contract Manager, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-0428, FAX (804) 786-0973, (800) 343-0634/TTY , e-mail katina.goodwyn@dmas.virginia.gov.

November 10, 2005 - 2 p.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor Board Room, Richmond, Virginia. 

A meeting of the Drug Utilization Review Board to discuss issues and concerns about Medicaid pharmacy issues with the committee and the community.

Contact: Rachel Cain, Pharmacist, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-2873, FAX (804) 786-5799, (800) 343-0634/TTY , e-mail rachel.cain@dmas.virginia.gov.

November 15, 2005 - 1 p.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor, Boardroom, Richmond, Virginia. 

A meeting of the Pharmacy Liaison to discuss issues and concerns about Medicaid pharmacy issues with the committee and the community.

Contact: Rachel Cain, Pharmacist, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-2873, FAX (804) 786-5799, (800) 343-0634/TTY , e-mail rachel.cain@dmas.virginia.gov.

November 16, 2005 - 1 p.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor, Boardroom, Richmond, Virginia.

A meeting of the Medicaid Transportation Advisory Committee to discuss issues and concerns about Medicaid

transportation issues with the committee and the community.

Contact: Bob Knox, Transportation Manager, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8854, FAX (804) 786-5799, (800) 343-0634/TTY , e-mail bob.knox@dmas.virginia.gov.

† December 2, 2005 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled **12 VAC 30-120, Waivered Services**. The purpose of the proposed action is to combine the Elderly and Disabled Waiver with the Consumer-Directed Waiver.

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

Contact: Teja Stokes, Project Manager, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-0527, FAX (804) 786-1680 or email teja.stokes@dmas.virginia.gov.

BOARD OF MEDICINE

October 4, 2005 - 9 a.m. -- Open Meeting
Holiday Inn Select, 2801 Plank Road, Fredericksburg, Virginia. 

October 12, 2005 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 

A Special Conference Committee will convene an informal conference to inquire into allegations that certain practitioners of medicine or the other healing arts may have violated certain laws and regulations governing the practice of medicine. Further, the committee may review cases with board staff for case disposition, including consideration of consent orders for settlement. The committee will meet in open and closed session pursuant to the Code of Virginia. Public comment will not be received.

Contact: Renee S. Dixon, Discipline Case Manager, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-7009, FAX (804) 662-9517, (804) 662-7197/TTY , e-mail renee.dixon@dhp.virginia.gov.

November 17, 2005 - 8 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia. 

A meeting to consider regulatory and disciplinary matters as may be presented on the agenda. Public comment on agenda items will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

† **December 1, 2005 - 9 a.m.** -- Public Hearing
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.📍

† **December 2, 2005** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled **18 VAC 85-120, Regulations Governing the Licensure of Athletic Trainers**. The purpose of the proposed action is to require an applicant to hold current NATABOC certification for initial licensure.

Statutory Authority: §§ 54.1-2400, 54.1-2912.1 and 54.1-2957.4 of the Code of Virginia.

Public comments may be submitted until December 2, 2005, to William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or email elaine.yeatts@dhp.virginia.gov.

December 16, 2005 - 8:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia.📍

A meeting of the Legislative Committee to consider regulatory matters as may be presented on the agenda. Public comment on agenda items will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

Advisory Board on Acupuncture

November 30, 2005 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia.

A meeting to consider issues related to the regulation of acupuncture. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

Advisory Board on Athletic Training

December 1, 2005 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia.📍

A meeting to consider issues related to the regulation of athletic training. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

Advisory Board on Occupational Therapy

November 29, 2005 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia.📍

A meeting to consider issues related to the regulation of occupational therapy. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

Advisory Board on Physician Assistants

December 1, 2005 - 1 p.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia.📍

A meeting to consider issues related to the regulation of physician assistants. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

Advisory Board on Radiologic Technology

November 30, 2005 - 1 p.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia.📍

A meeting to consider issues related to the regulation of radiologic technologists and radiologic technologist-limited. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

Calendar of Events

Advisory Board on Respiratory Care

November 29, 2005 - 1 p.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Board Room 4, Richmond, Virginia. 

A meeting to consider issues related to the regulation of respiratory care. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail william.harp@dhp.virginia.gov.

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

† **October 5, 2005 - 10 a.m.** -- Open Meeting
Hotel Roanoke, Roanoke, Virginia. 

A regular meeting. Public comment will be received.

Contact: Marlene Butler, Executive Secretary, Department of Mental Health, Mental Retardation and Substance Abuse Services, Jefferson Bldg., 1220 Bank St., 13th Floor, Richmond, VA 23219, telephone (804) 786-7945, FAX (804) 371-2308, e-mail marlene.butler@co.dmhmrsas.virginia.gov.

STATE MILK COMMISSION

December 15, 2005 - 10:45 a.m. -- Open Meeting
Department of Forestry, 900 Natural Resources Drive, Room 2063, Charlottesville, Virginia. 

A regular meeting to consider industry issues, distributor licensing, base transfers, and reports from staff. The commission offers anyone in attendance an opportunity to speak at the conclusion of the agenda. Those persons requiring special accommodations should notify the agency meeting contact at least five working days prior to the meeting date so that suitable arrangements can be made.

Contact: Edward C. Wilson, Jr., Deputy Administrator, State Milk Commission, Washington Bldg., 1100 Bank St., Suite 1019, Richmond, VA 23218, telephone (804) 786-2013, FAX (804) 786-3779, e-mail edward.wilson@vdacs.virginia.gov.

DEPARTMENT OF MINES, MINERALS AND ENERGY

October 5, 2005 - 9 a.m. -- Open Meeting
Oxbow Center, 16620 East Riverside Drive, St. Paul, Virginia.  (Interpreter for the deaf provided upon request)

At 9 a.m. the Regulatory Work Group of the Division of Mined Land Reclamation will meet regarding the final rule for monitoring of blasting within 1,000 feet of an occupied dwelling, permit markers, Office of Surface Mining proposed revegetation rule, Virginia revegetation standards, and proposed rule for stream restoration.

At 1 p.m. the permit Streamline Standardization Group will meet regarding electronic permitting, digital professional

engineer certification and signature, ground control plans, anniversary reports, roads, black water, reforestation, issue with acid mine drainage bonding in Tennessee, and fly rock notification requirement. Public comments will be received as the last item of the meeting. Special accommodations for the disabled will be made available upon request. Anyone needing special accommodations should contact the Department of Mines, Minerals and Energy at least seven days prior to the meeting or hearing date.

Contact: Leslie S. Vincent, Customer Services Manager, Department of Mines, Minerals and Energy, Division of Mined Land Reclamation, 3405 Mountain Empire Rd., P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (276) 523-8156, FAX (276) 523-8163, (800) 828-1120/TTY , e-mail les.vincent@dmme.virginia.gov.

Board of Coal Mining Examiners

† **October 4, 2005 - 9:30 a.m.** -- Open Meeting
Department of Mines, Minerals and Energy, Buchanan Smith Building, 3405 Mountain Empire Road, Room 219, Big Stone Gap, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to review and act upon the status of mine foreman certifications of those miners referred for disciplinary reasons to the board. Also, necessary updating of certification examination procedures and other administrative procedures of the board will be reviewed and discussed. No public comment has been requested; however, the board will receive comments from interested parties related to the work of the board. Special accommodations for the disabled will be made available at the public meeting or hearing on request. Anyone needing special accommodations should contact the department at least seven days prior to the meeting or hearing date.

Contact: Patty Varner, Administrative Program Specialist, Department of Mines, Minerals and Energy, Division of Mines, 3405 Mountain Empire Rd., Big Stone Gap, VA 24219, telephone (276) 523-8236, FAX (276) 523-8239, (800) 828-1120/TTY , e-mail patty.varner@dmme.virginia.gov.

VIRGINIA MUSEUM OF FINE ARTS

October 6, 2005 - 8 a.m. -- Open Meeting
November 1, 2005 - 8 a.m. -- Open Meeting
December 6, 2005 - 8 a.m. -- Open Meeting
† **January 3, 2006 - 8 a.m.** -- Open Meeting
Virginia Museum of Fine Arts, 200 North Boulevard, Main Lobby Conference Room, Richmond, Virginia. 

A meeting for staff to update the Executive Committee. Public comment will not be received.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 200 N. Boulevard, Richmond, VA 23220, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY , e-mail sbroyles@vmfa.state.va.us.

BOARD OF NURSING

October 4, 2005 - 9 a.m. -- Open Meeting
October 11, 2005 - 9 a.m. -- Open Meeting
October 17, 2005 - 9 a.m. -- Open Meeting
October 18, 2005 - 9 a.m. -- Open Meeting
October 20, 2005 - 9 a.m. -- Open Meeting
October 25, 2005 - 9 a.m. -- Open Meeting
December 5, 2005 - 9 a.m. -- Open Meeting
December 6, 2005 - 9 a.m. -- Open Meeting
December 13, 2005 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 

A Special Conference Committee comprised of two or three members of the Virginia Board of Nursing or agency subordinate will conduct informal conferences with licensees and certificate holders. Public comment will not be received.

Contact: Jay P. Douglas, R.N., M.S.M., C.S.A.C., Executive Director, Board of Nursing, 6603 West Broad Street, 5th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY , e-mail nursebd@dhp.virginia.gov.

† **October 25, 2005 - 10 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia. 

A meeting of the Medication Aide Task Force to discuss promulgating regulations regarding medication aides.

Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY , e-mail jay.douglas@dhp.virginia.gov.

November 14, 2005 - 9 a.m. -- Open Meeting
November 16, 2005 - 9 a.m. -- Open Meeting
November 17, 2005 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia. 

A panel of the board will conduct formal hearings with licensees and/or certificate holders. Public comment will not be received.

Contact: Jay P. Douglas, R.N., M.S.M., C.S.A.C., Executive Director, Board of Nursing, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY , e-mail nursebd@dhp.virginia.gov.

November 15, 2005 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia. 

A general business meeting including committee reports, consideration of regulatory action and discipline case decisions as presented on the agenda. Public comment will be received at 11 a.m.

Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond,

VA 23230-1712, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY , e-mail jay.douglas@dhp.virginia.gov.

JOINT BOARDS OF NURSING AND MEDICINE

October 19, 2005 - 9 a.m. -- Open Meeting
December 7, 2005 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 1, Richmond, Virginia. 

A meeting of the Joint Boards of Nursing and Medicine.

Contact: Jay P. Douglas, RN, MSM, CSAC, Executive Director, Board of Nursing, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY , e-mail nursebd@dhp.virginia.gov.

OLD DOMINION UNIVERSITY

October 24, 2005 - 3 p.m. -- Open Meeting
November 15, 2005 - 3 p.m. -- Open Meeting
Old Dominion University, Webb University Center, Norfolk, Virginia. 

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. Public comment will not be received by the board.

Contact: Donna Meeks, Executive Secretary to the Board of Visitors, Old Dominion University, 204 Koch Hall, Norfolk, VA 23529, telephone (757) 683-3072, FAX (757) 683-5679, e-mail dmeeks@odu.edu.

December 16, 2005 - 1 p.m. -- Open Meeting
Dominion University, Webb University Center, Old Norfolk, Virginia. 

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. Public comment will not be received by the board.

Contact: Donna Meeks, Executive Secretary to the Board of Visitors, Old Dominion University, 204 Koch Hall, Old Dominion University, Norfolk, VA 23529, telephone (757) 683-3072, FAX (757) 683-5679, e-mail dmeeks@odu.edu.

OLMSTEAD OVERSIGHT ADVISORY COMMITTEE

October 13, 2005 - 11 a.m. -- CANCELED
Virginia Housing Development Authority, 621 South Belvedere Street, Richmond, Virginia.

A regular meeting.

Contact: Brandon Leonard, 8004 Franklin Farms Dr., Richmond, VA 23229, telephone (804) 371-0829, e-mail brandon.leonard@governor.virginia.gov.

Calendar of Events

BOARD FOR OPTICIANS

NOTE: CHANGE IN MEETING DATE

November 9, 2005 - 9:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

A general business meeting including consideration of regulatory issues as may be presented on the agenda. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Public comment will be heard at the beginning of the meeting. Person desiring to participate in the meeting and requiring special accommodations or interpretive 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: William H. Ferguson, II, Executive Director, Board for Opticians, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY , e-mail opticians@dpor.virginia.gov.

VIRGINIA BOARD FOR PEOPLE WITH DISABILITIES

† October 11, 2005 - 10 a.m. -- Open Meeting
202 North 9th Street, 9th Floor, Conference Room, Richmond, Virginia. 

A meeting of the Innovative Grant Review Committee. A request will be made for the meeting to be held in closed session.

Contact: Barbara Etner, Director Policy Research and Evaluation, Virginia Board for People with Disabilities, 202 N. 9th St., 9th Floor, Richmond, VA 23219, telephone (804) 786-7333, FAX (804) 786-1118, toll-free (800) 846-4464, (804) 786-0016/TTY , e-mail barbara.etner@vbpd.virginia.gov.

December 1, 2005 - 10 a.m. -- Open Meeting
Location to be announced. 

An Executive Committee meeting.

Contact: Sandra Smalls, Executive Assistant, Virginia Board for People with Disabilities, 202 N. 9th St., 9th Floor, Richmond, VA, telephone (804) 786-0016, FAX (804) 786-1118, toll-free (800) 846-4464, (800) 846-4464/TTY , e-mail sandra.smalls@vbpd.virginia.gov.

December 2, 2005 - 9 a.m. -- Open Meeting
Location to be announced.

A quarterly board meeting.

Contact: Sandra Smalls, Executive Assistant, 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, (800) 846-4464/TTY , e-mail sandra.smalls@vbpd.virginia.gov.

PESTICIDE CONTROL BOARD

† October 20, 2005 - 9 a.m. -- Open Meeting
Department of Agriculture and Consumer Services,
Washington Building, 1100 Bank Street, Room 204,
Richmond, Virginia. 

A general business meeting. Portions of the meeting may be held in closed session, pursuant to § 2.2-3711 of the Code of Virginia. The board will hold a public hearing on proposed amendments to 2 VAC 20-51, Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act. The board also intends to consider comments received on the proposed amendments to 2 VAC 20-40, Rules and Regulations Governing Licensing of Pesticide Businesses by the Department of Agriculture and Consumer Services Operating Under Authority of the Virginia Pesticide Control Act; the board could then adopt the regulations (2 VAC 20-40) as final or delay taking final action until its January 2006 meeting. The board will entertain public comment at the beginning of the meeting on all other business for a period not to exceed 30 minutes. Any person desiring to attend the meeting, and requiring special accommodations in order to participate in the meeting, should contact Wayne Surles at least five days before the meeting date so that suitable arrangements can be made for any appropriate accommodation.

Contact: W. Wayne Surles, Program Manager, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Richmond, VA 23219, telephone (804) 371-6558, FAX (804) 371-8598, (800) 828-1120/TTY , e-mail wayne.surles@vdacs.virginia.gov.

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October 20, 2005 - 9 a.m. -- Public Hearing
Department of Agriculture and Consumer Services,
Washington Building, 1100 Bank Street, Room 204,
Richmond, Virginia.

November 30, 2005 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Pesticide Control Board intends to amend regulations entitled **2 VAC 20-51, Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act**. The purpose of the proposed action is to review the regulation for effectiveness and continued need, including amending the regulation to (i) help reduce fraudulent examination activities by eliminating proctoring by private individuals; (ii) more clearly define application and training requirements; (iii) establish applicator categories in areas where needed for industry; (iv) meet EPA requirements; (v) establish recordkeeping requirements for not-for-hire pesticide applicators, as means of ensuring that all pesticides are stored and used safely; and (vi) amend the regulation for housekeeping purposes.

Statutory Authority: § 3.1-249.30 of the Code of Virginia.

Contact: W. Wayne Surles, Program Manager, Department of Agriculture and Consumer Services, P.O. Box 1163,

Richmond, VA 23218, telephone (804) 371-6558, FAX (804) 371-8598, toll-free 1-800-552-9963 or e-mail wayne.surles@vdacs.virginia.gov.

BOARD OF PHARMACY

October 14, 2004 - 9 a.m. -- Open Meeting

October 25, 2005 - 9 a.m. -- Open Meeting

Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. 

A meeting of the Special Conference Committee to discuss disciplinary matters. Public comments will not be received.

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9911, FAX (804) 662-9313.

December 1, 2005 - 9 a.m. -- Open Meeting

Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. 

A meeting to consider regulatory and disciplinary matters as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

Contact: Elizabeth Scott Russell, RPh, Executive Director, Board of Pharmacy, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9911, FAX (804) 662-9313, (804) 662-7197/TTY , e-mail scott.e.russell@dhp.virginia.gov.

† **December 1, 2005 - 9 a.m.** -- Public Hearing

Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. 

† **December 2, 2005** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Pharmacy intends to amend regulations entitled **18 VAC 110-20, Regulations Governing the Practice of Pharmacy**, and adopt regulations entitled **18 VAC 110-50, Regulations Governing Wholesale Distributors, Manufacturers and Warehousemen**. The purpose of the proposed action is to establish more accountability for wholesale distribution of prescription drugs.

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

Public comments may be submitted until December 2, 2005, to Elizabeth Scott Russell, RPh, Executive Director, Board of Pharmacy, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or email elaine.yeatts@dhp.virginia.gov.

BOARD OF PHYSICAL THERAPY

October 28, 2005 - 9 a.m. -- Open Meeting

Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 

A regular business meeting.

Contact: Elizabeth Young, Executive Director, Board of Physical Therapy, Alcoa Bldg., 6603 West Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9924, FAX (804) 662-9523, (804) 662-7197/TTY , e-mail elizabeth.young@dhp.virginia.gov.

POLYGRAPH EXAMINERS ADVISORY BOARD

December 1, 2005 - 10 a.m. -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

A meeting to conduct board business. The meeting is open to the public; however a portion of the board's business may be discussed in closed session. 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: Kevin Hoeft, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-9753/TTY , e-mail kevin.hoeft@dpor.virginia.gov.

BOARD FOR PROFESSIONAL AND OCCUPATIONAL REGULATION

November 14, 2005 - 10 a.m. -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

A quarterly board meeting.

Contact: Judith A. Spiller, Executive Secretary, Board for Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8519, FAX (804) 367-9537, (804) 367-9753/TTY , e-mail judy.spiller@dpor.virginia.gov.

BOARD OF PSYCHOLOGY

October 11, 2005 - 9:30 a.m. -- Open Meeting

Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 

A business meeting to include reports from standing committees and any regulatory and disciplinary matters as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

Contact: Evelyn B. Brown, Executive Director, Board of Psychology, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9913, FAX

Calendar of Events

(804) 662-9943, (804) 662-7197/TTY ☎, e-mail evelyn.brown@dhp.virginia.gov.

October 17, 2005 - 10 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ♿

An informal conference.

Contact: Evelyn B. Brown, Executive Director, Board of Psychology, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9913, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail evelyn.brown@dhp.virginia.gov.

VIRGINIA PUBLIC BUILDING AUTHORITY

† **October 12, 2005 - 1 p.m.** -- Open Meeting
James Monroe Building, 101 North 14th Street, 3rd Floor, Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to discuss and consider adoption of the VPBA Variable Rate Department Policy and consider the approval of two series of VPBA bonds to finance authorized projects.

Contact: Calvin Johnson, Public Finance Analyst, Department of the Treasury, 101 N 14th St., Richmond, VA 23219, telephone (804) 225-4931.

VIRGINIA PUBLIC GUARDIAN AND CONSERVATOR ADVISORY BOARD

December 8, 2005 - 10 a.m. -- Open Meeting
Department for the Aging, 1610 Forest Avenue, Suite 100, Richmond, Virginia. ♿

An advisory board meeting.

Contact: Janet Dingle Brown, Esq., Public Guardianship Coordinator and Legal Services Developer, Department for the Aging, 1610 Forest Ave., Suite 100, Richmond, VA 23229, telephone (804) 662-7049, FAX (804) 662-9354, toll-free (800) 552-3402, (804) 662-9333/TTY ☎, e-mail janet.brown@vda.virginia.gov.

REAL ESTATE APPRAISER BOARD

October 6, 2005 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Room 453, Richmond, Virginia. ♿

Informal fact-finding conferences.

Contact: Christine Martine, Executive Director, Real Estate Appraiser Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-6946, (804) 367-9753/TTY ☎, e-mail reappraisers@dpor.virginia.gov.

November 1, 2005 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4 West Conference Room, Richmond, Virginia. ♿

A meeting to discuss board business.

Contact: Karen W. O'Neal, Regulatory Programs Coordinator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8537, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail karen.oneal@dpor.virginia.gov.

REAL ESTATE BOARD

† **October 4, 2005 - 9 a.m.** -- Open Meeting
October 6, 2005 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Room 453, Richmond, Virginia. ♿

Informal fact-finding conferences.

Contact: Christine Martine, Executive Director, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-6946, (804) 367-9753/TTY ☎, e-mail reboard@dpor.virginia.gov.

† **November 16, 2005 - 3 p.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A meeting of the Education Committee to discuss education issues.

Contact: Christine Martine, Executive Director, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-6946, (804) 367-9753/TTY ☎, e-mail reboard@dpor.virginia.gov.

† **November 17, 2005 - 8:30 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A meeting of the Fair Housing Committee to discuss fair housing cases.

Contact: Christine Martine, Executive Director, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-6946, (804) 367-9753/TTY ☎, e-mail reboard@dpor.virginia.gov.

November 17, 2005 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4 West Conference Room, Richmond, Virginia. ♿

A meeting to discuss board business.

Contact: Christine Martine, Executive Director, Real Estate Board, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-6946, (804) 367-9753/TTY ☎, e-mail reboard@dpor.virginia.gov.

DEPARTMENT OF REHABILITATIVE SERVICES

October 12, 2005 - 3 p.m. -- Public Hearing
Augusta County Government Center, 18 Government Center Lane, Verona, Virginia.  (Interpreter for the deaf provided upon request)

October 20, 2005 - 3 p.m. -- Public Hearing
Fairfax DRS Office, 11150 Fairfax Boulevard, Suite 300, Fairfax, Virginia.  (Interpreter for the deaf provided upon request)

October 27, 2005 - 3 p.m. -- Public Hearing
Roanoke DRS Office, 3433 Brambleton Avenue, SW, Roanoke, Virginia.  (Interpreter for the deaf provided upon request)

November 3, 2005 - 3 p.m. -- Public Hearing
Virginia Beach Central Library, 4100 Virginia Beach Boulevard, Virginia Beach, Virginia.  (Interpreter for the deaf provided upon request)

Public hearings to obtain comment regarding the Department of Rehabilitative Services State Plan for vocational rehabilitation services.

Contact: Susan Burns, Training and Development Coordinator, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23229, telephone (804) 662-7613, FAX (804) 662-7696, toll-free (800) 552-5019, (800) 552-5019/TTY , e-mail susan.burns@drs.virginia.gov.

VIRGINIA RESEARCH AND TECHNOLOGY ADVISORY COMMISSION

November 15, 2005 - 1 p.m. -- Open Meeting
NASA Langley Research Center/National Institute of Aerospace, Hampton, Virginia.

Tour at 10 a.m. Meeting will follow at 1 p.m. Lunch will be provided.

Contact: Nancy Vorona, VP Research Investment, CIT, Virginia Research and Technology Advisory Commission, 2214 Rock Hill Rd., Suite 600, Herndon, VA 20170, telephone (703) 689-3043, FAX (703) 464-1720, e-mail nvorona@cit.org.

SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD

NOTE: CHANGE IN MEETING LOCATION

October 19, 2005 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, Senate Room B, Richmond, Virginia. 

A meeting to hear appeals of health department denials of septic tank permits.

Contact: Susan Sherertz, Secretary to the Board, Department of Health, 109 Governor St., 5th Floor, Richmond, VA 23219, telephone (804) 864-7464, FAX (804) 864-7475, e-mail susan.sherertz@vdh.virginia.gov.

VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

† **October 19, 2005 - Noon** -- Open Meeting
707 East Main Street, 3rd Floor Board Room, Richmond, Virginia. 

A meeting to review applications for loans submitted to the authority for approval and to conduct general business of the board. The meeting time is subject to change depending upon the board's agenda.

Contact: Scott E. Parsons, Executive Director, Department of Business Assistance, P.O. Box 446, Richmond, VA 23218-0446, telephone (804) 371-8256, FAX (804) 225-3384, toll-free (866) 248-8814, e-mail scott.parsons@dba.virginia.gov.

STATE BOARD OF SOCIAL SERVICES

† **October 19, 2005 - 9 a.m.** -- Open Meeting
† **October 20, 2005 - 9 a.m.** -- Open Meeting
Department of Social Services, 170 West Shirley Avenue, Suite 200, Warrenton, Virginia. 

A regular meeting.

Contact: Pat Rengnerth, Board Liaison, State Board of Social Services, Office of Legislative and Regulatory Affairs, 7 N. 8th St., Room 5214, Richmond, VA 23219, telephone (804) 726-7905, FAX (804) 726-7906, (800) 828-1120/TTY , e-mail patricia.rengnerth@dss.virginia.gov.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS AND WETLAND PROFESSIONALS

October 12, 2005 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

A meeting to conduct board business. The meeting is open to the public; however a portion of the board's business may be discussed in closed session. 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 interpreter services should contact the board at least 10 days prior to the meeting so suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Executive Director, Board for Professional Soil Scientists and Wetland Professionals, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail soilscientist@dpor.virginia.gov.

Calendar of Events

DEPARTMENT OF TAXATION

Governor's Advisory Board of Economists

† **October 24, 2005 - 9 a.m.** -- Open Meeting
2220 West Broad Street, Richmond, Virginia. 

A meeting of the Governor's Advisory Board of Economists.
A request will be made for the meeting to be closed to the public.

Contact: Carolyn Johnson, Office Manager, Department of Taxation, 600 E Main Street Centre, Richmond, VA 23219, telephone (804) 371-4371, FAX (804) 371-4379, e-mail carolyn.johnson@tax.virginia.gov.

Governor's Advisory Council on Revenue Estimates

† **November 21, 2005 - 9:30 a.m.** -- Open Meeting
To be announced

A meeting of the Governor's Advisory Council on Revenue Estimates. A request will be made for the meeting to be closed to the public.

Contact: Carolyn Johnson, Office Manager, Department of Taxation, 600 East Main Street Centre, Richmond, VA 23219, telephone (804) 371-4371, FAX (804) 371-4379, e-mail carolyn.johnson@tax.virginia.gov.

COMMONWEALTH TRANSPORTATION BOARD

October 11, 2005 - 7 p.m. -- Open Meeting
1200 Government Center Parkway, Fairfax County Board of Supervisors Meeting Room, Fairfax, Virginia. 

The final meeting of the I-95/395 PPTA Advisory Panel to consider two proposals for improvements to the I-95/395 corridor. Public comment will not be received. Proceedings will be televised over the county's cable network.

Contact: Robert L. Trachy, Jr., Project Manager, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-4263, FAX (804) 225-4700, or e-mail larry.trachy@vdot.virginia.gov.

October 19, 2005 - 2 p.m. -- Open Meeting
Department of Transportation, 1221 East Broad Street, Auditorium, Richmond, Virginia. 

A work session.

Contact: Carol Mathis, Administrative Staff Assistant, Commonwealth Transportation Board, Policy Division, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-2701, e-mail carol.mathis@vdot.virginia.gov.

October 20, 2005 - 9 a.m. -- Open Meeting
Department of Transportation, 1221 East Broad Street, Auditorium, Richmond, Virginia. 

A regularly scheduled meeting to transact board business, such as permits, additions/deletions to the highway system, and other matters requiring board approval. Public comment will be received at the outset of the meeting on items on the 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 will be 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: Carol A. Mathis, Administrative Staff Assistant, Commonwealth Transportation Board, Policy Division, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-2701, e-mail carol.mathis@vdot.virginia.gov.

TREASURY BOARD

October 19, 2005 - 9 a.m. -- Open Meeting
November 16, 2005 - 9 a.m. -- Open Meeting
December 14, 2005 - 9 a.m. -- Open Meeting
Department of the Treasury, 101 North 14th Street, 3rd Floor, Treasury Board Room, Richmond, Virginia. 

A regular meeting.

Contact: Melissa Mayes, Secretary, Department of the Treasury, 101 N. 14th St., 3rd Floor, Richmond, VA 23219, telephone (804) 371-6011, FAX (804) 786-0833, e-mail melissa.mayes@trs.virginia.gov.

COUNCIL ON VIRGINIA'S FUTURE

December 16, 2005 - Noon -- Open Meeting
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia. 

A regular meeting.

Contact: Carole Noe, Executive Assistant, 700 E. Franklin St., Suite 700, Richmond, VA 23219, telephone (804) 371-2346, e-mail cnoe@virginia.edu.

VIRGINIA WASTE MANAGEMENT BOARD

October 11, 2005 - 1 p.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. 

A public meeting on the fast-track amendments to the Solid Waste Management Regulations concerning radio advertisements. The fast-track amendments appear in the Virginia Register of Regulations on September 19, 2005. The comment period begins on September 19, 2005, and ends on November 18, 2005. The amendments will become effective on December 19, 2005.

Contact: Michael Dieter, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4146, FAX (804) 698-4327, e-mail mjdieter@deq.virginia.gov.

October 24, 2005 - 10 a.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. 

A public meeting to receive comments on the notice of intent to amend the Solid Waste Management Regulations

(amendments 5 and 6) and the Development of Solid Waste Management Plans (amendment 2). The notice of intent appears in the Virginia Register of Regulations on September 19, 2005. The comment period begins on September 19, 2005, and closes on November 4, 2005.

Contact: Michael J. Dieter, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4146, FAX (804) 698-4327, e-mail mjdieter@deq.virginia.gov.

October 24, 2005 - 10 a.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. 

A public meeting to receive comments on the notice of intent to consider amending the Vegetative Waste Management and Yard Waste Composting Regulations. The notice of intent appears in the Virginia Register of Regulations on September 19, 2005. The public comment period begins on September 19, 2005, and ends on November 4, 2005.

Contact: Michael J. Dieter, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4146, FAX (804) 698-4327, e-mail mjdieter@deq.virginia.gov.

November 18, 2005 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Virginia Waste Management Board intends to amend regulations entitled **9 VAC 20-80, Solid Waste Management Regulations**. The purpose of the proposed action is to remove the requirement for radio advertisement of a tentative decision to grant or deny a variance petition under the solid waste management regulations.

Statutory Authority: § 10.1-1402 of the Code of Virginia; 42 USC § 6941 et seq.; 40 CFR Part 258.

Contact: Michael J. Dieter, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4146, FAX (804) 698-4327, e-mail mjdieter@deq.virginia.gov.

STATE WATER CONTROL BOARD

† **October 13, 2005 - 6:30 p.m.** -- Open Meeting
Elkton Fire Company, Elkton, Virginia. 

A public hearing to receive comments on the proposed reissuance and modification of a VPDES permit for Massanutten Public Service sewage treatment plant in Rockingham County. The public comment period ends on October 28, 2005.

Contact: Jason R. Dameron, State Water Control Board, 4411 Early Rd., Harrisonburg, VA 22801, telephone (540) 574-7824, FAX (540) 574-7878, e-mail jrdameron@deq.virginia.gov.

October 14, 2005 - 10 a.m. -- Open Meeting

October 28, 2005 - 10 a.m. -- Open Meeting
Department of Environmental Quality, 4949-A Cox Road, Glen Allen, Virginia.

A meeting of the advisory committee assisting the department in the development of a proposal to allow for the renewal of the Virginia Water Protection General Permit Regulation and allow revisions regarding administrative procedures; permit and application requirements; definitions and terminology; compensatory mitigation; permit usage thresholds; permit conditions; and typographical and grammatical errors. The Notice of Intent appears in the Virginia Register on September 5, 2005.

Contact: Catherine M. Harold, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4047, FAX (804) 698-4032, e-mail cmharold@deq.virginia.gov.

October 18, 2005 - 9:30 a.m. -- Open Meeting

November 9, 2005 - 9:30 a.m. -- Open Meeting
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia. 

A meeting of the advisory committee assisting in the development of a General VPDES Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia.

Contact: Kyle Winter, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4182, FAX (804) 698-4032, e-mail kiwinter@deq.virginia.gov.

October 24, 2005 - 1 p.m. -- Open Meeting

Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia. 

A public meeting to receive comments on the notice of intent to adopt a general Virginia pollution abatement permit for Industrial and Other Nonirrigation Reuses of Reclaimed Water. The notice of intent appears in the Virginia Register of Regulations on September 19, 2005. The public comment period begins on September 19, 2005 and ends on October 28, 2005.

Contact: Valerie Rourke, Department of Environmental Quality, P.O. Box 10009 Richmond, VA 23240, telephone (804) 698-4158, FAX (804) 698-4116, e-mail varourke@deq.virginia.gov.

October 24, 2005 - 1 p.m. -- Open Meeting

Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia. 

A public meeting to receive comments on the notice of intent to adopt a general Virginia pollution abatement permit for irrigation reuse of level B wastewater. The notice of intent appears in the Virginia Register of Regulations on September 19, 2005. The public comment period begins on September 19, 2005 and ends on October 28, 2005.

Contact: Valerie Rourke, Department of Environmental Quality, P.O. Box 10009 Richmond, VA 23240, telephone

Calendar of Events

(804) 698-4158, FAX (804) 698-4116, e-mail varourke@deq.virginia.gov.

October 24, 2005 - 1 p.m. -- Open Meeting
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia. 

A public meeting to receive comments on the notice of intent to adopt a general Virginia pollution abatement permit for irrigation reuse of level A reclaimed water. The notice of intent appears in the Virginia Register on September 19, 2005. The comment period begins on September 19, 2005, and ends on October 28, 2005.

Contact: Valerie Rourke, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4158, FAX (804) 698-4116, e-mail varourke@deq.virginia.gov.

October 24, 2005 - 1 p.m. -- Open Meeting
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia. 

A public meeting to receive comments on a notice of intent to adopt a regulation for wastewater reclamation and reuse. The notice of intent appears in the Virginia Register of Regulations on September 19, 2005. The comment period begins on September 19, 2005, and ends on October 28, 2005.

Contact: Valerie Rourke, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4158, e-mail varourke@deq.virginia.gov.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

October 5, 2005 - 10 a.m. -- Open Meeting
† October 20, 2005 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Room 453, Richmond, Virginia. 

An informal fact-finding conference.

Contact: David E. Dick, Assistant Director, Board for Waterworks and Wastewater Works Operators, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail waterwasteoper@dpor.virginia.gov.

December 7, 2005 - 8:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

A meeting to conduct board business. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. 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 interpreter services should contact the board at least 10 days prior to the meeting so suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Contact: David E. Dick, Executive Director, Board for Waterworks and Wastewater Works Operators, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, FAX (804) 367-6128, (804) 367-9753/TTY , e-mail waterwasteoper@dpor.virginia.gov.

INDEPENDENT

VIRGINIA OFFICE FOR PROTECTION AND ADVOCACY

Disabilities Advisory Council

October 12, 2005 - 10 a.m. -- Open Meeting
Virginia Office for Protection and Advocacy, 1910 Byrd Avenue, Suite 5, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the Disabilities Advisory Council. Public comment will be received at 10 a.m. Public comment will also be accepted by telephone. If you wish to provide public comment via telephone, you must call Lisa Shehi, Administrative Assistant at 1-800-552-3962 (Voice/TTY) or via e-mail at lisa.shehi@vopa.virginia.gov no later than September 28, 2005. Ms. Shehi will take your name and phone number and you will be telephoned during the public comment period. Directions and further information are available by contacting Ms. Shehi. If interpreter services or other accommodations are required please contact Ms. Shehi no later than September 28, 2005.

Contact: Lisa Shehi, Administrative Assistant, Virginia Office for Protection and Advocacy, 1910 Byrd Avenue, Suite 5, Richmond, VA 23230, telephone (804) 225-2042, FAX (804) 662-7413, toll-free (800) 552-3962, (804) 225-2042/TTY , e-mail lisa.shehi@vopa.virginia.gov.

PAIMI Advisory Council

November 3, 2005 - 10 a.m. -- Open Meeting
Albemarle County Office Building, 1600 5th Street, Meeting Room B, Charlottesville, Virginia.  (Interpreter for the deaf provided upon request)

Public comment is welcome and will be received at the beginning of the meeting. Public comment will also be accepted by telephone. If you wish to provide public comment via telephone, you must call Lisa Shehi, Administrative Assistant, at 1-800-552-3962 (Voice/TTY) or via e-mail at lisa.shehi@vopa.virginia.gov no later than October 20, 2005. Ms. Shehi will take your name and phone number and you will be telephoned during the public comment period. Please visit the Virginia Office for Protection and Advocacy website at www.vopa.state.va.us for directions. For further information, please contact Ms. Shehi. If interpreter services or other accommodations are required, please contact Ms. Shehi, no later than October 20, 2005.

Contact: Lisa Shehi, Administrative Assistant, Virginia Office for Protection and Advocacy, 1910 Byrd Ave., Suite 5,

Richmond, VA 23230, telephone (804) 662-7213, FAX (804) 662-7431, toll-free (800) 552-3962, (804) 225-2042/TTY ☎, e-mail lisa.shehi@vopa.virginia.gov.

VIRGINIA RETIREMENT SYSTEM

October 12, 2005 - 1 p.m. -- Open Meeting

November 9, 2005 - 9 a.m. -- Open Meeting

December 15, 2005 - 9 a.m. -- Open Meeting

Virginia Retirement System Headquarters Building, 1200 East Main Street, Richmond, Virginia. ♿

A regular meeting of the Board of Trustees. No public comment will be received at the meeting.

Contact: LaShaunda B. King, Executive Assistant, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, or e-mail lking@vrs.state.va.us.

October 12, 2005 - 10 a.m. -- Open Meeting

November 8, 2005 - 1 p.m. -- Open Meeting

November 16, 2005 - 2:30 p.m. -- Open Meeting

Virginia Retirement System Headquarters Building, 1200 East Main Street, Richmond, Virginia. ♿

A regular meeting of the Benefits and Actuarial Committee. No public comment will be received at the meeting.

Contact: LaShaunda B. King, Executive Assistant, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, or e-mail lking@vrs.state.va.us.

November 8, 2005 - 3:30 p.m. -- Open Meeting

Virginia Retirement System Headquarters Building, 1200 East Main Street, Richmond, Virginia. ♿

A regular meeting of the Audit and Compliance Committee. No public comment will be received at the meeting.

Contact: LaShaunda B. King, Executive Assistant, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, or e-mail lking@vrs.state.va.us.

November 15, 2005 - Noon -- Open Meeting

Virginia Retirement System Headquarters Building, 1200 East Main Street, Richmond, Virginia. ♿

A regular meeting of the Optional Retirement Plan Advisory Committee. No public comment will be received at the meeting.

Contact: LaShaunda B. King, Executive Assistant, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail lking@vrs.state.va.us.

November 16, 2005 - 11 a.m. -- Open Meeting

Virginia Retirement System Headquarters Building, 1200 East Main Street, Richmond, Virginia. ♿

Meetings of the following committees:

11 a.m. - Investment Advisory

4 p.m. - Administration and Personnel

No public comment will be received at the meeting.

Contact: LaShaunda B. King, Executive Assistant, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail lking@vrs.state.va.us.

December 14, 2005 - 3 p.m. -- Open Meeting

Virginia Retirement System Investment Department, 1111 East Main St., 3rd Floor, Richmond, Virginia. ♿

A special meeting of the Investment Advisory Committee. No public comment will be received at the meeting.

Contact: Phyllis Henderson, Executive Assistant, Virginia Retirement System, 1111 E. Main St., Richmond, VA 23219, telephone (804) 697-6675, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail phenderson@vrs.state.va.us.

LEGISLATIVE

JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION

† **October 11, 2005 - 9 a.m.** -- Open Meeting

General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia. ♿

A meeting to review the operation and performance of Virginia's social services system assessment of reimbursement rates for Medicaid home and community-based services and a review of land application of biosolids in Virginia.

Contact: Trish Bishop, Fiscal Officer, Joint Legislative Audit and Review Commission, General Assembly Bldg., 910 Capitol St., Suite 1100, Richmond, VA 23219, telephone (804) 786-1258, FAX (804) 371-0101, e-mail tbishop@leg.state.va.us.

VIRGINIA CODE COMMISSION

† **October 18, 2005 - 1 p.m.** -- Open Meeting

NOTE CHANGE IN MEETING TIME

October 19, 2005 - 9 a.m. -- Open Meeting

November 16, 2005 - 10 a.m. -- Open Meeting

December 21, 2005 - 10 a.m. -- Open Meeting

General Assembly Building, 9th and Broad Streets, 6th Floor, Speaker's Conference Room, Richmond, Virginia. ♿

A meeting to continue work on the 2007 Code of Virginia reorganization project and the Title 3.1 recodification.

Contact: Jane Chaffin, Registrar of Regulations, Virginia Code Commission, General Assembly Building, 2nd Floor, 910 Capitol Street, Richmond, VA 23219, telephone (804)

Calendar of Events

786-3591, FAX (804) 692-0625 or e-mail
jchaffin@leg.state.va.us.

DISABILITY COMMISSION

November 16, 2005 - 1 p.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, Senate
Room B, Richmond, Virginia. 

A regular meeting. For questions regarding the meeting agenda, contact Amy Marschean, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other accommodations should telephone Senate Committee Operations at (804) 698-7450, (804) 698-7419/TTY, or write to Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, at least seven days prior to the meeting.

Contact: Patty Lung, Senate Committee Operations, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 698-7410.

DR. MARTIN LUTHER KING JR. MEMORIAL COMMISSION

† **October 24, 2005 - 10 a.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, House
Room C, Richmond, Virginia. 

A regular meeting. For questions regarding the meeting agenda, contact Brenda Edwards, Division of Legislative Services, (804) 786-3591.

Contact: Lois V. Johnson, House Committee Operations, 910 Capitol St., Richmond, VA 23219, telephone (804) 698-1540.

JOINT SUBCOMMITTEE STUDYING PUBLIC FUNDING OF HIGHER EDUCATION IN VIRGINIA

October 17, 2005 - 2 p.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, Senate
Room A, Richmond, Virginia. 

A regular meeting. For questions regarding the meeting agenda, contact Amy Sebring at (804) 698-7480 or Tony Maggio at (804) 698-1590. Individuals requiring interpreter services or other accommodations should telephone Senate Committee Operations at (804) 698-7450, (804) 698-7419/TTY, or write to Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, at least seven days prior to the meeting.

Contact: Patty Lung, Senate Committee Operations, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 698-7410.

HOUSE AND SENATE SUBCOMMITTEES ON LAND CONSERVATION TAX CREDIT

November 10, 2005 - 2 p.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House
Room D, Richmond, Virginia. 

A regular meeting. For questions regarding the meeting agenda, contact Joan Putney, Division of Legislative Services, (804) 786-3591.

Contact: William L. Owen, House Committee Operations, 910 Capitol St., Richmond, VA 23219, telephone (804) 698-1540.

JOINT SUBCOMMITTEE STUDYING MEDICAL, ETHICAL, AND SCIENTIFIC ISSUES RELATING TO STEM CELL RESEARCH

November 15, 2005 - 2 p.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House
Room C, Richmond, Virginia. 

A regular meeting. For questions regarding the meeting agenda, contact Norma Szakal or Amy Marschean, Division of Legislative Services, (804) 786-3591.

Contact: Barbara L. Regen, House Committee Operations, 910 Capitol St., Richmond, VA 23219, telephone (804) 698-1540.

JOINT SUBCOMMITTEE TO EXAMINE THE COST AND FEASIBILITY OF RELOCATING THE MUSEUM AND WHITE HOUSE OF THE CONFEDERACY

November 21, 2005 - 2 p.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House
Room D, Richmond, Virginia. 

A regular meeting. For questions regarding the meeting agenda, contact Robie Ingram or Bryan Stogdale, Division of Legislative Services, (804) 786-3591.

Contact: Barbara L. Teague, House Committee Operations, 910 Capitol St., Richmond, VA 23219, telephone (804) 698-1540.

JOINT SUBCOMMITTEE STUDYING THE PUBLIC RECORDS ACT

† **October 7, 2005 - 9:30 a.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, House
Room C, Richmond, Virginia. 

A workgroup will meet at 9:30 a.m. in the 6th Floor Speaker's Conference Room. A regular meeting will begin at 2 p.m. in House Room C. For questions regarding the meeting agenda, contact Lisa Wallmeyer, Division of Legislative Services, (804) 786-3591.

Contact: Lori L. Maynard, House Committee Operations, 910 Capitol St., Richmond, VA 23219, telephone (804) 698-1540.

TAXES, ASSESSMENTS AND FEES IMPOSED BY THE COMMONWEALTH THAT GENERATE LITTLE REVENUE

† **October 17, 2005 - 1:30 p.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, House
Room D, Richmond, Virginia. 

A regular meeting. For questions regarding the meeting agenda, contact Joan Putney, Division of Legislative Services, (804) 786-3591.

Contact: William L. Owen, House Committee Operations, 910 Capitol St., Richmond, VA 23219, telephone (804) 698-1540.

JOINT COMMISSION ON TECHNOLOGY AND SCIENCE

October 4, 2005 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, 5th Floor Conference Room, Richmond, Virginia. ♿

A meeting of the Intellectual Property Advisory Committee.

Contact: Lisa Wallmeyer, Executive Director, Joint Commission on Technology and Science, 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, e-mail lwallmeyer@leg.state.va.us.

October 11, 2005 - 2 p.m. -- Open Meeting
November 15, 2005 - 2 p.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. ♿

A meeting of the JCOTS Integrated Government Advisory Committee.

Contact: Lisa Wallmeyer, Executive Director, Joint Commission on Technology and Science, 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, e-mail lwallmeyer@leg.state.va.us.

October 12, 2005 - 2 p.m. -- Open Meeting
November 16, 2005 - 2 p.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. ♿

A meeting of the JCOTS Privacy Advisory Committee.

Contact: Lisa Wallmeyer, Executive Director, Joint Commission on Technology and Science, 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, e-mail lwallmeyer@leg.state.va.us.

October 18, 2005 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. ♿

A meeting of the JCOTS Emerging Technology Issues Advisory Committee.

Contact: Lisa Wallmeyer, Executive Director, Joint Commission on Technology and Science, 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, e-mail lwallmeyer@leg.state.va.us.

October 19, 2005 - 1 p.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. ♿

A meeting of the JCOTS Nanotechnology Advisory Committee.

Contact: Lisa Wallmeyer, Executive Director, Joint Commission on Technology and Science, 910 Capitol St., 2nd

Floor, Richmond, VA 23219, telephone (804) 786-3591, e-mail lwallmeyer@leg.state.va.us.

December 1, 2005 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. ♿

The final meeting for 2005.

Contact: Lisa Wallmeyer, Executive Director, Joint Commission on Technology and Science, 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, e-mail lwallmeyer@leg.state.va.us.

JOINT SUBCOMMITTEE STUDYING THE VOTING EQUIPMENT CERTIFICATION PROCESS

November 21, 2005 - 1 p.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia. ♿

A regular meeting. For questions regarding the meeting agenda, contact Mary Spain or Jack Austin, Division of Legislative Services, (804) 786-3591.

Contact: Barbara L. Regen, House Committee Operations, 910 Capitol St., Richmond, VA 23219, telephone (804) 698-1540.

JOINT SUBCOMMITTEE STUDYING WORKFORCE DEVELOPMENT TRAINING RESOURCES

November 15, 2005 - 2 p.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia. ♿

A regular meeting. For questions regarding the meeting agenda, contact Frank Munyan, Division of Legislative Services, (804) 786-3591.

Contact: Lois V. Johnson, House Committee Operations, 910 Capitol St., Richmond, VA 23219, telephone (804) 698-1540.

CHRONOLOGICAL LIST

OPEN MEETINGS

- October 3**
Conservation and Recreation, Department of
- October 4**
Conservation and Recreation, Department of
Contractors, Board for
Environmental Quality, Department of
Medicine, Board of
Nursing, Board of
Technology and Science, Joint Commission on
† Asbestos, Lead, and Home Inspectors, Virginia Board for
† Mines, Minerals and Energy, Department of
- Board of Coal Mining Examiners
† Real Estate Board
- October 5**
Conservation and Recreation, Department of

Calendar of Events

Information Technology Agency, Virginia
- Information Technology Investment Board
† Mental Health, Mental Retardation and Substance Abuse
Services Board, State

Mines, Minerals and Energy, Department of
Waterworks and Wastewater Works Operators, Board for

October 6

Auctioneers Board
College Savings Plan, Virginia
Conservation and Recreation, Department of
Contractors, Board for
Environmental Quality, Department of
† Health, Department of
Museum of Fine Arts, Virginia
Real Estate Appraiser Board
Real Estate Board

October 7

Art and Architectural Review Board
† Public Records Act, Joint Subcommittee Studying the

October 11

Alcoholic Beverage Control Board
† Audit and Review Commission, Joint Legislative
† Aviation Board, Virginia
Blind and Vision Impaired, Board for the
† Conservation and Recreation, Department of
Nursing, Board of
† People with Disabilities, Virginia Board for
Psychology, Board of
Technology and Science, Joint Commission on
Transportation Board, Commonwealth
Waste Management Board, Virginia

October 12

† Aviation Board, Virginia
Environmental Quality, Department of
- Litter Control and Recycling Fund Advisory Board
Geology, Board for
Jamestown-Yorktown Foundation
Medicine, Board of
Protection and Advocacy, Virginia Office for
† Public Building Authority, Virginia
Retirement System, Virginia
Soil Scientists and Wetland Professionals, Board for
Technology and Science, Joint Commission on

October 13

† Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for
Conservation and Recreation, Department of
- Falls of the James Scenic River Advisory Committee
† Contractors, Board for
† Fire Services Board, Virginia
† Water Control Board, State

October 14

† Agriculture and Consumer Services, Department of
- Virginia Wine Board
† Fire Services Board, Virginia
Pharmacy, Board of
Water Control Board, State

October 17

† Environmental Quality, Department of
Higher Education in Virginia, Joint Subcommittee Studying
Public Funding of

Nursing, Board of
Psychology, Board of
† Taxes, Assessments and Fees Imposed by the
Commonwealth that General Little Revenue

October 18

† Code Commission, Virginia
† Conservation and Recreation, Department of
Contractors, Board for
Nursing, Board of
Technology and Science, Joint Commission on
Water Control Board, State

October 19

Cemetery Board
Code Commission, Virginia
† Compensation Board
† Conservation and Recreation, Department of
† Library Board, State
† Medical Assistance Services, Department of
Nursing and Medicine, Joint Boards of
Sewage Handling and Disposal Appeal Review Board
† Small Business Financing Authority, Virginia
† Social Services, State Board of
Technology and Science, Joint Commission on
Transportation Board, Commonwealth
Treasury Board

October 20

† Conservation and Recreation, Department of
† Contractors, Board for
Design-Build/Construction Management Review Board
Nursing, Board of
† Pesticide Control Board
† Social Services, State Board of
Transportation Board, Commonwealth
† Waterworks and Wastewater Works Operators, Board for

October 21

Health, Department of
Health Professions, Department of
- Health Practitioners Intervention Program Committee

October 24

Alcoholic Beverage Control Board
† Dr. Martin Luther King Jr. Memorial Commission
† Long-Term Care Administrators, Board of
Old Dominion University
† Taxation, Department of
Waste Management Board, Virginia
Water Control Board, State

October 25

Chesapeake Bay Local Assistance Board
† Conservation and Recreation, Department of
Marine Resources Commission
† Nursing, Board of
Pharmacy, Board of

October 26

Air Pollution Control Board, State
Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for
† Conservation and Recreation, Department of
Education, Board of

October 27

† Contractors, Board for
† Environmental Quality, Department of

Long-Term Care Administrators, Board of

October 28

† Dentistry, Board of
Physical Therapy, Board of
Water Control Board, State

October 31

Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for

November 1

Branch Pilots, Board for
† Conservation and Recreation, Department of
Museum of Fine Arts, Virginia
Real Estate Appraiser Board

November 2

Asbestos, Lead, and Home Inspectors, Virginia Board for
† Conservation and Recreation, Department of

November 3

Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for
† Conservation and Recreation, Department of
Counseling, Board of
Protection and Advocacy, Virginia Office for

November 4

Art and Architectural Review Board
Counseling, Board of
† Dentistry, Board of

November 7

Alcoholic Beverage Control Board
Hearing Aid Specialists, Board for

November 8

Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for
Retirement System, Virginia

November 9

Information Technologies Agency, Virginia
- E-911 Wireless Services Board
Opticians, Board for
Retirement System, Virginia
Water Control Board, State

November 10

Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for
Audiology and Speech-Language Pathology, Board of
Conservation and Recreation, Department of
- Falls of the James Scenic River Advisory Board
† Environmental Quality, Department of
Land Conservation Tax Credit, House and Senate
Subcommittees
Medical Assistance Services, Department of
- Drug Utilization Review Board

November 11

Conservation and Recreation, Department of

November 14

At-Risk Youth and Families, Comprehensive Services for
Library Board, State
Nursing, Board of
Professional and Occupational Regulation, Board for

November 15

Corrections, Board of
Environmental Quality, Department of
Medical Assistance Services, Department of
Nursing, Board of
Old Dominion University
Research and Technology Advisory Commission, Virginia
Retirement System, Virginia
Stem Cell Research, Joint Subcommittee Studying Medical,
Ethical and Scientific Issues Relating to
Technology and Science, Joint Commission on
Workforce Development Training Resources, Joint
Subcommittee Studying

November 16

Air Pollution Control Board, State
Code Commission, Virginia
Community Colleges, State Board for
Contractors, Board for
Corrections, Board of
Disability Commission
Medical Assistance Services, Department of
Nursing, Board of
† Real Estate Board
Retirement System, Virginia
Technology and Science, Joint Commission on
Treasury Board

November 17

Community Colleges, State Board for
Conservation and Recreation, Department of
- Virginia Soil and Water Conservation Board
Design-Build/Construction Management Review Board
† Health, Department of
Medicine, Board of
Nursing, Board of
† Real Estate Board

November 18

Child Fatality Review Team, State

November 21

Alcoholic Beverage Control Board
† Education, Board of
Jamestown-Yorktown Foundation
† Long-Term Care Administrators, Board of
Museum and White House of the Confederacy, Joint
Subcommittee to Examine the Cost and Feasibility of
Relocating the
† Taxation, Department of
Voting Equipment Certification Process, Joint
Subcommittee Studying the

November 22

Jamestown-Yorktown Foundation
Marine Resources Commission

November 29

Medicine, Board of
- Advisory Board on Occupational Therapy
- Advisory Board on Respiratory Care
Long-Term Care Administrators, Board of

November 30

Education, Board of
Medicine, Board of
- Advisory Board on Acupuncture
- Advisory Board on Radiologic Technology

Calendar of Events

December 1

Conservation and Recreation, Department of
Medicine, Board of
- Advisory Board on Athletic Training
- Advisory Board on Physician Assistants
People with Disabilities, Board for
Pharmacy, Board of
Polygraph Examiners Advisory Board
Technology and Science, Joint Commission on

December 2

Art and Architectural Review Board
† Dentistry, Board of
People with Disabilities, Board for

December 5

Alcoholic Beverage Control Board, State
Barbers and Cosmetology, Board for
Chesapeake Bay Local Assistance Board
Nursing, Board of

December 6

Gaming Board, Charitable
Museum of Fine Arts, Virginia
Nursing, Board of

December 7

Nursing and Medicine, Joint Boards of
Waterworks and Wastewater Works Operators, Board for

December 8

Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for
Alzheimer's Disease and Related Disorders Commission
Conservation and Recreation, Department of
- Falls of the James Scenic River Advisory Board
Criminal Justice Services Board
† Dentistry, Board of
Labor and Industry, Department of
Public Guardian and Conservator Advisory Board

December 9

Dentistry, Board of
Health, Department of
Jamestown-Yorktown Foundation

December 12

Branch Pilots, Board for
† Long-Term Care Administrators, Board of

December 13

Alzheimer's Disease and Related Disorders Commission
Contractors, Board for
Medical Assistance Services, Board of
Nursing, Board of

December 14

Health, Department of
Retirement System, Virginia
Treasury Board

December 15

Design-Build/Construction Management Review Board
Milk Commission, State
Retirement System, Virginia

December 16

Health Professions, Board of
Medicine, Board of
Old Dominion University
Virginia's Future, Council on

December 19

Alcoholic Beverage Control Board

December 20

† Marine Resources Commission

December 21

Code Commission, Virginia

January 3, 2006

† Museum of Fine Arts, Virginia

PUBLIC HEARINGS

October 12

Rehabilitative Services, Department of

October 13

† Water Control Board, State

October 17

Barbers and Cosmetology, Board for

October 20

Pesticide Control Board
Rehabilitative Services, Department of

October 27

Rehabilitative Services, Department of

November 3

Rehabilitative Services, Department of

November 9

Juvenile Justice, Board of

December 1

† Medicine, Board of
† Pharmacy, Board of

December 8

† Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for