



Virginia Register of Regulations

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THE VIRGINIA REGISTER INFORMATION PAGE

THE VIRGINIA REGISTER OF REGULATIONS is an official state publication issued every other week throughout the year. Indexes are published quarterly, and are cumulative for the year. The *Virginia Register* has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in the *Virginia Register*. In addition, the *Virginia Register* is a source of other information about state government, including petitions for rulemaking, emergency regulations, executive orders issued by the Governor, the Virginia Tax Bulletin issued periodically by the Department of Taxation, and notices of public hearings and open meetings of state agencies.

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

An agency wishing to adopt, amend, or repeal regulations must first publish in the *Virginia Register* a notice of intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

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

The Joint Commission of Administrative Rules (JCAR) or the appropriate standing committee of each house of the General Assembly may meet during the promulgation or final adoption process and file an objection with the Registrar and the promulgating agency. The objection will be published in the *Virginia Register*. Within 21 days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative body, and the Governor.

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

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

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

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date

specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

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

FAST-TRACK RULEMAKING PROCESS

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.

EMERGENCY REGULATIONS

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

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

STATEMENT

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia be examined carefully.

CITATION TO THE VIRGINIA REGISTER

The *Virginia Register* is cited by volume, issue, page number, and date. **23:7 VA.R. 1023-1140 December 11, 2006**, refers to Volume 23, Issue 7, pages 1023 through 1140 of the *Virginia Register* issued on December 11, 2006.

The Virginia Register of Regulations is published pursuant to Article 6 (§ 2.2-4031 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia.

Members of the Virginia Code Commission: **R. Steven Landes**, Chairman; **John S. Edwards**, Vice Chairman; **Ryan T. McDougle**; **Robert Hurt**; **Robert L. Calhoun**; **Frank S. Ferguson**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **James F. Almand**; **S. Bernard Goodwyn**.

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations; **June T. Chandler**, Assistant Registrar.

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the *Register's* Internet home page (<http://register.state.va.us>).

June 2007 through March 2008

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
23:20	May 23, 2007	June 11, 2007
INDEX 3 Volume 23		July 2007
23:21	June 6, 2007	June 25, 2007
23:22	June 20, 2007	July 9, 2007
23:23	July 2, 2007 (Monday)	July 23, 2007
23:24	July 18, 2007	August 6, 2007
23:25	August 1, 2007	August 20, 2007
23:26	August 15, 2007	September 3, 2007
FINAL INDEX - Volume 23		October 2007
24:1	August 29, 2007	September 17, 2007
24:2	September 12, 2007	October 1, 2007
24:3	September 26, 2007	October 15, 2007
24:4	October 10, 2007	October 29, 2007
24:5	October 24, 2007	November 12, 2007
24:6	November 7, 2007	November 26, 2007
24:7	November 20, 2007 (Tuesday)	December 10, 2007
INDEX 1 Volume 24		January 2008
24:8	December 5, 2007	December 24, 2008
24:9	December 19, 2007	January 7, 2008
24:10	January 2, 2008	January 21, 2008
24:11	January 16, 2008	February 4, 2008
24:12	January 30, 2008	February 18, 2008
24:13	February 13, 2008	March 3, 2008
24:14	February 27, 2008	March 17, 2008

*Filing deadlines are Wednesdays unless otherwise specified.

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

The table printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Fall 2006 VAC Supplement includes final regulations published through *Virginia Register* Volume 22, Issue 22, dated July 10, 2006). Emergency regulations, if any, are listed, followed by the designation “emer,” and errata pertaining to final regulations are listed. Proposed regulations are not listed here. The table lists the sections in numerical order and shows action taken, the volume, issue and page number where the section appeared, and the effective date of the section.

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
Title 2. Agriculture			
2 VAC 5-195 (Form)	Added	23:15 VA.R. 2512	--
2 VAC 5-620-10 through 2 VAC 5-620-100	Added	23:19 VA.R. 2981-2985	7/1/07
Title 3. Alcoholic Beverages			
3 VAC 5-10-40	Amended	23:13 VA.R. 2117	5/19/07
3 VAC 5-10-50	Amended	23:13 VA.R. 2117	5/19/07
3 VAC 5-10-60	Amended	23:13 VA.R. 2117	5/19/07
3 VAC 5-10-130	Amended	23:13 VA.R. 2117	5/19/07
3 VAC 5-10-150	Amended	23:13 VA.R. 2117	5/19/07
3 VAC 5-10-230	Amended	23:13 VA.R. 2118	5/19/07
3 VAC 5-10-360	Amended	23:13 VA.R. 2118	5/19/07
3 VAC 5-10-400	Amended	23:13 VA.R. 2118	5/19/07
3 VAC 5-10-480	Amended	23:13 VA.R. 2129	5/19/07
3 VAC 5-40-20	Amended	23:13 VA.R. 2133	5/19/07
3 VAC 5-40-50	Amended	23:13 VA.R. 2134	5/19/07
3 VAC 5-60-20	Amended	23:13 VA.R. 2137	5/19/07
3 VAC 5-60-40	Amended	23:13 VA.R. 2138	5/19/07
3 VAC 5-60-80	Amended	23:13 VA.R. 2138	5/19/07
3 VAC 5-60-100	Added	23:13 VA.R. 2139	5/19/07
3 VAC 5-70-100	Amended	23:13 VA.R. 2142	5/19/07
3 VAC 5-70-150	Amended	23:13 VA.R. 2143	5/19/07
3 VAC 5-70-160	Amended	23:13 VA.R. 2143	5/19/07
3 VAC 5-70-230	Added	23:13 VA.R. 2143	5/19/07
Title 4. Conservation and Natural Resources			
4 VAC 20-70-100	Amended	23:12 VA.R. 1958	2/1/07
4 VAC 20-200-10	Amended	23:11 VA.R. 1659	2/1/07
4 VAC 20-200-20	Amended	23:11 VA.R. 1659	2/1/07
4 VAC 20-200-30	Amended	23:11 VA.R. 1659	2/1/07
4 VAC 20-200-40	Amended	23:11 VA.R. 1660	2/1/07
4 VAC 20-200-50	Amended	23:11 VA.R. 1660	2/1/07
4 VAC 20-270-30 emer	Amended	23:14 VA.R. 2276	3/1/07-3/30/07
4 VAC 20-270-30	Amended	23:17 VA.R. 2737	3/30/07
4 VAC 20-270-40 emer	Amended	23:14 VA.R. 2276	3/1/07-3/30/07
4 VAC 20-270-40	Amended	23:17 VA.R. 2737	3/30/07
4 VAC 20-300-20 emer	Amended	23:14 VA.R. 2277	3/1/07-3/30/07
4 VAC 20-300-20	Amended	23:17 VA.R. 2738	3/30/07
4 VAC 20-310-55	Added	23:15 VA.R. 2481	3/1/07
4 VAC 20-370-10 through 4 VAC 20-370-30	Amended	23:19 VA.R. 2986	5/1/07
4 VAC 20-430-20	Amended	23:17 VA.R. 2738	3/30/07
4 VAC 20-430-45	Added	23:17 VA.R. 2738	3/30/07

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-450-30	Amended	23:17 VA.R. 2739	3/30/07
4 VAC 20-490-42	Amended	23:10 VA.R. 1540	12/21/06
4 VAC 20-490-42	Amended	23:19 VA.R. 2986	5/1/07
4 VAC 20-510-10	Amended	23:12 VA.R. 1958	2/1/07
4 VAC 20-510-20	Amended	23:12 VA.R. 1958	2/1/07
4 VAC 20-510-33	Added	23:12 VA.R. 1959	2/1/07
4 VAC 20-510-35	Added	23:12 VA.R. 1959	2/1/07
4 VAC 20-510-37	Added	23:12 VA.R. 1959	2/1/07
4 VAC 20-530-10 emer	Amended	23:12 VA.R. 1959	2/1/07-3/1/07
4 VAC 20-530-20 emer	Amended	23:12 VA.R. 1959	2/1/07-3/1/07
4 VAC 20-530-31 emer	Amended	23:12 VA.R. 1960	2/1/07-3/1/07
4 VAC 20-530-31	Added	23:13 VA.R. 2144	2/1/07-3/1/07
4 VAC 20-530-31	Amended	23:15 VA.R. 2482	3/1/07
4 VAC 20-530-32 emer	Amended	23:12 VA.R. 1960	2/1/07-3/1/07
4 VAC 20-530-32	Added	23:13 VA.R. 2145	2/1/07-3/1/07
4 VAC 20-530-32	Amended	23:15 VA.R. 2482	3/1/07
4 VAC 20-610-30	Amended	23:11 VA.R. 1660	2/1/07
4 VAC 20-610-60	Amended	23:11 VA.R. 1662	2/1/07
4 VAC 20-620-50	Amended	23:15 VA.R. 2483	3/1/07
4 VAC 20-620-60	Amended	23:15 VA.R. 2483	3/1/07
4 VAC 20-620-70	Amended	23:15 VA.R. 2483	3/1/07
4 VAC 20-670-15	Added	23:17 VA.R. 2739	3/30/07
4 VAC 20-670-30	Amended	23:17 VA.R. 2739	3/30/07
4 VAC 20-720-10 emer	Amended	23:19 VA.R. 2987	5/1/07-5/30/07
4 VAC 20-720-20 emer	Amended	23:19 VA.R. 2987	5/1/07-5/30/07
4 VAC 20-720-40 emer	Amended	23:10 VA.R. 1540	1/1/07-1/30/07
4 VAC 20-720-50 emer	Amended	23:10 VA.R. 1541	1/1/07-1/30/07
4 VAC 20-720-60 emer	Amended	23:19 VA.R. 2988	5/1/07-5/30/07
4 VAC 20-720-70 emer	Amended	23:19 VA.R. 2989	5/1/07-5/30/07
4 VAC 20-720-90 emer	Amended	23:19 VA.R. 2989	5/1/07-5/30/07
4 VAC 20-720-105 emer	Added	23:19 VA.R. 2989	5/1/07-5/30/07
4 VAC 20-720-110 emer	Amended	23:19 VA.R. 2990	5/1/07-5/30/07
4 VAC 20-752-20	Amended	23:19 VA.R. 2990	5/3/07
4 VAC 20-752-30	Amended	23:19 VA.R. 2991	5/3/07
4 VAC 20-890-20	Amended	23:19 VA.R. 2991	7/1/07
4 VAC 20-890-35	Amended	23:19 VA.R. 2991	7/1/07
4 VAC 20-890-40	Amended	23:19 VA.R. 2991	7/1/07
4 VAC 20-890-45	Added	23:19 VA.R. 2992	7/1/07
4 VAC 20-900-25	Amended	23:19 VA.R. 2992	7/1/07
4 VAC 20-900-35	Amended	23:19 VA.R. 2993	7/1/07
4 VAC 20-950-40 emer	Amended	23:12 VA.R. 1961	2/1/07-3/1/07
4 VAC 20-950-40	Amended	23:15 VA.R. 2484	3/1/07
4 VAC 20-950-47 emer	Amended	23:12 VA.R. 1961	2/1/07-3/1/07
4 VAC 20-950-47	Amended	23:15 VA.R. 2484	3/1/07
4 VAC 20-950-47	Amended	23:17 VA.R. 2740	3/30/07
4 VAC 20-950-48.2 emer	Amended	23:12 VA.R. 1961	2/1/07-3/1/07
4 VAC 20-950-48.2	Amended	23:15 VA.R. 2484	3/1/07
4 VAC 20-950-48	Amended	23:17 VA.R. 2740	3/30/07
4 VAC 20-1090-30	Amended	23:11 VA.R. 1663	2/1/07
4 VAC 20-1110-10 through 4 VAC 20-1110-50	Added	23:19 VA.R. 2994	5/1/07
4 VAC 20-1120-10 through 4 VAC 20-1120-50	Added	23:19 VA.R. 2994-2995	5/1/07

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 25-20-420	Amended	23:13 VA.R. 2146	4/4/07
4 VAC 25-130-700.12	Amended	23:13 VA.R. 2146	4/4/07
4 VAC 25-130-773.21	Amended	23:13 VA.R. 2147	4/4/07
4 VAC 25-130-775.11	Amended	23:13 VA.R. 2147	4/4/07
4 VAC 25-130-775.13	Amended	23:13 VA.R. 2148	4/4/07
4 VAC 25-130-784.20	Amended	23:13 VA.R. 2148	4/4/07
4 VAC 25-130-785.25	Amended	23:16 VA.R. 2592	5/16/07
4 VAC 25-130-800.51	Amended	23:13 VA.R. 2149	4/4/07
4 VAC 25-130-816.105	Amended	23:13 VA.R. 2150	4/4/07
4 VAC 25-130-816.116	Amended	23:16 VA.R. 2592	5/16/07
4 VAC 25-130-817.11	Amended	23:13 VA.R. 2150	4/4/07
4 VAC 25-130-817.64	Amended	23:13 VA.R. 2151	4/4/07
4 VAC 25-130-817.116	Amended	23:16 VA.R. 2594	5/16/07
4 VAC 25-130-817.121	Amended	23:13 VA.R. 2151	4/4/07
4 VAC 25-130-842.15	Amended	23:13 VA.R. 2153	4/4/07
4 VAC 25-130-843.12	Amended	23:13 VA.R. 2153	4/4/07
4 VAC 25-130-843.13	Amended	23:13 VA.R. 2154	4/4/07
4 VAC 25-130-843.15	Amended	23:13 VA.R. 2155	4/4/07
4 VAC 25-130-843.16	Amended	23:13 VA.R. 2156	4/4/07
4 VAC 25-130-845.13	Amended	23:13 VA.R. 2156	4/4/07
4 VAC 25-130-845.15	Amended	23:13 VA.R. 2158	4/4/07
4 VAC 25-130-845.18	Amended	23:13 VA.R. 2158	4/4/07
4 VAC 25-130-845.19	Amended	23:13 VA.R. 2159	4/4/07
4 VAC 25-130-846.14	Amended	23:13 VA.R. 2159	4/4/07
Title 8. Education			
8 VAC 20-350-10 through 8 VAC 20-350-660	Repealed	23:12 VA.R. 1962	5/8/07
8 VAC 20-700-10 through 8 VAC 20-700-50	Added	23:10 VA.R. 1541-1543	2/21/07
8 VAC 20-710-10 through 8 VAC 20-710-30	Added	23:10 VA.R. 1543-1544	2/21/07
Title 9. Environment			
9 VAC 5-50-400	Amended	23:17 VA.R. 2742	6/1/07
9 VAC 5-50-410	Amended	23:17 VA.R. 2742	6/1/07
9 VAC 5-60-60	Amended	23:17 VA.R. 2747	6/1/07
9 VAC 5-60-90	Amended	23:17 VA.R. 2748	6/1/07
9 VAC 5-60-100	Amended	23:17 VA.R. 2748	6/1/07
9 VAC 5-140-1010 through 9 VAC 5-140-1060	Added	23:14 VA.R. 2279-2291	4/18/07
9 VAC 5-140-1061	Added	23:14 VA.R. 2291	*
9 VAC 5-140-1062	Added	23:14 VA.R. 2291	*
9 VAC 5-140-1070 through 9 VAC 5-140-1150	Added	23:14 VA.R. 2292-2295	4/18/07
9 VAC 5-140-1200 through 9 VAC 5-140-1240	Added	23:14 VA.R. 2295-2296	4/18/07
9 VAC 5-140-1400 through 9 VAC 5-140-1430	Added	23:14 VA.R. 2296-2302	4/18/07
9 VAC 5-140-1500 through 9 VAC 5-140-1570	Added	23:14 VA.R. 2302-2306	4/18/07
9 VAC 5-140-1600 through 9 VAC 5-140-1620	Added	23:14 VA.R. 2307	4/18/07
9 VAC 5-140-1700 through 9 VAC 5-140-1750	Added	23:14 VA.R. 2307-2312	4/18/07
9 VAC 5-140-1800 through 9 VAC 5-140-1880	Added	23:14 VA.R. 2312-2317	4/18/07
9 VAC 5-140-2060	Added	23:14 VA.R. 2329	4/18/07
9 VAC 5-140-2061	Added	23:14 VA.R. 2331	*
9 VAC 5-140-2062	Added	23:14 VA.R. 2332	*
9 VAC 5-140-2070	Added	23:14 VA.R. 2333	4/18/07

* Effective Date Suspended 23:19

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 5-140-2080	Added	23:14 VA.R. 2333	4/18/07
9 VAC 5-140-2100 through 9 VAC 5-140-2150	Added	23:14 VA.R. 2333-2336	4/18/07
9 VAC 5-140-2200 through 9 VAC 5-140-2240	Added	23:14 VA.R. 2336-2337	4/18/07
9 VAC 5-140-2400 through 9 VAC 5-140-2430	Added	23:14 VA.R. 2337-2342	4/18/07
9 VAC 5-140-2500 through 9 VAC 5-140-2570	Added	23:14 VA.R. 2342-2347	4/18/07
9 VAC 5-140-2600 through 9 VAC 5-140-2620	Added	23:14 VA.R. 2347	4/18/07
9 VAC 5-140-2700 through 9 VAC 5-140-2750	Added	23:14 VA.R. 2347-2353	4/18/07
9 VAC 5-140-2800 through 9 VAC 5-140-2880	Added	23:14 VA.R. 2353-2359	4/18/07
9 VAC 5-140-3010 through 9 VAC 5-140-3060	Added	23:14 VA.R. 2359-2368	4/18/07
9 VAC 5-140-3061	Added	23:14 VA.R. 2370	*
9 VAC 5-140-3062	Added	23:14 VA.R. 2371	*
9 VAC 5-140-3070	Added	23:14 VA.R. 2371	4/18/07
9 VAC 5-140-3080	Added	23:14 VA.R. 2371	4/18/07
9 VAC 5-140-3100 through 9 VAC 5-140-3150	Added	23:14 VA.R. 2371-2374	4/18/07
9 VAC 5-140-3200 through 9 VAC 5-140-3240	Added	23:14 VA.R. 2374-2375	4/18/07
9 VAC 5-140-3400 through 9 VAC 5-140-3420	Added	23:14 VA.R. 2375	4/18/07
9 VAC 5-140-3500 through 9 VAC 5-140-3570	Added	23:14 VA.R. 2375-2380	4/18/07
9 VAC 5-140-3600 through 9 VAC 5-140-3620	Added	23:14 VA.R. 2380-2381	4/18/07
9 VAC 5-140-3700 through 9 VAC 5-140-3750	Added	23:14 VA.R. 2381-2386	4/18/07
9 VAC 5-140-3800 through 9 VAC 5-140-3880	Added	23:14 VA.R. 2386-2391	4/18/07
9 VAC 5-140-5010 through 9 VAC 5-140-5750	Added	23:13 VA.R. 2160-2186	4/4/07
9 VAC 5-140-1020	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-1061	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-1062	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-1130	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-1420	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-1700	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-1740	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-2020	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-2030	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-2040	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-2060	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-2062	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-2740	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-3062	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-3840	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-5020	Erratum	23:16 VA.R. 2672	--
9 VAC 5-140-5060	Erratum	23:16 VA.R. 2672	--
9 VAC 5-140-5100	Erratum	23:16 VA.R. 2672	--
9 VAC 5-140-5150	Erratum	23:16 VA.R. 2672	--
9 VAC 5-140-5420	Erratum	23:16 VA.R. 2672	--
9 VAC 5-140-5510	Erratum	23:16 VA.R. 2672	--
9 VAC 5-140-5540	Erratum	23:16 VA.R. 2672	--
9 VAC 5-140-5560	Erratum	23:16 VA.R. 2672	--
9 VAC 5-140-5600	Erratum	23:16 VA.R. 2672	--
9 VAC 5-151-10 through 9 VAC 5-151-70	Added	23:17 VA.R. 2755-2764	5/31/07
9 VAC 5-240-10 through 9 VAC 5-240-50	Added	23:16 VA.R. 2595-2596	5/16/07
9 VAC 20-110-90	Amended	23:11 VA.R. 1665	3/21/07
9 VAC 20-110-110	Amended	23:11 VA.R. 1665	3/21/07
9 VAC 20-200-10 through 9 VAC 20-200-70	Added	23:11 VA.R. 1666-1667	3/21/07
9 VAC 25-71-20	Amended	23:15 VA.R. 2485	5/2/07

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-71-50	Amended	23:15 VA.R. 2485	5/2/07
9 VAC 25-71-70	Amended	23:15 VA.R. 2485	5/2/07
9 VAC 25-720-50	Amended	23:11 VA.R. 1669	3/21/07
9 VAC 25-720-50	Amended	23:15 VA.R. 2486	5/2/07
9 VAC 25-720-60	Amended	23:12 VA.R. 1966	5/21/07
9 VAC 25-720-80	Amended	23:11 VA.R. 1670	3/21/07
9 VAC 25-720-90	Amended	23:11 VA.R. 1671	3/21/07
9 VAC 25-720-100	Amended	23:11 VA.R. 1671	3/21/07
9 VAC 25-720-130	Amended	23:15 VA.R. 2487	5/2/07
Title 10. Finance and Financial Institutions			
10 VAC 5-40-50	Added	23:18 VA.R. 2882	5/1/07
10 VAC 5-160-40	Amended	23:13 VA.R. 2187	2/10/07
Title 11. Gaming			
11 VAC 10-20-310	Amended	23:18 VA.R. 2883	5/31/07
11 VAC 10-20-330	Amended	23:18 VA.R. 2884	5/31/07
11 VAC 10-20-340	Amended	23:18 VA.R. 2891	5/31/07
11 VAC 10-100-30	Amended	23:18 VA.R. 2892	5/31/07
11 VAC 10-110-30	Amended	23:18 VA.R. 2893	5/31/07
11 VAC 10-110-90	Amended	23:18 VA.R. 2893	5/31/07
11 VAC 10-120-80	Amended	23:18 VA.R. 2894	5/31/07
11 VAC 10-130-10	Amended	23:11 VA.R. 1672	1/10/07
11 VAC 10-130-10	Amended	23:18 VA.R. 2894	4/30/07
11 VAC 10-130-60	Amended	23:11 VA.R. 1673	1/10/07
11 VAC 10-140-12	Added	23:18 VA.R. 2896	5/31/07
11 VAC 10-140-15	Added	23:18 VA.R. 2896	5/31/07
11 VAC 10-140-210	Amended	23:18 VA.R. 2896	5/31/07
11 VAC 10-150-12	Added	23:18 VA.R. 2897	5/31/07
11 VAC 10-150-15	Added	23:18 VA.R. 2897	5/31/07
Title 12. Health			
12 VAC 5-70-10 through 12 VAC 5-70-50	Repealed	23:13 VA.R. 2187	4/4/07
12 VAC 5-71-10 through 12 VAC 5-71-190	Added	23:13 VA.R. 2188-2195	4/4/07
12 VAC 5-90 (Forms)	Erratum	23:15 VA.R. 2507-2509	--
12 VAC 5-90-10	Amended	23:15 VA.R. 2488	5/2/07
12 VAC 5-90-40	Amended	23:15 VA.R. 2493	5/2/07
12 VAC 5-90-80	Amended	23:15 VA.R. 2493	5/2/07
12 VAC 5-90-90	Amended	23:15 VA.R. 2497	5/2/07
12 VAC 5-90-100	Amended	23:15 VA.R. 2500	5/2/07
12 VAC 5-90-103	Added	23:15 VA.R. 2500	5/2/07
12 VAC 5-90-107	Added	23:15 VA.R. 2502	5/2/07
12 VAC 5-90-110	Amended	23:15 VA.R. 2503	5/2/07
12 VAC 5-90-130	Amended	23:15 VA.R. 2504	5/2/07
12 VAC 5-90-225	Amended	23:15 VA.R. 2504	5/2/07
12 VAC 5-90-250 through 12 VAC 5-90-280	Amended	23:15 VA.R. 2505-2506	5/2/07
12 VAC 5-90-330	Amended	23:15 VA.R. 2506	5/2/07
12 VAC 5-90-350	Amended	23:15 VA.R. 2507	5/2/07
12 VAC 5-90-360	Amended	23:15 VA.R. 2507	5/2/07
12 VAC 5-371-10	Amended	23:10 VA.R. 1544	3/1/07
12 VAC 5-371-20	Repealed	23:10 VA.R. 1546	3/1/07
12 VAC 5-371-30	Amended	23:10 VA.R. 1547	3/1/07
12 VAC 5-371-40	Amended	23:10 VA.R. 1547	3/1/07

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-371-50	Repealed	23:10 VA.R. 1548	3/1/07
12 VAC 5-371-60	Amended	23:10 VA.R. 1548	3/1/07
12 VAC 5-371-70 through 12 VAC 5-371-130	Amended	23:10 VA.R. 1548-1551	3/1/07
12 VAC 5-371-150	Amended	23:10 VA.R. 1551	3/1/07
12 VAC 5-371-160	Amended	23:10 VA.R. 1551	3/1/07
12 VAC 5-371-190	Amended	23:10 VA.R. 1551	3/1/07
12 VAC 5-371-200	Amended	23:10 VA.R. 1552	3/1/07
12 VAC 5-371-400	Amended	23:10 VA.R. 1552	3/1/07
12 VAC 5-371-410	Amended	23:10 VA.R. 1552	3/1/07
12 VAC 5-410-10	Amended	23:10 VA.R. 1554	3/1/07
12 VAC 5-410-30	Amended	23:10 VA.R. 1555	3/1/07
12 VAC 5-410-70	Amended	23:10 VA.R. 1555	3/1/07
12 VAC 5-410-80	Amended	23:10 VA.R. 1555	3/1/07
12 VAC 5-410-100	Amended	23:10 VA.R. 1555	3/1/07
12 VAC 5-410-110	Amended	23:10 VA.R. 1555	3/1/07
12 VAC 5-410-130	Amended	23:10 VA.R. 1555	3/1/07
12 VAC 5-410-140	Amended	23:10 VA.R. 1555	3/1/07
12 VAC 5-410-150	Amended	23:10 VA.R. 1556	3/1/07
12 VAC 5-410-180	Amended	23:10 VA.R. 1556	3/1/07
12 VAC 5-410-210	Amended	23:10 VA.R. 1556	3/1/07
12 VAC 5-410-220	Amended	23:10 VA.R. 1557	3/1/07
12 VAC 5-410-270	Amended	23:10 VA.R. 1558	3/1/07
12 VAC 5-410-442	Amended	23:10 VA.R. 1558	3/1/07
12 VAC 5-410-445	Amended	23:10 VA.R. 1559	3/1/07
12 VAC 5-410-650	Amended	23:10 VA.R. 1560	3/1/07
12 VAC 5-410-720	Amended	23:10 VA.R. 1560	3/1/07
12 VAC 5-410-760	Amended	23:10 VA.R. 1560	3/1/07
12 VAC 5-410-1150	Amended	23:10 VA.R. 1560	3/1/07
12 VAC 5-410-1170	Amended	23:10 VA.R. 1561	3/1/07
12 VAC 5-410-1350	Amended	23:10 VA.R. 1561	3/1/07
12 VAC 5-410-1380	Amended	23:10 VA.R. 1561	3/1/07
12 VAC 30-10-140	Amended	23:16 VA.R. 2653	7/1/07
12 VAC 30-10-560	Amended	23:14 VA.R. 2396	9/1/07
12 VAC 30-20-140	Amended	23:14 VA.R. 2397	9/1/07
12 VAC 30-30-60	Added	23:11 VA.R. 1673	3/7/07
12 VAC 30-40-10	Amended	23:11 VA.R. 1674	3/7/07
12 VAC 30-40-20	Amended	23:18 VA.R. 2897	7/1/07
12 VAC 30-40-290	Amended	23:14 VA.R. 2398	9/1/07
12 VAC 30-50-20	Amended	23:16 VA.R. 2654	7/1/07
12 VAC 30-50-35	Added	23:11 VA.R. 1675	3/7/07
12 VAC 30-50-60	Amended	23:16 VA.R. 2654	7/1/07
12 VAC 30-50-75	Added	23:11 VA.R. 1676	3/7/07
12 VAC 30-50-320	Amended	23:16 VA.R. 2654	7/1/07
12 VAC 30-50-321	Added	23:16 VA.R. 2655	7/1/07
12 VAC 30-50-325	Added	23:16 VA.R. 2655	7/1/07
12 VAC 30-50-328	Added	23:16 VA.R. 2655	7/1/07
12 VAC 30-50-530	Amended	23:11 VA.R. 1676	3/7/07
12 VAC 30-70-311	Amended	23:19 VA.R. 3003	7/1/07
12 VAC 30-70-321	Amended	23:19 VA.R. 3003	7/1/07
12 VAC 30-70-341	Amended	23:19 VA.R. 3003	7/1/07
12 VAC 30-70-391	Amended	23:19 VA.R. 3004	7/1/07

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 30-80-190	Amended	23:19 VA.R. 3004	7/1/07
12 VAC 30-90-31	Amended	23:19 VA.R. 3005	7/1/07
12 VAC 30-90-264	Amended	23:14 VA.R. 2400	4/18/07
12 VAC 30-110-950	Amended	23:18 VA.R. 2898	7/1/07
12 VAC 30-120-61	Amended	23:16 VA.R. 2655	7/1/07
12 VAC 30-120-62	Amended	23:16 VA.R. 2657	7/1/07
12 VAC 30-120-64	Amended	23:16 VA.R. 2659	7/1/07
12 VAC 30-120-65	Amended	23:16 VA.R. 2660	7/1/07
12 VAC 30-120-66	Amended	23:16 VA.R. 2660	7/1/07
12 VAC 30-120-68	Amended	23:16 VA.R. 2661	7/1/07
12 VAC 30-130-900	Amended	23:12 VA.R. 1967	3/21/07
12 VAC 30-130-910	Amended	23:12 VA.R. 1968	3/21/07
12 VAC 30-130-930	Amended	23:12 VA.R. 1968	3/21/07
12 VAC 30-141-740	Amended	23:19 VA.R. 3006	7/1/07
12 VAC 35-45-10	Amended	23:10 VA.R. 1562	2/21/07
12 VAC 35-45-25	Added	23:10 VA.R. 1565	2/21/07
12 VAC 35-45-70	Amended	23:10 VA.R. 1564	2/21/07
12 VAC 35-45-80	Amended	23:10 VA.R. 1564	2/21/07
12 VAC 35-45-210	Added	23:10 VA.R. 1564	2/21/07
12 VAC 35-105-20	Amended	23:10 VA.R. 1567	2/21/07
12 VAC 35-105-30	Amended	23:10 VA.R. 1575	2/21/07
12 VAC 35-105-115 emer	Added	23:10 VA.R. 1566	1/3/07-1/2/08
12 VAC 35-105-590	Amended	23:10 VA.R. 1575	2/21/07
12 VAC 35-105-660	Amended	23:10 VA.R. 1576	2/21/07
Title 13. Housing			
13 VAC 5-111-10 through 13 VAC 5-111-400	Repealed	23:12 VA.R. 1971	3/21/07
13 VAC 5-112-10 through 13 VAC 5-112-560	Added	23:12 VA.R. 1971-1994	3/21/07
Title 14. Insurance			
14 VAC 5-200-20	Repealed	23:17 VA.R. 2766	9/1/07
14 VAC 5-200-30 through 14 VAC 5-200-60	Amended	23:17 VA.R. 2766-2770	9/1/07
14 VAC 5-200-70 through 14 VAC 5-200-90	Amended	23:17 VA.R. 2770-2774	9/1/07
14 VAC 5-200-110	Amended	23:17 VA.R. 2774	9/1/07
14 VAC 5-200-120	Amended	23:17 VA.R. 2777	9/1/07
14 VAC 5-200-153	Amended	23:17 VA.R. 2777	9/1/07
14 VAC 5-200-170	Amended	23:17 VA.R. 2780	9/1/07
14 VAC 5-200-175	Amended	23:17 VA.R. 2781	9/1/07
14 VAC 5-200-181	Added	23:17 VA.R. 2782	9/1/07
14 VAC 5-200-183	Added	23:17 VA.R. 2782	9/1/07
14 VAC 5-200-185	Amended	23:17 VA.R. 2783	9/1/07
14 VAC 5-200-187	Amended	23:17 VA.R. 2785	9/1/07
14 VAC 5-200-200	Amended	23:17 VA.R. 2786	9/1/07
14 VAC 5-200-201	Added	23:17 VA.R. 2788	9/1/07
14 VAC 5-200-205	Added	23:17 VA.R. 2788	9/1/07
14 VAC 5-321-10	Amended	23:10 VA.R. 1577	1/1/07
14 VAC 5-321-20	Amended	23:10 VA.R. 1577	1/1/07
14 VAC 5-321-30	Amended	23:10 VA.R. 1578	1/1/07
14 VAC 5-321-70	Added	23:10 VA.R. 1578	1/1/07
14 VAC 5-322-10 through 14 VAC 5-322-50	Added	23:10 VA.R. 1579-1581	1/1/07
Title 16. Labor and Employment			
16 VAC 25-55-10 and 16 VAC 25-55-20	Added	23:12 VA.R. 1995-1996	3/22/07

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
16 VAC 25-90-1910.134	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1000	Amended	23:12 VA.R. 1996	3/21/07
16 VAC 25-90-1910.1001	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1017	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1018	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1025	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1027	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1028	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1029	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1043	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1044	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1045	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1047	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1048	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1050	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1052	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-100-1915.5	Amended	23:12 VA.R. 1998	3/21/07
16 VAC 25-100-1915.505	Amended	23:12 VA.R. 1998	3/21/07
16 VAC 25-100-1915.507	Amended	23:12 VA.R. 1998	3/21/07
16 VAC 25-100-1915.1000	Amended	23:12 VA.R. 1996	3/21/07
16 VAC 25-100-1915.1001	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-175-1926.55	Added	23:12 VA.R. 1996	3/21/07
16 VAC 25-175-1926.60	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-175-1926.62	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-175-1926.1002, Appendix A of Subpart W	Amended	23:12 VA.R. 1999	3/21/07
16 VAC 25-175-1926.1101	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-175-1926.1127	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-190-1928.52	Amended	23:12 VA.R. 1999	3/21/07
16 VAC 25-190-1928.53, Appendix B to Subpart C	Amended	23:12 VA.R. 1999	3/21/07
Title 18. Professional and Occupational Licensing			
18 VAC 5-10-10 through 18 VAC 5-10-90	Amended	23:11 VA.R. 1678-1680	4/23/07
18 VAC 15-20 (Forms)	Added	23:15 VA.R. 2514	--
18 VAC 15-30 (Forms)	Amended	23:15 VA.R. 2514	--
18 VAC 41-60-10 through 18 VAC 41-60-220	Added	23:12 VA.R. 2000-2009	4/1/07
18 VAC 50-30-10 through 18 VAC 50-30-50	Amended	23:12 VA.R. 2020-2025	4/1/07
18 VAC 50-30-60	Repealed	23:12 VA.R. 2025	4/1/07
18 VAC 50-30-70	Amended	23:12 VA.R. 2025	4/1/07
18 VAC 50-30-80	Repealed	23:12 VA.R. 2025	4/1/07
18 VAC 50-30-90 through 18 VAC 50-30-150	Amended	23:12 VA.R. 2026-2028	4/1/07
18 VAC 50-30-180	Repealed	23:12 VA.R. 2028	4/1/07
18 VAC 50-30-185	Added	23:12 VA.R. 2028	4/1/07
18 VAC 50-30-190	Amended	23:12 VA.R. 2028	4/1/07
18 VAC 50-30-200	Amended	23:12 VA.R. 2029	4/1/07
18 VAC 50-30-210 through 18 VAC 50-30-260	Added	23:12 VA.R. 2030-2031	4/1/07
18 VAC 60-20-180	Amended	23:15 VA.R. 2510	5/2/07
18 VAC 65-40-10	Amended	23:12 VA.R. 2031	3/21/07
18 VAC 65-40-40	Amended	23:12 VA.R. 2031	3/21/07
18 VAC 65-40-90	Amended	23:12 VA.R. 2032	3/21/07
18 VAC 65-40-110	Amended	23:12 VA.R. 2032	3/21/07
18 VAC 65-40-130	Amended	23:12 VA.R. 2032	3/21/07
18 VAC 65-40-160	Repealed	23:12 VA.R. 2032	3/21/07

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18 VAC 65-40-220	Amended	23:12 VA.R. 2032	3/21/07
18 VAC 65-40-250	Amended	23:12 VA.R. 2032	3/21/07
18 VAC 65-40-300	Repealed	23:12 VA.R. 2032	3/21/07
18 VAC 65-40-320	Amended	23:12 VA.R. 2033	3/21/07
18 VAC 65-40-340	Amended	23:12 VA.R. 2033	3/21/07
18 VAC 85-20-235	Amended	23:11 VA.R. 1692	4/21/07
18 VAC 85-20-290	Amended	23:13 VA.R. 2206	4/4/07
18 VAC 85-101-50	Amended	23:15 VA.R. 2511	5/2/07
18 VAC 85-130-10 through 18 VAC 85-130-170	Added	23:10 VA.R. 1582-1586	2/21/07
18 VAC 90-20-60	Amended	23:12 VA.R. 2033	3/21/07
18 VAC 90-30-120	Amended	23:14 VA.R. 2404	4/18/07
18 VAC 90-30-230	Amended	23:12 VA.R. 2034	3/21/07
18 VAC 90-40-140	Amended	23:12 VA.R. 2034	3/21/07
18 VAC 90-60-10 through 18 VAC 90-60-120	Added	23:19 VA.R. 3008-3012	7/1/07
18 VAC 110-20-285	Amended	23:17 VA.R. 2791	5/30/07
18 VAC 115-20-20	Amended	23:14 VA.R. 2404	4/18/07
18 VAC 115-30-30	Amended	23:14 VA.R. 2405	4/18/07
18 VAC 115-40-20	Amended	23:14 VA.R. 2405	4/18/07
18 VAC 115-50-20	Amended	23:14 VA.R. 2405	4/18/07
18 VAC 115-60-20	Amended	23:14 VA.R. 2406	4/18/07
18 VAC 125-20-30	Amended	23:12 VA.R. 2035	3/21/07
18 VAC 125-30-20	Amended	23:12 VA.R. 2035	3/21/07
Title 19. Public Safety			
19 VAC 30-20-80	Amended	23:10 VA.R. 1587	3/1/07
Title 21. Securities and Retail Franchising			
21 VAC 5-10	Erratum	23:18 VA.R. 2935	--
21 VAC 5-20	Erratum	23:18 VA.R. 2935	--
21 VAC 5-110	Erratum	23:18 VA.R. 2935	--
Title 22. Social Services			
22 VAC 15-10-40	Amended	23:10 VA.R. 1587	3/1/07
22 VAC 15-10-50	Amended	23:10 VA.R. 1587	3/1/07
22 VAC 40-740-10	Amended	23:10 VA.R. 1588	3/1/07
22 VAC 40-740-15	Added	23:10 VA.R. 1591	3/1/07
22 VAC 40-740-20	Repealed	23:10 VA.R. 1592	3/1/07
22 VAC 40-740-21	Added	23:10 VA.R. 1592	3/1/07
22 VAC 40-740-30	Repealed	23:10 VA.R. 1593	3/1/07
22 VAC 40-740-31	Added	23:10 VA.R. 1593	3/1/07
22 VAC 40-740-40	Amended	23:10 VA.R. 1593	3/1/07
22 VAC 40-740-50	Amended	23:10 VA.R. 1594	3/1/07
22 VAC 40-740-60	Amended	23:10 VA.R. 1595	3/1/07
22 VAC 40-740-70	Added	23:10 VA.R. 1596	3/1/07
22 VAC 40-740-80	Added	23:10 VA.R. 1596	3/1/07
Title 24. Transportation and Motor Vehicles			
24 VAC 30-155-10 through 24 VAC 30-155-100	Added	23:18 VA.R. 2915-2930	7/1/07
24 VAC 30-320	Repealed	23:16 VA.R. 2665	3/22/07
24 VAC 30-325-10	Added	23:16 VA.R. 2665	3/22/07
24 VAC 30-325-20	Added	23:16 VA.R. 2666	3/22/07
24 VAC 30-330	Repealed	23:16 VA.R. 2665	3/22/07

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF VETERINARY MEDICINE

Agency Decision

Title of Regulation: 18 VAC 150-20. Regulations Governing the Practice of Veterinary Medicine.

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

Name of Petitioner: Danell Beisner-Creasey.

Nature of Petitioner's Request: To amend 18 VAC 150-20-120 on requirements for licensure by endorsement to allow the board to grant a license to a foreign-trained applicant who has completed clinical education in a prescribed formal agreement between an unaccredited veterinary medicine school and an accredited veterinary medicine program, which assures equivalency in length and content to the clinical training received by students in the accredited program.

Agency Decision: Request denied.

Statement of Reasons for Decision: The board discussed the petition and concluded that fulfilling the requirements of the Educational Commission of Foreign Veterinary Graduates is essential to ensure minimal competency for graduates of foreign veterinary schools. Therefore, the board denied the petition that requests acceptance of clinical education in an agreement between the unaccredited foreign school and an accredited veterinary medicine program.

Agency Contact: Elizabeth Young, Executive Director, Board of Veterinary Medicine, 6603 West Broad Street, Richmond, VA 23230-1712, telephone (804) 662-9907, FAX (804) 662-9523, or email elizabeth.young@dhp.virginia.gov.

VA.R. Doc. No. R07-150; Filed May 23, 2007, 10:44 a.m.

NOTICES OF INTENDED REGULATORY ACTION

Symbol Key

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

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Education intends to consider amending regulations entitled **8 VAC 20-131, Regulations Establishing Standards for Accrediting Public Schools in Virginia**. The purpose of the proposed action is to review the requirements for graduation (8 VAC 20-131-50), school and community communications (8 VAC 20-131-270), expectations for school accountability (8 VAC 20-131-280), and recognitions and rewards for school accountability performance (8 VAC 20-131-325). This review will include the role of graduation rates in the accountability measures for school accreditation as well as changes necessitated by actions taken by the 2007 General Assembly, including the following legislation:

1. Chapters 859 and 919 of the 2007 Acts of Assembly require the board to establish the requirements for a technical diploma.
2. Chapter 351 of the 2007 Acts of Assembly requires the board to modify the provisions of the Board of Education's Seal for Excellence in Civics Education to emphasize community service.
3. The Senate Education and Health Committee, while not taking action on HB 3201, related to removing students from classes, requested the Chairman write a letter to the Board of Education asking that the board consider this issue in its review of applicable regulations, and report back to the patron and the committee.

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

Statutory Authority: § 22.1-253.13:3 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 13, 2007.

Contact: Anne Wescott, Assistant Superintendent, Policy and Communications, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2403, FAX (804) 225-2524, or email anne.wescott@doe.virginia.gov.

VA.R. Doc. No. R07-228; Filed May 23, 2007, 11:18 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 30-30, Groups Covered and Agencies Responsible for Eligibility Determination**, and amending regulations entitled **12 VAC 30-40, Eligibility Conditions and Requirements**. The purpose of the proposed action is to implement a mandated Medicaid buy-in program per the requirement of the 2006 Appropriation Act. The buy-in program will help protect the health and welfare of the citizens of the Commonwealth by creating an incentive for disabled Medicaid enrollees who desire to be employed to have added income that will not count against their eligibility income limits. This reduces the financial restrictions to which such enrollees may be subject.

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 July 11, 2007.

Contact: Jack Quigley, Policy and Research Division, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-1300, FAX (804) 786-1680 or email jack.quigley@dmas.virginia.gov.

VA.R. Doc. No. R07-219; Filed May 21, 2007, 4:15 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF ACCOUNTANCY

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Accountancy intends to consider amending regulations entitled **18 VAC 5-21, Board of Accountancy Regulations**. The purpose of the proposed action is to provide clarification to those CPA exam candidates who qualified under the education requirements of

Notices of Intended Regulatory Action

the Board of Accountancy to sit for the CPA exam prior to July 1, 2006. The board seeks to set a deadline of December 31, 2008, for these CPA candidates to pass the CPA exam. The goal of the board is to enable these candidates to be able to complete the CPA exam in a timely manner and within an achievable deadline, without creating an undue burden on them.

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

Statutory Authority: §§ 54.1-4402 and 54.1-4410 of the Code of Virginia.

Public comments may be submitted until July 11, 2007.

Contact: Nancy Taylor Feldman, Executive Director, Board of Accountancy, 3600 W. Broad St., Suite 378, Richmond, VA 23230, telephone (804) 367-8505, FAX (804) 367-2174 or email boa@boa.virginia.gov.

VA.R. Doc. No. R07-211; Filed May 14, 2007, 12:49 p.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 85-50, Regulations Governing the Practice of Physician Assistants**. The purpose of the proposed action is to set out requirements for prescribing opioids for managements of chronic pain.

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

Statutory Authority: § 54.1-2400 and Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 11, 2007.

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

VA.R. Doc. No. R07-237; Filed May 23, 2007, 10:44 a.m.

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

specify requirements for informed consent in the performance of dental treatments.

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

Statutory Authority: § 54.1-2400 and Chapter 27 (§ 54.1-2700) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 11, 2007.

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

VA.R. Doc. No. R07-241; Filed May 23, 2007, 10:44 a.m.

BOARD OF OPTOMETRY

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Optometry intends to consider amending regulations entitled **18 VAC 105-20, Regulations Governing the Practice of Optometry**. The purpose of the proposed action is to make technical changes to clarify the continuing education rules and consider requirements for face-to-face or interactive hours.

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

Statutory Authority: § 54.1-2400 and Chapter 32 (§ 54.1-3200 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 11, 2007.

Contact: Elizabeth A. Carter, Ph.D., Executive Director, Board of Optometry, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9910, FAX (804) 662-7098, or email elizabeth.carter@dhp.virginia.gov.

VA.R. Doc. No. R07-238; Filed May 23, 2007, 10:44 a.m.

BOARD OF COUNSELING

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Counseling intends to consider amending regulations entitled **18 VAC 115-50, Regulations Governing the Practice of Marriage and Family Therapy**. The purpose of the proposed action is to change the requirements for supervision of residency and licensure by endorsement.

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

Notices of Intended Regulatory Action

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

Public comments may be submitted until 5 p.m. on July 11, 2007.

Contact: Evelyn B. Brown, Executive Director, Board of Counseling, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9133, FAX (804) 662-9943, or email evelyn.brown@dhp.virginia.gov.

VA.R. Doc. No. R07-239; Filed May 23, 2007, 10:44 a.m.

BOARD OF PSYCHOLOGY

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Psychology intends to consider amending regulations entitled **18 VAC 125-20, Regulations Governing the Practice of Psychology**. The purpose of the proposed action is to respond to a petition for rulemaking for fewer hours of face-to-face continuing education, and to update and clarify its requirements for continuing education.

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

Statutory Authority: § 54.1-2400 and Chapter 36 (§ 54.1-3600 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 11, 2007.

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, or email evelyn.brown@dhp.virginia.gov.

VA.R. Doc. No. R06-216; Filed May 23, 2007, 10:44 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 Psychology intends to consider amending regulations entitled **18 VAC 125-30, Regulations Governing the Certification of Sex Offender Treatment Providers**. The purpose of the proposed action is to respond to a petition for rulemaking that requested fewer supervised hours in experience required for persons who already hold a license as a clinical psychologist and to require at least six hours of continuing education focused on the treatment of that population for annual renewal.

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

Statutory Authority: § 54.1-2400 and Chapter 36 (§ 54.1-3600 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 11, 2007.

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, or email evelyn.brown@dhp.virginia.gov.

VA.R. Doc. No. R07-240; Filed May 23, 2007, 10:44 a.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

† Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the State Board of Social Services has WITHDRAWN the Notice of Intended Regulatory Action for **22 VAC 40-810, Fees for Court Services Provided by Local Departments of Social Services**, which was published in 22:22 VA.R. 2979 July 10, 2006.

Contact: Richard Martin, Office of Legislative and Regulatory Affairs, Department of Social Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7000.

VA.R. Doc. No. R06-267; Filed May 21, 2007, 9:47 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 Board of Social Services intends to consider amending regulations entitled **22 VAC 40-690, Virginia Child Care Provider Scholarship Program**. The purpose of the proposed action is to amend the regulation to employ more efficient business practices and to implement an applicant selection process that will address the immediate need to improve the qualifications of child care providers and to enhance the quality of child care services offered to children and families in the Commonwealth.

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

Statutory Authority: § 63.2-217 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 11, 2007.

Contact: Zeld Boyd, Program Development Consultant, Department of Social Services, Division of Child Care and Development, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7616, FAX (804) 726-7655, or email zelda.boyd@dss.virginia.gov.

VA.R. Doc. No. R07-214; Filed May 21, 2007, 9:48 a.m.

Notices of Intended Regulatory Action

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to consider amending regulations entitled **22 VAC 40-705, Child Protective Services**. The purpose of the proposed action is to conduct a comprehensive review of the Child Protective Services regulation. The regulation addresses the key functions in protecting children from abuse and neglect. The State Board of Social Services will recommend amendments to reflect recent changes in the Code of Virginia to the definition of an abused or neglected child and will also propose several amendments of a housekeeping nature and may propose additional amendments based on public comment.

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

Statutory Authority: § 63.2-217 and Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2 and of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 11, 2007.

Contact: Nan McKenney, CPS Policy Supervisor, Department of Social Services, 7 N. 8th St., 4th Floor, Richmond, VA 23219, telephone (804) 726-7569, FAX (804) 726-7895 or email nan.mckenney@dss.virginia.gov.

VA.R. Doc. No. R07-215; Filed May 21, 2007, 9:47 a.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 Taxation intends to consider amending regulations entitled **23 VAC 10-210, Retail Sales and Use Tax**. The purpose of the proposed action is to amend the existing regulation (23 VAC 10-210-680, Gifts Purchased in Virginia) to reflect a statutory change enacted by 2005 General Assembly defining "gift transaction" for sales and use tax purposes and allowing the dealer the option of collecting the tax in the state of the recipient or collecting the Virginia tax, provided the dealer is registered in the recipient state and the recipient is someone other than the purchaser. Tax will amend the regulation to reflect the law change and set their policy with respect to this change. The regulation will also provide processes and procedures for dealers to obtain approval from the Tax Commissioner prior to collecting the tax in the state of the recipient.

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

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 11, 2007.

Contact: Mark Haskins, Director, Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

VA.R. Doc. No. R07-245; Filed May 23, 2007, 9:58 a.m.

TITLE 23. TAXATION

DEPARTMENT OF TAXATION

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Taxation intends to consider amending regulations entitled **23 VAC 10-210, Retail Sales and Use Tax**. The purpose of the proposed action is to amend the current retail sales and use tax regulation on fabrication to more accurately set forth policy.

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

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 11, 2007.

Contact: Mark Haskins, Director, Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

VA.R. Doc. No. R07-243; Filed May 23, 2007, 9:58 a.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 Taxation intends to consider amending regulations entitled **23 VAC 10-210, Retail Sales and Use Tax**. The purpose of the proposed action is to amend the current regulation (23 VAC 10-210-730, Hotels, Motels, Tourist Camps, etc.) to reflect the 2004 legislative change that provides that Internet access services furnished with accommodations qualify as a tax-exempt service and not a service in connection with accommodations.

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

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 11, 2007.

Contact: Mark Haskins, Director, Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

VA.R. Doc. No. R07-246; Filed May 23, 2007, 9:58 a.m.

Notices of Intended Regulatory Action

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Taxation intends to consider amending regulations entitled **23 VAC 10-210, Retail Sales and Use Tax**. The purpose of the proposed action is to amend the existing regulation (23 VAC 10-210-840, Leases and Rentals) to clarify what constitutes "gross proceeds" with respect to leases and rentals and to distinguish leases and rentals from conditional sales.

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

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 11, 2007.

Contact: Mark Haskins, Director, Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

VA.R. Doc. No. R07-247; Filed May 23, 2007, 9:58 a.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 Taxation intends to consider amending regulations entitled **23 VAC 10-210, Retail Sales and Use Tax**. The purpose of the proposed action is to amend the current regulation (23 VAC 10-210-910, Maintenance Contracts and Warranty Plans) to implement 1994 General Assembly action changing the sales and use tax application to parts and labor maintenance contracts.

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

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 11, 2007.

Contact: Mark Haskins, Director, Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

VA.R. Doc. No. R07-248; Filed May 23, 2007, 9:58 a.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 Taxation intends to consider amending regulations entitled **23 VAC 10-210, Retail Sales and Use Tax**. The purpose of the proposed action is to amend the current regulation (23 VAC 10-210-920, Manufacturing and Processing) to clarify numerous

manufacturing and processing issues that are the subject of frequent audit appeals and ruling requests.

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

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 11, 2007.

Contact: Mark Haskins, Director, Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

VA.R. Doc. No. R07-249; Filed May 23, 2007, 9:58 a.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 Taxation intends to consider amending regulations entitled **23 VAC 10-210, Retail Sales and Use Tax**. The purpose of the proposed action is to amend the regulation (23 VAC 10-210-1020, Motor Vehicles Refinishers, Painters, and Car Washers) to conform with 2005 law change. Specifically, tax will amend the regulation to reflect the change to the definitions of "retail sale" and "sale at retail."

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

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 11, 2007.

Contact: Mark Haskins, Director, Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

VA.R. Doc. No. R07-250; Filed May 23, 2007, 9:58 a.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 Taxation intends to consider amending regulations entitled **23 VAC 10-210, Retail Sales and Use Tax**. The purpose of the proposed action is to amend the current regulation (23 VAC 10-210-1080, Occasional Sales) to provide clarification regarding the exemption available for "occasional sales."

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

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 11, 2007.

Notices of Intended Regulatory Action

Contact: Mark Haskins, Director, Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

VA.R. Doc. No. R07-244; Filed May 23, 2007, 9:58 a.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 Taxation intends to consider amending regulations entitled **23 VAC 10-210, Retail Sales and Use Tax**. The purpose of the proposed action is to amend the existing regulation (23 VAC 10-210-2032, Penalties and Interest Audits) to set forth alternative methods for computation of the use tax compliance ratio for determining the application of penalty to audit findings.

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

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 11, 2007.

Contact: Mark Haskins, Director, Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

VA.R. Doc. No. R07-252; Filed May 23, 2007, 9:58 a.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 Taxation intends to consider amending regulations entitled **23 VAC 10-210, Retail Sales and Use Tax**. The purpose of the proposed action is to amend the regulation (23 VAC 10-210-2090, Pollution Control Equipment and Facilities) to reflect a statutory change enacted by the 2005 General Assembly, to set forth the original intent of the retail sales tax exemption as it relates to pollution control equipment.

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

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 11, 2007.

Contact: Mark Haskins, Director, Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

VA.R. Doc. No. R07-251; Filed May 23, 2007, 9:58 a.m.



TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

† Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the Commonwealth Transportation Board has WITHDRAWN the Notice of Intended Regulatory Action for **24 VAC 30-92, Subdivision Street Acceptance Requirements**, which was published in 23:16 VA.R. 2591 April 16, 2007. This action is exempt from the Administrative Process Act pursuant to Chapter 382 (SB 1181) of the 2007 Acts of Assembly. Due to a technical error, all electronically submitted comments for this action were lost, so a new Notice of Intended Regulatory Action (NOIRA) is being filed for this action. Interested parties who responded to the earlier NOIRA are requested to resubmit their comments to <http://www.vdot.virginia.gov/projects/ssar/> by 5 p.m. on June 18, 2007.

Contact: Nick Donohue, Special Assistant, Office of the Secretary of Transportation, Patrick Henry Bldg., 1111 E. Broad St., 3rd Floor, Richmond, VA 23219, or P.O. Box 1475, Richmond, VA 23218, telephone (804) 786-8032, FAX (804) 786-6683 or email nicholas.donohue@drpt.virginia.gov.

VA.R. Doc. No. R07-181; Filed May 18, 2007, 3:35 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Commonwealth Transportation Board intends to consider promulgating regulations entitled **24 VAC 30-92, Secondary Street Acceptance Requirements**. The purpose of the proposed action is to develop and promulgate secondary street requirements to determine the conditions and standards that must be met before secondary streets constructed by developers, localities and entities other than the Virginia Department of Transportation (VDOT) will be accepted into the state secondary system for maintenance by VDOT, pursuant to the mandate set by Chapter 382 (SB 1181) of the 2007 Acts of Assembly. The new regulation will replace and supersede the current Subdivision Street Requirements (24 VAC 30-91). The provisions of the Administrative Process Act (§ 2.2-4000 et seq.) do not apply to initial regulations promulgated pursuant to Chapter 382. Due to a technical error, all electronically submitted comments for this action were lost, so a new Notice of Intended Regulatory Action is being filed for this action. Interested parties who responded to the earlier NOIRA are requested to resubmit their comments to <http://www.vdot.virginia.gov/projects/ssar/> by 5 p.m. on June 18, 2007, to ensure their input is available for consideration in the drafting of the new regulation.

Notices of Intended Regulatory Action

The intent of the regulation is to ensure that streets accepted into the state system for perpetual public maintenance provide commensurate public benefit. Among such other measures as the board may deem necessary or appropriate, the regulation shall include, but not be limited to (i) requirements to ensure the connectivity of road and pedestrian networks with the existing and future transportation network; (ii) provisions to minimize stormwater runoff and impervious surface area, and (iii) provisions for performance bonding of new secondary streets and associated cost recovery fees.

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

Statutory Authority: Chapter 382 of the 2007 Acts of Assembly.

Public comments may be submitted until June 18, 2007.

Contact: Nick Donohue, Special Assistant, Office of the Secretary of Transportation, Patrick Henry Bldg., 1111 E. Broad St., 3rd Floor, Richmond, VA 23219, or P.O. Box 1475, Richmond, VA 23218, telephone (804) 786-8032, FAX (804) 786-6683 or email nicholas.donohue@drpt.virginia.gov.

VA.R. Doc. No. R07-217; Filed May 18, 2007, 3:35 p.m.

REGULATIONS

For information concerning the different types of regulations, see the Information Page.

Symbol Key

Roman type indicates existing text of regulations. Underscored language indicates proposed new text. Language that has been stricken indicates proposed text for deletion. Brackets are used in final regulations to indicate changes from the proposed regulation.

TITLE 2. AGRICULTURE

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Final Regulation

REGISTRAR'S NOTICE: The following amendments are made pursuant to § 3.1-188.23 of the Code of Virginia, which provides authority to the Commissioner of Agriculture and Consumer Services to extend or reduce regulated areas described in the quarantine.

Title of Regulation: 2 VAC 5-330. Rules and Regulations for Enforcement of the Virginia Pest Law - Virginia Gypsy Moth Quarantine (amending 2 VAC 5-330-30).

Statutory Authority: §§ 3.1-188.21 and 3.1-188.24 of the Code of Virginia.

Effective Date: July 12, 2007.

Agency Contact: Frank M. Fulgham, Program Manager, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3515, FAX (804) 371-7793 or email frank.fulgham@vdacs.virginia.gov.

Summary:

The amendment extends the regulated areas under the Virginia Gypsy Moth Quarantine due to the detection of larvae or other life stages of the gypsy moth in areas not currently under regulation. The current regulated area is changed by the addition of the County of Montgomery. All other parts of the Virginia Gypsy Moth Quarantine will remain unchanged.

2 VAC 5-330-30. Regulated areas.

A. Any area of another state or the District of Columbia, whether designated high risk or low risk, in which gypsy moth is known to occur and is so geographically described and regulated by the United States Department of Agriculture under the Gypsy Moth and Brown-tail Moth Quarantine No. 45, (7 USC §§ 1520dd, 150ee, 162) or under a state gypsy moth quarantine or other state legislation.

B. The following areas in Virginia:

1. The entire counties of: Accomack, Albemarle, Alleghany, Amelia, Amherst, Appomattox, Arlington, Augusta, Bath, Bedford, Botetourt, Brunswick, Buckingham, Campbell, Caroline, Charles City, Charlotte, Chesterfield, Clarke, Craig, Culpeper, Cumberland,

Dinwiddie, Essex, Fairfax, Fauquier, Fluvanna, Frederick, Giles, Gloucester, Goochland, Greene, Greensville, Halifax, Hanover, Henrico, Highland, Isle of Wight, James City, King George, King and Queen, King William, Lancaster, Loudoun, Louisa, Lunenburg, Madison, Mathews, Mecklenburg, Middlesex, Montgomery, Nelson, New Kent, Northampton, Northumberland, Nottoway, Orange, Page, Pittsylvania, Powhatan, Prince Edward, Prince George, Prince William, Rappahannock, Richmond, Roanoke, Rockbridge, Rockingham, Shenandoah, Southampton, Spotsylvania, Stafford, Surry, Sussex, Warren, Westmoreland, and York.

2. The entire independent cities of: Alexandria, Bedford, Buena Vista, Charlottesville, Chesapeake, Clifton Forge, Colonial Heights, Covington, Danville, Emporia, Fairfax City, Falls Church, Franklin, Fredericksburg, Hampton, Harrisonburg, Hopewell, Lexington, Lynchburg, Manassas, Manassas Park, Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, Roanoke, Salem, Staunton, Suffolk, Virginia Beach, Waynesboro, Williamsburg, and Winchester.

VA.R. Doc. No. R07-220; Filed May 22, 2007, 11:27 a.m.

STATE BOARD OF AGRICULTURE AND CONSUMER SERVICES

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 13 of the Code of Virginia, which excludes the Commissioner of Agriculture and Consumer Services and the Board of Agriculture and Consumer Services in promulgating regulations pursuant to § 3.1-530.1 of the Code of Virginia. The State Board of Agriculture and Consumer Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 2 VAC 5-490. Regulations Governing Grade "A" Milk (amending 2 VAC 5-490-10 through 2 VAC 5-490-90, 2 VAC 5-490-110, 2 VAC 5-490-120 and 2 VAC 5-490-140; adding 2 VAC 5-490-15, 2 VAC 5-490-25, 2 VAC 5-490-31 through 2 VAC 5-490-39.6, 2 VAC 5-490-73, 2 VAC 5-490-75, 2 VAC 5-490-103, 2 VAC 5-490-105 and 2 VAC 5-490-131 through 2 VAC 5-490-138; and repealing 2 VAC 5-490-130).

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

Effective Date: May 23, 2007.

Agency Contact: John A. Beers, Program Supervisor, Office of Dairy and Foods, Department of Agriculture and Consumer Services, 102 Governor Street, Suite 349, Richmond, VA 23219, telephone (804) 786-1452, FAX (804) 371-7792, email john.beers@vdacs.virginia.gov.

Summary:

The amendments adopt the provisions of the 2005 revision of the Pasteurized Milk Ordinance (PMO). The PMO is a federal model regulation for states to adopt to govern the production, processing, distribution and sale of grade "A" milk and milk products. The requirements in the PMO are established under a cooperative state and federal program operated in cooperation with the National Conference on Interstate Milk Shipment (NCIMS). NCIMS is composed of dairy industry representatives, state milk regulatory personnel, federal representatives from the Food and Drug Administration and academia. The NCIMS holds a conference every two years for the purpose of considering changes to the requirements of the PMO. The PMO establishes minimum standards for individual dairy farms, dairy plant processors and state regulatory programs to comply with Interstate Milk Shipment (IMS) ratings. Milk from grade "A" farm suppliers and dairy processors must achieve acceptable rating scores on IMS ratings in order to be shipped in interstate commerce. IMS ratings provide the mechanism for the orderly marketing of milk and milk products in the United States. Compliance with IMS rating requirements is essential to maintain the ability of Virginia dairy farms and plants to market their products outside of Virginia.

The amendments incorporate condensed milk products and dry milk products formerly adopted by referencing "Grade "A" Condensed and Dry Milk Product and Condensed and Dry Whey," supplement 1 to the Grade "A" Pasteurized Milk Ordinance. This change was caused by the combining of the two documents in the 2005 PMO.

PART I.

DEFINITIONS AND STANDARDS OF IDENTITY.

2 VAC 5-490-10. Definitions and standards of identity.

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

"A hazard that is reasonably likely to occur" means a hazard for which a prudent milk plant, receiving station or transfer station operator would establish controls because experience, illness data, scientific reports, or other information provide a basis to conclude that there is a reasonable possibility that, in the absence of these controls, the hazard will occur in the particular type of milk, milk product, condensed milk,

condensed milk product, dry milk, or dry milk product being processed.

"Abnormal milk" means milk that is visibly changed in color, odor or texture.

~~"Acidified lowfat milk" means "acidified lowfat milk" as defined in 21 CFR 131.136.~~

"Acidified milk" means "acidified milk" as defined in 21 CFR 131.111.

"Acidified milk product" means a product with an acidity of not less than 0.50% expressed as lactic acid, which product is obtained by the addition of food grade acids to pasteurized cream, half-and-half, heavy cream, light cream, lowfat milk, milk, skim milk, or sour cream.

~~"Acidified skim milk" means "acidified skim milk" as defined in 21 CFR 131.144.~~

"Acidified sour cream" means "acidified sour cream" as defined in 21 CFR 131.162.

~~"Acidified sour half and half" means "acidified sour half and half" as defined in 21 CFR 131.187.~~

"Adulterated milk" or "adulterated milk product" means any milk, milk product, condensed milk product, or dry milk product which meets one or more of the conditions specified in Section 402 of the Federal Food, Drug and Cosmetic Act, as amended (21 USC 342).

"Aseptically processed milk" means milk that is hermetically sealed in a container and so thermally processed before or after packaging in conformance with 21 CFR Part 113 and the provisions of this chapter so as to render the product free of microorganisms capable of reproducing in the product under nonrefrigeration conditions of storage and distribution and that is free of viable microorganisms (including spores) capable of causing disease in humans.

"Aseptically processed milk product" means any milk or milk product that is hermetically sealed in a container and so thermally processed before or after packaging in conformance with 21 CFR Part 113 and the provisions of this chapter so as to render the product free of microorganisms capable of reproducing in the product under normal nonrefrigeration conditions of storage and distribution and that is free of viable microorganisms (including spores) capable of causing disease in humans.

"Aseptic processing" means that the product has been subjected to sufficient heat processing and packaged in a hermetically sealed container, to conform to the applicable requirements of 21 CFR Part 113 and the provisions of this chapter and to maintain the commercial sterility of the product under normal nonrefrigerated conditions.

"Audit" means an evaluation of the entire milk plant, receiving station or transfer station facility and HACCP

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System to ensure compliance with the voluntary HACCP program requirements of this chapter.

"Automatic milking installation" means the entire installation of one or more automatic milking units, including the hardware and software utilized in the operation of individual automatic milking units, the animal selection system, the automatic milking machine, the milk cooling system, the system for cleaning and sanitizing the automatic milking unit, the teat cleaning system, and the alarm systems associated with the process of milking cooling, cleaning and sanitation.

"Boiled custard" means "eggnog" as defined in 21 CFR 131.170.

"Bulk milk hauler" means any person who holds a permit issued by the Virginia Department of Agriculture and Consumer Services to collect official milk samples and transport: (i) raw milk from a dairy farm to a milk plant, receiving station or transfer station; or (ii) raw milk products from one milk plant, receiving station or transfer station to another milk plant, receiving station or transfer station.

~~"Butterfat" means the fat of milk.~~

"Buttermilk" means the fluid milk product that remains after the manufacture of butter from milk or cream and contains not less than 8.25% of milk solids not fat.

"Cancel" means to permanently nullify, void, or delete a grade A permit issued by the State Regulatory Authority.

"Centralized deviation log" means a centralized log or file identifying data detailing any deviation of critical limits and the corrective actions taken.

"CFR" means the Code of Federal Regulations.

"Clean" means the surfaces of equipment and facilities have had an effective and thorough removal of product, soils, and contaminants.

"Coffee cream" means "light cream."

"Commercially sterile" means (i) the food has been thermally processed by the application of heat to render the food free of viable microorganisms (including spores) of public health significance and microorganisms capable of reproducing in the food under normal nonrefrigerated conditions of storage and distribution; or (ii) the food has been processed with the application of heat and the water activity of the food has been controlled to render the food free of microorganisms capable of reproducing in the food under normal nonrefrigerated conditions of storage and distribution.

"Concentrated milk" means "concentrated milk" as defined in 21 CFR 131.115.

"Concentrated milk product" means any of the following foods: homogenized concentrated milk, ~~vitamin D concentrated milk,~~ homogenized concentrated skim milk,

~~fortified concentrated skim milk, concentrated lowfat milk, fortified concentrated lowfat milk, concentrated flavored milk, concentrated flavored milk product, or concentrated products made from concentrated milk or ,and concentrated skim milk,~~ which when combined with potable water according to the instructions printed on the food's container, conforms to the definition of the corresponding milk product in this chapter.

"Condensed buttermilk" means the product resulting from the removal of a considerable portion of water from buttermilk.

"Condensed and dry milk product" means grade A condensed milk, grade A condensed and dry whey, grade A dry milk product, or grade A dry milk and whey product.

"Condensed milk" means ~~milk unsterilized and unsweetened, resulting from the removal of a portion of water~~ concentrated milk as defined in 21 CFR 131.115. This definition does not include:

1. Any sterilized milk or milk product, when the sterilized milk or milk product is hermetically sealed in a container and processed, either before or after sealing, so as to prevent microbial spoilage; or
2. Any evaporated milk or sweetened condensed milk, except when the evaporated milk or sweetened condensed milk is combined with other substances in the commercial preparation of any pasteurized, ultra-pasteurized, or aseptically processed milk or milk product.

~~"Condensed whey" means the product resulting from the removal of a portion of the water contained in the whey~~ "condensed whey" as defined in 21 CFR 184.1979(a)(2).

"Consumer" means any person who uses any grade A milk, grade A milk product, or milk product.

"Corrective action" means procedures followed when a deviation occurs.

"Cottage cheese" means "cottage cheese" as defined in 21 CFR 133.128.

"Cottage cheese dry curd" means "dry curd cottage cheese."

"Cream" means "cream" as defined in 21 CFR 131.3(a).

"Critical control point" means a step at which control can be applied and is essential to prevent or eliminate a milk, milk product, condensed milk, condensed milk product, dry milk, or dry milk product safety hazard or reduce it to an acceptable level.

"Critical limit" means a maximum value or a minimum value to which a biological, chemical, or physical parameter must be controlled at a critical control point to prevent, eliminate, or reduce to an acceptable level the occurrence of a milk, milk product, condensed milk, condensed milk product, dry milk, or dry milk product safety hazard.

"Cultured half-and-half" means "sour half-and-half."

~~"Cultured lowfat milk" means "cultured lowfat milk" as defined in 21 CFR 131.138.~~

"Cultured milk" means "cultured milk" as defined in 21 CFR 131.112.

~~"Cultured skim milk" means "cultured skim milk" as defined in 21 CFR 131.146.~~

"Cultured sour cream" means "sour cream."

"Dairy farm" means any place or premises where any cow, goat, ~~or sheep~~, water buffalo, or other mammal (except humans) is kept, from which cow, goat, ~~or sheep~~ any, water buffalo, or other mammal (except humans) milk or any milk product is provided, sold, or offered for sale for human consumption or provided to a milk plant, cheese plant, frozen desserts plant, transfer station, or receiving station.

"Deficiency" means an element that is inadequate or missing from the requirements of a HACCP System or with the voluntary HACCP program requirements of this chapter.

"Deny" means the State Regulatory Authority will not issue a grade A permit to the applicant.

"Deviation" means a failure to meet a critical limit.

"Drug" means: (i) articles recognized in the official United States Pharmacopeia, official Homeopathic Pharmacopeia of the United States, or official National Formulary, or any supplement to any of them; (ii) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; (iii) articles other than food intended to affect the structure or any function of the body of man or other animals; and (iv) articles intended for use as a component of any articles specified in clause (i), (ii), or (iii) of this definition, but does not include devices or their components, parts, or accessories.

"Dry buttermilk" means "dry buttermilk" as defined in 7 CFR 58.251.

"Dry buttermilk product" means "dry buttermilk product" as defined in 7 CFR 58.251.

"Dry cream" means "dry cream" as defined in 21 CFR 131.149.

"Dry curd cottage cheese" means "dry curd cottage cheese" as defined in 21 CFR 133.129.

"Dry milk product" means a product resulting from the drying of any milk or milk product and any product resulting from the combination of a dry milk product with other safe and suitable dry ingredients.

~~"Dry whey" means the product resulting from the drying of whey, while leaving all other constituents in the same relative~~

~~proportions as whey "dry whey" as defined in 21 CFR 184.1979.~~

"Dry whey product" means a product resulting from the drying of whey or whey products and any product resulting from the combination of dry whey products with other wholesome dry ingredients.

"Dry whole milk" means "dry whole milk" as defined in 21 CFR 131.147.

"Eggnog" means "eggnog" as defined in 21 CFR 131.170.

"Eggnog-flavored milk" means a milk product, to which an emulsifier and a maximum of 0.5% stabilizer may have been added consisting of a mixture of (i) at least 3.25% butterfat, (ii) at least 0.5% egg yolk solids, (iii) sweetener, and (iv) flavoring.

"Evaporated milk" means "evaporated milk" as defined in 21 CFR 131.130.

~~"Evaporated skimmed milk" means "evaporated skimmed milk" as defined in 21 CFR 131.132.~~

"Flavored milk" means milk to which a flavor or sweetener has been added.

"Flavored milk product" means any milk product to which a flavor or sweetener has been added.

"Fortified milk" means milk, other than vitamin D milk, the vitamin or mineral content of which milk has been increased.

"Fortified milk product" means any milk product, other than a vitamin D milk product, the vitamin or mineral content of which milk product has been increased.

"Frozen milk concentrate" means the frozen milk product which, when water is added in accordance with instructions on the package containing the frozen milk product, the reconstituted milk product contains the percentage of milkfat and the percentage of milk solids not fat of milk.

"Goat milk" means the normal lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy goats which, when sold in retail packages, contains not less than 2.5% milkfat and not less than 7.5% nonfat milk solids not fat.

~~"Grade A condensed and dry whey" means condensed or dry whey which complies with the provisions of the "Grade A Condensed and Dry Milk Products and Condensed and Dry Whey," Supplement I to the "Grade "A" Pasteurized Milk Ordinance—1978 Recommendations, 2005 Revision" and this chapter.~~

"Grade A condensed milk" means condensed milk which complies with the provisions of the ~~"Grade A Condensed and Dry Milk Products and Condensed and Dry Whey," Supplement I to the "Grade "A" Pasteurized Milk Ordinance—1978 Recommendations, 2005 Revision"~~ and this chapter.

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"Grade A dry milk product" means any dry milk product which complies with the provisions of the "Grade A Condensed and Dry Milk Products and Condensed and Dry Whey," Supplement I to the "Grade "A" Pasteurized Milk Ordinance-1978 Recommendations, 2005 Revision" and this chapter.

"Grade A dry milk and whey product" means any dry milk or whey product which has been produced for use in any grade A pasteurized, ultra-pasteurized, or aseptically processed milk product; and which has been manufactured under the provisions of the "Grade A Condensed and Dry Milk Products and Condensed and Dry Whey," Supplement I to the "Grade "A" Pasteurized Milk Ordinance-1978 Recommendations, 2005 Revision" and this chapter.

"Grade A permit" means the written document issued by the state regulatory authority to the person who operates a: (i) dairy farm to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing; (ii) milk plant; (iii) receiving station; (iv) transfer station; (v) milk condensing plant; (vi) milk drying plant; (vii) whey condensing plant; or (viii) whey drying plant; after the State Regulatory Authority has inspected and approved the person's operation and determined the person's compliance with the provisions of this chapter for the operations specified in this definition.

"HACCP" means hazard analysis critical control point.

"HACCP plan" means the written document, which is based upon the principles of HACCP and delineates the procedures to be followed.

"HACCP system" means the implemented HACCP plan and prerequisite programs, including other applicable requirements of the voluntary HACCP program of this chapter.

"Half-and-half" means "half-and-half" as defined in 21 CFR 131.180.

"Hazard" means a biological, chemical, or physical agent that is reasonably likely to cause illness or injury in the absence of its control.

"Hazard analysis" means the process of collecting and evaluating information on hazards associated with the milk, milk product, condensed milk, condensed milk product, dry milk, or dry milk product under consideration, to decide which are reasonably likely to occur and must be addressed in the HACCP plan.

"Heavy cream" means "heavy cream" as defined in 21 CFR 131.150.

~~"Homogenized" means that milk or a milk product has been treated to ensure breakup of the fat globules in the milk or milk product to such an extent that, after 48 hours of undisturbed storage at 40°F, no visible cream separation occurs on the milk or milk product; and the fat percentage of~~

~~the top 100 milliliters of the milk or milk product in a quart, or of proportionate volumes in containers of other sizes, does not differ by more than 10% from the fat percentage of the remaining milk or milk product as determined after thorough mixing.~~

"Lactose-reduced lowfat milk" means the product resulting from the addition of safe and suitable enzymes to convert enough lactose to glucose or galactose so that less than 30% of the lactose remains in the lowfat milk from which the product is made.

"Lactose-reduced milk" means the product resulting from the addition of safe and suitable enzymes to convert enough lactose to glucose or galactose so that less than 30% of the lactose remains in the milk from which the product is made.

"Lactose-reduced skim milk" means the product resulting from the addition of safe and suitable enzymes to convert enough lactose to glucose or galactose so that less than 30% of the lactose remains in the skim milk from which the product is made.

"Light cream" means "light cream" as defined in 21 CFR 131.155.

"Light whipping cream" means "light whipping cream" as defined in 21 CFR 131.157.

~~"Lowfat cottage cheese" means "lowfat cottage cheese" as defined in 21 CFR 133.131.~~

~~"Lowfat dry milk" means "lowfat dry milk" as defined in 21 CFR 131.123.~~

~~"Lowfat milk" means "lowfat milk" as defined in 21 CFR 131.135.~~

"Lowfat yogurt" means "lowfat yogurt" as defined in 21 CFR 131.203.

"Low-sodium lowfat milk" means the milk product resulting from the treatment of lowfat milk by a process of passing the lowfat milk through an ion exchange resin process, or by any other process which has been recognized by the Food and Drug Administration that effectively reduces the sodium content of the product to less than 10 milligrams in 100 milliliters.

"Low-sodium milk" means the milk product resulting from the treatment of milk by a process of passing the milk through an ion exchange resin process, or by any other process which has been recognized by the Food and Drug Administration that effectively reduces the sodium content of the product to less than 10 milligrams in 100 milliliters.

"Low-sodium skim milk" means the milk product resulting from the treatment of skim milk by a process of passing the skim milk through an ion exchange resin process, or by any other process which has been recognized by the Food and Drug Administration that effectively reduces the sodium

content of the product to less than 10 milligrams in 100 milliliters.

"Market milk" means milk.

"Market milk product" means milk product.

"Milk" means ~~"milk" as defined in 21 CFR 131.110. Except as otherwise provided in this chapter, and except where the term "goat milk" is distinguished from "cow milk" in 2 VAC 5-490-30 L and 2 VAC 5-490-50 A 3 e of this chapter, wherever the term "milk" is used, it shall be deemed to include "sheep milk" and "goat milk."~~ the whole, fresh, clean lacteal secretion obtained by the complete milking of one or more healthy cows, goats, sheep, water buffalo, or other mammal (except humans) intended for human consumption excluding that obtained before and after birthing, for such a period as may be necessary to render the milk practically colostrum free.

"Milk condensing plant" means any plant in which milk or any milk product is condensed or dried, or in which milk or any milk product is received, separated, or otherwise processed for drying and packaging.

"Milk drying plant" means any plant in which milk or any milk product is condensed or dried, or in which milk or any milk product is received, separated, or otherwise processed for drying and packaging.

~~"Milk distributor" means any person who offers for sale or sells to another person any milk or milk product.~~

"Milkfat" means the fat of milk.

~~"Milk hauler" means any person who transports any raw milk or raw milk product to or from a milk plant, a receiving station, or a transfer station.~~

"Milkhouse" means the building or room in which there is conducted on a grade A dairy farm (i) the cooling, handling, and storing of milk; and (ii) the washing, sanitizing, and storing of milk containers and utensils.

"Milk plant" means any place, premises, or establishment where any milk or milk product is collected, handled, processed, stored, pasteurized, ultra-pasteurized, aseptically processed, condensed, dried, bottled, or prepared for distribution.

"Milk producer" means any person who operates a dairy farm and who provides, sells, or offers milk for sale for human consumption or to a milk plant, receiving station, or transfer station.

"Milk product" means: (i) acidified lowfat milk, acidified nonfat milk, acidified milk, acidified milk product, acidified reduced fat milk, acidified skim milk, acidified sour cream, acidified sour half-and-half, aseptically processed milk, aseptically processed milk product, buttermilk, coffee cream, concentrated milk, concentrated milk product, cottage cheese,

cottage cheese dry curd, cream, cultured half-and-half, cultured milk, cultured lowfat milk, cultured nonfat milk, cultured reduced fat milk, cultured skim milk, cultured sour cream, cultured sour half-and-half, dry curd cottage cheese, eggnog, eggnog-flavored milk, flavored milk, flavored milk product, fortified milk, fortified milk product, frozen milk concentrate, goat milk, half-and-half, heavy cream, heavy whipping cream, lactose-reduced lowfat milk, lactose-reduced nonfat milk, lactose-reduced milk, lactose-reduced reduced fat milk, lactose-reduced skim milk, light cream, light whipping cream, lowfat cottage cheese, lowfat milk, lowfat yogurt, low-sodium lowfat milk, low-sodium nonfat milk, low-sodium milk, low-sodium reduced fat milk, low-sodium skim milk, milk, nonfat milk, nonfat yogurt, recombined milk, recombined milk product, reconstituted milk, reconstituted milk product, reduced fat milk, sheep milk, skim milk, sour cream, sour half-and-half, table cream, vitamin D milk, vitamin D milk product, whipped cream, whipped light cream, whipping cream, or yogurt; (ii) any of the following foods: milk, lowfat milk, or skim milk with added safe and suitable microbial organisms; or (iii) any food made with a food specified in (i) of this definition by the addition or subtraction of milkfat or addition of safe and suitable optional ingredients for protein, vitamin, or mineral fortification. Nothing in this definition shall be deemed to include any evaporated milk, evaporated skim milk, condensed milk (sweetened or unsweetened), infant formula, ice cream or other dessert, dietary product, dry milk product (except as defined herein), canned eggnog in a rigid metal container, or butter or cheese, except when butter or cheese is combined with other substances to produce any pasteurized or aseptically processed food as specified in this definition.

"Misbranded milk" or "misbranded milk product" means any milk, milk product, or condensed and dry milk product that: (i) satisfies any of the conditions specified in § 403 of the Federal Food Drug, and Cosmetic Act, as amended (21 USC 343), (ii) does not conform to its definition; or (iii) is not labeled in accordance with 2 VAC 5-490-40.

"Nonconformity" means a failure to meet specified requirements of the HACCP system.

"Nonfat dry milk" means "nonfat dry milk" as defined in 21 CFR 131.125.

"Nonfat dry milk fortified with vitamins A and D" means "nonfat dry milk fortified with vitamins A and D" as defined in 21 CFR 131.127.

~~"Nonfat milk" means "skim milk" as defined in 21 CFR 131.143.~~

"Nonfat yogurt" means "nonfat yogurt" as defined in 21 CFR 131.206.

"Normal storage" means storage at a temperature of 45°F or cooler, but does not include freezing.

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"Official laboratory" means a biological, chemical, or physical laboratory operated by the Commonwealth of Virginia.

"Officially designated laboratory" means: (i) a commercial laboratory authorized by the State Regulatory Authority to examine a milk, milk product, or condensed and dry milk products; producer samples of Grade "A" raw milk for pasteurization, or commingled milk tank truck samples of raw milk or milk products or (ii) a milk-industry laboratory authorized by the State Regulatory Authority to examine milk producer samples of raw milk for pasteurization, and for drug residues and bacterial limits, samples of raw milk commingled in a tank truck.¹

~~"Optional ingredient" means: (i) only an ingredient specified as an optional ingredient in the definition of a milk product; or (ii) in the case in which no optional ingredient is specified, grade A condensed milk, grade A dry milk product, grade A condensed whey, grade A dry whey, concentrated milk, concentrated milk product, flavor, sweetener, stabilizer, emulsifier, acidifier, vitamin, mineral, or other safe and suitable ingredient.~~

"Pasteurization" or "pasteurized" means the process of heating every particle of milk, milk product, or whey in equipment designed and operated in conformance with this chapter, to one of the temperatures given in the following table and held continuously at or above that temperature for at least the corresponding specified time for the equipment indicated:

Temperature	Time	Equipment
145°F*	30 minutes	<u>Vat Pasteurization</u>
161°F*	15 seconds	<u>High Temperature Short Time</u>
191°F	1.0 second	<u>High Temperature Short Time</u>
194°F	0.5 second	<u>High Temperature Short Time</u>
201°F	0.1 second	<u>High Temperature Short Time</u>
204°F	0.05 second	<u>High Temperature Short Time</u>
212°F	0.01 second	<u>High Temperature Short Time</u>

*If: (i) the fat content of the milk or milk product is 10% or more; (ii) the milk or milk product contains added sweeteners; (iii) the product is condensed milk; or (iv) the milk product is a condensed milk product, then pasteurization means increasing the specified temperature by 5°F.

*If the dairy product is cream for butter-making, then "pasteurization" means heating to at least 165°F and holding continuously in a vat pasteurizer for not less than 30 minutes

or pasteurizing by the High Temperature Short Time method at a minimum temperature of not less than 185°F for not less than 15 seconds.

*If the milk product is eggnog, then "pasteurization" means heating to at least the following temperatures for the corresponding time specifications and equipment:

Temperature	Time	Equipment
155°F	30 minutes	<u>Vat Pasteurization</u>
175°F	25 seconds	<u>High Temperature Short Time</u>
180°F	15 seconds	<u>High Temperature Short Time</u>

Nothing in this definition shall be construed as barring any other process which has been recognized by the Food and Drug Administration as being equally efficacious as pasteurization, so long as that other process has been approved by the State Regulatory Authority.

"Person" means any individual, plant operator, partnership, corporation, company, firm, trustee, or institution.

"Prerequisite programs" means procedures, including Good Manufacturing Practices, that address operational conditions that provide the foundation for the HACCP system.

"Public" means any person in the Commonwealth.

"Pull date" means the date affixed to a consumer package or container of grade A pasteurized milk or grade A pasteurized milk product which is the date after the day of manufacturing and processing of the package or container and the last day on which the grade A pasteurized milk or grade A pasteurized milk product as determined by the milk plant may be offered for sale to consumers under normal storage.

"Raw milk" means: (i) any milk or any milk product which has not been pasteurized, ultra-pasteurized, or aseptically processed; or (ii) any milk or any milk product which has been pasteurized, ultra-pasteurized, or aseptically processed and which has been exposed to microbiological contamination before, during, or after packaging.

"Receiving station" means any place, premises, or establishment where raw milk is: (i) received, collected, handled, stored, or cooled; and (ii) prepared for further transporting.

"Recombined milk" means the food which, when combined with potable water according to the instructions printed on the food's container, conforms to the milk fat and nonfat milk solids requirements for milk, as specified in the definition of "milk."

"Recombined milk product" means the food which, when combined with potable water according to the instructions printed on the food's container, conforms to the milk fat and

milk nonfat solids requirements for the milk product designated on the food's container.

"Reconstituted milk" means "recombined milk."

"Reconstituted milk product" means "recombined milk product."

"Reduced lactose whey" means "reduced lactose whey" as defined in 21 CFR 184.1979a.

"Reduced minerals whey" means "reduced minerals whey" as defined in 21 CFR 184.1979b.

"Revoke" means to permanently annul, repeal, rescind, countermand, or abrogate a Grade A permit issued by the State Regulatory Authority.

"Safe and suitable" means "safe and suitable" as defined in 21 CFR 130.3(d).

"Sanitization" means the application of any effective method or substance to a clean surface for the destruction of pathogens, and of other organisms as far as is practicable, and when used does not adversely affect: (i) the equipment which comes in contact with milk, milk product, or condensed and dry milk product; (ii) the milk, milk product, or condensed and dry milk product; or (iii) the health of consumers.

"Septage" means material accumulated in a pretreatment system or privy.

"Sewage" means water-carried and nonwater-carried human excrement; kitchen, laundry, shower, bath, or lavatory wastes separately or together with such underground, surface, storm and other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments or other places.

"Sheep milk" means the normal lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy sheep.

~~"Skim milk" means "skim milk" as defined in 21 CFR 131.143.~~

"Sour cream" means "sour cream" as defined in 21 CFR 131.160.

~~"Sour half and half" means "sour half and half" as defined in 21 CFR 131.185.~~

"State Regulatory Authority" means the Commissioner of Agriculture and Consumer Services or his agent when carrying out any duty specified in § 3.1-530.3 of the Code of Virginia or the State Health Commissioner or his agent when carrying out any duty specified in § 3.1-530.4 of the Code of Virginia.

"Suspend" means to temporarily nullify, void, debar, or cease for a period of time a grade A permit issued by the State Regulatory Authority.

"Sweetened condensed milk" means "sweetened condensed milk" as defined in 21 CFR 131.120.

~~"Sweetened condensed skimmed milk" means "sweetened condensed skimmed milk" as defined in 21 CFR 131.122.~~

"Table cream" means "light cream" as defined in 21 CFR 131.155.

"Transfer station" means any place, premises, or establishment where milk or milk products are transferred directly from one ~~transport milk tank truck~~ to another.

"Trim" means to shorten the hair on the udder and tail of milking cows and goats by clipping, singeing, cutting, or other means.

"Ultra-pasteurized" means, when used to describe any milk or milk product, that the milk or milk product has been thermally processed at a temperature of 280°F (138°C) or hotter for at least two seconds, either before or after packaging, so as to produce a product that has an extended shelf life under normal storage.

"Validation" means the element of verification focused on collecting and evaluating scientific and technical information to determine whether the HACCP plan, when properly implemented, will effectively control the hazards.

"Verification" means those activities, other than monitoring, that determine the validity of the HACCP plan and that the HACCP system is operating according to the plan.

"Vitamin A milk" means milk, the vitamin A content of which has been increased to at least 2000 International Units per quart.

"Vitamin A milk product" means a milk product, the vitamin A content of which has been increased to at least 2000 International Units per quart.

"Vitamin D milk" means milk, the vitamin D content of which has been increased to at least 400 International Units per quart.

"Vitamin D milk product" means a milk product, the vitamin D content of which has been increased to at least 400 International Units per quart.

"Water buffalo milk" means the normal lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy water buffalo.

~~"Whey" means the liquid substance obtained by separating the coagulum from milk, cream, or skim milk during the cheese making procedure and may have the acidity adjusted by the addition of safe and suitable pH adjusting ingredients prior to pasteurization "whey" as defined in 21 CFR 184.1979.~~

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"Whey condensing plant" means a plant in which whey is condensed or in which whey is received and processed for drying and packaging.

"Whey drying plant" means a plant in which whey is dried or in which whey is received and processed for drying and packaging.

"Whey product" means any fluid product removed from whey, or made by the removal of any constituent from whey, or by the addition of any wholesome substance to whey or parts thereof.

"Whipped cream" means "heavy cream" as defined in 21 CFR 131.150 or "light whipping cream" as defined in 21 CFR 131.157, into which air or gas has been incorporated.

"Whipped light cream" means "light whipped cream" as defined in 21 CFR 131.155, into which air or gas has been incorporated.

"Whipping cream" means "light whipping cream" as defined in 21 CFR 131.157.

"Yogurt" means "yogurt" as defined in 21 CFR 131.200.

[†] ~~"IMS LIST — Sanitation Compliance and Enforcement Ratings of Interstate Milk Shippers"; the current edition of this publication contains the list of officially designated laboratories and may be obtained from the U.S. Food and Drug Administration, Milk Safety Branch, HFF-346, 200 "C" St., S.W., Washington, D.C. 20204.~~

PART II. GRADE A MILK AND MILK PRODUCTS.

2 VAC 5-490-15. Grade A milk and milk products.

Grade A milk, milk products, and condensed and dry milk products shall comply with the specific standard of identity established for each milk product, condensed milk product or dry milk product and the requirements of this chapter. Grade A milk and milk products, and condensed and dry milk products include: (i) (a) acidified lowfat milk, acidified nonfat milk, acidified milk, acidified milk product, acidified reduced fat milk, acidified skim milk, acidified sour cream, acidified sour half-and-half, aseptically processed milk, aseptically processed milk product, boiled custard, buttermilk, coffee cream, concentrated milk, concentrated milk product, condensed buttermilk, cottage cheese, cottage cheese dry curd, cream, cultured half-and-half, cultured milk, cultured lowfat milk, cultured nonfat milk, cultured reduced fat milk, cultured skim milk, cultured sour cream, cultured sour half-and-half, dry buttermilk, dry buttermilk product, dry cream, dry curd cottage cheese, dry whole milk, eggnog, eggnog-flavored milk, flavored milk, flavored milk product, fortified milk, fortified milk product, frozen milk concentrate, goat milk, half-and-half, heavy cream, heavy whipping cream, lactose-reduced lowfat milk, lactose-reduced nonfat milk, lactose-reduced milk, lactose-reduced reduced fat milk,

lactose-reduced skim milk, light cream, light whipping cream, lowfat cottage cheese, lowfat dry milk, lowfat milk, lowfat yogurt, low-sodium lowfat milk, low-sodium nonfat milk, low-sodium milk, low-sodium reduced fat milk, low-sodium skim milk, milk, nonfat milk, nonfat dry milk, nonfat dry milk fortified with vitamins A and D, nonfat yogurt, recombined milk, recombined milk product, reconstituted milk, reconstituted milk product, reduced lactose whey, reduced fat milk, reduced minerals whey, sheep milk, skim milk, sour cream, sour half-and-half, table cream, vitamin A milk, vitamin A milk product, vitamin D milk, vitamin D milk product, whipped cream, whipped light cream, whipping cream, or yogurt; (b) any of the following foods: milk, lowfat milk, or skim milk with added safe and suitable microbial organisms; or (c) any food made with a food specified in clause (i) (a) of this definition by the addition or subtraction of milkfat or addition of safe and suitable optional ingredients for protein, vitamin, or mineral fortification; and (ii) grade A condensed milk, grade A condensed whey, grade A dry whey, grade A dry milk product, grade A dry milk and grade A dry whey product. Nothing in this section shall be deemed to include any evaporated milk, evaporated skim milk, condensed milk (sweetened or unsweetened), infant formula, ice cream or other dessert, dietary product, dry milk product (except as defined herein), canned eggnog in a rigid metal container, or butter or cheese, except when butter or cheese is combined with other substances to produce any pasteurized or aseptically processed food as specified in this definition.

PART III. ADULTERATED OR MISBRANDED MILK OR MILK PRODUCTS.

2 VAC 5-490-20. Adulterated or misbranded milk or milk products.

A. No person may produce, provide, sell, offer, expose for sale, or possess; any adulterated or misbranded; ~~condensed and milk product;~~ condensed and milk product; dry milk product; milk; or milk product.

B. ~~Any~~ Each person who produces, provides, sells, offers, exposes for sale, or possesses; any adulterated or misbranded; condensed ~~and milk product;~~ dry milk product; milk; or milk product shall be subject to having the person's adulterated or misbranded; condensed ~~and milk product,~~ dry milk product, milk, or milk product impounded by the State Regulatory Authority.

C. No person may provide, sell, offer, or expose for sale; any; condensed ~~and milk product;~~ dry milk product; milk; or milk product to any milk plant for use in any grade A milk or grade A milk product if the person does not possess a permit from the State Regulatory Authority, unless the Commissioner of Agriculture and Consumer Services makes a finding in writing (which the Commissioner of Agriculture and Consumer Services may renew for terms not to exceed 90 days per term, without limitation) that: (i) the supply of grade A raw milk for pasteurization, ultra-pasteurization, or aseptic

processing is not adequate to meet the nutritional needs of any person who secures milk in the Commonwealth; or (ii) the supply of pasteurized, ultra-pasteurized, or aseptically processed milk or milk product at retail is not available for purchase by any person who secures milk in the Commonwealth.

D. No person may produce, provide, sell, offer, expose for sale, or possess any: ~~condensed and milk product;~~ dry milk product; milk; or milk product; under the provision of subsection C of this section unless the condensed milk product, dry milk product, milk or milk product is labeled "ungraded."

2 VAC 5-490-25. Impounding of adulterated or misbranded condensed milk, condensed milk product, dry milk, dry milk product, milk, or milk product.

The State Regulatory Authority shall comply with the following administrative procedures when impounding any adulterated or misbranded condensed milk, condensed milk product, dry milk, dry milk product, milk, or milk product:

1. The State Regulatory Authority shall serve the person with a written impoundment notice. The written impoundment notice shall specify the violations and inform the person of the opportunity to appear before the State Regulatory Authority in person, by counsel, or by other qualified representative at a fact-finding conference for the informal presentation of factual data, arguments, and proof to contest the written notice of violation.

2. The written impoundment notice shall include:

a. The name of the adulterated or misbranded condensed milk, condensed milk product, dry milk, dry milk product, milk, or milk product;

b. The size and number of separate units in the lot being impounded;

c. The product code and sell by date for the lot of product, if each exists; and

d. A statement directing the person to:

(1) Immediately remove from sale the entire lot of adulterated or misbranded condensed milk, condensed milk product, dry milk, dry milk product, milk, or milk product;

(2) Isolate and identify as not for sale the entire lot of adulterated or misbranded condensed milk, condensed milk product, dry milk, dry milk product, milk, or milk product in the person's storage area in a location separate from any storage accessible from a retail sales area; and

(3) Comply with one of the following options:

(a) If the condensed milk, condensed milk product, dry milk, dry milk product, milk, or milk product is adulterated: (i) the

entire lot shall be destroyed or (ii) the entire lot shall be held and returned to the manufacturer, distributor, or producer; or

(b) If the condensed milk, condensed milk product, dry milk, dry milk product, milk, or milk product is misbranded: (i) the entire lot shall be destroyed; (ii) the entire lot shall be held and returned to the manufacturer, distributor, or producer; or (iii) the entire lot shall be held and new labels affixed to each container in the lot which comply with all provisions for labeling of condensed milk, condensed milk product, dry milk, dry milk product, milk, or milk product contained in this chapter prior to being offered for sale.

**PART IV.
PERMITS.**

2 VAC 5-490-30. Permits.

A. No person may produce, provide, manufacture, sell, offer for sale, or store in the Commonwealth, or bring, send, or receive into the Commonwealth, any milk, milk product, market milk, market milk product or condensed and dry milk product for use in the commercial preparation of grade A pasteurized, ultra-pasteurized, or aseptically processed milk or milk product unless the person possesses a grade A permit from the State Regulatory Authority. ~~Nothing in this chapter shall apply to any establishment where milk or milk product is served or sold at retail, so long as the milk or milk product is not processed at the establishment.~~ Nothing in this chapter shall be deemed to require a person who is a broker, agent, or distributor's representative to have a grade A permit if the person buys condensed and dry milk product for, or sells condensed and dry milk product to, a milk plant that has a valid grade A permit from any state.

B. Only a person who complies with the requirements of this chapter shall be entitled to receive and retain a grade A permit. Permits shall not be transferable with respect to persons or locations. Each person whose name appears on a grade A permit shall be at least 18 years of age. Each person requesting a grade A permit shall provide the State Regulatory Authority with the following information:

1. The name of the person or persons to whom the permit is to be issued;

2. If the person or persons are requesting a permit for a partnership, corporation, firm, trustee, or institution, the person or persons shall provide the articles of incorporation, partnership agreement, trust document, or other document identifying the names, titles, and mailing addresses of all responsible officials for the partnership, corporation, firm, trustee, or institution;

3. The address of the facility being permitted, including the street and number, city, state, and zip code. Addresses containing post office box designations shall not be permitted;

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4. The trade name the permit holder will use if the permit holder will not be trading in the name to which the grade A permit is issued;

5. The name, mailing address, and telephone number for one responsible person designated by the grade A permit holder to receive all sample reports and official correspondence from the State Regulatory Authority;

6. If the permit application is for a grade A dairy farm, the name of the milk marketing organization or milk marketing cooperative to which the permit holder belongs or the buyer of its milk;

7. The names and phone numbers of responsible persons to contact at the grade A dairy farm or plant;

8. If the permit application is for a grade A dairy farm, the name, address, and telephone number of the owner of the dairy farm;

9. The printed name, signature, title, and date signed for each person whose name appears on the permit;

10. The printed name, signature, title, and date signed by the most responsible official for the partnership, corporation, firm, trustee, or institution if the permit is to be issued in the name of a partnership, corporation, company, firm, trustee, or institution; and

11. If the permit application is for a grade A plant permit, the plant code embossed or printed on packages of milk, milk product, condensed milk, condensed milk product, dry milk, or dry milk product packaged by the plant to identify the plant in lieu of printing the plant's name and address on the packages of milk, milk product, condensed milk, condensed milk product, dry milk, or dry milk product, if one has been assigned.

C. Each person who holds a grade A permit and who requests a change in the name or names on an existing grade A permit shall provide the State Regulatory Authority with the following information:

1. A written statement requesting that the existing grade A permit be canceled that has been signed by each person whose name appears on the existing grade A permit; except that when a person whose name on an existing grade A permit is deceased, the request for cancellation shall be made in writing by the executor or administrator of the permit holder's estate. A copy of the qualification as executor or administrator shall accompany the request for cancellation along with a statement identifying the name of the deceased and the date of death. Each signature shall be made next to or above the person's printed name and shall be dated with the date on which the written statement was signed by the grade A permit holder;

2. If the existing grade A permit is held in the name of a partnership, corporation, company, firm, trustee, or

institution, the written statement requesting the existing grade A permit be canceled shall be signed by a person who is authorized to sign on behalf of the partnership, corporation, company, firm, trustee, or institution. Each signature shall be made next to or above the person's printed name and official title for the partnership, corporation, company, firm, trustee, or institution and shall be dated with the date on which the written statement was signed by the person who is authorized to sign on behalf of the partnership, corporation, company, firm, trustee, or institution; and

3. All of the information required by 2 VAC 5-490-50 B for the State Regulatory Agency to issue a grade A permit.

D. No person may hold a grade A dairy farm permit if any part of his facilities, equipment, storage, or surroundings (except toilet rooms) requiring inspection is accessed through any room used for domestic purposes or part of any room used for domestic purposes. Toilet rooms used for domestic purposes may be approved as complying with the requirements of this chapter only if: (i) the toilet room is located within 300 feet of the milkroom and (ii) all labor utilized in the milking parlor, milking barn, and milkroom is provided by members of the permit holder's immediate family.

E. No person who holds a grade A permit shall use or allow anyone else to use his facilities and equipment for any purpose other than that for which the grade A permit was issued.

F. Each person who holds a grade A dairy farm permit shall display his permit in the milkroom on his dairy farm.

G. Each person who holds a grade A dairy plant permit shall display his grade A plant permit in his facilities where it is accessible for inspection.

H. No grade A permit holder may transfer any grade A permit to another person or another location.

I. No permit holder who has had his grade A dairy farm permit or dairy plant permit revoked by the State Regulatory Authority shall be eligible to hold a grade A dairy farm or dairy plant permit at any time after the permit holder's permit is revoked.

J. No grade A dairy farm may hold more than one grade A dairy farm permit. Multiple milking facilities or milk tanks on a grade A dairy farm shall not be issued separate grade A dairy farm permits for any reason.

2 VAC 5-490-31. Authority to cancel, suspend, revoke or deny a permit.

B. A. The State Regulatory Authority may cancel, suspend, or revoke the grade A permit of any person, or may deny to any person a grade A permit if:

1. The grade A permit holder fails to engage daily in the business for which the grade A permit is issued;
2. The grade A permit holder does not daily produce, provide, manufacture, sell, offer for sale, or store in the Commonwealth, or bring, send, or receive into the Commonwealth milk, milk product, ~~or condensed and milk product or~~ milk product or dry milk product;
3. The grade A permit holder fails to provide at no cost to the State Regulatory Authority samples of milk, milk product, ~~or condensed milk product and~~ milk product and dry milk product in the person's possession for testing by the State Regulatory Authority;
4. The grade A permit holder fails to provide on a daily basis milk, milk product, ~~or condensed and milk product or~~ milk product or dry milk product in the person's possession for sampling and testing by the State Regulatory Authority;
5. The grade A permit holder fails to comply with any requirement of this chapter, or of §§ 3.1-420 through 3.1-424, §§ 3.1-530.1 through ~~3.1-530.9~~ 3.1-530.11 or §§ ~~3.1-531~~ 3.1-531.1 through ~~3.1-545~~ 3.1-545.1 of the Code of Virginia;
6. A public health hazard exists that affects the grade A permit holder's milk, milk product, ~~or condensed and milk product or~~ milk product or dry milk product;
7. The grade A permit holder or any agent of the grade A permit holder has obstructed or interfered with the State Regulatory Authority in the performance of ~~its~~ its duties;
8. The person supplies false or misleading information to the State Regulatory Authority: (i) in the person's application for a grade A permit; (ii) concerning the identity of the person who will control the facility that is the subject of the grade A permit; (iii) concerning the amount of milk, milk product, ~~or condensed and milk product or~~ milk product or dry milk product which the person produces, provides, manufactures, sells, offers for sale, or stores; in the Commonwealth, or brings, sends, or receives into the Commonwealth and the distribution of the person's milk, milk product, ~~or condensed and milk product or~~ milk product or dry milk product; (iv) concerning any investigation conducted by the State Regulatory Authority; or (v) concerning the location of any part of the person's operation that is subject to a grade A permit;
9. The grade A permit holder engages in fraudulent activity regarding: (i) the amount of milk, milk product, ~~or condensed and milk product or~~ milk product or dry milk product the person offers to sell or sells; or (ii) the collection of samples of the person's milk, milk product, ~~or condensed and milk product or~~ milk product or dry milk product used to determine compliance with any provision of this chapter or as a basis for payment for milk, milk product, ~~or condensed and milk product or~~ milk product or dry milk product;
10. Three of the most recent five bacteria counts, somatic cell counts, or cooling temperature determinations conducted on

the grade A permit holder's raw milk exceed the standards specified in this chapter;

11. Three of the most recent five bacteria counts, coliform determinations, or cooling temperature determinations conducted on the grade A permit holder's milk, milk product, ~~or condensed and milk product or~~ milk product or dry milk product exceed the standards specified in this chapter;

12. Two of the most recent cryoscope tests on the grade A permit holder's milk violate the standard specified in this chapter and the most recent violative sample occurred within two years of the next most recent violative sample;

13. The most recent aflatoxin or drug residue test on the grade A permit holder's milk, milk product, condensed milk product or dry milk product violates the standards specified in this chapter. ~~In the event the State Regulatory Authority suspends the grade A permit the suspension shall be for a minimum of: (i) two days (except as specified in subdivision 13 b of this subsection); (ii) four days (except as specified in subdivision 13b of this subsection) on the second occurrence of violative drug residues in the grade A permit holder's milk within a 12-month period after the grade A permit holder's first positive test for violative drug residues; or (iii) four days (except as specified in subdivision 13 b of this subsection) on the third occurrence of violative drug residues in the grade A permit holder's milk within a 12-month period after the grade A permit holder's first positive test for violative drug residues and the grade A permit holder's permit shall be subject to revocation; and the grade A permit holder whose milk test positive for violative drug residues shall provide and complete for each separate violation, the Milk and Dairy Beef Residue Prevention Protocol², and have a signed quality assurance certificate, displayed in the grade A permit holder's milkhouse, within 30 days after the date of suspension of the grade A permit holder's permit;~~

~~a. The number of days represented by the grade A permit holder's milk shipment which tests positive for violative drug residues shall be determined by the State Regulatory Authority using: (i) the number of milkings included in the grade A permit holder's milk shipment which tests positive for violative drug residues; and (ii) the number of times each day the grade A permit holder milks; and~~

~~b. The number of days determined by the State Regulatory Authority shall satisfy the same portion of the grade A permit holder's required suspension period as the grade A permit holder's milk shipment represents;~~

14. The most recent phosphatase test on the grade A permit holder's milk, milk product, ~~or condensed and milk product or~~ milk product or dry milk product violates the standard specified in this chapter;

15. The most recent chemical residue test or pesticide residue test on the grade A permit holder's milk, milk product, ~~or~~

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condensed ~~and milk product~~ or dry milk product exceeds the actionable level, tolerance level, or safe level for any chemical residue or pesticide residue specified in: 40 CFR ~~Parts Part~~ 180, 185, or 186; and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, ~~564~~, 570, 573, 589. In the event that no actionable level, tolerance level, or safe level for a chemical residue or pesticides residue has been established in: 40 CFR ~~Parts Part~~ 180, 185, or 186; and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, ~~564~~, 570, 573, 589, the tolerance level shall be deemed to be zero;

16. The grade A permit holder fails to correct any: (i) violation of this chapter documented as a result of an inspection or (ii) deficiency or nonconformity documented as a result of a HACCP audit that the State Regulatory Authority has cited in a written notice of intent to suspend the person's grade A permit, as a violation of this chapter;

17. The grade A permit holder's raw milk for pasteurization is warmer than 50°F two hours after the completion of the first milking or the grade A permit holder's raw milk for pasteurization is warmer than 50°F during or after any subsequent milking;

18. The grade A permit holder's equipment is covered or partially covered by an accumulation of milk solids, milk fat, or other residue so that the milk, milk product, ~~or~~ condensed ~~and milk product~~ or dry milk product is adulterated;

19. The grade A permit holder sells or offers for sale milk, milk products, ~~or~~ condensed ~~and milk product~~ or dry milk product which violate any requirement of this chapter;

20. The grade A permit holder fails to complete the "Milk and Dairy Beef Residue Prevention Protocol,"² and have a signed quality assurance certificate, for display in the grade A permit holder's milkhouse, within 30 days after the date of the suspension of the grade A permit holder's permit because of the grade A permit holder's violation of subsection B 13 or holder's permit is suspended three times within a 12-month period;

21. The authority in another state responsible for issuing grade A permits has denied, suspended, or revoked the permit of the person in that state for any act or omission that would violate this chapter or the statutes under which this chapter was adopted, had the act or omission occurred in the Commonwealth; or

22. The Virginia Department of Agriculture and Consumer Services has previously revoked the person's grade A permit.

~~C.~~ B. The State Regulatory Authority may summarily suspend a grade A permit for violation of any of the following subdivisions of subsection ~~B~~ A of this section: 6, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, or 19, ~~or~~ 20.

~~D.~~ No grade A permit holder may transfer any grade A permit to another person or another location.

~~E.~~ Each grade A permit holder operating a milk plant within the Commonwealth shall provide to the State Regulatory Authority laboratory determinations of the quantity of vitamin A and vitamin D present in the milk plant's milk, milk product, fortified milk, and fortified milk product to which vitamin A or vitamin D has been added. Each grade A permit holder who operates a milk plant shall provide these laboratory determinations at least annually from a laboratory utilizing "Determination of Vitamin D2 and Vitamin D3 in Foods, Feeds, and Pharmaceuticals, using High Performance Liquid Chromatography: Comparison of Three Different Columns"³ or "HPLC Assays for Vitamin A and E (HPLC Method 1)"⁴ as appropriate for vitamin A and vitamin D determination, or any other method approved for such testing by the Food and Drug Administration. Each grade A permit holder who operates a milk plant shall pay for the cost of the laboratory determinations.

C. The State Regulatory Authority may suspend from sale any condensed milk, condensed milk product, dry milk, dry milk product, milk or milk product in violation of the requirements of this chapter processed by any grade A dairy plant permit holder in lieu of suspending the grade A dairy plant permit holder's permit.

D. If the State Regulatory Authority suspends a permit holder's permit more than three times within any 12-month period, the permit holder's permit shall not be reinstated for a period of three days on the fourth suspension within any 12-month period and six days on the fifth suspension within any 12-month period with three days being added to the required suspension period for each additional suspension thereafter within any 12-month period.

E. If the State Regulatory Authority issues two written notices of intent to suspend a person's permit for failure to correct the same deficiency within any 12-month period, the State Regulatory Authority may issue and enforce a written notice of intent to summarily suspend the person's permit at any time within six months after the date the written notice of intent to summarily suspend is issued, to summarily suspend the person's permit if the same violation exist on any inspection during the six-month period specified in the written notice of intent to summarily suspend.

2 VAC 5-490-32. Authority to impound milk and milk products.

The State Regulatory Authority may impound any condensed milk, condensed milk product, dry milk, dry milk product, milk or milk product if the condensed milk, condensed milk product, dry milk, dry milk product, milk or milk product is in violation of any requirement of this chapter.

2 VAC 5-490-33. Written warning and suspension notices for violations of quality standards; required procedures.

A. Whenever two of the last four consecutive cooling temperature checks, bacteria counts or somatic cell counts taken on separate days for a grade A dairy farm permit holder exceed the standard established for grade A raw milk, the State Regulatory Agency shall send a written warning notice to the permit holder or to the person identified by the permit holder to receive sample reports and official correspondence. The warning notice shall inform the permit holder or his representative: (i) concerning which quality standards the permit holder has violated; (ii) that another sample will be collected within 21 days to determine compliance with the requirements; and (iii) that his grade A dairy farm permit will be suspended whenever three out of the last five consecutive cooling temperature checks, bacteria counts or somatic cell counts exceed the standards. The warning notice shall be in effect so long as two out of the last four consecutive samples exceed the standard for grade A raw milk. An additional sample shall be collected to determine compliance with the standards for grade A raw milk within 21 days after sending the warning notice, but not before the lapse of three days.

B. Whenever the last cryoscope test result for a grade A dairy farm permit holder exceeds the standard established for grade A raw milk for the first time in the past two years, the State Regulatory Agency shall send a written warning notice to the permit holder or to the person identified by the permit holder to receive sample reports and official correspondence. The warning notice shall inform the permit holder or his representative: (i) concerning which quality standards the permit holder has violated; (ii) that another sample will be collected in the near future to determine compliance with the requirements; and (iii) that his grade A dairy farm permit will be suspended whenever two cryoscope test results on separate samples exceed the standard within the past two years. The warning notice shall be in effect so long as any sample exceeds the cryoscope standard for grade A raw milk within the past two years. Additional samples shall be collected in the future to determine compliance with the standards for grade A raw milk, but not before the lapse of three days.

C. Whenever two of the last four consecutive cooling temperature checks or bacteria counts taken on separate days from a grade A permit holder's dairy plant exceed the standard established for commingled grade A raw milk for pasteurization, ultra-pasteurization or aseptically processed milk or milk product, the State Regulatory Agency shall send a written warning notice to the permit holder or to the person identified by the permit holder to receive sample reports and official correspondence. The warning notice shall inform the permit holder or his representative: (i) concerning which quality standards the permit holder has violated; (ii) that another sample will be collected within 21 days to determine compliance with the requirements of this chapter; and (iii) that the permit holder's grade A permit will be suspended

whenever three out of the last five consecutive cooling temperature checks or bacteria counts exceed the quality standards. The warning notice shall be in effect so long as two out of the last four consecutive samples exceed the standard for grade A commingled raw milk for pasteurization, ultra-pasteurization or aseptically processed milk or milk product. An additional sample shall be collected to determine compliance with the standards for grade A raw milk within 21 days after sending the warning notice, but not before the lapse of three days.

D. Whenever two of the last four consecutive cooling temperature checks, bacteria counts or coliform counts taken on separate days from a grade A permit holder's dairy plant exceed the standard established for grade A pasteurized or ultra-pasteurized milk or milk products in retail containers, the State Regulatory Agency shall send a written warning notice to the permit holder or to the person identified by the permit holder to receive sample reports and official correspondence. The warning notice shall inform the permit holder or his representative: (i) concerning which quality standards the permit holder has violated for each grade A pasteurized or ultra-pasteurized milk or milk product in retail containers; (ii) that another sample will be collected within 21 days to determine compliance with the requirements of this chapter; and (iii) that the permit holder's grade A pasteurized or ultra-pasteurized milk or milk product in retail containers will be suspended from sale whenever three out of the last five consecutive cooling temperature checks, bacteria counts or coliform counts exceed the quality standards. The warning notice shall be in effect so long as two out of the last four consecutive samples exceed the standard for grade A pasteurized or ultra-pasteurized milk or milk products in retail containers. An additional sample shall be collected to determine compliance with the standards for grade A raw milk within 21 days after sending the warning notice, but not before the lapse of three days.

E. Whenever two of the last four consecutive cooling temperature checks or bacteria counts taken on separate days from a grade A permit holder's dairy plant exceed the standard established for grade A bulk shipped heat-treated milk products, the State Regulatory Agency shall send a written warning notice to the permit holder or to the person identified by the permit holder to receive sample reports and official correspondence. The warning notice shall inform the permit holder or his representative: (i) concerning which quality standards the permit holder has violated for each grade A bulk shipped heat-treated milk product; (ii) that another sample will be collected within 21 days to determine compliance with the requirements of this chapter; and (iii) that the permit holder's grade A permit will be suspended whenever three out of the last five consecutive cooling temperature checks or bacteria counts exceed the quality standards. The warning notice shall be in effect so long as two out of the last four consecutive samples exceed the

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standard for grade A bulk shipped heat-treated milk products. An additional sample shall be collected to determine compliance with the standards for grade A raw milk within 21 days after sending the warning notice, but not before the lapse of three days.

F. Whenever three out of the last five consecutive cooling temperature checks, bacteria counts or somatic cell counts taken on separate days for a grade A dairy farm permit holder exceed the standard established for grade A raw milk, the State Regulatory Agency shall send a written suspension notice to the permit holder or to the person identified by the permit holder to receive sample reports and official correspondence. The suspension notice shall inform the grade A dairy farm permit holder: (i) why his grade A permit is being suspended; (ii) that he will be contacted by the State Regulatory Authority to establish a date on which the suspension of his permit will be effective; and (iii) that his grade A permit will not be reinstated until laboratory analysis determine that his raw milk is in compliance with the quality standards.

G. Whenever two cryoscope test results taken on separate days for a grade A dairy farm permit holder exceed the standard established for grade A raw milk within the past two years, the State Regulatory Agency shall send a written suspension notice to the permit holder or to the person identified by the permit holder to receive sample reports and official correspondence. The suspension notice shall inform the grade A dairy farm permit holder: (i) why his grade A permit is being suspended; (ii) that he will be contacted by the State Regulatory Authority to establish a date on which the suspension of his permit will be effective; and (iii) that his grade A permit will not be reinstated until laboratory analysis determine that his raw milk is in compliance with the quality standards.

H. Whenever three out of the last five consecutive cooling temperature checks or bacteria counts taken on separate days from a grade A permit holder's dairy plant exceed the standard established for commingled grade A raw milk for pasteurization, ultra-pasteurization or aseptically processed milk or milk products, the State Regulatory Authority shall send a written suspension notice to the permit holder or to the person identified by the permit holder to receive sample reports and official correspondence. The suspension notice shall inform the grade A dairy plant permit holder that: (i) the permit holder's grade A dairy plant permit is suspended and (ii) should the grade A dairy plant permit holder desire to have his grade A dairy plant permit reinstated, he must make his request in writing to the State Regulatory Authority detailing the actions he has taken and will take to avoid violating the standard he exceeded for commingled grade A raw milk in the future, establishing a date and time by which these actions will be fully implemented and stating the reasons why his request should be granted.

I. Whenever three out of the last five consecutive cooling temperature checks, bacteria counts or coliform counts taken on separate days from a grade A permit holder's dairy plant exceed the standard established for grade A pasteurized or ultra-pasteurized milk or milk products in retail containers, the State Regulatory Authority shall send a written suspension notice to the permit holder or to the person identified by the permit holder to receive sample reports and official correspondence. The suspension notice shall inform the grade A dairy plant permit holder: (i) that the pasteurized or ultra-pasteurized milk and dairy products in violation of the quality standard are suspended from sale; (ii) why the pasteurized or ultra-pasteurized milk and dairy products are suspended from sale; (iii) that the permit holder must contact the State Regulatory Authority when corrections have been made to bring their pasteurized or ultra-pasteurized milk and milk products into compliance before any action will be taken to reinstate sales of his suspended pasteurized or ultra-pasteurized milk and milk products; and (iv) that his pasteurized or ultra-pasteurized milk and milk products will not be reinstated for sale until laboratory analysis determine that the pasteurized or ultra-pasteurized milk and milk products are in compliance with the quality standards.

J. Whenever three out of the last five consecutive cooling temperature checks or bacteria counts taken on separate days from a grade A permit holder's dairy plant exceed the standard established for grade A bulk shipped heat-treated milk products, the State Regulatory Authority shall send a written suspension notice to the permit holder or to the person identified by the permit holder to receive sample reports and official correspondence. The suspension notice shall inform the grade A dairy plant permit holder that: (i) the permit holder's grade A dairy plant permit is suspended and (ii) should the grade A dairy plant permit holder desire to have his grade A dairy plant permit reinstated, he must make his request in writing to the State Regulatory Authority detailing the actions he has taken and will take to avoid violating the standard he exceeded for grade A bulk shipped heat-treated milk products in the future, establishing a date and time by which these actions will be fully implemented and stating the reasons why his request should be granted.

F- 2 VAC 5-490-34. Inspection of dairy farms, milk plants, condensing plants, and drying plants; HACCP audits of dairy plants.

~~1. A. No person who operates a dairy farm, milk plant, receiving station, transfer station, condensing plant, or drying plant within the Commonwealth may hold a grade A permit until ~~the~~ his dairy farm, milk plant, receiving station, transfer station, condensing plant, or drying plant has been inspected and approved by the State Regulatory Authority;~~

~~2. The State Regulatory Authority shall inspect at least once every three months each dairy farm that holds a grade A permit;~~

~~3. The State Regulatory Authority shall inspect at least every month each milk plant, transfer station, and receiving station that holds a grade A permit;~~

~~4. The State Regulatory Authority shall inspect at least once every three months each condensing plant or drying plant that holds a grade A permit;~~

B. After permitting, each person's dairy farm, milk plant, receiving station, transfer station, condensing plant, or drying plant within the Commonwealth shall be inspected as often as the State Regulatory Authority deems is necessary.

C. After permitting, each person's milk plant, receiving station, transfer station, condensing plant, or drying plant within the Commonwealth participating in the voluntary HACCP program shall be HACCP audited as often as the State Regulatory Authority deems is necessary.

G. 2 VAC 5-490-35. The examination of milk and milk products.

~~1. A. The State Regulatory Authority shall collect during any consecutive six months at least four samples of raw milk, collected in at least four separate months, except when three months show a month containing two sampling dates separated by at least 20 days for pasteurization, ultra-pasteurization, or aseptic processing from each dairy farm that holds a grade A permit.~~

~~2. B. After receipt of the milk by the milk plant and prior to pasteurization, ultra-pasteurization or aseptic processing the State Regulatory Authority shall collect during any consecutive six months at least four samples of raw milk, collected in at least four separate months, except when three months show a month containing two sampling dates separated by at least 20 days for pasteurization, ultra-pasteurization, or aseptic processing from each milk plant located within the Commonwealth that holds a grade A permit.~~

~~3. C. The State Regulatory Authority shall collect during any consecutive six-month period at least four samples of each heat-treated, pasteurized, ultra-pasteurized, or aseptically processed milk product, each sample to be collected in at least four separate months during any consecutive six-month period, except when three months show a month containing two sampling dates separated by at least 20 days, from each milk plant located in the Commonwealth and holding a grade A permit.~~

~~4. D. The State Regulatory Authority shall, except when the production is not on a yearly basis, during each month collect from each milk condensing plant, milk drying plant, whey condensing plant or whey drying plant holding a grade A permit at least one sample of raw milk for pasteurization, after receipt of the milk by the plant and before pasteurization, and at least one sample of each grade A condensed milk product, grade A dry milk product, grade A~~

condensed whey, and grade A dry whey manufactured. If the production of grade A dry milk products or grade A dry whey is not on a yearly basis, the State Regulatory Authority shall collect at least five samples within a continuous production period.

~~5. E. The State Regulatory Authority shall collect at least once every three months samples of milk and milk product products as it deems necessary from retail establishments selling milk or milk product products to determine compliance with 2 VAC 5-490-20, 2 VAC 5-490-40, 2 VAC 5-490-50 and 2 VAC 5-490-80 of this chapter. The Each person who operates the retail establishment shall furnish the State Regulatory Authority, upon the request of the State Regulatory Authority, with the names of all distributors from whom the person has obtained milk or milk product products.~~

~~6. F. The State Regulatory Authority shall provide the remaining portion of the original raw milk sample from each grade A dairy farm which has been screened positive for animal drug residues by a milk plant, receiving station, or transfer station to the grade A dairy farms' milk marketing organization upon request.~~

G. Each grade A permit holder operating a milk plant within the Commonwealth shall provide to the State Regulatory Authority laboratory determinations of the quantity of vitamin A and vitamin D present in each of the milk plant's milk and milk products to which vitamin A or vitamin D has been added. Each grade A permit holder who operates a milk plant shall provide these laboratory determinations at least annually from a laboratory certified to determine the amount of vitamin A and vitamin D in milk and milk products under the requirements established in "Evaluation of Milk Laboratories," 2005 revision, available from the Food and Drug Administration, Center for Food Safety and Applied Nutrition, Office of Field Programs, Division of HACCP, Laboratory Quality Assurance Branch, HFH-450, 6502 South Archer Road, Summit-Argo, Illinois 60501, USA. Each grade A permit holder who operates a milk plant shall pay for the cost of the laboratory determinations.

H. 2 VAC 5-490-36. Drug residue monitoring and farm surveillance and follow up.

~~1. Any A. Each~~ grade A permit holder operating a milk plant, receiving station, or transfer station shall:

~~a. 1. Prior to processing any raw milk from bulk tanks on farms, test for residues of beta lactam drugs all raw milk that the milk plant, receiving station, or transfer station receives for pasteurization, ultra-pasteurization, or aseptic processing;~~

~~b. 2. Test each shipment of bulk tank raw milk received for pasteurization, ultra-pasteurization, or aseptic processing by screening tests methods which have been evaluated by Virginia Polytechnic Institute and State University in the study "Evaluation of Animal Drug Residue Detection Methods"⁵ and which have been demonstrated by "Evaluation~~

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~~of Animal Drug Residue Detection Methods" to provide positive results for residues of beta lactam drugs, unless Association of Official Analytical Chemists- (AOAC)- reviewed and Food and Drug Administration- (FDA)- accepted methods are available. In lieu of any test specified in this subdivision 1-b of this subsection a grade A permit holder may use AOAC first-action and AOAC final-action tests methods. Nothing in this subdivision 1-b of this subsection shall be deemed to include require the testing of individual raw milk samples prior to processing collected from each grade A dairy farm included in any shipment of bulk tank raw milk for pasteurization, ultra-pasteurization, or aseptic processing;~~

~~e. 3. Implement a random-sampling program when the Commissioner of the Food and Drug Administration determines that a potential problem exists with animal drug residues or other contaminants in the milk supply. Any Each grade A permit holder operating a milk plant, receiving station, or transfer station shall analyze the samples for the contaminant by a method determined by FDA to be effective in determining compliance with actionable levels or established tolerances. Any Each grade A permit holder operating a milk plant, receiving station, or transfer station shall continue the random-sampling program until such time that the Commissioner of the Food and Drug Administration is reasonably assured that the problem has been corrected. The sampling program shall represent and include during any consecutive six months, at least four samples collected in at least four separate months, except when three months show a month containing two sampling dates separated by at least 20 days.~~

~~d. 4. Retain any each sample found to be positive for drug residues for a period of 120 hours after the sample test result is positive for drug residues for the use of the State Regulatory Authority unless directed otherwise by a representative of the State Regulatory Authority;~~

~~e. 5. Abstain from selling or offering for sale any pasteurized, ultra-pasteurized, or aseptically processed milk, milk product, or condensed and dry milk product processed from raw milk for pasteurization, ultra-pasteurization, or aseptic processing before results of drug screening tests are available and which raw milk later tests positive for drug residues. All of the grade A permit holder's milk commingled with any raw milk which tests positive for drug residues shall be deemed adulterated. Any grade A permit holder operating a milk plant, receiving station, or transfer station shall report to the State Regulatory Authority instances of adulteration immediately;~~

~~f. 6. Record the results of tests on samples of raw milk and retain such records for a period of six months; report records of all results of tests on samples of raw milk to the State Regulatory Authority by the fifteenth day of each month for the preceding month; and maintain and make available to the State Regulatory Authority for inspection and review at the~~

permitted facility records of results of tests on samples of raw milk. Any Each record of results of tests on samples of raw milk required by this subdivision shall include:

~~(1) a. The analyst's signature, date and, time of, and place where the test was performed;~~

~~(2) b. The registration identification of each pickup tanker of bulk raw milk or raw milk sampled;~~

~~(3) c. The test method used; and~~

~~(4) d. The Interstate Milk Shipper Bulk Tank Unit identification number of each grade A milk supply included on each pickup tanker of bulk raw milk tested; and~~

~~e. A statement as to whether the test results were positive or negative. If the results were positive, the grade A permit holder shall also record:~~

~~(a) (1) The identity of each producer contributing to the load from which the positive sample of raw milk was taken;~~

~~(b) (2) The name of the person notified at the State Regulatory Authority of the positive test results;~~

~~(c) (3) The date and time of day the person at the State Regulatory Authority was notified of the positive test results; and~~

~~(d) (4) The method of notification of the State Regulatory Authority;~~

~~g. 7. Immediately notify the State Regulatory Authority and the milk marketing cooperative or broker of any shipment of bulk tank raw milk for pasteurization, ultra-pasteurization, or aseptic processing when the shipment of bulk tank raw milk is found to be positive for drug residues. Nothing in this subdivision shall be deemed to include individual raw milk samples collected from each grade A dairy farm included in any shipment of bulk tank raw milk for pasteurization, ultra-pasteurization, or aseptic processing;~~

~~h. 8. Test each producer sample of raw milk to determine the farm of origin represented by any sample of raw milk which tests positive for drug residues and immediately report to the State Regulatory Authority the result of each producer sample representing the raw milk for pasteurization, ultra-pasteurization, or aseptic processing found to be positive for drug residues; and~~

~~9. Provide by facsimile machine or other electronic means to the Virginia Department of Agriculture and Consumer Services copies of load manifests, producer weight tickets, laboratory worksheets where the results of laboratory tests are originally recorded, and records from electronic readers documenting the results for samples tested for all positive loads; and~~

~~i. 10. Immediately discontinue receiving shipments of raw milk from the grade A permit holder whose milk tests~~

positive for drug residues, until subsequent tests ~~by the State Regulatory Authority~~ are no longer positive for drug residues and the producer has satisfied the requirements of subdivision B-13 of this section;

B. Each grade A dairy farm permit holder's milk marketing cooperative or milk marketing agent shall be responsible for the collection and testing of follow-up milk samples for animal drug residues required for permit reinstatement and resumption of milk shipment from the dairy farm each time the grade A dairy farm permit holder's milk test positive for animal drug residues.

C. Each grade A dairy farm permit holder's milk marketing cooperative or milk marketing agent shall comply with the following when following up on a producer's dairy farm after a positive animal drug residue:

1. Only person's who hold valid permits to weigh, sample and collect milk issued by the Virginia Department of Agriculture and Consumer Services shall collect and deliver follow-up milk samples to laboratories for official testing for the purpose of permit reinstatement and the resumption of milk shipments from the dairy farm;

2. Reports of laboratory testing shall be provided from officially designated laboratories for each milk sample tested for animal drug residues and shall include the following information:

- a. The name of the grade A dairy farm permit holder;
- b. The patron number of the grade A dairy farm permit holder;
- c. The date, time and temperature of the milk sample when collected;
- d. The name of the person who collected the milk sample;
- e. The name of the test method used to test the milk sample; and
- f. The test result for the milk sample; and

3. Only confirmation test methods approved under M-I-96-10 (Revision #5) dated March 10, 2004, and titled "Drug Residue Test Methods for Confirmation of Presumptive Positive Results and Initial Producer Traceback" may be used for follow-up milk sample testing.

2 VAC 5-490-37. Laboratory certification.

A. Each grade A permit holder operating a dairy plant that receives any milk that could require load confirmation or producer trace-back as a result of a positive animal drug residue on a load of milk delivered at the plant shall provide to the Virginia Department of Agriculture and Consumer Services results of animal drug residue tests from an officially designated laboratory. Each officially designated laboratory shall maintain a listing in the IMS List – Sanitation

Compliance and Enforcement Ratings of Interstate Milk Shippers as an approved milk laboratory certified to test load and producer samples. All laboratory results from officially designated laboratories shall be reported to the Virginia Department of Agriculture and Consumer Services within six hours of the initial presumptive positive result at the plant. Existing dairy plants holding permits on [~~(insert the effective date of this regulation)~~ May 23, 2007,] shall have until December 31, 2007, to comply with this section.

B. Each officially designated laboratory shall comply with the requirements contained in the "Evaluation of Milk Laboratories, 2005 revision" for certification and listing in the "IMS List – Sanitation Compliance and Enforcement Ratings of Interstate Milk Shippers."

2. 2 VAC 5-490-38. Disposal of adulterated milk.

~~Any~~ Each grade A permit holder whose milk tests positive for drug residues shall dispose of such milk in a manner that removes it from the human food chain or in any manner approved by the Food and Drug Administration;

1. 2 VAC 5-490-39. Records of milk purchased or sold; list of sources.

~~Any~~ Each grade A permit holder who operates a milk plant, receiving station, or transfer station, and any person who distributes milk or milk products shall furnish the State Regulatory Authority upon request:

- 1. A true statement of the quantities of milk and milk products of each grade purchased or sold by the milk plant, receiving station, transfer station, or distributor of milk or milk product; and
- 2. A list of all sources from which the milk plant, receiving station, transfer station, or distributor of milk or milk product, received milk or milk.

1. 2 VAC 5-490-39.1. Receiving raw or untreated sewage on a dairy farm prohibited.

No person holding a grade A permit may operate a dairy farm that receives on the dairy farm raw or untreated sewage or septage from any septic tank, from any private or public sewage system, from any septic tank pump operator, from any hauler of septic tank waste or sewage, or from any other source;

1. 2 VAC 5-490-39.2. Milk that may be held in a milk storage tank.

No person who holds a grade A permit may place or hold in his milk storage tank: any milk except that milk which was obtained from cows, sheep, ~~or~~ goats, ~~water buffalo, or other~~ mammal milked at the grade A permit holder's dairy farm; any milk which did not enter the milk storage tank through the milking and milk-handling equipment on the grade A permit holder's dairy farm during the milking of the grade A

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permit holder's cows, sheep, ~~or goats, water buffalo, or other mammal~~; any milk which has been held without refrigeration; or which has been exposed to chemical or physical contamination;~~and.~~

~~↳~~ **2 VAC 5-490-39.3. Commingling of milk from different species prohibited.**

No person may produce, provide, manufacture in, sell, offer for sale, or store in the Commonwealth, or, bring, send, or receive into the Commonwealth, any milk, milk product, or condensed and dry milk product for use in the commercial preparation of grade A pasteurized, ultra-pasteurized, or aseptically processed milk or milk products, any part of which is a combination of ~~goat milk and cow milk, sheep milk and cow milk, or goat milk and sheep milk~~ the milk from any two or more species of mammal.

² ~~"Milk and Dairy Beef Residue Prevention Protocol," available from Milk & Dairy Beef Quality Assurance Center, 801 Shakespeare, Box 497, Stratford, Iowa 50294.~~

² ~~"Milk and Dairy Beef Residue Prevention Protocol," available from Milk & Dairy Beef Quality Assurance Center, 801 Shakespeare, Box 497, Stratford, Iowa 50294.~~

³ ~~"Determination of Vitamin D2 and Vitamin D3 in Foods, Feeds, and Pharmaceuticals, Using High Performance Liquid Chromatography: Comparison of Three Different Columns," Melina C. Villalobos, Norman R. Gregory & Martin P. Bueno, Food and Drug Administration, Center for Food Safety and Applied Nutrition, Division of Nutrition, HFF-266, Washington, D.C. 20204.~~

⁴ ~~"HPLC Assays for Vitamin A and E (HPLC Method 1)," available from Laboratory Assurance Branch, HFH 450, Division of Microbiology, Food and Drug Administration Center for Food Safety, 6502 S. Archer Rd., Summit Argo, IL 60501-1399.~~

⁵ ~~"Evaluation of Animal Drug Residue Detection Methods," J. Russell Bishop, Susan E. Duncan, Gerald M. Jones, and William D. Whittier, available from Food Science and Technology, Virginia Polytechnic Institute and State University, Blacksburg, VA 24061.~~

2 VAC 5-490-39.4. Feeding poultry litter and unprocessed body discharges prohibited.

No person holding a grade A permit to produce milk for pasteurization, ultra-pasteurization or aseptic processing shall feed their lactating cows, goats, sheep, water buffalo, or other milking mammals any unprocessed poultry litter or other unprocessed body discharges from any animal.

2 VAC 5-490-39.5. Limit for aflatoxin residue in feed of lactating mammals.

No person holding a grade A permit to produce milk for pasteurization, ultra-pasteurization or aseptic processing shall

feed their lactating cows, goats, sheep, water buffalo, or other milking mammals any feed separately or in combination that contains an aflatoxin residue greater than 20 parts per billion.

2 VAC 5-490-39.6. Limit for aflatoxin residue in milk and milk products.

No person may sell or offer for sale any milk or milk product if it contains an aflatoxin residue equal to or greater than 0.50 parts per billion.

**PART V.
LABELING.**

2 VAC 5-490-40. Labeling.

A. No person may produce, provide, manufacture, sell, offer for sale, or store in the Commonwealth or, bring, send into, or receive into the Commonwealth any milk, milk product, or condensed and dry milk product for use in the commercial preparation of grade A pasteurized, ultra-pasteurized, or aseptically processed milk or milk products which are not labeled in compliance with the following:

1. ~~Except for nutrition labeling, the~~ Each grade A permit holder's bottles, containers, and packages enclosing any milk or milk products shall be labeled in accordance with the requirements of the Federal Food, Drug and Cosmetic Act, as amended, the ~~Fair Packaging and Labeling Act~~ Nutrition Labeling and Education Act (NLEA) of 1990, and regulations developed thereunder;

2. The grade A permit holder shall label or mark all bottles, containers, and packages enclosing any milk or milk products with:

a. The name of a defined milk product, if there is a definition, and if there is no definition, a name that is not false or misleading;

b. The word "reconstituted" or "recombined" if the milk product is made by reconstitution or recombination;

c. The term "grade A" located on the exterior of the package on the principal display panel, the secondary or informational panel, or the cap or cover;

d. The identity of the plant where the grade A permit holder's milk or milk product is pasteurized, ultra-pasteurized, or aseptically processed by specifying:

(1) The street address, city, state, and zip code of the plant; or

(2) The code assigned the plant under the National Uniform Coding System for Packaging Identification of Milk and Milk Product Processing Plants.⁶

e. In the case of concentrated milk,~~concentrated~~ or concentrated milk products the volume or proportion of water to be added for recombining;

f. The name of the milk product that the concentrated milk product will produce, which name shall be preceded by the term "concentrated." In the case of flavored milk or flavored reconstituted milk, the grade A permit holder shall substitute the name of the principal flavor for the word "flavored";

g. In the case of aseptically processed milk and milk products the words "keep refrigerated after opening;"

h. In the case of aseptically processed and packaged milk or milk products, the term "UHT" ultra-high-temperature;

i. The term "ultra-pasteurized" if the milk or milk product has been ultra-pasteurized;

j. The term "goat" preceding the name of the milk or milk product when the milk or milk product is goat milk or is made from goat milk;

k. The term "sheep" preceding the name of the milk or milk product when the milk or milk product is sheep milk or is made from sheep milk;

l. The term "water buffalo" preceding the name of the milk or milk product when the milk or milk product is water buffalo milk or is made from water buffalo milk;

m. As in the case of cow's milk, goat's milk, sheep's milk, and water buffalo's milk, the common or usual name of the mammal from which the milk was obtained shall precede the name of the milk, milk product, condensed milk, condensed milk product, dry milk or dry milk product;

~~h. n.~~ n. The information appearing on the label of any bottle, container, or package of milk or milk product shall contain no marks, pictures, graphics, or words which are misleading;

~~m. o.~~ o. The "pull date" which shall not interfere with the legibility of other labeling required for the milk or milk product and shall be expressed by: the first three letters in the name of the month, followed by or preceded by the numeral or numerals constituting the calendar date after which the product shall not be sold or expressed numerically by the number of the month followed by the number of the day. For example, June 1 shall be expressed "JUN 1," "1 JUN," "06 01," or "06-01." ~~Nothing in this chapter pertaining to pull dates shall apply to grade A pasteurized milk and grade A pasteurized milk products bottled in glass containers for home delivery;~~

~~n. p.~~ p. The grade A permit holder who operates a milk plant and offers for sale milk or milk product within the Commonwealth shall file and certify with the State Regulatory Authority the maximum number of days after manufacturing or processing the grade A permit holder's milk or milk products which will be used to determine the "pull date." The grade A permit holder shall establish a "pull date" that under normal storage the milk or milk product meets for a minimum of 96 hours after the "pull date," standards set by this chapter;

q. No person may sell or offer for sale any packaged grade A pasteurized milk, grade A pasteurized milk product, or milk product after the date of the "pull date" on the package;

~~r. r.~~ r. No person may sell or offer for sale any grade A pasteurized milk, grade A pasteurized milk product, or milk product in a package that does not bear the "pull date;" and

~~s. s.~~ s. Nothing in this chapter shall apply to containers of grade A pasteurized milk, grade A milk products, or milk products which are not to be sold in the Commonwealth.

~~6. "IMS LIST - Sanitation Compliance and Enforcement Ratings of Interstate Milk Shippers," specifies the requirements for the "National Uniform Coding System for Packaging Identification of Milk and Milk Product Processing Plants" and list the code for each milk or milk product processing plant. This document is available from the U.S. Food and Drug Administration, Milk Safety Branch, HFF 346,200 "C" St., S.W., Washington, D.C. 20204.~~

PART VI.

STANDARDS FOR MILK AND MILK PRODUCTS.

2 VAC 5-490-50. Standards Quality standards for milk and milk products.

A. No person may produce, provide, manufacture, sell, offer for sale, or store in the Commonwealth, or, bring, send, or receive into the Commonwealth, any milk, milk product, ~~or~~ condensed and milk product or dry milk product for use in the commercial preparation of grade A pasteurized, ultra-pasteurized, or aseptically processed milk or milk products which do not comply with the following:

1. Grade A raw milk for pasteurization or ultra-pasteurization or aseptic processing and all grade A pasteurized, ultra-pasteurized, or aseptically processed milk or milk products shall be produced, processed, and pasteurized or ultra-pasteurized, or aseptically processed to conform with the following chemical, bacteriological, somatic cell, cryoscope, and temperature standards, and with the requirements of this chapter;

2. No process or manipulation other than (i) pasteurization; (ii) ultra-pasteurization; (iii) aseptic processing; or (iv) processing methods integral with pasteurization, ultra-pasteurization, or aseptic processing; and refrigeration may be applied to milk or milk products for the purpose of removing or deactivating microorganisms. Nothing in this chapter is deemed to prohibit any grade A permit holder who operates a milk plant from preparing bulk shipments of cream, skim milk, or lowfat milk labeled as "heat treated"; if the raw milk, raw cream, skim milk, or lowfat milk is heated, one time, to a temperature warmer than 125°F but cooler than 161°F for separation purposes;

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3. Grade A raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall comply with the following standards:

a. The temperature of the raw milk shall be cooled to 40°F or cooler, but not frozen, within two hours after milking and the temperature after the first or any subsequent milking shall not be warmer than 50°F;

b. The bacteria count of the raw milk shall not exceed 100,000 bacteria per milliliter prior to commingling with any other milk; and the bacteria count of the raw milk that is commingled shall not exceed 300,000 bacteria per milliliter prior to pasteurization;

c. Raw milk shall freeze at or below -0.530° Hortvet;

d. Raw milk ~~shall produce no zone greater than or equal to 16 millimeters when tested by the Bacillus sterothermophilus disc assay method or other equivalent method~~ and shall have no positive results of tests for drug residues by detection methods reported to the State Regulatory Authority by official laboratories, officially designated laboratories, milk plants, receiving stations, or transfer stations;

e. The somatic cell count of raw cow's milk, water buffalo's milk or raw sheep's milk shall not exceed ~~1,000,000 somatic cells per milliliter through June 30, 1993. Effective July 1, 1993, raw cow's milk or raw sheep's milk shall not exceed~~ 750,000 somatic cells per milliliter. The somatic cell count of raw goat's milk shall not exceed 1,000,000 somatic cells per milliliter; ~~and~~

f. Raw milk shall not exceed the actionable level, tolerance level, or safe level for any chemical residue or pesticide residue specified in: 40 CFR ~~Parts Part~~ 180, ~~185, or 186~~ and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, ~~178 § 1010,~~ 189, 556, ~~564,~~ 570, 573, 589. In the event that no actionable level, tolerance level, or safe level for a chemical residue or pesticides residue has been established in 40 CFR ~~Parts Part~~ 180, ~~185, or 186~~; and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, ~~564,~~ 570, 573, 589, the tolerance level shall be deemed to be zero; and

g. Raw milk shall not contain aflatoxin residues equal to or greater than 0.50 parts per billion as determined by the Charm II aflatoxin test or other equivalent method.

4. Grade A pasteurized or ultra-pasteurized, milk and milk products shall comply with the following standards:

a. The temperature of milk products shall be cooled to 45°F or cooler (but not frozen) and maintained at that temperature;

b. The bacteria count² for any milk or milk products (except cultured products) shall not exceed 20,000 bacteria per milliliter;

c. Except for commingled milk shipped in a transport tank the coliform count for any milk or milk products shall not exceed 10 coliform organisms per milliliter. Commingled milk shipped in a transport tank shall not exceed 100 coliform organisms per milliliter;

~~d. The phosphatase⁸ test result of any milk or milk product shall be less than 1 microgram per milliliter when tested by the Scherer Rapid Method or other equivalent method. The phenol value of test samples of pasteurized finished product shall be no greater than the maximum specified for the particular product as determined and specified by: (i) any phosphatase test method prescribed in the Official Methods of Analysis, 18th Edition, 2005, published by the Association of Official Analytical Chemists; (ii) the Fluorometer test method; (iii) the Charm ALP test method; or (iv) other equivalent method as determined by the Virginia Department of Agriculture and Consumer Services. A phenol value greater than the maximum specified for the particular product shall mean that the product was not properly pasteurized. A phenol value less than the maximum specified for the particular product shall not be deemed to mean that the product was properly pasteurized, unless there is evidence of proper pasteurization equipment in conformance with this chapter and records to determine an adequate pasteurization process has been completed for each separate batch or lot of milk, milk product, condensed milk, condensed milk product, dry milk, or dry milk product;~~

e. Milk or milk products ~~produce no zone greater than or equal to 16 millimeters when tested by the Bacillus sterothermophilus disc assay method or other equivalent method~~ have no positive results of tests for drug residues by detection methods reported to the State Regulatory Authority by official laboratories, officially designated laboratories, milk plants, receiving stations, or transfer stations;

f. Milk or milk products shall not exceed the actionable level, tolerance level, or safe level for any chemical residue or pesticide residue specified in: 40 CFR ~~Parts Part~~ 180, ~~185, or 186~~ and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, ~~564,~~ 570, 573, 589. In the event that no actionable level, tolerance level, or safe level for a chemical residue or pesticides residue has been established in 40 CFR ~~Parts Part~~ 180, ~~185, or 186~~ and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, ~~564,~~ 570, 573, 589, the tolerance level shall be deemed to be zero; and

g. Milk or milk products shall not contain aflatoxin residues equal to or greater than 0.50 parts per billion as determined by the Charm II aflatoxin test or other equivalent method.

5. Grade A aseptically processed milk and milk products shall comply with the following standards:

a. ~~The bacteria count of any aseptically~~ Aseptically processed milk and milk products shall ~~demonstrate no growth be~~ commercially sterile;

b. Aseptically processed milk and milk products shall ~~produce no zone greater than or equal to 16 millimeters when tested by the Bacillus sterothermophilus disc assay method or other equivalent method~~ have no positive results of tests for drug residues by detection methods reported to the State Regulatory Authority by official laboratories, officially designated laboratories, milk plants, receiving stations, or transfer stations; and

c. Aseptically processed milk and milk products shall not exceed the actionable level, tolerance level, or safe level for any chemical residue or pesticide residue specified in 40 CFR ~~Parts Part 180, 185, or 186~~ and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, ~~564~~, 570, 573, 589. In the event that no actionable level, tolerance level, or safe level for a chemical residue or pesticides residue has been established in 40 CFR ~~Parts Part 180, 185, or 186~~ and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, ~~564~~, 570, 573, 589, the tolerance level shall be deemed to be zero; and

d. Aseptically processed milk and milk products milk shall not contain aflatoxin residues equal to or greater than 0.05 parts per billion.

B. Sanitation requirements for grade A raw milk.

1. ~~Any~~ Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall comply with:

a. The following administrative procedures contained in the "Grade A Pasteurized Milk Ordinance-~~1989~~ Recommendations 2005 Revision"⁹ Section 4. – Labeling, Items 1r, 2r, 3r, 4r, 5r, 6r, 7r, 8r, 9r, 10r, 11r, 12r, ~~13r~~, 13r(1), 13r(2), 13r(4), 13r(5), 14r, 15r, ~~16r.1 through 16r.10~~, 16r, 17r, 18r(2), ~~9r.2, 20r, and 21r~~ 19r, Section 8. – Animal Health; Section 10. – Transferring; Delivery Containers; Cooling; and Section 13. – Personnel Health;

b. The following appendices contained in the "Grade A Pasteurized Milk Ordinance-~~1989~~ Recommendations 2005 Revision": Appendixes B.I, B.IV, B.V, B.VI, Appendixes A, B, C, D, F, ~~and~~ G, N, Q and R; and

c. Item 1r. Abnormal milk. ~~Any~~ Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall:

(1) Milk last or with separate equipment cows, sheep, ~~or~~ goats, water buffalo, or other mammals which show evidence of the secretion of abnormal milk in one or more quarters (based upon bacteriological, chemical, or physical examination) and discard the milk obtained from cows, sheep,

~~or~~ goats, water buffalo, or other mammals which show evidence of the secretion of abnormal milk in one or more quarters based upon bacteriological, chemical, or physical examination; and;

(2) Milk last or with separate equipment cows, sheep, ~~or~~ goats, water buffalo, or other mammals treated with, or which have consumed, chemical, medicinal, or radioactive agents which are capable of being secreted in the milk and which may be deleterious to human health; and dispose of in a manner which will not pollute the environment or any human food the milk obtained from cows, sheep, ~~or~~ goats, water buffalo, or other mammals treated with, or which have consumed, chemical, medicinal, or radioactive agents which are capable of being secreted in the milk and which may be deleterious to human health;

d. Item 2r. Milking barn, stable, or parlor-construction. ~~Any~~ Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall:

(1) Provide on the person's dairy farm a milking barn, stable, or parlor in which the milking herd shall be housed during milking time; ~~and~~

(2) Provide on the grade A permit holder's dairy farm a milking barn, stable, or parlor which, milking barn, stable, or parlor shall:

(a) Have floors constructed of concrete or equally impervious material;

(b) Have walls and ceiling which are smooth, painted, or finished in an approved manner, and in good repair and have a ceiling which is dust tight;

(c) Have separate stalls or pens for horses, calves, and bulls;

(d) Have natural or artificial light, well distributed for day or night milking;

(e) Have sufficient air space and air circulation to prevent condensation and excessive odors;

(f) Have dust-tight covered boxes or bins, or separate storage facilities for ground, chopped, or concentrated feed; and

(g) Not be overcrowded; and

(3) Provide and use only an "automatic milking installation" that complies with the requirements of Appendix Q of the "Grade A Pasteurized Milk Ordinance" if the person milks any cows, goats, sheep, water buffalo, or other mammals (except humans) using robots or other automated means in the absence of any human;

e. Item 3r. Milking barn, stable, or parlor-cleanliness. ~~Any~~ Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall:

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(1) Keep the interior of the milking barn, stable, or parlor clean;

(2) Keep the floors, walls, windows, pipelines, and equipment in the milking barn, stable, or parlor free of filth or litter and clean; ~~and~~

(3) Keep swine and fowl out of the milking barn, stable, and parlor; ~~and~~

(4) Keep surcingles, belly straps, milk stools and antikickers clean and stored above the floor;

f. Item 4r. Cow yard, sheep yard, ~~or~~ goat yard, water buffalo yard or other milking mammal yard. ~~Any~~ Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall:

(1) Provide and maintain the cow yard, sheep yard, ~~or~~ goat yard, water buffalo yard or other milking mammal yard, to be graded and drained, and to have no standing pools of water or accumulations of organic wastes;

(2) In the cow loafing, goat loafing, sheep loafing, water buffalo loafing or other milking mammal loafing, cattle-housing, sheep-housing, ~~or~~ goat-housing, water buffalo-housing, or other milking mammal-housing areas remove cow droppings, sheep droppings, ~~and~~ goat droppings, water buffalo droppings, and other milking mammal droppings and remove soiled bedding or add clean bedding at sufficiently frequent intervals to prevent the soiling of the cow's, sheep's, ~~or~~ goat's udders, water buffalo's, or other milking mammal's udder and flanks;

(3) Assure that waste feed does not accumulate in the goat yard, cow yard, sheep yard, water buffalo yard, other milking mammal yard, cow loafing, sheep loafing, goat loafing, water buffalo loafing, other milking mammal loafing, cattle-housing, sheep-housing, ~~or~~ goat-housing, water buffalo-housing, or other milking mammal-housing area;

(4) Maintain any manure packs so as to be properly drained and so as to provide a reasonably firm footing; and

(5) Keep swine and fowl out of the cow yard, sheep yard, goat yard, water buffalo yard, other milking mammal yard, cow loafing, sheep loafing, goat loafing, water buffalo loafing, other milking mammal loafing, cattle-housing, sheep-housing, ~~or~~ goat-housing, water buffalo-housing, or other milking mammal-housing area.

g. Item 5r. Milkhouse or room-construction and facilities. ~~Any~~ Each who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall:

(1) Provide a milkhouse or milkroom of sufficient size in which the cooling, handling, and storing of milk and the washing, sanitizing, and storing of milk containers and

utensils shall be conducted except as provided under subdivision 1 n of this subsection;

(2) Provide a milkhouse with a smooth floor, constructed of concrete or equally impervious material graded to drain, and maintained in good repair;

(3) Dispose of in a sanitary manner all liquid waste generated in the milkhouse;

(4) Provide one or more floor drains in the milkhouse, which floor drains shall be accessible, and if connected to a sanitary sewer system trapped;

(5) Provide in the milkhouse walls and ceilings constructed of a smooth material, in good repair, well painted, or finished in an equally suitable manner;

(6) Provide adequate natural or artificial light and ventilation in the milkhouse;

(7) Use the milkhouse for no other purpose than milkhouse operations;

(8) Provide no direct opening from the milkhouse into any barn, stable, or into any room used for domestic purposes, other than a direct opening between the milkhouse and milking barn, stable, or parlor provided with a tight-fitting, self-closing, solid door, which door has been hinged to be single or double acting;

(9) Provide in the milkhouse water under pressure which has been piped into the milkhouse;

(10) Provide in the milkhouse a two-compartment wash vat and adequate hot water heating facilities ~~and~~;

~~(11) Provide~~ Except as provided for under subdivision 1 g (12) of this subsection provide a suitable shelter for the receipt of milk when the grade A permit holder uses a transportation tank for the cooling ~~and~~ or storage of milk on the grade A permit holder's dairy farm, which shelter adjacent to, but not a part of, the milkroom; and with the requirements of the milkroom shall comply with respect to construction, light, drainage, insect and rodent control, and general maintenance. In addition to providing a suitable shelter as required by this subsection, the grade A permit holder shall:

(a) Install an accurate, accessible temperature-recording device in the milk line used to fill the transportation tank downstream from an effective cooling device capable of cooling the milk to 40°F or less before the milk enters the transportation tank;

(b) Install an indicating thermometer as close as possible to the temperature-recording device in the milk line used to fill the transportation tank to be used for verification of recording temperatures, which indicating thermometer shall:

(i) Have a temperature span of not less than 50°F including normal storage temperatures plus or minus 5°F, with an

extension of the scale on either side permitted and graduated in not more than 2°F divisions;

(ii) Have temperature scale divisions spaced not less than 0.0625 inches apart between 35°F and 55°F;

(iii) Have an accuracy within plus or minus 2°F throughout the scale range; and

(iv) Have the stem fitting installed in a pressure-tight seat or other sanitary fitting with no threads exposed;

(c) Provide an effective means to agitate the transport tank or an approved in-line sampling device in order to collect a representative milk sample;

(12) If the State Regulatory Authority determines conditions exist whereby the milk transport tank may be adequately protected and sampled without contamination, a shelter need not be provided if the grade A permit holder:

(a) Provides a means to make all milk hose connections to the transport tank accessible from within the milkhouse;

(b) Provides a means to completely protect the milk hose connection to the transport tank from the outside environment;

(c) Ensures he utilizes only milk transport tanks the manholes of which have been sealed after cleaning and sanitizing;

(d) Ensures he utilizes only milk transport tanks that have been washed and sanitized at permitted dairy plants or a permitted milk tank truck cleaning facilities acceptable to the State Regulatory Agency;

(e) Installs an accurate, accessible temperature-recording device in the milk line used to fill the transportation tank downstream from an effective cooling device capable of cooling the milk to 40°F or less before the milk enters the transportation tank;

(f) Installs an indicating thermometer as close as possible to the temperature-recording device in the milk line used to fill the transportation tank to be used for verification of recording temperatures, which indicating thermometer shall:

(i) Have a temperature span of not less than 50°F including normal storage temperatures plus or minus 5°F, with an extension of the scale on either side permitted and graduated in not more than 2°F divisions;

(ii) Have temperature scale divisions spaced not less than 0.0625 inches apart between 35°F and 55°F;

(iii) Have an accuracy within plus or minus 2°F throughout the scale range; and

(iv) Have the stem fitting installed in a pressure-tight seat or other sanitary fitting with no threads exposed;

(g) Provides an effective means to agitate the transport tank or an approved in-line sampling device in order to collect a representative milk sample; and

(h) Provides a self-draining concrete or equally impervious surface on which the transport tank can be parked during filling and storage;

h. Item 6r. Milkhouse or milkroom-cleanliness. ~~Any~~ Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall:

(1) Keep clean the floors, walls, ceilings, windows, tables, shelves, cabinets, wash vats, nonproduct contact surfaces of milk containers, utensils, equipment, and other milkroom equipment in the milkroom;

(2) Place in the milkroom only those articles directly related to milkroom activities; and

(3) Keep the milkroom free of trash, animals, and fowl;

i. Item 7r. Toilets. ~~Any~~ Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall:

(1) Provide on the person's grade A dairy farm one or more toilets, which shall be conveniently located and properly constructed, and operated, and maintained in a sanitary manner;

(2) Prevent the access of flies to the waste contained in or from the toilet;

(3) Prevent the waste contained in or from the toilet from polluting the soil surface or contaminating any water supply; and

(4) Assure that there is no direct opening from the toilet into any milkroom;

j. Item 8r. Water supply. ~~Any~~ Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall:

(1) Provide water for milkhouse and milking operations from a water supply properly located, protected, and operated. The water supply shall be easily accessible, adequate, and of a safe, sanitary quality;

(2) Assure that any well casing which is part of a water supply that provides water for any milkhouse or milking operation is not located closer to any source of contamination which may contaminate the water supply than is specified as follows:

(a) No grade A permit holder may locate a well casing closer than 10 feet to a pit;

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(b) No grade A permit holder may locate a well casing closer than 10 feet to any sewer pipe, floor drain, or other pipe which may back up;

(c) No grade A permit holder may locate a well casing closer than 50 feet to any above-ground gas, oil, petroleum, or chemical storage tank;

(d) No grade A permit holder may locate a well casing closer than 50 feet to any accumulated animal manure;

(e) No grade A permit holder may locate a well casing closer than 50 feet to any area to which livestock has access; or animal-holding area, feedlot, or loafing area on dirt;

(f) No grade A permit holder may locate a well casing closer than 50 feet to any pit not drained to the surface of the ground. Nothing in this requirement shall apply to a residential basement;

(g) ~~From and after September 1, 1993, no~~ No grade A permit holder may locate a well casing closer than 100 feet to any pit privy. Existing well casings located on grade A dairy farms holding valid permits issued by the State Regulatory Authority on September 1, 1993, shall be exempt from the 100 foot distance requirement of this subdivision until the existing permit is ~~cancelled~~ canceled or revoked;

(h) No grade A permit holder may locate a well casing closer than 100 feet to any animal-manure disposal area;

(i) No grade A permit holder may locate a well casing closer than 100 feet to any cess pool;

(j) No grade A permit holder may locate a well casing closer than 100 feet to any dry well;

(k) No grade A permit holder may locate a well casing closer than 100 feet to any structure which stores animal manure;

(l) No grade A permit holder may locate a well casing closer than 100 feet to any septic tank or drain field; and

(m) No grade A permit holder may locate a well casing closer than 100 feet to any underground or partially-buried gas, oil, petroleum, or chemical storage tank;

(3) Construct the water supply so that the well casing terminates at least two feet above the highest-known flood plane for the location in which the water supply is located; and

(4) Construct the water supply so that no potable water supply pipe attached to the water supply is located closer than 10 feet measured horizontally to any sewer pipe, soil pipe, or drain-;

k. Item 9r. Utensils and equipment-construction. ~~Any~~ Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall:

(1) Provide multiuse containers, equipment, and utensils for use in the handling, storage, or transportation of any milk, which multiuse containers, equipment, and utensils, shall be made of smooth, nonabsorbent, corrosion-resistant, and nontoxic materials; constructed as to be easily cleaned; and in good repair;

(2) Provide milk pails which are constructed to be seamless and of the hooded type if the grade A permit holder does hand milking and stripping;

(3) Abstain from using multiple-use woven material for straining any milk;

(4) Use only single-service articles which have been manufactured, packaged, transported, stored, and handled in a sanitary manner and that comply with the requirements of subdivision C 1 of this section;

(5) Abstain from reusing any article intended for single-service use; and

(6) Provide farm holding or cooling tanks, welded sanitary piping, and transportation tanks which comply with the requirements of subdivisions C 1 l; and C 1 m of this section on any grade A dairy farm;

l. Item 10r. Utensils and equipment; cleaning. ~~Any~~ Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall:

(1) Clean after each use the product-contact surfaces of all multiuse containers, multiuse equipment, and multiuse utensils used in the handling, storage, or transportation of any milk; and

(2) Offer for sale or sell no milk which has passed through any equipment, if the milk-contact surfaces of the equipment are no longer visible, or are covered or partially covered by an accumulation of milk solids, milk fat, cleaning compounds or other soils. Any milk which passes through equipment, the milk-contact surfaces of which are no longer visible, or are covered or partially covered by an accumulation of milk solids, milk fat, cleaning compounds, or other soils shall be deemed adulterated;

m. Item 11r. Utensils and equipment; sanitization. ~~Any~~ Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall sanitize before each use the product-contact surfaces of all multiuse containers, equipment, and utensils used in the handling, storage, or transportation of any milk;

n. Item 12r. Utensils and equipment; storage. ~~Any~~ Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall store containers, utensils, and equipment used in the handling, storage, or transportation of any milk in a sanitizing solution or store the containers, utensils, and equipment used in the

handling, storage, or transportation of any milk to assure complete drainage, and protected from contamination prior to use. Nothing in this requirement shall be deemed to prohibit a grade A permit holder from storing in a milking barn or milking parlor a milk pipeline, or the following pipeline milking equipment: milker claw, inflation, weigh jar, meter, milk hose, milk receiver, tubular cooler, plate cooler, or milk pump; if the milk pipeline or pipeline milking equipment specified in this subdivision is designed for mechanical cleaning; and designed, installed, and operated to protect the milk product and solution-contact surfaces from contamination at all times;

~~o. Item 13r. Utensils and equipment; handling. Any person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall handle all containers, utensils, and equipment in such a manner so as to prevent the contamination of any milk-contact surface of any containers, utensils, or equipment after the containers, utensils, or equipment have been sanitized; Milking; flanks, udders, and teats. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall:~~

~~(1) Milk all cows, sheep, goats, water buffalo, and other mammals in a milking barn, stable, or parlor;~~

~~(2) Trim the hair from the udder and tail of all milking cows, sheep, goats, water buffalo, and other mammals to facilitate cleaning of the udder and tail;~~

~~(3) Keep the flanks, udders, bellies, and tails of all milking cows, sheep, goats, water buffalo, and other mammals free of visible dirt;~~

~~(4) Keep the hair on the udders of all milking cows, sheep, goats, water buffalo and other mammals to a length that the hair on the udder of any cow, sheep, goat, water buffalo, or other mammal cannot be incorporated with the teat in the inflation during milking;~~

~~(5) Abstain from milking any cow, sheep, goat, water buffalo, or other mammal whose udder or teats is not clean and dry;~~

~~(6) Treat with a sanitizing solution, just prior to milking, the teats of each milking cow, sheep, goat, water buffalo, and other mammal and dry the teats of each milking cow, sheep, goat, water buffalo, and other mammal before milking; and~~

~~(7) Milk all cows, sheep, goats, water buffalo, and other mammal with dry hands;~~

~~p. Item 14r. Milking; flanks, udders, and teats. Any person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall:~~

~~(1) Milk all cows, sheep, and goats in a milking barn, stable, or parlor;~~

~~(2) Trim the hair from the udder and tail of all milking cows, sheep, and goats to facilitate cleaning of the udder and tail;~~

~~(3) Keep the flanks, udders, bellies, and tails of all milking cows, sheep, and goats free of visible dirt;~~

~~(4) Keep the hair on the udders of all milking cows, sheep, and goats to a length that the hair on the udder of any cow, sheep, or goat can not be incorporated with the teat in the inflation during milking;~~

~~(5) Abstain from milking any cow, sheep, or goat whose udder or teats is not clean and dry;~~

~~(6) Treat with a sanitizing solution, just prior to milking, the teats of each milking cow, sheep, and goat, and dry the teats of each milking cow, sheep, and goat before milking; and~~

~~(7) Milk all cows, sheep, and goats with dry hands;~~

~~p. Item 14r. Protection from contamination. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall:~~

~~(1) Locate and operate the milking and milk house operations, equipment, and facilities to prevent any contamination of the milk, equipment, containers, or utensils;~~

~~(2) Transfer immediately from the milking barn, stable, or parlor to the milkhouse each pail or container of milk;~~

~~(3) Strain, pour, transfer, or store any milk unless it is protected from contamination;~~

~~(4) Handle all containers, utensils and equipment that have been sanitized in such a manner as to prevent contamination of any product-contact surfaces;~~

~~(5) Transport from the grade A permit holder's dairy farm to a milk plant or receiving station all milk in cans, using vehicles which are constructed and operated to protect the milk from sun, freezing, and contamination;~~

~~(6) Keep clean the inside and outside of each vehicle used to transport from the grade A permit holder's dairy farm to a milk plant or receiving station any milk in cans; and~~

~~(7) Transport no substance capable of contaminating the milk when transporting milk;~~

~~q. Item 15r. Milking; sureingles, milk stools, and antikiickers. Any person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall keep sureingles, milk stools, and antikiickers clean and stored above the floor; Drug and chemical control. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall:~~

~~(1) Store all drugs and medicinals in such a manner that neither the drugs nor the medicinals can contaminate any~~

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milk or the milk product-contact surface of any equipment, containers or utensils;

(2) Abstain from using unapproved or improperly labeled medicinals or drugs to treat any dairy animals or store unapproved or improperly labeled medicinals or drugs in the milkhouse, milking barn, stable or parlor. Except for topical antiseptics, wound dressings (unless intended for direct injection into the teat), vaccines and other biologics, and dosage form vitamins and mineral products a drug or medicinal is properly labeled only if the drug or medicinal is labeled with the following:

(a) For over-the-counter medicinals or drugs, the name and address of the manufacturer or distributor, or for prescription and extra-label use medicinals or drugs, the name of the veterinary practitioner dispensing the product;

(b) Directions for use of the drug or medicinal and the prescribed holding time;

(c) Any cautionary statement for the drug or medicinal, if needed; and

(d) The active ingredient or ingredients in the drug or medicinal;

(3) Except for topical antiseptics, wound dressings (unless intended for direct injection into the teat), vaccines and other biologics, and dosage form vitamins and mineral products, segregate all medicinals and drugs used for lactating dairy animals from any medicinals and drugs used for nonlactating dairy animals;

(4) Except for topical antiseptics, wound dressings (unless intended for direct injection into the teat), vaccines and other biologics, and dosage form vitamins and mineral products, provide separate shelves in a cabinet, refrigerator, or other storage facility for the storage of all medicinals and drugs for treatment of nonlactating dairy animals separate from those medicinals or drugs used for lactating dairy animals; and

(5) Store topical antiseptics, wound dressings (unless intended for direct injection into the teat), vaccines and other biologics, and dosage-form vitamins and mineral products in a manner that does not contaminate any milk or the milk-product surfaces of any containers or utensils;

~~r. Item 16r. Protection from contamination. Any person who holds a grade A permit to produce raw milk for pasteurization, ultra pasteurization, or aseptic processing shall:~~

~~(1) Locate and operate the milking and milk house operations, equipment, and facilities to prevent any contamination of the milk, equipment, containers, or utensils;~~

~~(2) Transfer immediately from the milking barn, stable, or parlor to the milkhouse each pail or container of milk;~~

~~(3) Strain, pour, transfer, or store any milk unless it is protected from contamination;~~

~~(4) Store all drugs and medicinals in such a manner that neither the drugs nor the medicinals can contaminate any milk or the milk product contact surface of any equipment, containers or utensils;~~

~~(5) Abstain from using unapproved or improperly labelled medicinals or drugs to treat any dairy animals or store unapproved or improperly labelled medicinals or drugs in the milkhouse, milking barn, stable or parlor. Except for topical antiseptics, wound dressings, (unless intended for direct injection into the teat) vaccines and other biologics, and dosage form vitamins and mineral products a drug or medicinal is properly labelled only if the drug or medicinal is labelled with the following:~~

~~(a) For over the counter medicinals or drugs, the name and address of the manufacturer or distributor, or for prescription and extra-label use medicinals or drugs, the name of the veterinary practitioner dispensing the product;~~

~~(b) Directions for use of the drug or medicinal and the prescribed holding time;~~

~~(c) Any cautionary statement for the drug or medicinal, if needed; and~~

~~(d) The active ingredient or ingredients in the drug or medicinal;~~

~~(6) Except for topical antiseptics, wound dressings, (unless intended for direct injection into the teat) vaccines and other biologics, and dosage form vitamins and mineral products, segregate all medicinals and drugs used for lactating dairy animals from any medicinals and drugs used for nonlactating dairy animals;~~

~~(7) Except for topical antiseptics, wound dressings, (unless intended for direct injection into the teat) vaccines and other biologics, and dosage form vitamins and mineral products, provide separate shelves in a cabinet, refrigerator, or other storage facility for the storage of all medicinals and drugs for treatment of nonlactating dairy animals separate from those medicinals or drugs used for lactating dairy animals; and~~

~~(8) Store topical antiseptics, wound dressings, (unless intended for direct injection into the teat) vaccines and other biologics, and dosage form vitamins and mineral products in a manner that does not contaminate any milk or the milk-product surfaces of any containers or utensils;~~

~~s. Item 17r. r. Item 16r. Personnel; hand-washing facilities. Any Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall provide hand-washing facilities that are convenient to the milkhouse, milking barn, stable, or parlor, and flush toilet and that include separate hot and cold running water; soap or detergent; and individual sanitary towels;~~

~~t. Item 18r~~ s. Item 17r. Personnel; cleanliness. ~~Any~~ Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall:

(1) Wash clean and dry with an individual sanitary towel the person's hands immediately before milking, before performing any milkhouse function, and immediately after the interruption of milking or performing any milkhouse function; and

(2) Wear clean outer garments while milking or handling any milk, milk containers, utensils, or equipment. ~~Milk~~ Bulk milk haulers shall wear clean outer garments while handling any milk, milk containers, utensils, or equipment;

~~u. Item 19r~~ t. Item 18r. Cooling. ~~Any~~ Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall:

(1) Cool to 40°F or cooler (but not freeze), all raw milk for pasteurization, ultra-pasteurization, or aseptic processing, within two hours after the grade A permit holder completes milking; and assure that the temperature of the grade A permit holder's raw milk is not warmer than 50°F after the first milking or any subsequent milking. Raw milk for pasteurization which is warmer than a temperature of 50°F after the first milking or any subsequent milking shall be deemed a public health hazard and shall not be offered for sale or sold; and

(2) Agitate all raw milk for pasteurization for not less than five minutes at least once every hour; assure that the milk in the farm's bulk milk cooling or holding tank covers the agitator paddle sufficiently to facilitate proper cooling and sampling after the completion of the first milking; and abstain from selling or offering for sale milk which does not cover the agitator paddle sufficiently to ~~facilitate~~ facilitate proper cooling and sampling after the completion of the first milking;

~~(v) Item 20r. Vehicles. Any person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing shall:~~

~~(1) Transport from the grade A permit holder's dairy farm to a milk plant or receiving station all milk in cans, using vehicles which are constructed and operated to protect the milk from sun, freezing, and contamination;~~

~~(2) Keep clean the inside and outside of each vehicle used to transport from the grade A permit holder's dairy farm to a milk plant or receiving station any milk in cans; and~~

~~(3) Transport no substance capable of contaminating the milk when transporting milk;~~

~~w. Item 21r~~ u. Item 19r. Insect and rodent control. ~~Any~~ Each person who holds a grade A permit to produce raw milk for

pasteurization, ultra-pasteurization, or aseptic processing shall:

(1) Take effective measures to prevent the contamination of any milk, containers, equipment, and utensils by insects, rodents, and other animals, and by chemicals used to control insects, rodents, and other animals;

(2) Maintain the milkroom free of insects, rodents and other animals; ~~and~~

(3) Keep the areas surrounding the: milkhouse; milking barn; milking stable; milking parlor; cattle, sheep, water buffalo, other mammal, or goat housing; cattle, sheep, water buffalo, other mammal, or goat loafing; water supply; or other facilities on the grade A permit holder's dairy farm neat, clean, and free of conditions which might harbor or be conducive to the breeding of insects and rodents; and

(4) Store all feed in such a manner that the feed will not attract birds, rodents or insects.

C. Sanitation requirements for grade A pasteurized, ultra-pasteurized, or aseptically processed milk or milk products.

1. ~~Any~~ Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk or milk products shall comply with:

a. The following administrative procedures contained in the "Grade A Pasteurized Milk Ordinance-~~1989 Recommendations~~ 2005 Revision": Items 1p, 2p, 3p, 4p, 5p, 6p, 7p, 8p, 9p, 10p, 11p-~~1 through 11p-9~~, 12p-~~1 through 12p-5~~, 12p-7, 13p, 14p, 15p, 16p, 17p, 18p, 19p, 20p, 21p, and 22p;

b. The following appendices contained in the "Grade A Pasteurized Milk Ordinance-~~1989 Recommendations~~ 2005 Revision:" Appendices ~~C, D, F, G, H, I, and J, K, L, N, O and R~~;

c. Item 1p. Floors; construction. ~~Any~~ Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall:

(1) Except as specified in subdivision C 1 c (2) of this section, provide floors, for all rooms in which milk or milk products are processed, handled, or stored, or in which milk containers, equipment, or utensils are washed constructed of concrete or other equally impervious and easily cleaned material and which are smooth, properly sloped, provided with trapped drains, and kept in good repair;

(2) The floor in any cold-storage room used for storing milk and milk products need not be provided with floor drains if the floors are sloped to drain to one or more exits from the cold-storage room. The floor in any storage room used for storing dry ingredients or packaging materials need not be provided with drains and the floor in any storage room used

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for storing dry ingredients or packaging materials may be constructed of tightly joined wood;

d. Item 2p. Walls and ceilings; construction. ~~Any~~ Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall provide walls and ceilings of rooms in which milk or milk products are handled, processed, or stored, or in which milk containers, utensils, or equipment are washed, that have a smooth, washable, light-colored surface, and that are in good repair;

e. Item 3p. Doors and windows. ~~Any~~ Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall provide:

(1) Effective means to prevent the access of flies and rodents to any part of a milk plant, receiving station, or transfer station; and

(2) Solid doors or glazed windows for all openings to the outside of any milk plant, receiving station, or transfer station and keep the doors and windows closed during dusty weather;

f. Item 4p. Lighting and ventilation. ~~Any~~ Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall provide rooms in which any milk or milk products are handled, processed, or stored or in which any milk containers, equipment, or utensils are washed, that are well lighted and well ventilated;

g. Item 5p. Separate rooms. ~~Any~~ Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall:

(1) Provide separate rooms for: (i) pasteurizing, processing, cooling, and packaging milk ~~or~~ and milk products; (ii) cleaning milk cans, bottles, and cases; (iii) the fabrication of containers and closures for milk and milk products; (iv) cleaning and sanitizing facilities for bulk milk transport tanks if the grade A permit holder receives any milk or milk product in bulk milk transport tanks; and ~~(iv)~~ (v) receiving cans of milk and milk products separate from ~~subdivisions~~ clauses (i), (ii) and ~~(ii)~~ (iii) of this subsection subdivision, unless all of the grade A permit holder's milk or milk products are received in bulk milk transport tanks;

(2) Not use any room with a direct opening into any stable or room used for domestic purposes to handle, process, or store any milk or milk products or; wash or store any milk containers, utensils, or equipment; ~~and~~

(3) Use rooms of sufficient size so as not to be crowded to handle, process, or store any milk or milk products or wash or store any milk containers, utensils, or equipment; and

(4) Provide designated areas or rooms for the receiving, handling and storage of returned packaged milk and milk products if the permit holder receives any returned packaged milk or milk products;

h. Item 6p. Toilet-sewage disposal facilities. ~~Any~~ Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall provide each milk plant with toilet facilities conforming with the regulations of the Commonwealth and the following requirements: no toilet room may open directly into any room in which milk or milk products are processed; the toilet room shall be completely enclosed and shall have tight-fitting, self closing doors; the dressing room, toilet room, and fixtures shall be kept in a clean condition, in good repair, and shall be well ventilated and well lighted; and sewage and other liquid wastes from the toilet room shall be disposed of in a sanitary manner;

i. Item 7p. Water supply. ~~Any~~ Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall:

(1) Provide water for each milk plant from a supply which is properly located, protected, and operated; and

(2) Provide water from a supply which is easily accessible for inspection by the State Regulatory Authority, adequate, and of a safe, sanitary quality;

j. Item 8p. Hand-washing facilities. ~~Any~~ Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall:

(1) Provide hand-washing facilities, including separate hot and cold running water, mix valve, soap, and individual sanitary towels or other approved hand-drying devices, convenient in any area where milk or milk products are handled, processed, or stored, and any area where containers, utensils, or equipment, are washed or stored; and

(2) Keep the hand-washing facilities clean and in good repair;

k. Item 9p. Milk plant cleanliness. ~~Any~~ Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall:

(1) Keep clean, neat, and free of any evidence of animals, insects or rodents, all rooms in which milk or milk products are handled, processed, or stored or in which containers, utensils, or equipment are washed or stored; and

~~(2) Use pesticides safely; and~~

~~(3)~~ (2) Permit only equipment directly related to processing operations or to the handling of containers, utensils, and equipment, in pasteurizing, processing, cooling, packaging, or bulk milk storage rooms;

l. Item 10p. Sanitary piping. ~~Any~~ Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall:

- (1) Use only sanitary piping, fittings, and connections consisting of smooth, impervious corrosion-resistant, nontoxic, easily cleanable materials that are exposed to any milk or milk products, or from which liquids may drip, drain, or be drawn into any milk or milk products;
- (2) Keep all piping in good repair;
- (3) Except as specified in subdivision ~~€ 1 l~~ of this ~~section~~ subsection, use only sanitary piping to transfer any pasteurized or ultra-pasteurized milk or milk products from one piece of equipment to another piece of equipment; and
- (4) Transport cottage cheese, cheese dressings, or cheese ingredients by methods which protect the product from contamination;

m. Item 11p. Construction and repair of containers and equipment. ~~Any~~ Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall:

- (1) Use only multiuse containers and equipment, that may come in contact with any milk or milk products constructed of smooth, impervious, corrosion-resistant, and nontoxic materials; constructed for ease of cleaning; and kept in good repair;
- (2) Use only single-service containers, closures, gaskets, and other articles, that may come in contact with any milk or milk products, that are nontoxic and have been manufactured, packaged, transported, and handled in a sanitary manner;
- (3) Abstain from using more than once any articles intended for single-service use; and
- (4) Use only single-service containers, closures, caps, gaskets, and similar articles manufactured, packed, transported, and handled in a manner which complies with the requirements of Appendix J, "Standards for the Fabrication of Single-Service Containers and Closures for Milk and Milk Products—1991 revision"⁴⁰; contained in the "Grade A Pasteurized Milk Ordinance, 2005 revision";

n. Item 12p. Cleaning and sanitizing of containers and equipment. ~~Any~~ Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall:

- (1) Effectively clean and sanitize before each use the product-contact surfaces of all multiuse containers and equipment, utensils, and equipment used in the transportation, processing, handling, and storage of any milk or milk products;
- (2) Use only multi-use containers for packaging pasteurized milk and milk products that comply with the following: (i) the

residual bacteria count on multi-use containers may not exceed one per milliliter of capacity when the rinse test is used, or the residual bacteria count on multi-use containers shall not exceed 50 colonies per eight square inches (one per square centimeter) of product-contact surface, when the swab test is used; in three-out-of-four samples taken at random on a given day; and (ii) all multi-use containers shall be free of coliform organisms; and

- (3) Use only single-service containers for packaging pasteurized milk and milk products that comply with the following: (i) the residual bacteria count of single-service containers shall not exceed 50 per container, when the rinse test is used, except that in containers less than 100 milliliters, the count shall not exceed 10, or the residual bacteria count of single-service containers shall not exceed 50 colonies per eight square inches (one per square centimeter) of product contact surface, when the swab test is used; in three-out-of-four samples taken at random on a given day; and (ii) all single-service containers shall be free of coliform organisms;

o. Item 13p. Storage of cleaned containers and equipment. ~~Any~~ Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products, shall after cleaning any multiuse milk or milk product containers, utensils, or equipment, transport or store the multiuse milk or milk product containers, utensils, or equipment in a manner that assures complete drainage and in a manner that protects the multiuse milk or milk product containers, utensils, or equipment from contamination before use;

p. Item 14p. Storage of single-service containers, utensils, and materials. ~~Any~~ Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall:

- (1) Purchase all single-service caps, cap stock, parchment paper, containers, gaskets, and other single-service articles for use in contact with milk or milk products, in sanitary tubes, wrappings, or cartons;
- (2) Store in a clean dry place until used, single-service caps, cap stock, parchment paper, containers, gaskets, and other single-service articles for use in contact with milk or milk products;
- (3) Store single-service caps, cap stock, parchment paper, containers, gaskets, and other single-service articles for use in contact with milk or milk products in sanitary tubes, wrappings, or cartons; and
- (4) Handle single-service caps, cap stock, parchment paper, containers, gaskets, and other single-service articles for use in contact with milk or milk products in a sanitary manner;

q. Item 15p. Protection from contamination. ~~Any~~ Each person who holds a grade A permit to produce grade A pasteurized,

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ultra-pasteurized, or aseptically processed milk, or milk products shall:

(1) Locate the person's equipment and facilities and conduct milk plant operations to prevent any contamination of any milk or milk products, ingredients, equipment, containers, or utensils;

(2) Discard all milk, milk products, or ingredients which have been spilled, overflowed, or leaked;

(3) Perform the processing and handling of products other than milk and milk products in the person's milk plant to preclude the contamination of any milk or milk products;

(4) Store, handle, or use any toxic material to preclude the contamination of any milk, milk product, or ingredient, and the milk product contact surfaces of all equipment, containers, or utensils; and

(5) Clean, prior to use, all multi-use cases used to encase packaged milk or milk product containers;

r. Item 16p. Pasteurization and ultra-pasteurization. ~~Any~~ Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall:

~~perform~~ (1) Perform pasteurization, or ultra-pasteurization, or aseptic processing as defined in 2 VAC 5-490-10 of this chapter; and

(2) Perform aseptic processing in compliance with the provisions of 21 CFR Part 113, 21 CFR Part 108, and the Administrative Procedures of Item 16p, 16p(C), 16p(D), and 16p(E) of the "Grade A Pasteurized Milk Ordinance, 2005 revision";

s. Item 17p. Cooling of milk. ~~Any~~ Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall:

(1) Maintain all raw milk and milk products at a temperature of 45°F or cooler, but not frozen, until processed;

(2) Immediately cool, except for milk or milk products to be cultured, all pasteurized or ultra-pasteurized milk or milk products prior to filling or packaging in approved cooling equipment to a temperature of 45°F or cooler, but not frozen;

(3) Store, transport and deliver at a temperature of 45°F or cooler, but not frozen, all pasteurized or ultra-pasteurized milk or milk products; and

(4) Equip with an accurate thermometer each of the rooms or tanks in which any milk or milk products are stored;

t. Item 18p. Bottling and packaging. ~~Any~~ Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall:

(1) Bottle or package all milk or milk products (except for cottage cheese, dry curd cottage cheese and lowfat cottage cheese) at the place of pasteurization in the grade A permit holder's milk plant and in approved mechanical equipment; and

(2) Transport all cottage cheese, dry curd cottage cheese, or lowfat cottage cheese not creamed or packaged in the grade A permit holder's milk plant in sealed containers and in a protected, sanitary manner from the grade A permit holder's milk plant to another grade A permit holder's milk plant for creaming or packaging;

u. Item 19p. Capping. ~~Any~~ Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall:

(1) Cap or close all milk or milk product containers in a sanitary manner by use of approved mechanical capping or closing equipment; and

(2) Use only caps or closures for all milk or milk products, which protect the pouring lip of a milk or milk product container to at least its largest diameter and, use with respect to fluid product containers, only caps or closures that the removal of the cap or closure cannot be made without detection;

v. Item 20p. Personnel; cleanliness. No person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall:

(1) Permit any person in a milk plant to commence any plant function before the person has thoroughly washed the person's hands to remove soil and contamination or to permit any person in a milk plant to continue any plant function if the person's hands are not clean;

(2) Permit any person in a milk plant to resume work after the person has visited the toilet room before the person has thoroughly washed the person's hands;

(3) Permit any person in a milk plant to engage in the processing, pasteurization, handling, storage, or transportation of any milk, milk products, containers, equipment or utensils, unless the person is wearing clean outer garments;

(4) Permit any person in a milk plant, to engage in the processing of any milk or milk products unless the person wears adequate hair covering; or

(5) Permit any person in a milk plant, to engage in the processing of any milk or milk products if the person is using tobacco;

w. Item 21p. Vehicles. ~~Any~~ Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall use

vehicles to transport pasteurized and ultra-pasteurized milk and milk products that are constructed and operated so that the milk or milk products are maintained at a temperature of 45°F or cooler, but not frozen and protected from sunlight, from freezing, and from contamination;

x. Item 22p. Surroundings. ~~Any~~ Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, or aseptically processed milk, or milk products shall keep neat, clean, and free from conditions which might attract or harbor flies, other insects, rodents, or which otherwise constitute a nuisance, the area surrounding any milk plant;

y. ~~Any~~ Each grade A permit holder's receiving station shall comply with subdivisions C 1 a through q of this section, inclusive, and subdivisions C 1, s, v, and x of this section, except that the partitioning requirement of subdivision C 1 g of this section shall not be deemed to apply;

z. ~~Any~~ Each grade A permit holder's transfer station shall comply with subdivisions C 1 ~~a, d, e, f, g, h, i, j, k, l, m,~~ through n, ~~p, q, s,~~ v, and x of this section; and as climatic and operating conditions require, the provisions of subdivisions C 1 ~~b d~~ and e ~~e~~ of this section; except that each person shall provide overhead protection for a transfer station;

a1. ~~Any~~ Each grade A permit holder's facilities for the cleaning and sanitizing of bulk tanks which transport milk and milk products ~~in the grade A permit holder's milk plant, receiving station, or transfer station~~ shall comply with subdivisions C 1 a, ~~d, f, g,~~ h, i, j, k, l, m, through n, ~~p, q,~~ v, and x of this section; and as climatic and operating conditions require, the provisions of subdivisions C 1 ~~b d~~ and e ~~e~~ of this section except that each grade A permit holder shall provide overhead protection for facilities for the cleaning and sanitizing of bulk tanks which transport milk and milk products in the grade A permit holder's milk plant, receiving station, or transfer station.

⁷~~The bacteria limit standard is not applicable to cultured milk products.~~

⁸~~The phosphatase standard is not applicable to bulk shipped heat treated milk products.~~

⁹~~"Grade A Pasteurized Milk Ordinance 1989 Recommendations" is available from U.S. Food and Drug Administration, Milk Safety Branch, HFF-346, 200 "C" St., S.W., Washington, D.C. 20204.~~

¹⁰~~"Standards for the Fabrication of Single-service Containers and Closures for Milk and Milk Products," 1991 revision, is available from the U.S. Food and Drug Administration, Milk Safety Branch, HFF-346, 200 "C" St., S.W., Washington, D.C. 20204.~~

PART VII.
ANIMAL HEALTH.

2 VAC 5-490-60. Animal health.

A. No person may produce, provide, manufacture sell, offer for sale, store in the Commonwealth, or, bring, send, or receive into the Commonwealth any milk, milk product, or condensed and dry milk product for use in the commercial preparation of grade A pasteurized, ultra-pasteurized, or aseptically processed milk or milk product unless the person complies with the following requirements:

1. Milk for pasteurization or ultra-pasteurization or aseptic processing from cows, goats, sheep, water buffalo, and other mammals shall be from a herd or flock that complies with the "Uniform Methods and Rules; Bovine Tuberculosis Eradication-effective ~~February 3, 1989,~~¹¹ January 1, 2005, 9 CFR Part 77, and each herd or flock shall be located in a Modified Accredited Tuberculosis Area or an Area Accredited Free of Bovine Tuberculosis as defined in "Uniform Methods and Rules; Tuberculosis Eradication-effective ~~February 3, 1989~~ January 1, 2005," and certified by the U.S. Department of Agriculture or shall have passed an annual tuberculosis test;

2. Milk for pasteurization or ultra-pasteurization or aseptic processing from bison and cattle shall be from a herd that complies with "Uniform Methods and Rules; Brucellosis Eradication-effective ~~May 6, 1992~~ October 1, 2003,"¹² 9 CFR Part 78; and the following:

(~~a~~) a. Each herd shall be located in a Certified Brucellosis-Free Area or a Modified Certified Brucellosis Area as defined in "Uniform Methods and Rules; Brucellosis Eradication-effective ~~May 6, 1992~~ October 1, 2003," and certified by the United States Department of Agriculture and enrolled in a testing program for the Certified Brucellosis-Free Area or the Modified Certified Brucellosis Area; ~~or~~

(~~b~~) b. Each herd shall meet the requirements for an individually certified herd as defined in "Uniform Methods and Rules; Brucellosis Eradication-effective ~~May 6, 1992~~ October 1, 2003;" ~~or~~

(~~c~~) c. Each herd shall participate in a milk ring testing program meeting the requirements specified in "Uniform Methods and Rules; Brucellosis Eradication-effective ~~May 6, 1992~~ October 1, 2003," in an area that conducts a milk ring testing program at least ~~four~~ two times per year at approximately equal intervals, and any herd with a positive milk ring test result shall be blood tested within 30 days from the date of the positive milk ring test; or

(~~d~~) d. Each cow, bull, heifer, calf, and bison in the herd shall be individually tested by an "official" blood test as defined in "Uniform Methods and Rules; Brucellosis Eradication" for the detection of brucellosis annually;

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3. Goat's milk ~~and~~, sheep's milk, water buffalo milk and milk from other mammals (except bison and cattle) [~~or for~~] pasteurization or ultra-pasteurization or aseptic processing shall be from a herd or flock which:

~~has a. Has an annual whole-herd tuberculosis and brucellosis test; and~~

b. Has passed an initial whole herd or flock brucellosis test, followed by the testing of all replacement animals or any animals entering the milking group or sold as dairy animals on a continuing basis;

c. Has passed an annual random blood-testing program sufficient to provide a confidence level of 99% with a P value of 0.05. Any herd or flock with one or more confirmed positive animals shall go to 100% testing until the whole herd tests show no positive animals are found. The following table provides the random sampling size needed to achieve a 99% confidence with a P value of 0.05:

<u>Herd/Flock Size</u>	<u>Sampling Size</u>	<u>Herd/Flock Size</u>	<u>Sampling Size</u>
<u>20</u>	<u>20</u>	<u>500</u>	<u>82</u>
<u>50</u>	<u>41</u>	<u>600</u>	<u>83</u>
<u>100</u>	<u>59</u>	<u>700</u>	<u>84</u>
<u>150</u>	<u>67</u>	<u>800</u>	<u>85</u>
<u>200</u>	<u>72</u>	<u>1000</u>	<u>86</u>
<u>250</u>	<u>75</u>	<u>1400</u>	<u>87</u>
<u>300</u>	<u>77</u>	<u>1800</u>	<u>88</u>
<u>350</u>	<u>79</u>	<u>4000</u>	<u>89</u>
<u>400</u>	<u>80</u>	<u>10000</u>	<u>89</u>
<u>450</u>	<u>81</u>	<u>100000</u>	<u>90</u>

; or

d. Has passed a USDA-approved bulk milk brucellosis test certified for use in each species of mammal and at the USDA-recommended frequency for testing; and

4. For diseases of cows, sheep, ~~or~~ goats, water buffalo or other mammals which might affect human health, other than brucellosis and tuberculosis, the State Regulatory Authority may require physical, chemical, or bacteriological examinations or other tests as may be deemed necessary by a licensed veterinarian or a veterinarian in the employ of the State Regulatory Authority to diagnose the disease. Each grade A permit holder shall dispose of any diseased animal disclosed by testing in a manner which prevents the spread of the disease to other animals or humans.

~~⁺ "Uniform Methods and Rules; Bovine Tuberculosis Eradication effective February 3, 1989," is available from Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Center Building, Hyattsville, Maryland, 20782 or Federal Veterinarian in Charge, VS, APHIS, USDA, Sixth Floor, Washington Building, 1100 Bank St., Richmond, VA 23219.~~

~~⁺ "Uniform Methods and Rules; Brucellosis Eradication effective May 6, 1992" is available from Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Center Building, Hyattsville, Maryland, 20782 or Federal Veterinarian in Charge, VS, APHIS, USDA, Sixth Floor, Washington Building, 1100 Bank St., Richmond, VA 23219.~~

B. Each grade A dairy farm permit holder shall test his whole herd of milking mammals for brucellosis using a test method acceptable to a licensed veterinarian or a veterinarian in the employ of the State Regulatory Authority within 30 days after each positive screening test result on a milk ring test.

PART VIII.

MILK AND MILK PRODUCTS WHICH MAY BE SOLD.

2 VAC 5-490-70. Milk or milk products which may be sold.

A. Except as specified in subsection B of this section from and after ~~the date this chapter are effective~~ September 10, 1993, a person may sell, offer for sale, or expose for sale in the Commonwealth only grade A pasteurized, ultra-pasteurized, or aseptically processed milk or milk products to the final consumer, or to restaurants, soda fountains, and grocery stores.

B. No person may sell, offer for sale, or expose for sale in the Commonwealth any pasteurized, ultra-pasteurized, or aseptically processed milk or milk products which have not been graded or the grade of which is not known to the final consumer, or to restaurants, soda fountains, and grocery stores unless the Commissioner of Agriculture and Consumer Services makes a finding in writing (which the Commissioner of Agriculture and Consumer Services may renew for terms not to exceed 90 days per term, without limitation) that the supply of grade A raw milk for pasteurization, ultra-pasteurization, or aseptic processing is not adequate to meet the nutritional needs of any person who secures milk in Virginia; or the supply of pasteurized, ultra-pasteurized, or aseptically processed milk or milk product at retail is not available for purchase by any person who secures milk in Virginia.

C. No person may sell, offer for sale or, expose for sale in, or possess in the Commonwealth any pasteurized, ultra-pasteurized, or aseptically processed milk or milk products under the provision of subsection B of this section unless the milk or milk product is labeled "ungraded."

2 VAC 5-490-73. Mandatory pasteurization for all milk, milk products, condensed milk, condensed milk products, dry milk, and dry milk products in final package form intended for direct human consumption.

No person shall cause to be delivered into intrastate commerce or shall sell, otherwise distribute, or hold for sale or other distribution after shipment in intrastate commerce

any milk, milk product, condensed milk, condensed milk product, dry milk, or dry milk product in final package form for direct human consumption unless the product has been pasteurized or is made from milk, milk product, condensed milk, condensed milk product, dry milk, or dry milk product that has all been pasteurized, except where alternative procedures to pasteurization are provided for under 21 CFR Part 133 for curing of certain cheese varieties.

2 VAC 5-490-75. Sale of unpasteurized milk for human consumption prohibited.

No person may offer to sell or sell, barter, trade, or accept any goods or services in exchange for unpasteurized milk if the unpasteurized milk is intended for human consumption.

2 VAC 5-490-80. Transferring, delivery containers, cooling.

A. No person, except as authorized in this chapter, may transfer any milk or any milk product from one container or tank truck to another container or tank truck in any place except a milk plant, receiving station, transfer station, or milkhouse especially used for that purpose and no person may dip or ladle any milk or milk product;

~~B. No person may sell or serve to the public any milk or fluid milk product except in the individual, original container received from the milk distributor, or from an approved bulk dispenser. Nothing in subsection A of this section prohibits any person from transferring milk from one container to another container for the purpose of mixing drinks, if the amount of milk required is less than one half pint of milk; or using an original container of not more than one half gallon capacity or an approved bulk dispenser to serve cream, whipped cream, or half and half, which is to be sold or served to the public;~~

~~C. B.~~ No person may sell or serve to the public any pasteurized or any ultra-pasteurized milk or milk product which has not been maintained at a temperature of 45°F or cooler, but not frozen. No person may store any pasteurized or ultra-pasteurized containers of milk or milk products in ice unless the container is properly drained.

2 VAC 5-490-90. Milk and milk products from beyond the limits of routine inspection.

No person may provide, sell, offer for sale or, store in the Commonwealth or, bring, send, or receive, in the Commonwealth any condensed milk, condensed milk product, dry milk, dry milk product, milk or milk product from outside the Commonwealth unless the condensed milk, condensed milk product, dry milk, dry milk product, milk or milk products are produced and pasteurized, ultra-pasteurized, or aseptically processed under regulations which are substantially equivalent to this chapter and the supply of the milk or and the milk plant that produced the condensed milk, condensed milk product, dry milk, dry milk product,

milk or milk product has been awarded a milk sanitation compliance rating of at least 90 and an enforcement compliance rating of at least 90, or awarded an acceptable HACCP listing made by a state milk sanitation rating listing officer certified by the United States Public Health Service. The State Regulatory Authority may impound any condensed milk, condensed milk product, dry milk, dry milk product, milk or milk product within the Commonwealth of Virginia if it does not comply with the requirements of this section.

PART IX.

CONSTRUCTION PLANS FOR DAIRY FARMS AND MILK PLANTS.

2 VAC 5-490-103. Equipment and facilities; accessibility for inspection.

Each grade A permit holder shall ensure that his facilities and equipment are accessible for inspection by complying with the following:

1. Concrete lids, covers and access doors to each well house, water supply, or pump house shall be easily lifted or opened by a single person and require the person to lift no more than 80 pounds to gain free access to the facilities for inspection;

2. If the permit holder locks any portion of his facilities requiring inspection, the permit holder, upon request, shall provide the State Regulatory Authority with keys to open the facilities or the combination code for each lock to unlock the facilities or the permit holder shall ensure that he or his agent is always available on the premises to provide access to the locked facilities during all normal inspection times;

3. If the permit holder installs floor mats on cow standing surfaces in the milking parlor or barn, the entire area of the floor underneath of the floor mats shall be accessible for inspection by a single person working continuously for 20 minutes including the time necessary to lift and replace the floor mats on the floor;

4. If the permit holder installs any equipment that requires a tool or tools to be disassembled for inspection, the permit holder shall provide the tool or tools freely accessible to the State Regulatory Authority during all normal inspection times;

5. If the permit holder installs any equipment requiring inspection in an attic, loft, pit, or other area requiring a ladder for access, the permit holder shall provide a ladder convenient to each of these areas during all normal inspection times; and

6. If the permit holder installs any milk lines or other milking equipment, milk transfer or wash solution lines in an attic, loft, pit, or other area not visible from below by the State Regulatory Authority, the permit holder shall ensure that all fittings and joints are welded and contain no gaskets or joints that could leak and that the interior surfaces of all milk lines or other milking equipment, milk transfer or wash solution

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lines is fully accessible for inspection from outside the attic, loft, pit, or other area not visible from below.

2 VAC 5-490-105. New or test facilities and equipment; equipment design, construction and approval process.

A. At the request of any grade A permit holder, the State Regulatory Authority may allow the temporary installation of equipment or the temporary construction of dairy facilities that the State Regulatory Authority has no or limited regulatory experience with, on a trial basis, to determine if the equipment or dairy facilities can comply with the requirements of this chapter under normal conditions of use. The State Regulatory Authority will at a minimum evaluate the equipment or facilities for compliance with the requirements of this chapter when newly installed, as well as, complete a separate evaluation of the inspection record during the trial of the equipment or facilities to comply with the requirements of this chapter over time under normal conditions of use.

B. At the conclusion of each trial, the State Regulatory Authority shall inform the grade A permit holder in writing if the equipment or facilities or both the equipment and facilities comply with the requirements of this chapter. If the equipment or facilities do not comply or both the equipment and facilities do not comply with the requirements of this chapter, the State Regulatory Authority shall inform the grade A permit holder in writing to alter or remove his equipment or facilities or to alter or remove both his equipment and facilities within a maximum of six months from the date of receipt of the written decision by the permit holder.

C. The State Regulatory Authority shall not renew or extend any temporary installation of equipment or the temporary construction of dairy facilities beyond the time specified in the written agreement between the grade A permit holder and the State Regulatory Authority for more than one year after the time specified in the written agreement for any reason. The State Regulatory Authority shall not accept any agreement between the grade A permit holder and the State Regulatory Authority for the temporary installation of equipment or the temporary construction of dairy facilities that proposes to be evaluated for a period longer than one year.

D. If the State Regulatory Authority agrees to allow the temporary installation of equipment or the temporary construction of dairy facilities, the State Regulatory Authority and the grade A permit holder installing the equipment or constructing the facilities shall each sign a written agreement that at a minimum includes:

1. A description of the equipment or facilities and detailed plans for their installation acceptable to the State Regulatory Authority;

2. The name of the grade A permit holder and the physical address where the equipment or facilities will be installed;

3. The name and contact information for the person or persons who will be installing the equipment or constructing the facilities;

4. A detailed plan including:

a. A description of the items to be evaluated by the State Regulatory Authority;

b. Criteria to judge the acceptability of performance by which each item being evaluated will be measured by the State Regulatory Authority;

c. A time table specifying the length of the trial, the minimum number of inspections and time periods between inspections;

d. How inspection findings will be documented and reviewed with the permit holder and at what frequency;

e. A provision for the State Regulatory Authority to end the temporary installation agreement before the completion of the timeline and reject the equipment or facilities as not complying with the requirements of this chapter if continuation of the trial will not substantially affect the decision of the State Regulatory Authority;

f. A provision that at the end of the timeline specified in the agreement, the permit holder will remove or alter the equipment or facilities within a maximum of six months from the date he receives written instruction to do so from the State Regulatory Authority to comply with the requirements of this chapter if the State Regulatory Authority does not approve the equipment or facilities; and

g. A provision that the permit holder's failure to remove or alter the equipment or facilities to comply with the requirements of this chapter within six months after receipt of written instructions from the State Regulatory Authority shall be considered sufficient cause for permit suspension.

PART X. PERSONNEL HEALTH.

2 VAC 5-490-110. Personnel health.

A. No person affected with any disease in a communicable form, or while a carrier of a communicable disease, may work at any dairy farm or milk plant in any capacity which brings the person into contact with the production, handling, storage, or transportation of milk or milk products, or into contact with milk or milk product containers, equipment, or utensils.

B. No person holding a grade A permit may employ any person having, or suspected of having, any disease in a communicable form, or of being a carrier of a communicable disease.

C. Any grade A permit holder who produces or distributes milk or milk products, or condensed or dry milk products

upon whose dairy farm, or in whose milk plant any communicable disease occurs, or who suspects that any employee has contracted any disease in a communicable form, or has become a carrier of a communicable disease, shall notify the State Regulatory Authority immediately.

2 VAC 5-490-120. Procedure when infection is suspected.

When reasonable cause exists to suspect the possibility of transmission of infection of a communicable disease from any person concerned with the handling of milk or milk products to any other person, the person concerned with the handling of milk or milk products and the person holding the grade A permit shall comply with the following measures:

1. The immediate exclusion of that person from milk handling;
2. No grade A permit holder may sell or offer for sale any milk or milk products that have been handled by or exposed to a person who is suspected of having a communicable disease or being a carrier of a communicable disease; and
3. ~~Any~~ Each person who is suspected of having a communicable disease or being a carrier of a communicable disease and his associates, at the discretion of the State Regulatory Authority, shall submit to medical and bacteriological examination by a licensed physician in the Commonwealth sufficient to make a medical diagnosis.

~~2 VAC 5-490-130. Grade A condensed and dry milk products and condensed and dry whey. (Repealed.)~~

~~No person may produce, provide, manufacture, sell, offer for sale, or store in the Commonwealth, or, bring, send, or receive in, the Commonwealth any condensed and dry milk product for use in the commercial preparation of grade A pasteurized, ultra pasteurized, or aseptically processed milk or milk product if the person does not comply with:~~

- ~~1. The following sections of Part II of the "Grade A Condensed and Dry Milk Products and Condensed and Dry Whey Recommended Sanitation Ordinance for Condensed and Dry Milk Products and Condensed and Dry Whey used in Grade A Pasteurized Milk Products Supplement I to the Grade A Pasteurized Milk Ordinance 1978 Recommendations of the United States Public Health Service Food and Drug Administration, 1978 Edition"¹³ and "Supplement I 1978 Grade A Condensed & Dry Milk Ordinance (DMO)"¹⁴:~~

~~Section 2;~~

~~Section 4;~~

~~Section 7 (except that the temperature standard for grade A raw milk for pasteurization shall be 40°F or cooler, but not frozen);~~

~~Section 8;~~

~~Section 9;~~

~~Section 10;~~

~~Section 11; and~~

~~2. The following appendices contained in the "Grade A Condensed and Dry Milk Products and Condensed and Dry Whey Recommended Sanitation Ordinance for Condensed and Dry Milk Products and Condensed and Dry Whey used in Grade A Pasteurized Milk Products Supplement I to the Grade A Pasteurized Milk Ordinance 1978 Recommendations of the United States Public Health Service Food and Drug Administration, 1978 Edition:"~~

~~Appendices A, B, C, D, E, F, and H.~~

¹³ ~~"Grade A Condensed and Dry Milk Products and Condensed and Dry Whey", supplement I to the "Grade A Pasteurized Milk Ordinance", 1978 recommendations, is available from U.S. Food and Drug Administration, Milk Safety Branch, HFF 346, 200 "C" St., S.W., Washington, D.C. 20204.~~

¹⁴ ~~"Supplement I 1978 Grade A Condensed & Dry Milk Ordinance (DMO)" was issued December 11, 1992 and is available from U.S. Food and Drug Administration, Milk Safety Branch, HFF 346, 200 "C" St., S.W., Washington, D.C. 20204.~~

**PART XI.
VOLUNTARY HACCP PROGRAM.**

**Article 1.
Program Participation.**

2 VAC 5-490-131. HACCP program participation voluntary.

A. Participation in the HACCP program is voluntary for each person who operates a dairy plant, receiving station or transfer station and the State Regulatory Authority responsible for the permitting and auditing of each person's dairy plant, receiving station or transfer station. No person operating a milk plant, receiving station or transfer station may participate in the voluntary HACCP program unless the State Regulatory Agency responsible for the permitting and auditing of each person's dairy plant agrees to participate in the voluntary HACCP program, also.

B. Each person volunteering to operate his milk plant, receiving station or transfer station under the voluntary HACCP program shall provide a written commitment to the State Regulatory Authority responsible for his milk plant, receiving station or transfer station that he will supply the necessary resources to support participation in the voluntary HACCP program.

C. Each State Regulatory Authority volunteering to participate in the voluntary HACCP program shall provide a written commitment to the person requesting to operate a

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milk plant, receiving station or transfer station under the voluntary HACCP program that the State Regulatory Authority will supply the necessary resources to support participation in the voluntary HACCP program.

D. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall have a minimum of 60 days of HACCP System records prior to a HACCP listing audit. Each milk plant, receiving station or transfer station shall be inspected and permitted initially by the State Regulatory Authority and shall be regulated initially under the requirements of this chapter without taking into consideration the provisions of this part until the State Regulatory Authority conducts an acceptable HACCP listing audit documenting the successful implementation of a fully functioning HACCP System in the person's milk plant, receiving station or transfer station.

E. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall:

1. Comply with all of the provisions applicable to the voluntary HACCP program contained in:

- a. Section 7, Standards for grade "A" milk and milk products;
- b. Item 16p, Pasteurization and aseptic processing;
- c. Item 16p(E), Pasteurization and aseptic processing records, equipment tests and examinations;
- d. Section 13, Personnel health;
- e. Section 14, Procedure when infection or high risk of personnel health;
- f. Appendix H, Pasteurization Equipment and procedures;
- g. Appendix I, Pasteurization equipment and controls tests;
- h. Appendix K, HACCP Program; and
- i. Appendix R, Determination of Time/Temperature Control for Safety of Milk and Milk Products contained in the "Grade A Pasteurized Milk Ordinance, 2005 revision";

2. Prepare their HACCP Plan based on the following HACCP principles:

- a. Conduct a hazard analysis;
- b. Determine the critical control points;
- c. Establish critical limits;
- d. Establish monitoring procedures;
- e. Establish corrective actions;
- f. Establish verification procedures; and
- g. Establish recordkeeping and documentation procedures;

3. Prior to the implementation of a HACCP Plan develop, document and successfully implement written prerequisite programs which provide the basic environment and operating conditions that are necessary for the production of safe, wholesome food.

Article 2.

Implementation of a HACCP System.

2 VAC 5-490-132. Prerequisite programs.

A. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall:

1. Provide complete, up-to-date process flow diagrams for all grade A milk, milk products, condensed milk, condensed milk products, dry milk or dry milk products prior to developing the HACCP plan;

2. Provide a brief written description or checklist for each prerequisite program that can be audited against to endure compliance. Each prerequisite program shall include procedures that can be monitored, records that specify what is monitored, and how often it will be monitored.

3. Develop and implement prerequisite programs that address conditions and practices before, during, and after processing;

4. Develop and implement prerequisite programs that address:

a. Safety of the water that comes into contact with milk, milk products, condensed milk, condensed milk products, dry milk, dry milk products or product-contact surfaces, including steam and ice;

b. Condition and cleanliness of equipment product-contact surfaces;

c. Prevention of cross-contamination from unsanitary objects and or practices to milk, milk products, condensed milk, condensed milk products, dry milk, dry milk products or product-contact surfaces, packaging material and other food-contact surfaces, including utensils, gloves, outer garments, etc, and from raw product to processed product;

d. Maintenance of hand washing, hand sanitizing, and toilet facilities;

e. Protection of milk, milk products, condensed milk, condensed milk products, dry milk, dry milk products, packaging material, and product-contact surfaces from adulteration with lubricants, fuel, pesticides, cleaning compounds, sanitizing agents, condensate and other chemical, physical and biological contaminants;

f. Proper labeling, storage, and use of toxic compounds;

g. Control of employee health conditions, including employee exposure to high risk situations, that could result in the microbiological contamination of milk, milk products, condensed milk, condensed milk products, dry milk, dry milk

products, packaging materials, and product-contact surfaces; and

h. Pest exclusion from the milk plant, receiving station or transfer station;

5. In addition to the required prerequisite programs specified in this section, any other prerequisite programs that are being relied upon in the hazard analysis to reduce the likelihood of hazards such that they are not reasonably likely to occur shall also be monitored, audited, and documented as required prerequisite programs.

B. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall:

1. Monitor the conditions and practices of all required prerequisite programs with sufficient frequency to ensure conformance with those conditions and that are appropriate both to the milk plant, receiving station or transfer station and to the safety of the milk, milk products, condensed milk, condensed milk products, dry milk or dry milk products being processed;

2. Document the correction of those conditions and practices that are not in conformance with all prerequisite programs;

3. Determine the frequency of calibration for indicating thermometers, recording thermometers, and other devices used to monitor prerequisite programs and ensure that they are properly calibrated to assure accuracy at the determined frequency; and

4. Maintain records that document the monitoring and corrections required by their prerequisite programs for review by the State Regulatory Authority.

2 VAC 5-490-133. Hazard analysis.

A. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall:

1. Develop, or have developed for it, a written hazard analysis to determine whether there are hazards that are reasonably likely to occur for each type of milk, milk product, condensed milk, condensed milk product, dry milk, dry milk product processed or handled by the milk plant, receiving station or transfer station and to identify the control measures that the milk plant, receiving station or transfer station can apply to control those hazards;

2. Include in the hazard analysis, hazards that can be introduced both within and outside the milk plant, receiving station or transfer station environment, including hazards that can occur during handling, transportation, processing and distribution;

3. Evaluate milk, milk product, condensed milk, condensed milk product, dry milk or dry milk product hazards that are

reasonably likely to occur and at a minimum, giving consideration to the following:

a. Microbiological contamination;

b. Parasites;

c. Chemical contamination;

d. Unlawful drug and pesticide residues;

e. Natural toxins;

f. Unapproved use of food or color additives;

g. Presence of undeclared ingredients that may be allergens; and

h. Physical hazards.

2 VAC 5-490-134. HACCP plan.

A. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall develop and implement a written HACCP plan whenever a hazard analysis reveals one or more hazards that are reasonably likely to occur.

B. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall ensure the person's HACCP plan complies with the following:

1. The HACCP plan shall be developed by one or more individuals who have been trained in accordance with the requirements of this chapter;

2. The HACCP plan shall be subject to the recordkeeping requirements of this chapter; and

3. The HACCP plan shall be specific to each location and milk, milk product, condensed milk, condensed milk product, dry milk or dry milk product;

C. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall ensure the person's HACCP plan shall at a minimum:

1. Include complete up-to-date process flow diagrams for all milk, milk products, condensed milk, condensed milk products, dry milk and dry milk products manufactured;

2. List all hazards that are reasonably likely to occur as identified in the hazard analysis and that must be controlled for each type of milk, milk product, condensed milk, condensed milk product, dry milk or dry milk product;

3. List the Critical Control Points for each of the identified hazards, including:

a. Critical Control Points designed to control hazards that could occur or could be introduced in the milk plant, receiving station or transfer station environment;

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b. Critical Control Points designed to control hazards introduced outside the milk plant, receiving station or transfer station environment, including hazards that occur before arriving at the milk plant, receiving station or transfer station; and

c. A list of Critical Limits that shall be met at each of the Critical Control Points;

4. List the procedures and the frequency with which they are to be performed that will be used to monitor each of the Critical Control Points to ensure compliance with the Critical Limits;

5. Include any corrective action plans that have been developed in accordance with the corrective action requirements as described in this chapter, and that are to be followed in response to deviations from Critical Limits at Critical Control Points;

6. List the verification and validation procedures, and the frequency with which they are to be performed, that the milk plant, receiving station or transfer station will use in accordance with verification and validation requirements as described in this chapter;

7. Provide a recordkeeping system that documents the monitoring of the Critical Control Points in accordance with the record requirements as described in this chapter; and

8. Create records that contain only actual values and observations obtained during monitoring.

2 VAC 5-490-135. Corrective actions.

A. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall take corrective action as described in subsection B or subsection C of this section whenever a deviation from a Critical Limit occurs.

B. Before a deviation occurs each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program:

1. May develop written corrective action plans, which become a part of their HACCP plan. These corrective action plans may predetermine the corrective actions that milk plants, receiving stations and transfer stations will take whenever there is a deviation from a Critical Limit;

2. Shall develop corrective action plans that are appropriate for each particular deviation and that:

a. Describes the steps to be taken;

b. Assigns responsibility for taking those steps to ensure that:

(1) No milk, milk product, condensed milk, condensed milk product, dry milk or dry milk product is allowed to enter commerce that is either injurious to health or is otherwise adulterated as a result of the deviation; or

(2) If such milk, milk product, condensed milk, condensed milk product, dry milk or dry milk product has entered commerce, it is expeditiously removed; and

(3) The cause of the deviation is corrected.

C. When a deviation from a critical limit occurs and a corrective action plan that is appropriate for that deviation does not exist, each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall:

1. Segregate and hold the affected milk or milk product, at least until the requirements of subdivisions 2 and 3 of this subsection have been met;

2. Perform or obtain a review to determine the acceptability of the affected milk, milk product, condensed milk, condensed milk product, dry milk or dry milk product for distribution. The review shall be performed by an individual or individuals qualified by training or experience to perform such a review;

3. Take corrective action, when necessary, with respect to the affected milk, milk product, condensed milk, condensed milk product, dry milk or dry milk product to ensure that no milk, milk product, condensed milk, condensed milk product, dry milk or dry milk product is allowed to enter commerce that is either injurious to health or is otherwise adulterated as a result of the deviation;

4. Take corrective action, when necessary, to correct the cause of the deviation; and

5. Perform or obtain timely validation by a qualified individual or individuals to determine whether modification of the HACCP plan is required to reduce the risk of recurrence of the deviation and modify the HACCP plan as necessary.

D. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall ensure that all corrective actions taken in accordance with this section are fully documented in records that are subject to verification.

2 VAC 5-490-136. Verification and validation.

A. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall verify that the HACCP system is being implemented according to design, except that critical factors for aseptically processed grade A milk and milk products, as determined by the process authority and listed on the scheduled process under 21 CFR Part 113 shall be managed separately from the voluntary HACCP program, even if identified as a Critical Control Point in the hazard analysis. Critical factors identified in the scheduled process shall be monitored under the operating supervision of an individual who has successfully completed an approved course of

instruction in low-acid canned foods as required by 21 CFR 108.35.

B. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall include in their verification activities:

1. The calibration of Critical Control Point process-monitoring instruments;

2. At the option of the person operating a milk plant, receiving station or transfer station, the performance of periodic end-product or in-process testing;

3. A review, including signing and dating, by an individual who has been trained in accordance with the training requirements of this chapter, of the records that document:

a. The monitoring of Critical Control Points;

b. The taking of corrective action; and

c. The calibrating of any process monitoring instruments used at Critical Control Points and the performance of any periodic end-product or in-process testing that is part of HACCP Plan verification activities;

4. The taking of corrective action procedures whenever any verification procedure establishes the need to take a corrective action; and

5. The calibration of Critical Control Point process-monitoring instruments, and the performance of any periodic end-product and in-process testing, in accordance with subdivisions 3 a and b of this subsection, shall be documented in records and maintained as required by this chapter.

C. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall:

1. Validate that the HACCP plan is adequate to control hazards that are reasonably likely to occur at least once within 12 months after implementation of the HACCP system and annually thereafter or whenever any changes in the process occur that could affect the hazard analysis or alter the HACCP plan;

2. Ensure the validation is performed by a qualified individual or individuals trained in accordance with the requirements of this chapter;

3. Ensure the validation is documented and the records maintained as required by this chapter; and

4. Ensure the HACCP plan is modified immediately whenever a validation reveals that the HACCP plan is no longer adequate.

D. Whenever a milk plant, receiving station or transfer station does not have a HACCP plan, because a hazard analysis has revealed no hazards that are reasonable likely to occur, the

person operating the milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall reassess the adequacy of the hazard analysis whenever there are any changes in the process that could reasonably affect whether a hazard exists.

2 VAC 5-490-137. Records.

A. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall:

1. Use consistent terminology to identify each piece of equipment, record, document, or other program throughout their written HACCP system;

2. Maintain the following records documenting the HACCP system:

a. Records documenting the ongoing application of the prerequisite programs, including a brief written description, monitoring and correction records;

b. The written hazard analysis;

c. The written HACCP plan;

d. A table of contents and centralized list of the HACCP program records, by title, documenting the ongoing application of the HACCP system;

e. A document change log;

f. Records documenting the ongoing application of the HACCP plan that include:

(1) Monitoring of Critical Control Points and their Critical Limits, including the recording of actual times, temperatures, or other measurements, as prescribed in the HACCP plan;

(2) Corrective actions, including all actions taken in response to a deviation;

(3) A centralized deviation log; and

(4) Plan validation dates;

g. Required HACCP documents and forms specified in subdivisions 2 a through c of this subsection shall be dated or identified with a version number and each page shall be marked with a new date or version number whenever that page is updated; and

h. Records documenting verification and validation of the HACCP system, including the HACCP plan, hazard analysis and the prerequisite programs.

B. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall ensure all required records include:

1. The identity of the milk plant, receiving station or transfer station;

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2. The date and time of the activity that the record reflects;

3. The signature or initial of the person or persons performing the operation or creating the record;

4. Where appropriate, the identity of the milk or milk product and the production code, if any;

5. Processing and other information entered on the records at the time that it is observed; and

6. Only the actual values and observations obtained during monitoring.

C. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall ensure all required records specified in subdivisions A 2 a through c of this section:

1. Have been signed and dated by the most responsible individual onsite at the milk plant, receiving station or transfer station to signify that the records have been accepted by the firm; and

2. Are signed and dated upon initial acceptance;

a. Upon any modification; and

b. Upon verification and validation.

D. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall:

1. Ensure all records required by this section for perishable or refrigerated products are retained for one year after the date that such products were prepared, and in the case of frozen, preserved, or shelf-stable products, for two years after the date that the products were prepared or the for the shelf-life of the product, whichever is greater;

2. Ensure all records that relate to the adequacy of equipment or processes used, such as commissioning or process validation records, including the results of scientific studies and evaluations, shall be maintained at the milk plant, receiving station or transfer station facility for a least two years after the date that the milk plant, receiving station or transfer station last used such equipment or process;

3. Ensure that all processing records stored off-site are a minimum of six months old from the date that the monitoring occurred and can be retrieved and provided on-site within 24 hours after a request by the State Regulatory Authority. Electronic records shall be considered accessible on-site if they can be accessed on-site; and

4. Ensure all records required by this subsection shall be available for review by the State Regulatory Authority at all reasonable hours.

2 VAC 5-490-138. Training.

Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall ensure that each person who is responsible for: (i) developing a hazard analysis; (ii) delineating control measures; (iii) developing a HACCP plan that is appropriate for the specific milk plant, receiving station or transfer station; (iv) validating and modifying the HACCP plan; or (v) performing required HACCP plan record reviews has received basic HACCP training and an orientation to the HACCP requirements contained in Appendix K of the "Grade A Pasteurized Milk Ordinance, 2005 revision."

PART XII.

INTERPRETATION AND ENFORCEMENT.

2 VAC 5-490-140. Interpretation and enforcement.

A. This chapter is based on the "Grade A Pasteurized Milk Ordinance-~~1989~~ 2005 recommendations." Except as otherwise provided in this chapter, the provisions of this chapter shall be interpreted in a manner consistent with interpretations accorded the "Grade A Pasteurized Milk Ordinance-~~1989~~ 2005 recommendations."

B. The administrative procedures used to conduct case decisions under this chapter shall conform to the provisions of the Virginia Administrative Process Act.

C. The State Regulatory Authority shall comply with the following administrative procedures when summarily suspending a grade A permit as specified in ~~2 VAC 5-490-30~~ 2 VAC 5-490-31 B ~~of this chapter:~~

1. The State Regulatory Authority shall serve upon the grade A permit holder a written notice of suspension. The written notice of suspension shall specify the violations in question and inform the grade A permit holder of the right to appear before the State Regulatory Authority in person, by counsel, or by other qualified representative at a fact-finding conference for the informal presentation of factual data, arguments, and proof to appeal this determination of violation;

2. Upon receipt of written application from any person whose grade A permit has been summarily suspended (within 30 days after the effective date of the summary suspension) the State Regulatory Authority shall within seven days after the date of receipt by the State Regulatory Authority of a written application from any person whose grade A permit has been summarily suspended proceed to hold an informal fact-finding conference to ascertain the facts of the violations in question and upon evidence presented at the informal fact-finding conference shall affirm, modify, or rescind the summary suspension;

3. The State Regulatory Authority shall, unless the parties consent, ascertain the fact basis for their decisions of cases

through informal conference proceedings. Such conference proceedings include the rights of parties to the case to have reasonable notice thereof, to appear in person or by counsel or other qualified representative before the State Regulatory Authority for the informal presentation of factual data, argument, or proof in connection with any case, to have notice of any contrary fact basis or information in the possession of the agency which can be relied upon in making an adverse decision, to receive a prompt decision of any application for license, benefit, or renewal thereof, and to be informed, briefly and generally in writing, of the factual or procedural basis for an adverse decision in any case;

4. No person whose grade A permit has been summarily suspended may be granted an informal fact-finding conference by the State Regulatory Authority unless the State Regulatory Authority receives the person's written application within 30 days after the effective date of the summary suspension;

5. From any adverse decision of an informal fact-finding conference, the ~~State Regulatory Authority~~ grade A permit holder may request a formal hearing under § ~~9-6.14-12~~ 2.2-4020 of the Code of Virginia by writing the ~~Director of Division Program Manager of the Office of Dairy and Foods~~ within 30 days stating the request and by providing the State Regulatory Authority with a statement of the issues in dispute. If the request for a formal conference is denied, the State Regulatory Authority shall notify the grade A permit holder in writing and further may affirm or modify the decision of the informal fact-finding conference; and

6. If a formal fact-finding conference is denied, the State Regulatory Authority shall notify the grade A permit holder of the right to file an appeal in the circuit court.

FORMS

~~Application For a Permit to Produce Grade A Raw Milk For Sale in the Commonwealth of Virginia.~~

DOCUMENTS INCORPORATED BY REFERENCE

~~National Uniform Coding System For Packaging Identification of Milk and Milk Product Processing Plants.~~

~~Standards For the Fabrication of Single Service Containers and Closures For Milk and Milk Products — 1991 revision.~~

~~Uniform Methods and Rules; Bovine Tuberculosis Eradication — eff. 2/3/89.~~

~~Grade A Condensed and Dry Milk Products and Condensed and Dry Whey, supplement I to the Grade A Pasteurized Milk Ordinance, 1978 recommendations.~~

Drug Residue Test Methods for Confirmation of Presumptive Positive Results and Initial Producer Traceback, M-I-96-10 (Revision #5), March 10, 2004, published by the Food and

Drug Administration, Milk Safety Branch (HFS-626), 5100 Paint Branch Parkway, College Park, MD 20740-3835.

Evaluation of Milk Laboratories, 2005 Revision, published by the Food and Drug Administration Laboratory Quality Assurance Team, HFH-450, 6502 South Archer Road, Summit-Argo, Illinois 60501.

Grade "A" Pasteurized Milk Ordinance, 2005 Revision, published by the Food and Drug Administration, Milk Safety Branch (HFS-626), 5100 Paint Branch Parkway, College Park, MD 20740-3835.

Official Methods of Analysis of the Association of AOAC International, 18th Edition, 2005, published by the Association of Official Analytical Chemists International, 481 North Frederick Avenue, Suite 500, Gaithersburg, Maryland 20877-2417.

Uniform Methods and Rules: Bovine Tuberculosis Eradication - effective January 1, 2005, available from U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, federal Center Building, Hyattsville, Maryland 20782 or Federal Veterinarian in Charge, USDA/APHIS-VS, Virginia Area Office, 7th Floor, Federal Building, 400 N. 8th Street, Richmond, Virginia 23240.

Uniform Methods and Rules: Brucellosis Eradication - effective October 1, 2003, available from U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, Federal center Building, Hyattsville, Maryland 20782 or Federal Veterinarian in Charge, USDA/APHIS-VS, Virginia Area Office, 7th Floor, Federal Building, 400 N. 8th Street, Richmond, Virginia 23240.

VA.R. Doc. No. R07-83; Filed May 22, 2007, 11:27 a.m.



TITLE 11. GAMING

VIRGINIA RACING COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The Virginia Racing Commission is exempt from the Administrative Process Act pursuant to subdivision B 23 of § 2.2-4002 of the Code of Virginia when promulgating regulations relating to the administration of medication or other substances foreign to the natural horse.

Title of Regulation: 11 VAC 10-180. Medication (amending 11 VAC 10-180-10, 11 VAC 10-180-20, 11 VAC 10-180-60 and 11 VAC 10-180-80).

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

Effective Date: May 18, 2007.

Regulations

Agency Contact: David S. Lermond, Jr., Regulatory Coordinator, Virginia Racing Commission, 10700 Horsemen's Lane, New Kent, VA 23024, telephone (804) 966-7404, FAX (804) 966-7418, or email david.lermond@vrc.virginia.gov.

Summary:

The major changes to these regulations include the prohibition of anabolic or androgenic steroids, or both, and other like substances, except for boldenone, stanozolol, nandrolone, and testosterone individually but not in combination (stacking or layering) and a clarification of when adjunct bleeder medications can be given on race day (no less than three hours before post time). These rule changes are consistent with the Model Rules of Racing published by the Association of Racing Commissioners International.

11 VAC 10-180-10. Definitions.

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

"Bleeder" means a horse that has been diagnosed as suffering from exercise-induced pulmonary hemorrhage based on external or endoscopic examination by the commission veterinarian or a practicing veterinarian who is a permit holder in the Commonwealth of Virginia or any other jurisdiction.

"Bleeder list" means a tabulation of all bleeders to be maintained by the stewards.

"Commission" means the Virginia Racing Commission.

"Controlled substance" means a drug, substance or immediate precursor in Schedules I through VI of the Virginia Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia) or any substance included in the five classification schedules of the U.S. Uniform Controlled Substances Act (21 USC § 301 et seq.).

"Furosemide list" means a tabulation of horses permitted to use the medication of furosemide on race day.

"Injectable substance" means a liquid or solid substance that may require the addition of a liquid via a needle and syringe to change it from a solid into a liquid, contained in a vial that can be accessed and administered only via a needle and syringe.

"Licensed veterinarian" means a veterinarian who holds a valid license to practice veterinary medicine and surgery under the applicable laws of the jurisdiction in which such person's practice is principally conducted.

"Milkshaking" or "bicarbonate loading" means a bicarbonate or other alkalinizing substance, administered to a horse that elevates the horse's bicarbonate level or pH level above those

existing naturally in the untreated horse at normal physiological concentrations as determined by the commission, regardless of the means of administration.

"Permitted race day substances" means only substances approved by the commission that are administered solely for the benefit and welfare of the horse, nonperformance altering, of no danger to riders/drivers, and unlikely to interfere with the detection of prohibited substances.

"Prescription substance" means any substance that is administered or dispensed by or on the order of a licensed veterinarian for the purpose of medical treatment of an animal patient when a bona fide doctor-patient relationship has been established.

"Primary laboratory" means a facility designated by the commission for the testing of test samples.

"Prohibited substance" means any drug, medication or chemical foreign to the natural horse, whether natural or synthetic, or a metabolite or analog thereof, the use of which is not expressly permitted by the regulations of the commission.

"Race day" means the 24-hour period before post-time for the race in which the horse is entered to start.

"Reference laboratory" means a facility designated by the commission for the testing of split samples.

"Substance" means any drug, medication or chemical foreign to the natural horse or human being, whether natural or synthetic, or a metabolite or analog thereof.

"Test sample" means any sample of blood, urine, saliva or tissue obtained from a horse or person for the purpose of laboratory testing for the presence of substances.

"Tubing" means the administration to a horse of any substance via a naso-gastric tube.

11 VAC 10-180-20. Generally.

A. Prohibited substance. No trainer shall allow a horse to appear in a race, including qualifying races or official timed workouts, when the horse contains in its system any prohibited substance, as determined by testing of blood, saliva or urine, or any other reasonable means.

B. Race day prohibitions. No person shall administer any substance to a horse on race day other than those substances expressly permitted by the commission. Substances permitted by the commission shall be administered solely for the benefit and welfare of the horse, nonperformance altering, of no danger to riders/drivers, and unlikely to interfere with the detection of prohibited substances.

C. Veterinarian treatment reports. Practicing veterinarians at the horse racing facility shall submit daily treatment reports at a time and in a manner prescribed by the commission

veterinarian. The report shall contain the veterinarian's name, the name of the trainer of the horse, the name of the horse, all medications administered to the horse, diagnostic and therapeutic procedures performed, and the time and date of the administration or treatment.

1. Trainers of horses not stabled at the horse racing facility shall be responsible for submitting retroactive treatment reports to the commission veterinarian for any horse programmed to race. At a time prescribed by the commission veterinarian, the trainer shall submit to the commission veterinarian a retroactive treatment report for the seven previous days for any horse programmed to race. Reports may be electronically submitted or hand delivered to the commission veterinarian's office.

2. If a treatment report has not been received by the commission veterinarian prior to the start of a horse's race, the stewards, in their discretion, may exclude the introduction of such a treatment report into any subsequent hearing.

D. Tubing of horses prohibited. The tubing or dosing of any horse for any reason on race day is prohibited, unless administered for medical emergency purposes by a licensed veterinarian in which case the horse shall be scratched. The practice of administration of any substance, via a tube or dose syringe, into a horse's stomach on race day is considered a violation of this chapter.

1. Using or possessing the ingredients or the paraphernalia associated with forced feeding to a horse of any alkalizing agent with or without a concentrated form of carbohydrate, or administering any substance by tubing or dose syringe on race day shall be considered a violation of this chapter.

2. Under the provisions of this subsection endoscopic examination shall not be considered a violation of this chapter.

E. Possession of needles prohibited. No person, except a veterinarian holding a valid veterinarian's permit or an assistant under his immediate supervision or a person possessing documentary evidence of a valid medical prescription, shall have in his possession within the enclosure any hypodermic syringe or needle or any instrument capable of being used for the injection of any substance.

F. Possession of injectables prohibited. No person, except a veterinarian holding a valid veterinarian's permit or an assistant under his immediate supervision, shall have in his possession within the enclosure any injectable substance.

G. Prescription substances for animal use. No person, except a veterinarian holding a valid veterinarian's permit or an assistant under his immediate supervision, shall have in his possession within the enclosure of a horse racing facility any prescription substance for animal use unless:

1. The person actually possesses, within the enclosure of the horse racing facility, documentary evidence that a prescription has been issued to him for the substance by a licensed veterinarian;

2. The prescription substance is labelled with a dosage for the horse or horses to be treated with the prescription substance; and

3. The horse or horses named in the prescription are then under the care and supervision of the permit holder and are then stabled within the enclosure of the horse racing facility.

H. Possession of substances. No veterinarian or permit holder shall, without good cause, possess or administer any substance to a horse stabled within the enclosure:

1. That has not been approved by the U.S. Food and Drug Administration (FDA) for any use (human or animal), or the U.S. Department of Agriculture's Center for Veterinary Biologics; or

2. That is on the U.S. Drug Enforcement Agency's Schedule I or Schedule II of controlled substances as prepared by the Attorney General of the United States pursuant to 21 USC §§ 811 and 812.

I. Human use of needles and substances. Notwithstanding these regulations, a permit holder or veterinarian may possess within the enclosure of a horse racing facility a substance for use on his person, providing the permit holder or veterinarian possesses documentary evidence that a valid medical prescription has been issued to the permit holder or veterinarian.

Notwithstanding these regulations, a permit holder or veterinarian may possess within the enclosure of a horse racing facility a hypodermic syringe ~~or~~ and needle for the purpose of administering to himself a substance, provided that the permit holder has documentary evidence that the substance can only be administered by injection and that the substance to be administered by injection has been prescribed for him.

J. Erythropoietin, Darbepoietin, Oxyglobin, Hemopure, and any analogous substances. The possession or administration of Erythropoietin (Epogen), Darbepoietin, Oxyglobin, Hemopure, or any analogous substance that increases oxygen-carrying capacity of the blood is prohibited. Furthermore, should the analysis of a test sample detect the presence of antibodies of Erythropoietin or Darbepoietin or any analogous substance in the horse's blood that indicates a history of use of these substances, the horse shall be prohibited from racing and placed on the veterinarian's list until the horse tests negative for the presence of such antibodies.

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K. Extracorporeal shockwave therapy or radial pulse wave therapy. The use of an extracorporeal shockwave therapy device or radial pulse wave therapy device is prohibited unless:

1. The therapy device is registered with the commission veterinarian;
2. The therapy device is used by a veterinarian who is a permit holder; and
3. Each use of the therapy device is reported to the commission veterinarian on the treatment report.

In no case shall a shockwave therapy device or radial pulse wave therapy device be used on a racehorse fewer than 10 days before the horse is to race.

L. Notwithstanding any other provision in this chapter, no substance of any kind may be administered to a horse within three hours of the scheduled post time for the race in which the horse is entered. To ensure uniform supervision and conformity to this regulation, the trainer shall have each horse programmed to race stabled in its assigned stall within the enclosure of the horse race facility no later than four hours prior to post time for the respective race.

11 VAC 10-180-60. Medications and substances.

A. Medications and substances are divided into three categories. The categories are:

1. Category 1. Substances found in this category have no generally accepted medical use in the racehorse and have a very high pharmacological potential for altering the performance of a racehorse. These substances should never be found in the horse's system through post-race testing or in the possession of any holder of a permit within the enclosure of a horse racing facility licensed by the commission. Such substances are potent stimulants of the nervous system including opiates, opium derivatives, synthetic opioids, psychoactive drugs, amphetamines and U.S. Drug Enforcement Agency (DEA) Scheduled I and II controlled substances, and substances that are products intended to alter consciousness or the psychic state of humans.

Also included in this category are some substances, such as injectable local anesthetics, that have legitimate uses in equine medicine, but should not be found in a racehorse through post-race testing. The following groups of substances in this category are:

- a. Opiate partial agonists or agonist-antagonists;
- b. Nonopiate psychotropic drugs, which may have stimulant, depressant, analgesic or neuroleptic effects;
- c. Miscellaneous substances that might have a stimulant effect on the central nervous system (CNS);

- d. Drugs with prominent CNS depressant action;
- e. Antidepressant and antipsychotic drugs, with or without prominent CNS stimulatory or depressant effects;
- f. Muscle-blocking substances that have a direct neuromuscular blocking action;
- g. Local anesthetics that have a reasonable potential for use as nerve-blocking agents (except procaine);
- h. Other biological substances or chemicals that may be used as nerve-blocking agents; and
- i. Erythropoietin (Epogen), Darbepoietin, Oxyglobin, Hemopure, or other blood-doping agents.

The commission, through these regulations, specifically states it will have zero tolerance for any positive test involving Category 1 substances.

2. Category 2. Substances found in this category have an accepted therapeutic use in the horse, but have a potential to enhance performance, and their presence in the horse's system is prohibited on race day. The following groups of substances are in this category:

- a. Substances affecting the autonomic nervous system that do not have prominent CNS effects, but that do have prominent cardiovascular and respiratory system effects (bronchodilators are included in this category);
- b. Local anesthetics that have nerve-blocking potential but also a high potential for producing urine residue levels from a method of use not related to the anesthetic effect of the substance (procaine);
- c. Miscellaneous substances with mild sedative action, such as the sleep-inducing antihistamines;
- d. Primary vasodilating/hypotensive agents;
- e. Potent diuretics affecting renal function and body fluid composition;
- f. Nonopiate substances that have a mild central analgesic effect;
- g. Substances affecting the autonomic nervous system that do not have prominent CNS, cardiovascular or respiratory effects:
 - (1) Substances used solely as topical vasoconstrictors or decongestants;
 - (2) Substances used as gastrointestinal antispasmodics;
 - (3) Substances used to void the urinary bladder; and
 - (4) Substances with a major effect on CNS vasculature or smooth muscle of visceral organs.

h. Antihistamines that do not have a significant CNS depressant effect (this does not include H1 blocking agents).

3. Category 3. Substances found in this category are therapeutic medications that are considered nonperformance enhancing, but may interfere with testing. The following groups of substances are in this category:

- a. Mineral corticoid substances;
- b. Skeletal muscle relaxants;
- c. Anti-inflammatory substances that may reduce pains as a consequence of their anti-inflammatory actions, which include:
 - (1) Nonsteroidal anti-inflammatory drugs (NSAIDs);
 - (2) Corticosteroids (glucocorticoids); and
 - (3) Miscellaneous anti-inflammatory agents.
- d. Anabolic or androgenic steroids, or both, and other like substances, except boldenone, stanozolol, nandrolone, and testosterone individually but not in combination (stacking or layering);
- e. Less potent diuretics;
- f. Cardiac glycosides and antiarrhythmics including:
 - (1) Cardiac glycosides;
 - (2) Antirhythmic agents (exclusive of lidocaine, bretilium and propranolol); and
- g. Topical anesthetics agents not available in injectable formulations;
- h. Antidiarrheal agents; and
- i. Miscellaneous substances including:
 - (1) Expectorants with little or no other pharmacologic action;
 - (2) Stomachics; and
 - (3) Mucolytic agents.

4. Newly developed substances not previously categorized. For the purposes of a stewards' determination if a chemical identification constitutes a positive finding, and for determining the subsequent disciplinary action, newly developed substances, not previously categorized, may be considered Category 1 substances, until a duly recognized scientific body or regulatory racing authority determines the substance should be categorized otherwise.

B. Disciplinary actions. The stewards shall, absent mitigating circumstances specifically noted in their findings, impose the disciplinary action noted below upon a any permit holder holders, which may include practicing veterinarians, for a positive test result for one of the three categories listed in

subsection A of this section. The stewards also may refer the case to the commission for further disciplinary action. The penalties are:

- 1. For substances in Category 1--Revocation of permit and loss of purse;
- 2. For substances in Category 2--Fine of not less than 6.0% of the purse, not to exceed the maximum allowed by law, and loss of purse;
- 3. For substances in Category 3--Fine and suspension are discretionary, relating to the specific circumstances of the case and any mitigating circumstances; loss of purse shall be imposed.
- 4. For cimetidine, dicoumerol, griseofulvin, isoxsuprine, ranitidine, sulfa and tetramisole--first offense: \$500 fine; second offense: \$1,500 fine and loss of purse.
- 5. For procaine, o-desmethyl pyrilamine--if found in urine only, first offense: \$500 fine; second offense: \$1,500 fine and loss of purse.
- 6. For procaine, o-desmethyl pyrilamine--if found in urine and blood, first offense: \$1,500 fine and loss of purse; second offense: after notification of first offense, \$2,500 fine and loss of purse.
- 7. For methylprednisolone--first offense, if found in urine only: \$250 fine, or if found in urine and blood: \$1,000 fine and loss of purse; second offense: \$2,000 fine and loss of purse.
- 8. For nonsteroidal anti-inflammatory substances--first offense is a \$500 fine and loss of purse; second offense: \$1,000 fine and loss of purse; and third offense: \$2,500 fine and loss of purse.
- 9. For two or more nonsteroidal anti-inflammatory substances, or a nonsteroidal anti-inflammatory substance and a corticosteroid substance other than methylprednisolone: \$5,000 fine and loss of purse.
- 10. For anabolic or androgenic steroids, or both, and other like substances, other than boldenone, stanozolol, nandrolone, and testosterone--first offense: \$1,000 fine and loss of purse; second offense: \$2,500 fine and loss of purse; third and subsequent offense: \$5,000 fine, loss of purse, and 15-day suspension for the trainer.
- 11. For any combination (stacking or layering) in any concentration of stanozolol, nandrolone, boldenone, or testosterone in a single horse--first offense: \$500 fine; second offense: \$1,000 fine and loss of purse; third and subsequent offense: \$2,500 fine and loss of purse.

11 VAC 10-180-80. Permitted race day substances.

A. Generally. The following substances that have been determined to be solely for the benefit and welfare of the

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horse., nonperformance altering, of no danger to riders/drivers, and unlikely to interfere with the detection of prohibited substances, may be administered to a horse on race day are:

Intravenous commercially available electrolyte solutions including calcium and magnesium, but not including bicarbonate, providing such administration is a minimum of three hours prior to the post time for that horse's race and administered under veterinary supervision within the limits of this chapter.

B. Bleeder medications. By this regulation, the Virginia Racing Commission specifically permits the use of bleeder medications in only those horses that:

1. Have been placed on the bleeders list by the stewards;
2. Have raced on furosemide in another jurisdiction and on the last previous start in a pari-mutuel race, as indicated by the past performance chart or by verification by the commission veterinarian from that racing jurisdiction, or both; or
3. Have been placed on the furosemide list by the stewards. A horse is eligible for inclusion on the furosemide list if the licensed trainer and a licensed veterinarian determine it is in the horse's best interest to race with furosemide, and the prescribed commission form is presented to the commission veterinarian prior to the close of entries for the horse's race. A horse placed on the furosemide list without demonstrating an episode of exercise-induced pulmonary hemorrhage is not restricted from racing for the usual recovery period described in 11 VAC 10-180-85 D. However, any future episode of exercise-induced pulmonary hemorrhage shall be considered a reoccurrence of bleeding for the purpose of determining restrictions from racing, as provided in this chapter.

a. A trainer or owner may discontinue the administration of furosemide to his racehorse only with the permission of the stewards. The request must be submitted in writing on forms prescribed by the commission and prior to entering the horse in a race.

b. A horse removed from the furosemide list may not be placed back on the furosemide list for a period of 60 calendar days unless the horse suffers an external bleeding incident witnessed by the commission veterinarian or his designee. In such case, the horse shall be placed on the bleeders list as though that bleeding incident was a reoccurrence of bleeding and subjected to a minimum 30-day or 90-day restriction for recovery as provided in this chapter.

C. Furosemide.

1. Procedures for usage. The use of furosemide shall be permitted by the commission only in horses eligible to

receive bleeder medications and under the following circumstances:

- a. Furosemide shall be administered intravenously within the enclosure of the horse race facility by a veterinarian who is a permit holder.
- b. The furosemide dosage administered shall not exceed 10 ml (500 mg) and shall not be less than 3 ml (150 mg).
- c. The veterinarian administering the furosemide shall deliver a furosemide treatment report to the commission no later than two hours prior to post time. The furosemide treatment report shall contain the following:
 - (1) The trainer's name, date, horse's name, and horse's identification number;
 - (2) The time furosemide was administered to the horse;
 - (3) The dosage level administered for this race;
 - (4) The barn and stall number; and
 - (5) The signature of the practicing veterinarian, who is a permit holder.

2. Furosemide quantification. Furosemide levels must not exceed 100 nanograms per milliliter (ng/ml) of plasma. Furosemide must be present in the plasma or urine of any horse that has been designated in the program as being treated with furosemide.

D. Disciplinary actions.

1. For the first violation of the regulation pertaining to furosemide quantification (subdivision C 2 of this section), the stewards shall issue a written reprimand to the trainer and to the practicing veterinarian, if applicable.
2. For the second violation of the regulation pertaining to furosemide quantification (subdivision C 2 of this section), the stewards shall fine the trainer, practicing veterinarian or both an amount not to exceed \$500.
3. For the third violation of the regulation pertaining to furosemide quantification (subdivision C 2 of this section) within a 12-month period, the stewards shall suspend or fine the trainer, practicing veterinarian or both.
4. The stewards, in their discretion, may impose other more stringent disciplinary actions against trainers or other permit holders who violate the provisions under which furosemide is permitted by the commission, regardless of whether or not the same horse is involved.

E. Adjunct bleeder medications. The Virginia Racing Commission permits the use of adjunct bleeder medications only in horses ~~qualified to that~~ receive bleeder medications furosemide as provided for in this chapter. Such medications, if administered to a horse, must be administered ~~concurrently~~ with on race day no less than three hours before post time.

Permissible adjunct bleeder medications and maximum dosages are:

1. Conjugated estrogens, not to exceed 25 milligrams.
2. Aminocaproic acid, not to exceed 2.5 grams.
3. Tranexamic acid, not to exceed 1 gram.
4. Carbazochrome, not to exceed 5 milliliters.

F. Program designation. The licensee shall be responsible for designating in the program those horses racing on furosemide. The designation shall also include those horses making their first start while racing on furosemide. In the event there is an error, the licensee shall be responsible for making an announcement to be made over the public address system and taking other means to correct the information published in the program.

G. Discontinue use of furosemide. A trainer or owner may discontinue the administration of furosemide to his horse only with the permission of the stewards and prior to entering the horse in a race.

VA.R. Doc. No. R07-213; Filed May 18, 2007, 3:21 p.m.



TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Emergency Regulation

Titles of Regulations: **12 VAC 30-30. Groups Covered and Agencies Responsible for Eligibility Determination (amending 12 VAC 30-30-20).**

12 VAC 30-40. Eligibility Conditions and Requirements (amending 12 VAC 30-40-280, 12 VAC 30-40-290, adding 12 VAC 30-40-105).

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

Effective Dates: May 30, 2007, through May 29, 2008.

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Preamble:

This regulatory action is intended to implement a mandated Medicaid Buy-In program per the requirement of the 2006 Appropriation Act. This new program, called "Medicaid Works," requires the amendment of two regulations addressing Medicaid eligibility. One of the issues faced by

Medicaid enrollees with disabilities is that, while many of them have the capacity to be gainfully employed, the extra income they earn could cause them to lose their Medicaid eligibility due to excess income. The Medicaid Works Buy-In program will help protect the health and welfare of the citizens of the Commonwealth by creating an incentive for disabled Medicaid enrollees who desire to be employed to have added income that will not count against their eligibility income limits. This reduces the financial restrictions to which such enrollees may be subject.

12 VAC 30-30-20. Optional groups other than the medically needy.

The Title IV A agency determines eligibility for Title XIX services.

1. Caretakers and pregnant women who meet the income and resource requirements of AFDC but who do not receive cash assistance.

2. Individuals who would be eligible for AFDC, SSI or an optional state supplement as specified in 42 CFR 435.230, if they were not in a medical institution.

3. A group or groups of individuals who would be eligible for Medicaid under the plan if they were in a NF or an ICF/MR, who but for the provision of home and community-based services under a waiver granted under 42 CFR Part 441, Subpart G would require institutionalization, and who will receive home and community-based services under the waiver. The group or groups covered are listed in the waiver request. This option is effective on the effective date of the state's § 1915(c) waiver under which this group(s) is covered. In the event an existing § 1915(c) waiver is amended to cover this group(s), this option is effective on the effective date of the amendment.

4. Individuals who would be eligible for Medicaid under the plan if they were in a medical institution, who are terminally ill, and who receive hospice care in accordance with a voluntary election described in § 1905(o) of the Act.

5. The state does not cover all individuals who are not described in § 1902(a)(10)(A)(i) of the Act, who meet the income and resource requirements of the AFDC state plan and who are under the age of 21. The state does cover reasonable classifications of these individuals as follows:

a. Individuals for whom public agencies are assuming full or partial financial responsibility and who are:

- (1) In foster homes (and are under the age of 21).
- (2) In private institutions (and are under the age of 21).
- (3) In addition to the group under subdivisions 5 a (1) and (2) of this section, individuals placed in foster homes or private institutions by private nonprofit agencies (and are under the age of 21).

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b. Individuals in adoptions subsidized in full or part by a public agency (who are under the age of 21).

c. Individuals in NFs (who are under the age of 21). NF services are provided under this plan.

d. In addition to the group under subdivision 5 c of this section, individuals in ICFs/MR (who are under the age of 21).

6. A child for whom there is in effect a state adoption assistance agreement (other than under Title IV-E of the Act), who, as determined by the state adoption agency, cannot be placed for adoption without medical assistance because the child has special care needs for medical or rehabilitative care, and who before execution of the agreement:

a. Was eligible for Medicaid under the state's approved Medicaid plan; or

b. Would have been eligible for Medicaid if the standards and methodologies of the Title IV-E foster care program were applied rather than the AFDC standards and methodologies.

The state covers individuals under the age of 21.

7. Section 1902(f) states and SSI criteria states without agreements under §§ 1616 and 1634 of the Act.

The following groups of individuals who receive a state supplementary payment under an approved optional state supplementary payment program that meets the following conditions. The supplement is:

a. Based on need and paid in cash on a regular basis.

b. Equal to the difference between the individual's countable income and the income standard used to determine eligibility for the supplement.

c. Available to all individuals in each classification and available on a statewide basis.

d. Paid to one or more of the following classifications of individuals:

(1) Aged individuals in domiciliary facilities or other group living arrangements as defined under SSI.

(2) Blind individuals in domiciliary facilities or other group living arrangements as defined under SSI.

(3) Disabled individuals in domiciliary facilities or other group living arrangements as defined under SSI.

(4) Individuals receiving a state administered optional state supplement that meets the conditions specified in 42 CFR 435.230.

The supplement varies in income standard by political subdivisions according to cost-of-living differences.

The standards for optional state supplementary payments are listed in 12 VAC 30-40-250.

8. Individuals who are in institutions for at least 30 consecutive days and who are eligible under a special income level. Eligibility begins on the first day of the 30-day period. These individuals meet the income standards specified in 12 VAC 30-40-220.

The state covers all individuals as described above.

9. Individuals who are 65 years of age or older or who are disabled as determined under § 1614(a)(3) of the Act, whose income does not exceed the income level specified in 12 VAC 30-40-220 for a family of the same size, and whose resources do not exceed the maximum amount allowed under SSI.

10. Individuals who may qualify for the Medicaid Buy-In program under 1902(a)(10)(A)(ii)(XV) of the Social Security Act (Ticket to Work Act), if they meet the requirements for the 80% eligibility group described in 12 VAC 30-40-220 D, as well as the requirements described in 12 VAC 30-40-105.

~~10.~~ 11. Individuals required to enroll in cost-effective employer-based group health plans remain eligible for a minimum enrollment period of one month.

~~11.~~ 12. Women who have been screened for breast or cervical cancer under the Centers for Disease Control and Prevention Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service Act in accordance with § 1504 of the Act and need treatment for breast or cervical cancer, including a pre-cancerous condition of the breast or cervix. These women are not otherwise covered under creditable coverage, as defined in § 2701(c) of the Public Health Services Act, are not eligible for Medicaid under any mandatory categorically needy eligibility group, and have not attained age 65.

12 VAC 30-40-105. Medicaid Works: Working individuals with disabilities under the Ticket to Work and Work Incentive Improvement Act.

A. Working individuals with disabilities - Basic Coverage Group - Ticket to Work and Work Incentive Improvement Act (Ticket Act) – Initial Eligibility.

1. In determining initial eligibility for working individuals with disabilities under this provision, individuals must meet the following requirements in order to be eligible:

a. Are disabled; for the purposes of this program, current participation in the Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) program will satisfy the condition for disability. Any other prospective participant without SSA documentation of disability will have to be evaluated by the Disability

Determination Services (DDS) unit at Department of Rehabilitative Services for this determination of disability;

b. Be employed or have documentation from an employer establishing the date when employment will begin;

c. Be at least 16 years of age and less than 65 years of age;

d. Income limit - individual's total countable income cannot exceed 80% of current federal poverty level guidelines.

e. Resource limit - individual's total countable assets cannot exceed \$2,000.

2. Individuals who must spend down resources in order to qualify for Medicaid enrollment are not eligible for Medicaid Buy-In under § 1902(a)(10)(A)(ii)(XV);

3. Individuals who are an inpatient in an institution for mental diseases (IMD), or an inmate in a public institution that is not a medical facility are not eligible for the Medicaid Buy-In program under § 1902(a)(10)(A)(ii)(XV).

4. Individuals who reside in a nursing facility or who are receiving services through a home and community-based care waiver program are not eligible for the Medicaid Buy-In program under § 1902(a)(10)(A)(ii)(XV).

B. Working individuals with disabilities - Basic Coverage Group - Ticket to Work and Work Incentive Improvement Incentive Act (Ticket Act) - Continuing Eligibility.

1. In determining continuing eligibility for working individuals with disabilities under § 1902(a)(10)(A)(ii)(XV), individuals must meet the following requirements in order to continue their eligibility:

a. Continue to meet the disability, age and employment criteria described in section (A)(1) above; individuals who are unable to maintain employment due to illness or unavoidable job loss may remain in the program as unemployed for up to six months with the continued payment of monthly premiums, if required;

b. Have enrollee countable earned income of no more than 200% FPL;

(1) The standard SSI methodology shall be used to determine "countable" income;

(2) The enrollee shall be treated as a "household of one" and spousal income shall be disregarded for ongoing enrollee eligibility;

c. In determining whether an individual meets the income standard described above, the agency uses more liberal income methodologies than the SSI program. More

liberal income methodologies are described in 12 VAC 30-40-280.

d. Have resources or assets up to the annual SSI "threshold amount" (Social Security Act, § 1619(b)) as established for Virginia by the Social Security Administration (SSA), if such resources or assets are accumulated solely from enrollee earnings after the individual is enrolled with Medicaid Buy-In under § 1902(a)(10)(A)(ii)(XV);

e. The agency disregards funds in retirement accounts in a manner other than those described above. The agency's resource disregards are specified in 12 VAC 30-40-290.

f. The agency uses resource methodologies in addition to any indicated above that are more liberal than those used by the SSI program. More liberal resource methodologies are described in 12 VAC 30-40-290.

2. Routine nominal co-payments for services will be required. A premium schedule shall be established.

12 VAC 30-40-280. More liberal income disregards.

A. For children covered under §§ 1902(a)(10)(A)(i)(III) and 1905(n) of the Social Security Act, the Commonwealth of Virginia will disregard one dollar plus an amount equal to the difference between 100% of the AFDC payment standard for the same family size and 100% of the Federal Poverty Level for the same family size as updated annually in the Federal Register.

B. For ADC-related cases, both categorically and medically needy, any individual or family applying for or receiving assistance shall be granted an income exemption consistent with the Act (§§ 1902(a)(10)(A)(i)(III), (IV), (VI), (VII); §§ 1902(a)(10)(A)(ii)(VIII), (IX); § 1902(a)(10)(C)(i)(III)). Any interest earned on one interest-bearing savings or investment account per assistance unit not to exceed \$5,000, if the applicant, applicants, recipient or recipients designate that the account is reserved for purposes related to self-sufficiency, shall be exempt when determining eligibility for medical assistance for so long as the funds and interest remain on deposit in the account. For purposes of this section, "purposes related to self-sufficiency" shall include, but are not limited to, (i) paying for tuition, books, and incidental expenses at any elementary, secondary, or vocational school, or any college or university; (ii) for making down payment on a primary residence; or (iii) for establishment of a commercial operation that is owned by a member of the Medicaid assistance unit.

C. For the group described in §§ 1902(a)(10)(A)(i)(VII) and 1902(l)(1)(D), income in the amount of the difference between 100% and 133% of the Federal Poverty Level (as revised annually in the Federal Register) is disregarded.

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D. For aged, blind, and disabled individuals, both categorically and medically needy, with the exception of the special income level group of institutionalized individuals, the Commonwealth of Virginia shall disregard the value of in-kind support and maintenance when determining eligibility. In-kind support and maintenance means food, clothing, or shelter or any combination of these provided to an individual.

E. For all categorically needy and medically needy children covered under the family and children covered groups, (§§ 1902(a)(10)(A)(i)(I), 1902(a)(10)(A)(i)(III), 1902(a)(10)(A)(i)(VI), 1902(a)(10)(A)(i)(VII), 1902(a)(10)(A)(ii)(VIII), 1902(a)(10)(C)(ii)(I) and 1905(n) of the Act), the Commonwealth will disregard all earned income of a child under the age of 19 who is a student.

F. For all categorically needy and medically needy individuals covered under the family and children covered groups (§§ 1902(a)(10)(A)(i)(I), 1902(a)(10)(A)(i)(III), 1902(a)(10)(A)(i)(IV), 1902(a)(10)(A)(i)(V), 1902(a)(10)(A)(i)(VI), 1902(a)(10)(A)(i)(VII), 1902(a)(10)(A)(ii)(VIII), 1902(a)(10)(C)(ii)(I) and 1905(n) of the Act), the Commonwealth will disregard the fair market value of all in-kind support and maintenance as income in determining financial eligibility. In-kind support and maintenance means food, clothing or shelter or any combination of these provided to an individual.

G. Working individuals with disabilities eligible for assistance under § 1902(a)(10)(A)(ii)(XV) of the Act who wish to increase their earnings while maintaining eligibility for Medicaid must establish Work Incentive (WIN) Accounts (see 12 VAC 30-40-290). The Commonwealth shall disregard earned income up to 200% of the federal poverty level for workers with disabilities eligible for assistance under § 1902(a)(10)(A)(ii)(XV) of the Act. To be eligible for this earned income disregard, the income is subject to the following provisions:

a. Only earnings that are deposited into a Work Incentive Account can be disregarded for eligibility purposes.

b. All funds deposited and their source will be identified and registered with the Department, for which prior approval has been obtained from the Department, and for which the owner authorizes regular monitoring and/or reporting of these earnings and other information deemed necessary by the Department for the proper administration of this provision.

c. A spouse's income will not be deemed to the applicant when determining whether or not the individual meets the financial eligibility requirements for eligibility under this section.

12 VAC 30-40-290. More liberal methods of treating resources under § 1902(r)(2) of the Act: § 1902(f) states.

A. Resources to meet burial expenses. Resources set aside to meet the burial expenses of an applicant/recipient or that individual's spouse are excluded from countable assets. In determining eligibility for benefits for individuals, disregarded from countable resources is an amount not in excess of \$3,500 for the individual and an amount not in excess of \$3,500 for his spouse when such resources have been set aside to meet the burial expenses of the individual or his spouse. The amount disregarded shall be reduced by:

1. The face value of life insurance on the life of an individual owned by the individual or his spouse if the cash surrender value of such policies has been excluded from countable resources; and
2. The amount of any other revocable or irrevocable trust, contract, or other arrangement specifically designated for the purpose of meeting the individual's or his spouse's burial expenses.

B. Cemetery plots. Cemetery plots are not counted as resources regardless of the number owned.

C. Life rights. Life rights to real property are not counted as a resource. The purchase of a life right in another individual's home is subject to transfer of asset rules. See 12 VAC 30-40-300.

D. Reasonable effort to sell.

1. For purposes of this section, "current market value" is defined as the current tax assessed value. If the property is listed by a realtor, then the realtor may list it at an amount higher than the tax assessed value. In no event, however, shall the realtor's list price exceed 150% of the assessed value.

2. A reasonable effort to sell is considered to have been made:

a. As of the date the property becomes subject to a realtor's listing agreement if:

- (1) It is listed at a price at current market value; and
- (2) The listing realtor verifies that it is unlikely to sell within 90 days of listing given the particular circumstances involved (e.g., owner's fractional interest; zoning restrictions; poor topography; absence of road frontage or access; absence of improvements; clouds on title, right of way or easement; local market conditions); or

b. When at least two realtors refuse to list the property. The reason for refusal must be that the property is unsaleable at current market value. Other reasons for refusal are not sufficient; or

- c. When the applicant has personally advertised his property at or below current market value for 90 days by use of a "Sale By Owner" sign located on the property and by other reasonable efforts, such as newspaper advertisements, or reasonable inquiries with all adjoining landowners or other potential interested purchasers.
3. Notwithstanding the fact that the recipient made a reasonable effort to sell the property and failed to sell it, and although the recipient has become eligible, the recipient must make a continuing reasonable effort to sell by:
- a. Repeatedly renewing any initial listing agreement until the property is sold. If the list price was initially higher than the tax-assessed value, the listed sales price must be reduced after 12 months to no more than 100% of the tax-assessed value.
 - b. In the case where at least two realtors have refused to list the property, the recipient must personally try to sell the property by efforts described in subdivision 2 c of this subsection for 12 months.
 - c. In the case of a recipient who has personally advertised his property for a year without success (the newspaper advertisements and "for sale" sign do not have to be continuous; these efforts must be done for at least 90 days within a 12-month period), the recipient must then:
 - (1) Subject his property to a realtor's listing agreement at price or below current market value; or
 - (2) Meet the requirements of subdivision 2 b of this subsection which are that the recipient must try to list the property and at least two realtors refuse to list it because it is unsaleable at current market value; other reasons for refusal to list are not sufficient.
4. If the recipient has made a continuing effort to sell the property for 12 months, then the recipient may sell the property between 75% and 100% of its tax assessed value and such sale shall not result in disqualification under the transfer of property rules. If the recipient requests to sell his property at less than 75% of assessed value, he must submit documentation from the listing realtor, or knowledgeable source if the property is not listed with a realtor, that the requested sale price is the best price the recipient can expect to receive for the property at this time. Sale at such a documented price shall not result in disqualification under the transfer of property rules. The proceeds of the sale will be counted as a resource in determining continuing eligibility.
5. Once the applicant has demonstrated that his property is unsaleable by following the procedures in subdivision 2 of this subsection, the property is disregarded in determining eligibility starting the first day of the month in which the most recent application was filed, or up to three months

prior to this month of application if retroactive coverage is requested and the applicant met all other eligibility requirements in the period. A recipient must continue his reasonable efforts to sell the property as required in subdivision 3 of this subsection.

E. Automobiles. Ownership of one motor vehicle does not affect eligibility. If more than one vehicle is owned, the individual's equity in the least valuable vehicle or vehicles must be counted. The value of the vehicles is the wholesale value listed in the National Automobile Dealers Official Used Car Guide (NADA) Book, Eastern Edition (update monthly). In the event the vehicle is not listed, the value assessed by the locality for tax purposes may be used. The value of the additional motor vehicles is to be counted in relation to the amount of assets that could be liquidated that may be retained.

F. Life, retirement, and other related types of insurance policies. Life, retirement, and other related types of insurance policies with face values totaling \$1,500 or less on any one person 21 years old and over are not considered resources. When the face values of such policies of any one person exceeds \$1,500, the cash surrender value of the policies is counted as a resource.

G. Resource exemption for Aid to Dependent Children categorically and medically needy (the Act §§ 1902(a)(10)(A)(i)(III), (IV), (VI), (VII); §§ 1902(a)(10)(A)(ii)(VIII), (IX); § 1902(a)(10)(C)(i)(III)). For ADC-related cases, both categorically and medically needy, any individual or family applying for or receiving assistance may have or establish one interest-bearing savings or investment account per assistance unit not to exceed \$5,000 if the applicant, applicants, recipient or recipients designate that the account is reserved for purposes related to self-sufficiency. Any funds deposited in the account shall be exempt when determining eligibility for medical assistance for so long as the funds and interest remain on deposit in the account. Any amounts withdrawn and used for purposes related to self-sufficiency shall be exempt. For purposes of this section, purposes related to self-sufficiency shall include, but are not limited to, (i) paying for tuition, books, and incidental expenses at any elementary, secondary, or vocational school, or any college or university; (ii) for making down payment on a primary residence; or (iii) for establishment of a commercial operation that is owned by a member of the medical assistance unit.

H. Disregard of resources. The Commonwealth of Virginia will disregard all resources for qualified children covered under §§ 1902(a)(10)(A)(i)(I), 1902(a)(10)(A)(i)(III), 1902(a)(10)(A)(ii)(VIII), and 1905(n) of the Social Security Act.

I. Household goods and personal effects. The Commonwealth of Virginia will disregard the value of household goods and personal effects. Household goods are items of personal

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property customarily found in the home and used in connection with the maintenance, use and occupancy of the premises as a home. Examples of household goods are furniture, appliances, televisions, carpets, cooking and eating utensils and dishes. Personal effects are items of personal property that are worn or carried by an individual or that have an intimate relation to the individual. Examples of personal property include clothing, jewelry, personal care items, prosthetic devices and educational or recreational items such as books, musical instruments, or hobby materials.

J. Determining eligibility based on resources. When determining Medicaid eligibility, an individual shall be eligible in a month if his countable resources were at or below the resource standard on any day of such month.

K. Working individuals with disabilities eligible for assistance under § 1902(a)(10)(A)(ii)(XV) of the Act who wish to increase their personal resources while maintaining eligibility for Medicaid shall establish Work Incentive (WIN) Accounts. The Commonwealth will disregard up to the current annual SSI (Social Security Act, § 1619(b)) threshold amount (as established for Virginia by the Social Security Administration) held in WIN Accounts for workers with disabilities eligible for assistance under § 1902(a)(10)(A)(ii)(XV) of the Act. To be eligible for this resource disregard, WIN Accounts are subject to the following provisions:

1. Deposits to this account shall derive solely from the individual's income earned after electing to enroll in the Medicaid Buy-In (MBI) program.
2. The balance of this account shall not exceed the current annual SSI (Social Security Act § 1619(b)) threshold amount (as established for Virginia by the Social Security Administration).
3. This account will be held separate from non-exempt resources in accounts for which prior approval has been obtained from the Department, and for which the owner authorizes regular monitoring and/or reporting including deposits, withdrawals, and other information deemed necessary by the Department for the proper administration of this provision.
4. A spouse's resources will not be deemed to the applicant when determining whether or not the individual meets the financial eligibility requirements for eligibility under this section.
5. Resources accumulated in the Work Incentive Account shall be disregarded in determining eligibility for Aged, Blind and Disabled Medicaid covered groups for one year after the individual leaves the Medicaid buy-in program.
6. In addition, excluded from the resource and asset limit include amounts deposited in the following types of IRS-approved accounts established as WIN accounts: retirement

accounts, medical savings accounts, medical reimbursement accounts, education accounts and independence accounts. Assets retained in these WIN accounts shall be disregarded for all future Medicaid eligibility determinations for Aged, Blind and Disabled Medicaid covered groups.

/s/ Timothy M. Kaine, Governor
Date: May 18, 2007

VA.R. Doc. No. R07-218; Filed May 21, 2007, 4:16 p.m.

Final Regulation

Titles of Regulations: 12 VAC 30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12 VAC 30-50-490).

12 VAC 30-120. Waivered Services (amending 12 VAC 30-120-700 through 12 VAC 30-120-750, 12 VAC 30-120-752, 12 VAC 30-120-753, 12 VAC 30-120-754, 12 VAC 30-120-756, 12 VAC 30-120-758, 12 VAC 30-120-760, 12 VAC 30-120-762, 12 VAC 30-120-764, 12 VAC 30-120-766, 12 VAC 30-120-770, 12 VAC 30-120-772, 12 VAC 30-120-774, 12 VAC 30-120-776; repealing 12 VAC 30-120-768, 12 VAC 30-120-780, 12 VAC 30-120-790).

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

Effective Date: July 11, 2007.

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Summary:

The amendments (i) allow recipients to receive both day support and supported employment services at the same time; (ii) no longer require that the primary unpaid caregiver live in the home of the recipient for respite care reimbursement purposes; (iii) no longer require that consumer-directed employees receive annual CPR training and flu shots; (iv) modify the rules by which the new waiver slots are allocated; (v) require that personal care, respite care, and companion service aides be able to read and write in English to the extent necessary to accomplish the tasks associated; (vi) no longer require that service facilitators under consumer-directed model have consultation with a registered nurse; (vii) prohibit Personal Emergency Response System (PERS) providers from direct marketing to recipients; and (viii) clarify a number of requirements.

In response to public comments on the proposed regulation, amendments (i) clarify text to resolve potential ambiguities and make the language more person-centered; (ii) change the definition regarding respite care to remove the requirement that caregivers to whom respite services

are available must reside in the home of the waiver recipient; (iii) modify the definition of "home" to permit four individuals to live together; (iv) change 12 VAC 30-120-720 to reflect that the personal maintenance allowance was increased; and amend the current restriction on "primary home" and (v) "primary vehicle" in 12 VAC 30-120-758 to allow two homes and two vehicles to be made accessible with environmental modifications.

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.

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

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

1. An active client for case management shall mean an individual for whom there is a plan of care [~~in effect~~] that requires regular direct or client-related contacts or communication or activity with the client, family, service providers, significant others and others including at least one face-to-face contact every 90 [calendar] days. Billing can be submitted for an active client only for months in which direct or client-related contacts, activity or communications occur.

[2. When an individual applies for the IFDDS Waiver and there is no available funding (slots), he will be placed on a waitlist until funding is available. The "Initial Waitlist Plan of Care" is completed with the case manager and identifies the services anticipated once a slot is available. Individuals on the waitlist do not have routine case management services unless there is a documented special service need in the plan of care. Case managers may make face-to-face contact every 90 calendar days to monitor the special service need and documentation is required to support such contact. The case manager will assure the plan of care addresses the current needs of the individual and will coordinate with DMAS to assure actual enrollment into the waiver upon slot availability.

3. The unit of service is one month. There shall be no maximum service limits for case management services except case management services for individuals residing in institutions or medical facilities. For these individuals, reimbursement for case management for institutionalized individuals may be billed for no more than two months in a 12-month cycle.]

[~~2.~~ 4.] The unit of service is one month. There shall be no maximum service limits for case management services except case management services for individuals residing in

institutions or medical facilities. For these individuals, reimbursement for case management for institutionalized individuals may be billed for no more than two months in a 12-month cycle.

B. Services will be provided in the entire state.

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

D. Definition of services. ~~Support coordination Case management~~ Case management services will be provided for ~~recipients~~ Medicaid-eligible individuals with related conditions who are on the waiting list for or participants in the home and community-based care IFDDS Waiver. ~~Support coordination Case management~~ Case management services to be provided include:

1. Assessment and planning services, to include developing a consumer service plan (does not include performing medical and psychiatric assessment but does include referral for such assessments);
2. Linking the ~~recipient~~ individual to services and supports specified in the consumer service plan;
3. Assisting the ~~recipient~~ individual directly for the purpose of locating, developing, or obtaining needed services and resources;
4. Coordinating services with other agencies and providers involved with the ~~recipient~~ individual;
5. Enhancing community integration by contacting other entities to arrange community access and involvement, including opportunities to learn community living skills and use vocational, civic, and recreational services;
6. Making collateral contacts with the ~~recipient's~~ individual's significant others to promote implementation of the service plan and community adjustment;
7. Following up and monitoring to assess ongoing progress and ensure services are delivered;
8. Education and counseling that guides the ~~recipient~~ individual and develops a supportive relationship that promotes the service plan; and
9. Benefits counseling.

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

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

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

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

c. Be ~~certified~~ enrolled as an IFDDS ~~support-coordination case management~~ agency by DMAS.

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

a. Knowledge of:

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

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

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

(4) ~~Recipients'~~ Individuals' rights;

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

(6) Types of developmental disability programs and services;

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

(8) General principles of record documentation; and

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

b. Skills in:

(1) Interviewing;

(2) Negotiating with ~~recipients~~ individuals and service providers;

(3) Observing, recording, and reporting behaviors;

(4) Identifying and documenting ~~a recipient's~~ an individual's needs for resources, services, and other assistance;

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

(6) Coordinating the provision of services by diverse public and private providers;

(7) Analyzing and planning for the service needs of developmentally disabled persons;

(8) Formulating, writing, and implementing ~~recipient~~ individual-specific ~~individual~~ service plans to promote goal attainment for recipients with developmental disabilities; and

(9) Using assessment tools.

c. Abilities to:

(1) Demonstrate a positive regard for ~~recipients~~ individuals and their families (e.g., ~~treating recipients as individuals~~, allowing risk taking, avoiding stereotypes of developmentally disabled people, respecting ~~recipients'~~ individuals' and families' privacy, believing ~~recipients~~ individuals can grow);

(2) Be persistent and remain objective;

(3) Work as a team member, maintaining effective inter- and intra-agency working relationships;

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

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

(6) Establish and maintain ongoing supportive relationships.

3. In addition, case managers who enroll with DMAS to provide case management services after (insert the effective date of these regulations) must possess a minimum of an undergraduate degree in a human services field. Providers who had a Medicaid participation agreement to provide case management prior to February 1, 2005, and who maintain that agreement without interruption may continue to provide case management using the KSA requirements effective prior to February 1, 2005.

4. Case managers who are employed by an organization must receive supervision within the same organization. Case managers who are self-employed must obtain one hour of documented supervision every three months when the case manager has active cases. The individual who provides the supervision to the case manager must have a master's level degree in a human services field and/or have five years of satisfactory experience in the field working with individuals with related conditions as defined in 42 CFR 435.1009. A case management provider cannot supervise another case management provider.

5. Case managers must complete eight hours of training annually in one or a combination of the areas described in the knowledge, skills and abilities (KSA) subdivision. Case managers must have documentation to demonstrate training is completed. The documentation must be maintained by the case manager for the purposes of utilization review.

6. Parents, spouses, or any person living with the individual may not provide direct case management services for their child, spouse or the individual with whom they live or be employed by a company that provides case management for their child, spouse, or the individual with whom they live.

7. A case manager may provide services facilitation services. In these cases, the case manager must meet all the case management provider requirements as well as the service facilitation provider requirements. Individuals and [their] family/caregivers [, as appropriate,] have the right to choose whether the case manager may provide services facilitation or to have a separate services facilitator and this choice must be clearly documented in the individual's record. If case managers are not services facilitation providers, the case manager must assist the individual and [his] family/caregiver [, as appropriate,] to locate an available services facilitator.

8. If the case manager is not serving as the individual's services facilitator, the case manager may conduct the assessments and reassessment for CD services if the individual or [his] family/caregiver [, as appropriate,] chooses. The individual's choice must be clearly documented in the case management record along with which provider is responsible for conducting the assessments and reassessments required for CD services.

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

1. Eligible recipients will have free choice of the providers of ~~support coordination~~ case management services.

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

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

12 VAC 30-120-700. Definitions.

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

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

"Assistive technology" means specialized medical equipment and supplies including those devices, controls, or appliances specified in the ~~consumer service~~ plan of care but not

available under the State Plan for Medical Assistance that enable ~~recipients~~ individuals to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live, or that are necessary to ~~their~~ the proper functioning of the specialized equipment.

~~"Attendant care" means long term maintenance or support services necessary to enable the recipient to remain at or return home rather than enter or remain in an Intermediate Care Facility for the Mentally Retarded (ICF/MR). The recipient will be responsible for hiring, training, supervising and firing the personal attendant. If the recipient is unable to independently manage his own attendant care, a family caregiver can serve as the employer on behalf of the recipient. Recipients with cognitive impairments will not be able to manage their own care.~~

"Behavioral health authority" or "BHA" means the local agency, established by a city or county or a combination of counties or cities or cities and counties under Chapter 6 (§ ~~37-1-194~~ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia, that plans, provides, and evaluates mental health, mental retardation, and substance abuse services in the jurisdiction or jurisdictions it serves.

"CARF" means the Rehabilitation Accreditation Commission, formerly known as the Commission on Accreditation of Rehabilitation Facilities.

"Case management" means services as defined in 12 VAC 30-50-490.

~~"Case manager" means the individual on behalf of the community services board or behavioral health authority staff possessing a combination of mental retardation work experience and relevant education that indicates that the individual possesses the knowledge, skills and abilities, at the entry level, as established by the Department of Medical Assistance Services, 12 VAC 30-50-450 provider of case management services as defined in 12 VAC 30-50-490.~~

"Centers for Medicare and Medicaid Services" or "CMS" means the unit of the federal Department of Health and Human Services that administers the Medicare and Medicaid programs.

~~"Community-based care waiver services" or "waiver services" means the range of community support services approved by the Centers for Medicare and Medicaid Services (CMS) pursuant to § 1915(e) of the Social Security Act to be offered to developmentally disabled recipients who would otherwise require the level of care provided in an ICF/MR a variety of home and community-based services paid for by DMAS as authorized under a § 1915(c) waiver designed to offer individuals an alternative to institutionalization. Individuals may be preauthorized to receive one or more of these services~~

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either solely or in combination, based on the documented need for the service or services to avoid ICF/MR placement.

"Community services board" or "CSB" means the local agency established by a city or county or combination of counties or cities, or cities and counties, under Chapter 5 (§ 37.1-194 37.2-500 et seq.) of Title 37.2 of the Code of Virginia, that plans, provides, and evaluates mental health, mental retardation, and substance abuse services in the jurisdiction or jurisdictions it serves.

"Companion—~~aide~~" means, for the purpose of these regulations, a ~~domestic servant who is also exempt from workers' compensation~~ person who provides companion services.

"Companion services" means nonmedical care, supervision and socialization, provided to [~~a functionally or cognitively impaired an~~] adult [() age 18 and older ()]. The provision of companion services does not entail hands-on ~~nursing~~ care [~~and .It~~] is provided in accordance with a therapeutic goal in the ~~consumer service plan of care~~ [and is not purely diversional in nature]. ~~This shall not be the sole service used to divert recipients from institutional care.~~

~~"Consumer directed companion care" means nonmedical care, supervision and socialization provided to a functionally or cognitively impaired adult. The provision of companion services does not entail hands on nursing care and is provided in accordance with a therapeutic goal in the consumer service plan. This shall not be the sole service used to divert recipients from institutional care. The recipient will be responsible for hiring, training, supervising, and firing the companion. If the recipient is unable to independently manage his own consumer directed care, a family caregiver can serve as the employer on behalf of the recipient.~~

~~"Consumer directed respite care" means services given to caretakers of eligible individuals who are unable to care for themselves that are provided on an episodic or routine basis because of the absence or need for relief of those persons residing with the recipient who normally provide the care. The recipient will be responsible for hiring, training, supervising, and firing the personal attendant. If the recipient is unable to independently manage his own consumer directed respite care, a family caregiver can serve as the employer on behalf of the recipient.~~

"Consumer-directed employee" means, for purposes of these regulations, a person who provides consumer-directed services, personal care, companion services and/or respite care, who is also exempt from workers' compensation.

"Consumer-directed services" means personal care, companion services and/or respite care services where the individual or [his] family/caregiver [, as appropriate,] is responsible for hiring, training, supervising, and firing of the employee or employees.

"Consumer-directed (CD) services facilitator" means the provider ~~contracted by enrolled with DMAS that who~~ is responsible for ~~ensuring development and monitoring of the CSP, management training, and review activities as required by DMAS for attendant care, consumer-directed companion care, and consumer directed respite care services.~~

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

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

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

"DMAS" means the Department of Medical Assistance Services.

"DMAS staff" means individuals DMAS employees who perform utilization review, ~~recommendation~~ of preauthorization for preauthorize service type and intensity, provide technical assistance, and review of recipient individual level of care criteria.

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

"DRS" means the Department of Rehabilitative Services.

"DSS" means the Department of Social Services.

"Day support" means training in intellectual, sensory, motor, and affective social development including awareness skills, sensory stimulation, use of appropriate behaviors and social skills, learning and problem solving, communication and self care, physical development, services and support activities. These services take place outside of the individual's home/residence.

"Direct marketing" means either (i) conducting directly or indirectly 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 individuals or family/caregivers as inducements to use the providers' services; (v) continuous, periodic marketing activities to the same prospective individual or [his] family/caregiver, [as appropriate,] 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 [his] family/caregiver's [, as appropriate,] use of the providers' services.

"Enroll" means that the individual has been determined by the IFDDS screening team to meet the eligibility requirements for the waiver, DMAS has approved the individual's plan of care and has assigned an available slot to the individual, and DSS has determined the individual's Medicaid eligibility for home and community-based services.

"Entrepreneurial model" means a small business employing eight or fewer individuals with disabilities on a shift and may involve interactions with the public and coworkers with disabilities.

"Environmental modifications" means physical adaptations to a house, place of residence, primary vehicle or work site, when the work site modification exceeds reasonable accommodation requirements of the Americans with Disabilities Act, necessary to ensure recipients' individuals' health and safety or enable functioning with greater independence when the adaptation is not being used to bring a substandard dwelling up to minimum habitation standards and is of direct medical or remedial benefit to recipients individuals.

"EPSDT" means the Early Periodic Screening, Diagnosis and Treatment program administered by DMAS for children under the age of 21 according to federal guidelines which that prescribe specific preventive and treatment services for Medicaid-eligible children as defined in 12 VAC 30-50-130.

"Face-to-face visit" means the case manager or service provider must meet with the individual in person and that the individual should be engaged in the visit to the maximum extent possible.

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

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

"Home" means, for purposes of the IFDDS Waiver, an apartment or single family dwelling in which no more than

[two four] individuals who require services live with the exception of siblings living in the same dwelling with family. This does not include an assisted living facility or group home.

"Home and community-based care waiver services" means a variety of ~~in-home~~ home and community-based services reimbursed by DMAS as authorized under a § 1915(c) waiver designed to offer recipients individuals an alternative to institutionalization. Recipients 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 to avoid ICF/MR placement.

"ICF/MR" means a facility or distinct part of a facility certified as meeting the federal certification regulations for an Intermediate Care Facility for the Mentally Retarded and persons with related conditions. These facilities must address the residents' total needs including physical, intellectual, social, emotional, and habilitation. An ICF/MR must provide active treatment, as that term is defined in 42 CFR 483.440(a).

"IFDDS screening team" means the persons employed by the entity under contract with DMAS who are responsible for performing level of care screenings for the IFDDS Waiver.

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

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

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

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

"Mental retardation" means, a disability as defined by the American Association on Mental Retardation (AAMR), being substantially limited in present functioning as characterized by significantly subaverage intellectual functioning, existing

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

"MR Waiver" means the mental retardation waiver.

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

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

"Personal attendant" means, for purposes of this regulation, a domestic servant who is also exempt from Workers' Compensation.

"Pend" means delaying the consideration of an individual's request for authorization of services until all required information is received by DMAS.

"Person-centered planning" means a process, directed by [the family or] the individual [, with long term care needs, or his family/caregiver, as appropriate,] intended to identify the strengths, capacities, preferences, needs and desired outcomes of the individual.

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

"Personal care services" means long-term maintenance or support services necessary to enable recipients individuals to remain in or return to the community rather than enter an

Intermediate Care Facility for the Mentally Retarded. Personal care services include assistance with activities of daily living, nutritional support, and the environmental maintenance necessary for recipients to remain in their homes and in the community instrumental activities of daily living, access to the community, medication or other medical needs, and monitoring health status and physical condition. This does not include skilled nursing services with the exception of skilled nursing tasks that may be delegated in accordance with 18 VAC 90-20-420 through 18 VAC 90-20-460.

"Personal emergency response system (PERS)" is an electronic device that enables certain recipients individuals [at high risk of institutionalization] to secure help in an emergency. PERS services are limited to those recipients 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.

"Plan of care" means a document developed by the individual or [his] family/caregiver [, as appropriate,] and the individual's case manager addressing all needs of individuals of home and community-based waiver services, in all life areas. Supporting documentation developed by waiver service providers is to be incorporated in the plan of care by the case manager. Factors to be considered when these plans are developed must include, but are not limited to, individuals' ages, levels of functioning, and preferences.

"Preauthorized" means the preauthorization agent has approved a service for initiation and reimbursement prior to the commencement of the service by the service provider.

"Primary caregiver" means the main person who consistently assumes the role of providing direct care and support of the individual to live successfully in the community without compensation for such care.

"Qualified developmental disabilities professional" or "QDDP" means a professional who (i) possesses at least one year of documented experience working directly with individuals who have related conditions; (ii) is one of the following: a doctor of medicine or osteopathy, a registered nurse, a provider holding at least a bachelor's degree in a human service field including, but not limited to, sociology, social work, special education, rehabilitation engineering, counseling or psychology, or a provider who has documented equivalent qualifications; and (iii) possesses the required Virginia or national license, registration, or certification in accordance with his profession, if applicable.

"Qualified mental health professional" means a professional having: (i) at least one year of documented experience working directly with recipients who have developmental disabilities; (ii) at least a bachelor's degree in a human services field including, but not limited to, sociology, social work, special education, rehabilitation counseling, or

psychology; and (iii) the required Virginia or national license, registration, or certification in accordance with his profession.

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

1. It is attributable to:
 - a. Cerebral palsy or epilepsy; or
 - b. Any other condition, other than mental illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of [~~mentally retarded~~] persons [with mental retardation], and requires treatment or services similar to those required for these persons.
2. It is manifested before the person reaches age 22.
3. It is likely to continue indefinitely.
4. It results in substantial functional limitations in three or more of the following areas of major life activity:
 - a. Self-care.
 - b. Understanding and use of language.
 - c. Learning.
 - d. Mobility.
 - e. Self-direction.
 - f. Capacity for independent living.

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

"Respite care agency provider" means a participating provider that renders services designed to prevent or reduce inappropriate institutional care by providing respite care services to ~~for~~ for unpaid caregivers [living in the home] of eligible recipients ~~for their caregivers~~ individuals.

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

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

"Skilled nursing services" means nursing services (i) listed in the plan of care that do not meet home health criteria, (ii)

required to prevent institutionalization, (iii) not otherwise available under the State Plan for Medical Assistance, (iv) provided within the scope of the state's Nursing Act (§ 54.1-3000 et seq. of the Code of Virginia) and Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia), and (v) provided by a registered professional nurse or by a licensed practical nurse under the supervision of a registered nurse who is licensed to practice in the state. Skilled nursing services are to be used to provide training, consultation, nurse delegation as appropriate and oversight of direct care staff as appropriate.

"Slot" means an opening or vacancy of waiver services for an individual.

"Specialized supervision" means staff presence necessary for ongoing or intermittent intervention to ensure an individual's health and safety.

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

~~"Support coordination" means the assessment, planning, linking, and monitoring for recipients referred for the IFDDS community based care waiver. Support coordination: (i) ensures the development, coordination, implementation, monitoring, and modification of consumer service plans; (ii) links recipients with appropriate community resources and supports; (iii) coordinates service providers; and (iv) monitors quality of care. Support coordination providers cannot be service providers to recipients in the IFDDS Waiver with the exception of consumer directed service facilitators.~~

"Supporting documentation" means the specific service plan of care developed by the recipient individual and waiver service provider related solely to the specific tasks required of that service provider. Supporting documentation helps to comprise the overall ESP plan of care for the recipient individual, developed by the case manager and the individual.

"Supported employment" means [work in settings in which persons without disabilities are typically employed. It includes] training in specific skills related to paid employment and provision of ongoing or intermittent assistance and specialized supervision to enable a recipient an individual to maintain paid employment.

"Therapeutic consultation" means consultation provided by members of psychology, social work, rehabilitation engineering, behavioral analysis, speech therapy, occupational therapy, psychiatry, psychiatric clinical nursing, therapeutic recreation, or physical therapy ~~disciplines~~ or behavior consultation to assist recipients individuals, parents, family members, in-home residential support, day support

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and any other providers of support services in implementing a CSP plan of care.

"VDH" means the Virginia Department of Health.

12 VAC 30-120-710. General coverage and requirements for all home and community-based care waiver services.

A. Waiver service populations. Home and community-based services shall be available through a § 1915(c) waiver. Coverage shall be provided under the waiver for ~~recipients~~ individuals six years of age and older with related conditions as defined in ~~42 CFR 435.1009~~ 12 VAC 30-120-700, including autism, who have been determined to require the level of care provided in an ~~intermediate care facility for the mentally retarded~~ ICF/MR. The individual must not also have a diagnosis of mental retardation as defined by the American Association on Mental Retardation (AAMR). Mental Retardation (MR) Waiver recipients who are six years of age on or after October 1, 2002, who are determined to not have a diagnosis of mental retardation, and who meet all IFDDS Waiver eligibility criteria, shall be eligible for and shall transfer to the IFDDS Waiver effective with their sixth birthday. Psychological evaluations confirming diagnoses must be completed less than one year prior to the child's sixth birthday. These recipients transferring from the MR Waiver will automatically be assigned a slot in the IFDDS Waiver. Such slot shall be in addition to those slots available through the screening process described in 12 VAC 30-120-720 ~~€ B~~ and ~~D C~~.

B. ~~Coverage statement~~ Covered services.

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

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

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

C. Eligibility criteria for emergency access to the waiver.

1. Subject to available funding and a finding of eligibility under 12 VAC 30-120-720, individuals must meet at least one of the emergency criteria of this subdivision to be eligible for immediate access to waiver services without consideration to the length of time an individual has been waiting to access services. In the absence of waiver services, the individual would not be able to remain in his home. The criteria are as follows:

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

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

c. The individual demonstrates behaviors that present risk to personal or public safety;

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

e. The individual lives in an institutional setting and has a viable discharge plan in place.

2. When emergency slots become available:

a. All individuals who have been found eligible for the IFDDS Waiver but have not been enrolled shall be notified by either DMAS or the individual's case manager.

b. Individuals and [their] family/caregivers shall be given 30 calendar days to request emergency consideration.

c. An interdisciplinary team of DMAS professionals shall evaluate the requests for emergency consideration within 10 [business calendar] days from the [~~30-day~~ 30-calendar day] deadline using the emergency criteria to determine who will be assigned an emergency slot. If DMAS receives more requests than the number of available emergency slots, then the interdisciplinary team will make a decision on slot allocation based on need as documented in the request for emergency consideration. A waiting list of emergency cases will not be kept.

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

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

A. ~~Recipients~~ Individuals receiving services under this waiver must meet the following requirements. Virginia will apply the financial eligibility criteria contained in the State Plan for the categorically needy. Virginia has elected to cover the optional categorically needy groups under 42 CFR 435.121 and 435.217. The income level used for 42 CFR 435.121 and

435.217 is 300% of the current Supplemental Security Income payment standard for one person.

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

2. Virginia shall reduce its payment for home and community-based waiver 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 ~~recipients~~ 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) The basic maintenance needs for an individual, which is equal to 165% of the SSI payment for one person. Due to expenses of employment, a working individual shall have an additional income allowance. For an individual employed 20 hours or more per week, earned income shall be disregarded up to a maximum of 300% SSI; for an individual employed at least eight but less than 20 hours per week, earned income shall be disregarded up to a maximum of 200% of SSI. If the individual requires a guardian or conservator who charges a fee, the fee, not to exceed an amount greater than 5.0% of the individual's total monthly income, is added to the maintenance needs allowance. However, in no case shall the total amount of the maintenance needs allowance (basic allowance plus earned income allowance plus guardianship fees) for the individual exceed 300% of SSI.

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

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

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

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

(1) The basic maintenance needs for an individual, which is equal to 165% of the SSI payment for one person. Due to expenses of employment, a working individual shall have an additional income allowance. For an individual employed 20 hours or more per week, earned income shall be disregarded up to a maximum of 300% SSI; for an individual employed at least eight but less than 20 hours per week, earned income shall be disregarded up to a maximum of 200% of SSI. If the individual requires a guardian or conservator who charges a fee, the fee, not to exceed an amount greater than 5.0% of the individual's total monthly income, is added to the maintenance needs allowance. However, in no case shall the total amount of the maintenance needs allowance (basic allowance plus earned income allowance plus guardianship fees) for the individual exceed 300% of SSI.

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

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

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

1. To ensure that Virginia's home and community-based ~~care~~ waiver programs serve only ~~recipients~~ individuals who would otherwise be placed in an ICF/MR, home and community-based ~~care~~ waiver services shall be considered only for individuals who are eligible for admission to an ICF/MR, absent a diagnosis of mental retardation and are age six or older. Home and community-based ~~care~~ waiver services shall be the critical service that enables the individual to remain at home rather than being placed in an ICF/MR.

~~[2. Individuals requesting IPDDS waiver services will be screened and will receive services on a first come, first served basis in accordance with available funding based on the date the individuals' applications are received. Individuals~~

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~~who meet at least one of the emergency criteria pursuant to 12 VAC 30-120-710 shall be eligible for immediate access to waiver services if funding is available.~~

~~3- 2.] To be eligible for IFDDS Waiver services, the individual must:~~

- ~~a. Be determined to be eligible for the ICF/MR level of care;~~
- ~~b. Be six years of age or older;~~
- ~~c. Meet the related conditions definition as defined in 42 CFR 435.1009 or be diagnosed with autism; and~~
- ~~d. Not have a diagnosis of mental retardation as defined by the American Association on Mental Retardation (AAMR).~~

~~2- [4- The] recipient's [individual's status as an individual in need of IFDDS home and community based] care [waiver services shall be determined by the IFDDS screening team after completion of a thorough assessment of the] recipient's [individual's needs and available] support [supports. Screening] of [for home and community based] care [waiver services by the IFDDS screening team or DMAS staff is mandatory before Medicaid will assume payment responsibility of home and community based] care [waiver services.~~

~~5- 3.] Children under six years of age shall not be screened until three months prior to the month of their sixth birthday. Children under six years of age shall not be added to the waiver or the wait list until the month in which their sixth birthday occurs.~~

~~[6- The IFDDS screening team determines the level of care by applying existing DMAS ICF/MR criteria (Part VI (12 VAC 30-130-430 et seq.) of 12 VAC 30-130).]~~

~~3- [7- 4.] The IFDDS screening team shall gather relevant medical, and social, and psychological data and identify all services received by and supports available to the recipient individual. The IFDDS screening team shall also gather psychological evaluations or refer the individual to a private or publicly funded psychologist for evaluation of the cognitive abilities of each screening applicant. For children to transfer to the IFDDS Waiver at age six, case managers shall submit to DMAS the child's most recent Level of Functioning form, the CSP, and a psychological examination completed no more than one year prior to the child's sixth birthday if they are receiving MR Waiver services. Such documentation must demonstrate that no diagnosis of mental retardation exists in order for this transfer to the IFDDS Waiver to be approved.~~

~~4. The case manager shall be responsible for notifying DMAS, DMHMRSAS, and DSS, via the DMAS 122, when a child transfers from the MR Waiver to the IFDDS Waiver.~~

~~5. Children under six years of age shall not be screened until three months prior to the month of their sixth birthday.~~

~~Children under six years of age shall not be added to the waiver/wait list until the month in which their sixth birthday occurs.~~

~~6- An essential part of the IFDDS screening team's assessment process is determining the level of care required by applying existing DMAS ICF/MR criteria (12 VAC 30-130-430 et seq.).~~

~~[5. The individual's status as an individual in need of IFDDS home and community-based care waiver services shall be determined by the IFDDS screening team after completion of a thorough assessment of the individual's needs and available supports. Screening for home and community-based care waiver services by the IFDDS screening team or DMAS staff is mandatory before Medicaid will assume payment responsibility of home and community-based care waiver services.~~

~~6. The IFDDS screening team determines the level of care by applying existing DMAS ICF/MR criteria (12 VAC 30-130-430).]~~

~~7- [8- 7.] The IFDDS screening team shall explore alternative settings and services to provide the care needed by the individual with the individual and [his] family/caregiver [, as appropriate]. If placement in an ICF/MR or a combination of other services is determined to be appropriate, the IFDDS screening team shall initiate a referral for service to DMAS. If Medicaid-funded home and community-based care waiver services are determined to be the critical service to delay or avoid placement in an ICF/MR or promote exiting from an institutional setting, the IFDDS screening team shall initiate a referral for service to a support coordinator case manager of the recipient's individual's choice. Referrals are based on the individual choosing either ICF/MR placement or home and community-based waiver services.~~

~~8- [9- 8.] Home and community-based care waiver services shall not be provided to any individual who also resides in a nursing facility, an ICF/MR, a hospital, an adult family home licensed approved by the DSS, a group home licensed by DMHMRSAS, or an assisted living facility licensed by the DSS. [However, an individual may be screened for the IFDDS Waiver and placed on the wait list while residing in one of the aforementioned facilities.]~~

~~9. Medicaid will not pay for any home and community-based care services delivered prior to the authorization date approved by DMAS. Any Consumer Service Plan for home and community-based care services must be pre-approved by DMAS prior to Medicaid reimbursement for waiver services.~~

~~10. The following five criteria shall apply to all IFDDS Waiver services:~~

- ~~a. Individuals qualifying for IFDDS Waiver services must have a demonstrated clinical need for the service resulting in significant functional limitations in major life activities. In~~

order to be eligible, a person must be six years of age or older, have a related condition as defined in these regulations and cannot have a diagnosis of mental retardation, and who would, in the absence of waiver services, require the level of care provided in an ICF/MR facility, the cost of which would be reimbursed under the Plan;

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

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

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

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

~~11.~~ [~~10. 9.~~] The IFDDS screening teams team must submit the results of the comprehensive assessment and a recommendation to DMAS staff for final determination of ICF/MR level of care and authorization for home and community-based care waiver services.

[~~11. 10.~~] For children receiving MR Waiver services prior to age six to transfer to the IFDDS Waiver during their sixth year, the individual's MR Waiver case manager shall submit to DMAS the child's most recent Level of Functioning form, the plan of care, and a psychological examination completed no more than one year prior to transferring. Such documentation must demonstrate that no diagnosis of mental retardation exists in order for this transfer to the IFDDS Waiver to be approved. The case manager shall be responsible for notifying DMAS, DMHMRSAS, and DSS, via the DMAS-122, when a child transfers from the MR Waiver to the IFDDS Waiver. Transfers must be completed prior to the child's seventh birthday.

C. Screening for the IFDDS Waiver.

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

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

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

b. ~~Be six years of age or older,~~

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

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

~~D. C.~~ Waiver approval process: available funding.

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

2. Level one ~~will be~~ is for individuals whose comprehensive consumer service plan (CSP) ~~is expected to~~ plans of care cost less than \$25,000 per fiscal year. Level two ~~will be~~ is for individuals whose ~~CSP is expected to cost~~ plans of care costs are equal to or more than \$25,000. There ~~will not be a~~ is no threshold for budget level two; however, if the actual cost of waiver services exceeds the average annual cost of ICF/MR care for an individual, the ~~recipient's~~ individual's care ~~will be~~ e~~ordinated~~ is case managed by DMAS staff.

3. ~~Fifty five~~ Fifty percent of available waiver funds ~~will be~~ are allocated to budget level one, and 40% of available waiver funds ~~will be~~ are allocated to level two in order to ensure that the waiver ~~will be~~ is cost effective. The remaining ~~5-0~~ 10% of available waiver funds ~~will be~~ is allocated for emergencies as defined in ~~12 VAC 30-120-790~~ 12 VAC 30-120-710. ~~Recipients who have been placed in budget level one and who subsequently require additional services that would exceed \$25,000 per fiscal year must meet the emergency criteria as defined in 12 VAC 30-120-790 to receive additional funding for services. In order to transition an appropriate number of level one slots to emergency slots, every third level one slot that becomes available will convert to an emergency slot until the percentage of emergency slots reaches 10%. Half of emergency slots will be allocated for individuals in institutional settings who are discharge ready and have a viable discharge plan to transition into the community within 60 days. If there are no such individuals who choose to discharge into the community when emergency slots are available for institutionalized individuals, the emergency slot will be allocated to an individual residing in the community who meets emergency criteria.~~

~~E.~~ Waiver approval process: ~~accessing~~ services D. Assessment and enrollment.

1. The IFDDS screening team shall determine if an individual meets the functional criteria within 45 [calendar] days of receiving the request for screening from [DMAS the individual or his family/caregiver, as appropriate]. Once the IFDDS screening entity has determined team determines that an individual meets the eligibility criteria for IFDDS Waiver services and the individual has chosen this service, the

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~~IFDDS screening entity will team shall provide the individual with a list of available support coordinators case managers. For MR Waiver recipients transferring to the IFDDS Waiver, the case manager must provide the recipient or family/caregiver with a list of support coordinators. The individual or [his] family/caregiver [, as appropriate,] will shall choose a support coordinator case manager within 10 calendar days of receiving the list of support coordinators case managers and the IFDDS screening entity/case manager will team shall forward the screening materials, CSP, and all MR Waiver related documentation within 10 calendar days of the coordinator's case manager's selection to the selected support coordinator case manager.~~

2. ~~The support coordinator will case manager shall contact the recipient individual within 10 calendar days of receipt of screening materials. The support coordinator and case manager must meet face-to-face with the recipient or recipient's individual and [the individual's his] family/caregiver, as appropriate, will meet within 30 calendar days to discuss the recipient's individual's needs, existing supports and to develop a preliminary consumer service plan (CSP) which will identify plan of care identifying needed services needed and will estimate estimating the annual waiver cost of the recipient's CSP individual's plan of care. If the recipient's individual's annual waiver services cost is expected to exceed the average annual cost of ICF/MR care for an individual, the recipient's support coordination will be managed individual's case management shall be provided by DMAS.~~

3. ~~Once the CSP plan of care has been initially developed, the support coordinator will case manager shall contact DMAS to receive prior authorization request approval of the plan of care and to enroll the recipient individual in the IFDDS Waiver. DMAS shall, within 14 [calendar] days of receiving all supporting documentation, either approve for Medicaid coverage or deny for Medicaid coverage the CSP plan of care.~~

4. ~~Medicaid will not pay for any home and community-based waiver services delivered prior to the authorization date approved by DMAS. Any plan of care for home and community-based waiver services must be pre-approved by DMAS prior to Medicaid reimbursement for waiver services.~~

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

a. ~~Individuals qualifying for IFDDS Waiver services must have a demonstrated clinical need for the service resulting in significant functional limitations in major life activities. In order to be eligible, an individual must be six years of age or older, have a related condition as defined in these regulations, cannot have a diagnosis of mental retardation, and would, in the absence of waiver services, require the level of care provided in an ICF/MR facility, the cost of which would be reimbursed under the State Plan;~~

~~b. The plan of care and services that are delivered must be consistent with the Medicaid definition of each service;~~

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

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

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

6. ~~DMAS shall only authorize a waiver services slot for the recipient individual if funding is available for the entire CSP a slot is available. If DMAS does not have a waiver slot for this individual, the individual shall be placed on the waiting list until such time as a waiver slot becomes available for the individual.~~

7. ~~DMAS will notify the case manager when a slot is available for the individual [and the initial plan of care has been approved. The case manager shall also notify the local DSS by submitting a DMAS-122 and IFDDS Level of Care Eligibility form. The case manager shall inform the individual so the individual may apply for Medicaid if necessary and begin choosing waiver service providers for services listed in the plan of care].~~

~~[8. Once] this authorization has been received [the case manager receives authorization from DMAS, the] support coordinator [case manager shall inform the] recipient [individual so] that [the] recipient can [individual may apply for Medicaid if necessary and begin choosing waiver service providers for services listed in the] CSP [plan of care. The case manager shall also notify the local DSS by submitting a DMAS-122 and IFDDS Level of Care Eligibility form.]~~

~~If DMAS does not have the available funding for this recipient, the recipient will be held on the waiting list until such time as funds are available to cover the cost of the CSP.~~

~~[9- 8.] The case manager forwards a copy of the completed DMAS-122 to DMAS. Upon receipt of the completed DMAS-122, DMAS shall enroll the individual into the IFDDS Waiver.~~

4. ~~[10- 9.] Once the recipient individual has been authorized for determined to be Medicaid eligible and enrolled in the waiver, the recipient individual or support coordinator case manager shall contact the waiver service providers and that the individual or [his] family/caregiver [, as appropriate,] chooses, who shall initiate waiver services within 60 [calendar] days. During this time, the consumer individual, support coordinator case manager, and waiver service providers will shall meet to complete the CSP provider's supporting documentation for the plan of care, implementing~~

a person-centered planning process. If services are not initiated within 60 [calendar] days, the support coordinator case manager must submit information to DMAS demonstrating why more time is needed to initiate services and request in writing a 30-day extension, up to a maximum of four consecutive extensions, for the initiation of waiver services. DMAS must receive the request for extension letter within the 30-day extension period being requested. DMAS will review the request for extension and make a determination within 10 [business calendar] days of receiving the request. DMAS has authority to approve or deny the 30-day extension request in 30-day extensions. The waiver service providers will shall develop supporting documentation for each waiver service and will shall submit a copy of these plans this documentation to the support coordinator case manager.

[11, 10.] The support coordinator will case manager shall monitor the waiver service providers' supporting documentation to ensure that all providers are working toward the identified goals of recipients the individual. The support coordinator will case manager shall review and sign off on the supporting documentation and will. The case manager shall contact DMAS the preauthorization agent for prior authorization of services and will shall notify the waiver service providers when waiver services are approved.

5. [12, 11.] The support coordinator will case manager shall contact the recipient individual at a minimum on a monthly basis and as needed to coordinate services and maintain the recipient's CSP conduct case management activities as defined in 12 VAC 30-50-490. DMAS will shall conduct annual level of care reviews in which the recipient individual is assessed to ensure he continues to meet continued waiver criteria eligibility. DMAS will shall review recipients' CSPs individuals' plans of care and will shall review the services provided by support coordinators as well as case managers and waiver service providers.

E. Reevaluation of service need and utilization review.

1. The plan of care.

a. The case manager shall develop the plan of care, implementing a person-centered planning process with the individual, [the individual's his] family/caregiver [, as appropriate], other service providers, and other interested parties identified by the individual and/or family/caregiver, based on relevant, current assessment data. The plan of care development process determines the services to be provided for individuals, the frequency of services, the type of service provided, and a description of the services to be offered. All plans of care written by the case managers must be approved by DMAS prior to seeking authorization for services. DMAS is the single state authority responsible for the supervision of the administration of the home and community-based waiver.

b. The case manager is responsible for continuous monitoring of the appropriateness of the individual's services by reviewing supporting documentation and revisions to the plan of care as indicated by the changing needs of the individual. At a minimum, every three months the case manager must:

(1) Review the plan of care face-to-face with the individual and family/caregiver, as appropriate, using a person-centered planning approach;

(2) Review individual provider quarterly reports to ensure goals and objectives are being met; and

(3) Determine whether any modifications to the plan of care are necessary [, based upon the needs of the individual].

c. At least once per plan of care year this review must be performed with the individual present, and [his] family/caregivers as appropriate, in the individual's home environment.

d. DMAS staff shall review the plan of care every 12 months or more frequently as required to assure proper utilization of services. Any modification to the amount or type of services in the plan of care must be approved by DMAS.

2. Annual reassessment.

a. The case manager or DMAS, if DMAS is acting as the individual's case manager, shall complete an annual comprehensive reassessment, in coordination with the individual, family, and service providers. If warranted, the case manager will coordinate a medical examination and a psychological evaluation for every waiver individual. The reassessment, completed in a person-centered planning manner, must include an update of the assessment instrument and any other appropriate assessment data.

b. A medical examination must be completed for adults 18 years of age and older based on need identified by the individual, [the his] family/caregiver, [as appropriate,] providers, the case manager, or DMAS staff. Medical examinations for children must be completed according to the recommended frequency and periodicity of the EPSDT program.

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

3. Documentation required.

a. The case management provider must maintain the following documentation for review by the DMAS staff for each waiver individual:

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(1) All assessment summaries and all plans of care completed for the individual are maintained for a period of not less than six years;

(2) All supporting documentation from any provider rendering waiver services for the individual;

(3) All supporting documentation related to any change in the plan of care;

(4) All related communication with the individual, [his] family/caregiver [, as appropriate,], providers, consultants, DMHMRSAS, DMAS, DSS, DRS, or other related parties;

(5) An ongoing log documenting all contacts related to the individual made by the case manager that relate to the individual;

(6) The individual's most recent, completed level of functioning;

(7) Psychologicals;

(8) Communications with DMAS;

(9) Documentation of rejection or refusal of services and potential outcomes resulting from the refusal of services communicated to the individual; and

(10) Annual DMAS-122s.

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

(1) All supporting documentation developed for that individual and maintained for a period of not less than six years;

(2) An attendance log documenting the date and times services were rendered and the amount and the type of services rendered;

(3) Appropriate progress notes reflecting the individual's status and, as appropriate, progress toward the identified goals on the supporting documentation;

(4) All communication relating to the individual. Any documentation or communication must be dated and signed by the provider;

(5) Prior authorization decisions;

(6) Plans of care specific to the service being provided; and

(7) Assessments/reassessments as required for the service being provided.

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

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

1. Immediately notify DMAS, in writing, of any change in the information that the provider previously submitted to DMAS.

2. Assure freedom of choice ~~to recipients in~~ for individuals seeking ~~medical care~~ 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 were performed.

3. Assure the ~~recipient's~~ individual's freedom to reject medical care ~~and~~ and treatment, ~~and~~ and document that potential adverse outcomes that may result from refusal of services were discussed with the individual.

4. Accept referrals for services only when staff is available to initiate services within 30 [calendar] days and perform such services on an ongoing basis.

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

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

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

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

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

a. ~~In general,~~ Such records shall be retained for at least ~~five~~ six years from the last date of service or as provided by applicable state and federal laws, whichever period is longer. However, if an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every exception resolved. Records of minors

shall be kept for at least ~~five~~ six years after such minor has reached the age of 18 years.

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

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

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

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

~~12. B.~~ Pursuant to 42 CFR Part 431, Subpart F, 12 VAC 30-20-90, and any other applicable federal or state law, all providers shall hold confidential and use for DMAS authorized purposes only all medical assistance information regarding recipients 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 are necessary for the functioning of DMAS in conjunction with the cited laws. DMAS shall not disclose medical information to the public.

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

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

~~15. E.~~ Suspected abuse or neglect. Pursuant to §§ ~~63.1-55.3 63.2-1509 and 63.1-248.3~~ 63.2-1606 of the Code of Virginia, if a participating provider knows or suspects that a home and community-based care recipient waiver service individual is being abused, neglected, or exploited, the party having

knowledge or suspicion of the abuse, neglect, or exploitation shall report this immediately from first knowledge to the local DSS adult or child protective services ~~worker and agency, as applicable, as well as~~ to DMAS, and, if applicable, to DMHMRSAS Offices of Licensing and Human Rights.

~~16. F.~~ Adherence to provider contract participation agreement and the DMAS provider service manual. In addition to compliance with the general conditions and requirements, all providers enrolled by DMAS shall adhere to the conditions of participation outlined in their individual provider contracts participation agreements and in the DMAS provider manual.

G. Direct marketing. Providers are prohibited from performing any type of direct marketing activities to Medicaid individuals or their family/caregivers.

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

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

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

1. For services that have licensure and certification requirements, licensure and certification requirements pursuant to 42 CFR 441.352.

2. Disclosure of ownership pursuant to 42 CFR 455.104 and 455.105.

3. The ability to document and maintain individual case records in accordance with state and federal requirements.

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

D. Recipient Individual choice of provider agencies entities. The recipient individual will have the option of selecting the provider agency of his choice. The case manager must inform the individual of all available waiver service providers in the community in which he desires services, and he shall have the option of selecting the provider of his choice.

E. Review of provider participation standards and renewal of contracts provider participation agreements. 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

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~~contract agreement~~ renewal with DMAS to provide home and community-based waiver services. A provider's noncompliance with DMAS policies and procedures, as required in the provider's ~~contract~~ participation agreement, may result in a written request from DMAS for a corrective action plan which details the steps the provider must take and the length of time permitted to achieve full compliance with the plan to correct the deficiencies which have been cited.

F. Termination of provider participation. A participating provider may voluntarily terminate his participation in Medicaid by providing 30 [calendar] days' written notification. ~~DMAS shall be permitted to administratively terminate a provider from participation upon 30 days' written notification. DMAS may also cancel a contract immediately or may give notification in the event of a breach of the contract by the provider as specified in the DMAS contract. DMAS may terminate at will a provider's participation agreement on 30 [calendar] days' written notice as specified in the DMAS participation agreement. DMAS may also immediately terminate a provider's participation agreement if the provider is no longer eligible to participate in the program as determined by DMAS. Such action precludes further payment by DMAS for services provided to recipients for individuals subsequent to the date specified in the termination notice.~~

G. Reconsideration of adverse actions. A provider shall have the right to appeal adverse action taken by DMAS. ~~Adverse action includes, but shall not be limited to, termination of the provider agreement by DMAS, and retraction of payments from the provider by DMAS for noncompliance with applicable law, regulation, policy, or procedure. All disputes regarding provider reimbursement or termination of the agreement by DMAS for any reason shall be resolved through administrative proceedings conducted at the office of DMAS in Richmond, Virginia. These administrative proceedings and judicial review of such administrative proceedings shall be conducted pursuant to the Virginia Administrative Process Act (§ 9-6-14:1 et seq. of the Code of Virginia), the State Plan for Medical Assistance provided for in § 32.1-325 of the Code of Virginia, and duly promulgated regulations. Court review of final agency determinations concerning provider reimbursement shall be made in accordance with the Administrative Process Act. Provider appeals shall be considered pursuant to 12 VAC 30-10-1000 and 12 VAC 30-20-500 through 12 VAC 30-20-560.~~

H. Termination of a provider ~~contract~~ participation agreement upon conviction of a felony. Section 32.1-325 ~~€ D 2~~ of the Code of Virginia mandates that "any such Medicaid agreement or contract shall terminate upon conviction of the provider of a felony." A provider convicted of a felony in Virginia or in any other of the 50 states or Washington, D.C., must, within 30 days, notify the Medicaid Program of this conviction and relinquish its provider agreement. ~~Reinstatement will be contingent upon provisions of state~~

~~law.~~ In addition, termination of a provider ~~contract~~ participation agreement will occur as may be required for federal financial participation.

I. ~~Support coordinator's~~ Case manager's responsibility for the ~~Recipient Patient~~ Patient Information Form (DMAS-122). It is the responsibility of the ~~support coordinator~~ case manager to notify DMAS and DSS, in writing, when any of the following circumstances occur:

1. Home and community-based ~~care~~ waiver services are implemented.
2. ~~A recipient~~ An individual dies.
3. ~~A recipient~~ An individual is discharged or terminated from services.
4. Any other circumstances (including hospitalization) that cause home and community-based ~~care~~ waiver services to cease or be interrupted for more than 30 [calendar] days.
5. A selection by the individual or [his] family/caregiver [, as appropriate,] of a different case management provider.

J. Changes or termination of care. It is the DMAS staff's responsibility to authorize any changes to supporting documentation of ~~a recipient's CSP~~ an individual's plan of care based on the recommendations of the ~~support coordinator~~ case manager. ~~Agencies providing direct~~ Waiver service providers are responsible for modifying the supporting documentation ~~if the recipient or parent/legal guardian agrees with the involvement of the individual or [his] family/caregiver [, as appropriate]~~. The provider ~~will~~ shall submit the supporting documentation to the ~~support coordinator~~ case manager any time there is a change in the ~~recipient's individual's~~ individual's condition or circumstances that may warrant a change in the amount or type of service rendered. ~~The support coordinator will~~ case manager shall review the need for a change and ~~will~~ shall sign the supporting documentation if he agrees to the changes. ~~The support coordinator will~~ case manager shall submit the revised supporting documentation to the DMAS staff to receive approval for that change. The DMAS staff has the final authority to approve or deny the requested change to ~~recipients' individual's~~ individual's supporting documentation. DMAS shall notify the individual or [his] family/caregiver [, as appropriate,] in writing of their right to appeal the decision or decisions to reduce, terminate, suspend, or deny services pursuant to DMAS client appeals regulations, 12 VAC 30-110, Eligibility and Appeals.

1. Nonemergency termination of home and community-based ~~care~~ waiver services by the participating provider. The participating provider shall give the ~~recipient and individual~~ [, his] family/caregiver [, as appropriate], and ~~support coordinator~~ case manager 10 [calendar] days' written notification of the intent to terminate services. The notification letter shall provide the reasons for and effective

date of the termination. The effective date of services termination shall be at least 10 [calendar] days from the date of the termination notification letter.

2. Emergency termination of home and community-based ~~care waiver~~ services by the participating provider. In an emergency situation when the health and safety of the recipient individual or provider ~~agency personnel~~ is endangered, the ~~support coordinator~~ case manager and DMAS must be notified prior to termination. The 10-day written notification period shall not be required. ~~If~~ When appropriate, the local DSS adult protective services or child protective services agency must be notified immediately. DMHMRSAS Offices of Licensing and Human Rights must also be notified as required under the provider's license.

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

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

4. In the case of termination of home and community-based waiver services by DMAS staff:

- a. Individuals shall be notified of their appeal rights by DMAS pursuant to 12 VAC 30-110.
- b. Individuals identified by the case manager who no longer meet the level of care criteria or for whom home and community-based waiver services are no longer appropriate must be referred by the case manager to DMAS for review.

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

A. Service description. In-home residential support services shall be based primarily in the recipient's individual's home. The service shall be designed to enable ~~recipients qualifying for individuals enrolled in~~ recipients qualifying for individuals enrolled in the IFDDS Waiver to be maintained in their homes and shall include: (i) training in or ~~reinforcement of~~ engagement and interaction with functional skills and appropriate behavior related to ~~a recipient's an~~ individual's health and safety, personal care, activities of daily living and use of community resources; (ii) assistance with medication management and monitoring the recipient's individual's health, nutrition, and physical condition (iii) life

skills training; (iv) cognitive rehabilitation; ~~and~~ (v) assistance with personal care activities of daily living and use of community resources; and (vi) specialized supervision to ensure the individual's health and safety. Service providers shall be reimbursed only for the amount and type of in-home residential support services included in the recipient's individual's approved CSP plan of care. In-home residential support services shall not be authorized in the CSP plan of care unless the recipient individual requires these services and these services exceed services provided by the family or other caregiver. Services ~~will~~ are not be provided by paid staff of the in-home residential services provider for a continuous 24-hour period.

- 1. This service must be provided on a ~~recipient specific~~ an individual-specific basis according to the CSP plan of care, supporting documentation, and service setting requirements.
- 2. ~~This service may not be provided to any recipient who simultaneously receives personal care or attendant care services under the IFDDS Waiver or other residential program that provides a comparable level of care. Individuals may have in-home residential, personal care, and respite care in their plans of care but cannot receive these services simultaneously.~~
- 3. Room and board and general supervision shall not be components of this service.
- 4. This service shall not be used solely to provide routine or emergency respite care for the parent or parents or other unpaid caregivers with whom the recipient individual lives.

B. Criteria.

- 1. All ~~recipients~~ individuals must meet the following criteria in order for Medicaid to reimburse providers for in-home residential support services. The recipient individual must meet the eligibility requirements for this waiver service as ~~herein~~ defined. The recipient individual shall have a demonstrated need for supports to be provided by staff who are paid by the in-home residential support provider.
- 2. A functional assessment must be conducted to evaluate each recipient individual in his home environment and community settings.
- 3. Routine supervision/oversight of direct care staff. To provide additional assurance for the protection or preservation of ~~a recipient's~~ an individual's health and safety, there are specific requirements for the supervision and oversight of direct care staff providing in-home residential support as outlined below. For all in-home residential support services provided under a DMHMRSAS license or CARF accreditation:

- a. An employee of the ~~agency~~ provider, typically by position, must be formally designated as the supervisor of each direct

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care staff person ~~who is~~ providing in-home residential support services.

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

c. The supervisor must observe each direct care staff person delivering services at least semi-annually. Staff performance ~~and~~ service delivery ~~according to~~ in accordance with the CSP should be documented, along with plan of care, and evaluation of and evidence of recipient the individual's satisfaction with service delivery by direct care staff must be documented.

d. ~~Providers of in-home residential supports~~ The supervisor must ~~also have~~ complete and document at least one monthly contact with the recipient individual or [his] family/caregiver [, as appropriate,] regarding satisfaction with services delivered by each direct care staff person. ~~If the recipient has a guardian, the guardian should be contacted.~~

4. The in-home residential support supporting documentation must indicate the necessary amount and type of activities required by the recipient individual, the schedule of in-home residential support services, the total number of hours per day, and the total number of hours per week of in-home residential support. A formal, written behavioral program is required to address behaviors, including self-injury, aggression or self-stimulation.

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

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

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

persons with developmental disabilities individuals with related conditions and functional limitations.

1. For DMHMRSAS licensed programs, a CSP plan of care and ongoing documentation of service delivery must be consistent with licensing regulations.

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

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

4. Documentation must be maintained for routine supervision and oversight of all in-home residential support direct care staff. All significant contacts described in this section must be documented. A qualified developmental disabilities professional must provide supervision of direct service staff.

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

a. Date of contact or observation;

b. Person or persons contacted or observed;

c. A ~~note regarding~~ summary about direct care staff performance and ~~supporting documentation~~ service delivery for monthly ~~contact~~ contacts and semi-annual home visits;

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

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

f. Copy of the most recently completed DMAS-122 form. The provider must clearly document efforts to obtain the completed DMAS-122 form from the case manager.

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

A. Service description. Day support services shall include a variety of training, assistance, support, and specialized supervision offered in a setting (other than the home or recipient individual residence), which allows peer interactions and community integration for the acquisition, retention, or improvement of self-help, socialization, and adaptive skills. When services are provided through alternative payment sources, the ~~consumer~~ service plan of care shall not authorize

them as a waiver funded expenditure. Service providers are reimbursed only for the amount and type of day support services included in the recipient's individual's approved CSP plan of care based on the setting, intensity, and duration of the service to be delivered. This does not include prevocational services.

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

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

2. Types and levels of day support. The amount and type of day support included in the recipient's consumer service individual's plan of care is determined according to the services required for that recipient individual. There are two types of day support: center-based, which is provided partly or entirely in a segregated setting; primarily at one location/building, or noncenter-based, which is provided entirely primarily in community settings. Both types of day support may be provided at either intensive or regular levels. To be authorized at the intensive level, the recipient individual must have meet at least one of the following criteria: (i) requires physical assistance to meet the basic personal care needs (toileting, feeding, etc.); (ii) has extensive disability-related difficulties and require requires additional, ongoing support to fully participate in programming and to accomplish his service goals; or the recipient (iii) requires extensive constant supervision to reduce or eliminate behaviors that preclude full participation in the program. A formal, written behavioral program is required to address behaviors such as, but not limited to, withdrawal, self-injury, aggression, or self-stimulation.

C. Service units and service limitations. Day support cannot be regularly or temporarily (e.g., due to inclement weather or recipient illness) provided in a recipient's an individual's home or other residential setting (e.g., due to inclement weather or individual's illness) without prior written prior approval from DMAS. If prevocational services are offered, the plan of care must contain documentation regarding whether prevocational services are available in vocational rehabilitation agencies through § 110 of the Rehabilitation

Act of 1973 or in Special Education services through § 602 (16) and (17) of the Individuals with Disabilities Act. When services are provided through these sources, the plan of care shall not authorize them as a waiver expenditure. Compensation for prevocational services can only be made when the individual's productivity is less than 50% of the minimum wage. Noncenter-based day support services must be separate and distinguishable from either both in-home residential support services or and personal care services. There must be separate supporting documentation for each service and each must be clearly differentiated in documentation and corresponding billing. The supporting documentation must provide an estimate of the amount of day support required by the recipient individual. The maximum is 780 units per calendar plan of care year. If this service is used in combination with prevocational and/or supported employment services, the combined total units for these services can not exceed 780 units per plan of care year. Transportation shall not be billable as a day support service.

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

Services shall normally be furnished four or more hours per day on a regularly scheduled basis for one or more days per week unless provided as an adjunct to other day activities included in an individual's plan of care.

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

1. For DMHMRSAS programs licensed as day support programs, the CSP plan of care, supporting documentation, and ongoing documentation must be consistent with licensing regulations. For programs certified accredited by CARF as day support programs, there must be supporting documentation, which that contains, at a minimum, the following elements:
 - a. The recipient's individual's strengths, desired outcomes, required or desired supports and training needs;
 - b. The recipient's individual's goals and, for a training goal, a sequence of measurable objectives to meet the above identified outcomes;
 - c. Services to be rendered and the frequency of services to accomplish the above goals and objectives;
 - d. All individuals or organizations entities that will provide the services specified in the statement of services;

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

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

g. The ~~individual or individuals~~ entities responsible for the overall coordination and integration of the services specified in the CSP plan of care.

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

a. The provider must review the supporting documentation must be reviewed by the provider with the recipient individual or [his] family/caregiver [, as appropriate], and this written review submitted to the support coordinator case manager at least semi-annually with goals, objectives, and activities modified as appropriate. For the annual review and anytime the supporting documentation is modified, the revised supporting documentation must be reviewed with the individual or [his] family/caregiver [, as appropriate].

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

c. Documentation must indicate whether the services were center-based or noncenter-based and regular or intensive level.

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

e. In instances where day support staff are required to ride with the individual to and from day support, the day support staff time may be billed as day support, provided that the billing for this time does not exceed 25% of the total time spent in the day support activity for that day. Documentation must be maintained to verify that billing for day support staff coverage during transportation does not exceed 25% of the total time spent in the day support for that day.

f. Copy of the most recently completed DMAS-122 form. The provider must clearly document efforts to obtain the completed DMAS-122 form from the case manager.

3. Supervision of direct service staff must be provided by a qualified developmental disabilities professional.

12 VAC 30-120-753. ~~Reserved.~~ Prevocational services.

A. Service description. Prevocational services are services aimed at preparing an individual for paid or unpaid employment, but are not job-task oriented. Prevocational services are provided for individuals who are not expected to be able to join the general work force without supports or to participate in a transitional, sheltered workshop within one year of beginning waiver services (excluding supported employment services or programs). Activities included in this service are not primarily directed at teaching specific job skills but at underlying rehabilitative goals such as accepting supervision, attendance, task completion, problem solving, and safety.

B. Criteria. In order to qualify for prevocational services, the individual shall have a demonstrated need for support in skills that are aimed toward preparation for paid employment that may be offered in a variety of community settings.

C. Service units and service limitations. Billing is for one unit of service. This service is limited to 780 units per plan of care year. If this service is used in combination with day support and/or supported employment services, the combined total units for these services cannot exceed 780 units per plan of care year. Prevocational services may be provided in center or noncenter-based settings. There must be documentation about whether prevocational services are available in vocational rehabilitation agencies through § 110 of the Rehabilitation Act of 1973 or through the Individuals with Disabilities Education Act (IDEA). When services are provided through these sources to the individual, they will not be authorized as a waiver service. Prevocational services may only be provided when the individual's compensation is less than 50% of the minimum wage.

1. One unit shall be 1 to 3.99 hours of service a day.

2. Two units are 4 to 6.99 hours of service a day.

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

Services shall normally be furnished four or more hours per day on a regularly scheduled basis for one or more days per week unless provided as an adjunct to other day activities included in an individual's plan of care.

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

1. The prevocational services provider must be a vendor of extended employment services, long-term employment services, or supported employment services for DRS, or be licensed by DMHMRSAS as a day support services provider. Providers must ensure and document that persons providing prevocational services have training in the characteristics of

related conditions, appropriate interventions, training strategies, and support methods for individuals with related conditions and functional limitations.

2. Required documentation in the individual's record. The provider must maintain a record for each individual receiving prevocational services. At a minimum, the record must contain the following:

a. A functional assessment conducted by the provider to evaluate each individual in the prevocational environment and community settings.

b. A plan of care containing, at a minimum, the following elements (new DMHMRSAS licensing regulations require the following for plans of care):

- (1) The individual's needs and preferences;
- (2) Relevant psychological, behavioral, medical, rehabilitation, and nursing needs as indicated by the assessment;
- (3) Individualized strategies including the intensity of services needed;
- (4) A communication plan for individuals with communication barriers including language barriers; and
- (5) The behavior treatment plan, if applicable.

3. The plan of care must be reviewed by the provider quarterly, annually, and more often as needed, modified as appropriate, and with written results of these reviews submitted to the case manager. For the annual review and in cases where the plan of care is modified, the plan of care must be reviewed with the individual or [his] family/caregiver [, as appropriate].

4. Documentation must confirm the individual's attendance, amount of time spent in services, type of services rendered, and provide specific information about the individual's response to various settings and supports as agreed to in the plan of care.

5. In instances where prevocational staff are required to ride with the individual to and from prevocational services, the prevocational staff time may be billed for prevocational services, provided that the billing for this time does not exceed 25% of the total time spent in prevocational services for that day. Documentation must be maintained to verify that billing for prevocational staff coverage during transportation does not exceed 25% of the total time spending the prevocational services for that day.

6. A copy of the most recently completed DMAS-122. The provider must clearly document efforts to obtain the completed DMAS-122 from the case manager.

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

A. Service description.

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

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

B. Criteria for receipt of services.

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

2. In order to qualify for these services, the ~~recipient individual~~ recipient individual shall have a demonstrated need for training, specialized supervision, or assistance in paid employment and for whom competitive employment at or above the minimum wage is unlikely without this support and who, because of the disability, needs ongoing support, including supervision, training and transportation to perform in a work setting.

3. A functional assessment ~~should~~ must be conducted to evaluate each ~~recipient individual~~ recipient individual in his ~~home work~~ home work environment and related community settings.

4. The supporting documentation must provide document the amount of supported employment required by the ~~recipient individual~~ recipient individual. Service providers are reimbursed only for the amount and type of supported employment included in the ~~recipient's CSP plan of care~~ recipient's CSP plan of care based on the intensity and duration of the service delivered.

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C. Service units and service limitations.

1. Supported employment for ~~recipient individual~~ job placement ~~will be billed on an hourly basis~~ is provided in one-hour units. ~~Transportation cannot be billable as a supported employment service.~~

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

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

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

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

3. Supported employment services are limited to 780 units per plan of care year. If used in combination with prevocational and day support services, the combined total units for these services cannot exceed 780 units per plan of care year.

~~3- 4.~~ For the ~~recipient individual~~ job placement model, reimbursement of supported employment will be limited to actual documented interventions or collateral contacts by the provider, not the amount of time the ~~recipient individual~~ is in the supported employment situation.

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

1. Supported employment services shall be provided by agencies that are programs certified by CARF to provide supported employment services or are DRS vendors of supported employment services.

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

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

4. For non-DMHMRSAS programs certified as supported employment programs, there must be supporting documentation that contains, at a minimum, the following elements:

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

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

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

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

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

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

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

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

6. The provider must review the supporting documentation ~~must be reviewed by the provider~~ with the ~~recipient individual~~, and this written review submitted to the ~~support coordinator case manager~~, at least semi-annually, with goals, objectives and activities modified as appropriate. For the annual review and in cases where the plan of care is modified, the plan of care must be reviewed with the individual or [his] family/caregiver [, as appropriate].

7. In instances where supported employment staff are required to ride with the individual to and from supported employment activities, the supported employment staff time may be billed for supported employment provided that the billing for this time does not exceed 25% of the total time spent in supported employment for that day. Documentation must be maintained to verify that billing supported employment staff coverage during transportation does not exceed 25% of the total time spent in supported employment for that day.

8. There must be a copy of the completed DMAS-122 form in the record. Providers must clearly document efforts to obtain the DMAS-122 form from the case manager.

12 VAC 30-120-756. Therapeutic consultation.

A. Service description. ~~Therapeutic consultation is available under the waiver for Virginia licensed or certified practitioners in~~ provides expertise, training, and technical assistance in any of the following specialty areas to assist family members, caregivers, and service providers in supporting the individual. The specialty areas include the following: psychology, social work, occupational therapy, physical therapy, therapeutic recreation, rehabilitation, psychiatry, psychiatric clinical nursing, and speech/language therapy. Behavior consultation performed by these individuals may also be a covered waiver service. These services may be provided, based on the ~~recipient's CSP individual's plan of care, for those recipients individuals~~ recipient's individual's plan of care, for those recipients individuals for whom specialized consultation is clinically necessary to enable their utilization of waiver services and who have additional challenges restricting their ability to function in the community. Therapeutic consultation services may be provided in ~~in home residential or day support settings or in office settings in~~ the individual's home, in other appropriate community settings, and in conjunction with another waiver service. Only behavior consultation may be offered in the absence of any other waiver service when the consultation provided to informal caregivers is determined to be necessary to prevent institutionalization. These services are intended to facilitate implementation of the individual's desired outcomes as identified in the individual's plan of care. Therapeutic consultation service providers are reimbursed according to the amount and type of service authorized in the ~~CSP plan of care~~ CSP plan of care based on an hourly fee for service.

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

1. The ~~recipient's CSP individual's plan of care~~ recipient's individual's plan of care must clearly reflect the ~~recipient's individual's~~ recipient's individual's needs, as documented in the social assessment, for specialized consultation provided to family/caregivers and providers in order to implement the ~~CSP plan of care~~ CSP plan of care effectively.

2. Therapeutic consultation services may ~~neither not~~ neither not include direct therapy provided to individuals receiving waiver recipients nor services, or monitoring activities, and may not duplicate the activities of other services that are available to the recipient individual through the State Plan of Medical Assistance.

C. Service units and service limitations. The unit of service shall equal one hour. The services must be explicitly detailed in the supporting documentation. Travel time, written

preparation, and telephone communication are in-kind expenses within this service and are not billable as separate items. Therapeutic consultation may not be billed solely for purposes of monitoring. Therapeutic consultations shall be available to individuals who are receiving at least one other waiver service and case management services.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based care participating providers as specified in 12 VAC 30-120-730 and 12 VAC 30-120-740, professionals rendering therapeutic consultation services, including behavior consultation services, shall meet all applicable state licensure or certification requirements. Persons providing rehabilitation consultation shall be rehabilitation engineers or certified rehabilitation specialists. Behavioral consultation may be performed by professionals based on the professional's knowledge, skills, and abilities as defined by DMAS.

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

- a. Identifying information: ~~recipient's individual's~~ recipient's individual's name and Medicaid number; provider name and provider number; responsible person and telephone number; effective dates for supporting documentation; and semi-annual review dates, if applicable;
- b. Targeted objectives, time frames, and expected outcomes;
- c. Specific consultation activities; and
- d. ~~The expected outcomes~~ A written support plan detailing the interventions or support strategies.

2. Monthly and contact notes shall include:

- a. Summary of consultative activities for the month;
- b. Dates, locations, and times of service delivery;
- c. Supporting documentation objectives addressed;
- d. Specific details of the activities conducted;
- e. Services delivered as planned or modified; and
- f. Effectiveness of the strategies and ~~recipients' individuals'~~ recipients' individuals' and caregivers' satisfaction with service.

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

- a. Activities related to the therapeutic consultation supporting documentation;
- b. Recipient Individual status and satisfaction with services; and
- c. Consultation outcomes and effectiveness of support plan.

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

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

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

- a. Strategies utilized;
- b. Objectives met;
- c. Unresolved issues; and
- d. Consultant recommendations.

12 VAC 30-120-758. Environmental modifications.

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

B. Criteria. In order to qualify for these services, the ~~recipient~~ individual must have a demonstrated need for equipment or modifications of a remedial or medical benefit offered ~~primarily in a recipient's~~ an individual's primary home, primary vehicle used by the individual, community activity setting, or day program to specifically improve the ~~recipient's~~ individual's personal functioning. This service shall encompass those items not otherwise covered in the State

Plan for Medical Assistance or through another program. Environmental modifications shall be covered in the least expensive, most cost-effective manner.

C. Service units and service limitations. Environmental modifications shall be available to individuals who are receiving case management services in addition to at least one other waiver service. A maximum limit of \$5,000 may be reimbursed per ~~calendar~~ plan of care year. Costs for environmental modifications shall not be carried over from year to year. All environmental modifications must be prior authorized by [~~DMAS~~ the prior authorization agent prior to billing]. Modifications shall not be used to bring a substandard dwelling up to minimum habitation standards. Also excluded are modifications that are reasonable accommodation requirements of the Americans with Disabilities Act, the Virginians with Disabilities Act, and the Rehabilitation Act.

Case managers must, upon completion of each modification, meet face-to-face with the individual and [~~the individual's family his family/caregiver,~~] as appropriate [,] to ensure that the modification is completed satisfactorily and is able to be used by the individual.

D. Provider requirements. In addition to meeting the general conditions and requirements for ~~HCBC~~ home and community-based waiver services participating providers as specified in 12 VAC 30-120-730 and 12 VAC 30-120-740, environmental modifications must be provided in accordance with all applicable state or local building codes by contractors who have a provider agreement with DMAS. Providers may not be spouses or parents of the individual. [Modifications must be completed within the plan of care year.]

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

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

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

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

explicitly detailed in the CSP and must be specifically ordered by a physician.

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

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

12 VAC 30-120-762. Assistive technology.

A. Service description. Assistive technology (AT) is available to recipients who are receiving at least one other waiver service and may be provided in a residential or nonresidential setting. Assistive technology (AT) is the specialized medical equipment and supplies, including those devices, controls, or appliances, specified in the plan of care, but not available under the State Plan for Medical Assistance, that enable individuals to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live. This service also includes items necessary for life support, ancillary supplies, and equipment necessary to the proper functioning of such items.

B. Criteria. In order to qualify for these services, the ~~recipient individual~~ must have a demonstrated need for equipment or modification for remedial or direct medical benefit primarily in ~~a recipient's~~ an individual's primary home, primary vehicle used by the individual, community activity setting, or day program to specifically serve to improve the ~~recipient's individual's~~ personal functioning. This shall encompass those items not otherwise covered under the State Plan for Medical Assistance. Assistive technology shall be covered in the least expensive, most cost-effective manner.

C. Service units and service limitations. Assistive technology (AT) is available to individuals receiving at least one other waiver service and may be provided in the individual's home or community setting. A maximum limit of \$5,000 may be reimbursed per ~~calendar~~ plan of care year. Costs for assistive technology cannot be carried over from year to year and must be preauthorized each plan of care year. AT will not be approved for purposes of convenience of the caregiver/provider or restraint of the individual. An independent, professional consultation must be obtained from qualified professionals who are knowledgeable of that item for each AT request prior to approval by [DMAS the prior authorization agent, and may include training on such AT by the qualified professional]. All assistive technology must be prior authorized by [DMAS the prior authorization agent prior to billing]. Also excluded are modifications that are reasonable accommodation requirements of the Americans with Disabilities Act, the Virginians with Disabilities Act, and the Rehabilitation Act.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based care participating providers as specified in 12 VAC 30-120-730 and 12 VAC 30-120-740, assistive technology shall be provided by ~~agencies under contract the providers having a current provider participation agreement~~ with DMAS as durable medical equipment and supply providers. Independent, professional consultants ~~shall be include~~ include speech/language therapists, physical therapists, occupational therapists, physicians, behavioral therapists, certified rehabilitation specialists, or rehabilitation engineers. Providers that supply assistive technology for an individual may not perform assessment/consultation, write specifications, or inspect the assistive technology for that individual. Providers of services may not be spouses or parents of the individual. [AT must be delivered within the plan of care year.]

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

A. Service description. Crisis stabilization services involve direct interventions that provide temporary, intensive services and supports that avert emergency, psychiatric hospitalization or institutional placement of individuals who are experiencing serious psychiatric or behavioral problems that jeopardize their current community living situation. Crisis stabilization services shall ~~provide~~ include, as appropriate, neuropsychological, psychiatric, psychological and other functional assessments and stabilization techniques, medication management and monitoring, behavior assessment and support, and intensive care coordination with other agencies and providers. This service is designed to stabilize the individual and strengthen the current living situation so that the individual remains in the community during and beyond the crisis period.

These services shall be provided to:

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1. Assist planning and delivery of services and supports to ~~maintain community placement of the recipient~~ enable the individual to remain in the community;

2. Train family members ~~and~~ other care givers, and service providers in ~~positive behavioral~~ supports to maintain the ~~recipient~~ individual in the community; and

3. Provide temporary crisis supervision to ensure the safety of the ~~recipient~~ individual and others;

B. Criteria.

1. In order to receive crisis stabilization services, the ~~recipient~~ individual must meet at least one of the following criteria:

a. The ~~recipient~~ individual is experiencing marked reduction in psychiatric, adaptive, or behavioral functioning;

b. The ~~recipient~~ individual is experiencing extreme increase in emotional distress;

c. The ~~recipient~~ individual needs continuous intervention to maintain stability; or

d. The ~~recipient~~ individual is causing harm to self or others.

2. The ~~recipient~~ individual must be at risk of at least one of the following:

a. Psychiatric hospitalization;

b. Emergency ICF/MR placement;

c. Disruption of community status (living arrangement, day placement, or school); or

d. Causing harm to self or others.

C. Service units and service limitations. Crisis stabilization services must be authorized following a documented face-to-face assessment conducted by a qualified ~~mental health developmental disabilities~~ professional (QDDP).

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

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

a. The home of a ~~recipient~~ an individual who lives with family or other primary caregiver or caregivers;

b. The home of a ~~recipient~~ an individual who lives independently or semi-independently to augment any current services and support;

c. A day program or setting to augment current services and supports; or

d. A respite care setting to augment current services and supports.

3. Crisis supervision may be provided as a component of this service only if clinical or behavioral interventions allowed under this service are also provided during the authorized period. Crisis supervision must be provided one-on-one and face-to-face with the individual. Crisis supervision ~~must be provided face to face with the recipient~~, if provided as a part of this service, shall be billed separately in hourly service units.

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

5. If appropriate, the assessment and any reassessments shall be conducted jointly with a licensed mental health professional or other appropriate professional or professionals.

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

1. Crisis stabilization services shall be provided by ~~agencies~~ entities licensed by DMHMRSAS as a provider of outpatient, residential, supportive ~~residential in-home~~ services, or day support services. The provider ~~agency~~ must employ or utilize qualified licensed mental health professionals or other qualified personnel competent to provide crisis stabilization and related activities ~~to recipients for individuals with developmental disabilities related conditions who are experiencing serious behavioral problems~~ require crisis stabilization services. Supervision of direct service staff must be provided by a QDDP. Crisis supervision providers must be licensed by DMHMRSAS as providers of residential services, supportive in-home services, or day support services.

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

3. Documentation indicating the dates and times of crisis stabilization services ~~and~~ the amount and type of service provided, and specific information about the individual's response to the services and supports as agreed to in the supporting documentation must be recorded in the ~~recipient's~~ individual's record.

4. Documentation of provider qualifications of providers must be maintained for review by DMAS staff. This service shall be designed to stabilize the recipient individual and strengthen the current semi-independent living situation, or situation with family or other primary care givers, so the recipient individual can be maintained during and beyond the crisis period.

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

A. Service description. Services may be provided either through an agency-directed or consumer-directed model.

1. Personal care services ~~may be~~ means services offered to recipients individuals in their homes and communities ~~as an alternative to more costly institutional care 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 services substitute for the absence, loss, diminution, or impairment of a physical, behavioral, or cognitive function. This service shall provide care to recipients individuals with activities of daily living (eating, drinking, personal hygiene, toileting, transferring and bowel/bladder control), instrumental activities of daily living (IADL), access to the community, monitoring of self-medication or other medical needs ~~or, and~~ the monitoring of health status or physical condition. ~~Recipients shall be permitted to share service hours for no more than two individuals living in the same home.~~ In order to receive personal care services, the individual must require assistance with their ADLs. When specified in the plan of care, personal care services may include assistance with IADL. Assistance with IADL must be essential to the health and welfare of the individual, rather than the individual's family/caregiver. An additional component to personal care is work or school-related personal care. This allows the personal care provider to provide assistance and supports for individuals in the workplace and for those individuals attending postsecondary educational institutions. Workplace or school supports through the IFDDS Waiver are not provided if they are services that should be provided by the Department of Rehabilitative Services, under IDEA, or if they are an employer's responsibility under the Americans with Disabilities Act [, the Virginians with Disabilities Act,] or § 504 of the Rehabilitation Act. Work-related personal care services cannot duplicate services provided under supported employment.

2. Respite care means services provided for unpaid caregivers of eligible individuals who are unable to care for themselves that are provided on an episodic or routine basis because of the absence of or need for relief of those unpaid persons who routinely provide the care.

B. Criteria.

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

2. In order to qualify for respite care, individuals must have [~~a primary an~~] unpaid [primary] caregiver [~~living in the home~~] who requires temporary relief to avoid institutionalization of the individual.

3. Individuals choosing the consumer-directed option must receive support from a CD services facilitator and meet requirements for consumer direction as described in 12 VAC 30-120-770.

C. Service units and service limitations.

1. The unit of service is one hour.

2. Respite care services are limited to a maximum of 720 hours per year. Individuals who are receiving services through both the agency-directed and consumer-directed models cannot exceed 720 hours per calendar year combined.

~~Recipients can~~ 3. Individuals may have personal care, respite care, and in-home residential support services in their service plan of care but cannot receive in-home residential supports and personal care or respite care services at the same time.

4. Each recipient individual receiving personal care services must have ~~an emergency~~ a back-up plan in case the personal care aide or consumer-directed (CD) employee does not show up for work as expected or terminates employment without prior notice.

5. Individuals must need assistance with ADLs in order to receive IADL care through personal care services.

6. Individuals shall be permitted to share personal care service hours with one other individual (receiving waiver services) who lives in the same home.

7. This service does not include skilled nursing services with the exception of skilled nursing tasks that may be delegated in accordance with 18 VAC 90-20-420 through 18 VAC 90-20-460.

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

1. ~~Personal care~~ Services shall be provided by:

a. For the agency-directed model, a DMAS ~~certified~~ enrolled personal care/respite care provider or by a DMHMRSAS_licensed residential ~~support~~ supportive in-home provider. All personal care aides must pass an objective standardized test of

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knowledge, skills, and abilities approved by DMHMRSAS and administered according to DMHMRSAS' defined procedures. ~~2. The personal care provider:~~

Providers must: ~~a. demonstrate a prior successful health care delivery business;~~ ~~b. and operate from a business office.~~

~~e. b. For the consumer-directed model, a service facilitation provider meeting the requirements found in 12 VAC 30-120-770.~~

2. For DMHMRSAS-licensed providers, a residential supervisor shall provide ongoing supervision for all personal care aides. For DMAS-enrolled personal care/respice care providers, the provider must employ or subcontract with and directly supervise an RN or an LPN who will provide ongoing supervision of all personal care aides. (1) The supervising RN and LPN must be currently licensed to practice in the Commonwealth and have at least two years of related clinical nursing experience that may include work in an acute care hospital, public health clinic, home health agency, ICF/MR or nursing facility.

~~(2) 3. The RN supervisor or case manager/services facilitator must make an initial assessment comprehensive a home visit to conduct an initial assessment prior to the start of care for all new recipients admitted to personal care individuals requesting services. The RN supervisor or case manager/service facilitator must also perform any subsequent reassessments or changes to the supporting documentation. Under the consumer-directed model, the initial comprehensive visit is done only once upon the individual's entry into the service. If an individual served under the waiver changes CD services facilitation agencies, the new CD services facilitation provider must bill for a reassessment in lieu of a comprehensive visit.~~

~~(3) 4. The RN or LPN supervisor or case manager/services facilitator must make supervisory visits as often as needed to ensure both quality and appropriateness of services.~~

a. For personal care the minimum frequency of these visits is every 30 to 90 [calendar] days depending on recipient individual needs. For respice care offered on a routine basis, the minimum frequency of these visits is every 30 to 90 [calendar] days under the agency-directed model and every six months or upon the use of 300 respice care hours (whichever comes first) under the consumer-directed model.

b. Under the agency-directed model, when respice care services are not received on a routine basis, but are episodic in nature, the RN is not required to conduct a supervisory visit every 30 to 90 [calendar] days. Instead, the RN supervisor must conduct the initial home visit with the respice care aide immediately preceding the start of care and make a second home visit within the respice care period.

c. When respice care services are routine in nature and offered in conjunction with personal care, the 30- to 90-day

supervisory visit conducted for personal care may serve as the RN supervisor or case manager/service facilitator visit for respice care. However, the RN supervisor or case manager/services facilitator must document supervision of respice care separately. For this purpose, the same record can be used with a separate section for respice care documentation.

5. Under the agency-directed model, the supervisor shall identify any gaps in the aide's ability to provide services as identified in the individual's plan of care and provide training as indicated based on continuing evaluations of the aide's performance and the individual's needs.

~~(4) 6. The supervising RN or LPN or case manager/services facilitator must maintain current documentation. This may be done as a summary and must note:~~

~~(a) a. Whether personal and respice care services continue to be appropriate;~~

~~(b) b. Whether the plan supporting documentation is adequate to meet the need individual's needs or if changes are indicated in the plan supporting documentation;~~

~~(c) c. Any special tasks performed by the aide/CD employee and the aide's/CD employee's qualifications to perform these tasks;~~

~~(d) Recipient's d. Individual's satisfaction with the service;~~

~~(e) e. Any hospitalization or change in the individual's medical condition or functioning status;~~

~~(f) f. Other services received and their amount; and~~

~~(g) g. The presence or absence of the aide in the home during the RN's or LPN's visit.~~

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

7. Qualification of aides/CD employees. Each aide/CD employee must:

a. Be 18 years of age or older and possess a valid social security number;

~~(a) b. For the agency-directed model, be able to read and write English to the degree necessary to perform the tasks required. For the consumer-directed model, possess basic math, reading and writing skills;~~

c. Have the required skills to perform services as specified in the individual's plan of care;

d. Not be the parents of individuals who are minors, or the individual's spouse. Payment will 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 available to provide the care. Family members who are approved to be reimbursed for providing this service must meet the qualifications. In addition, under the consumer-directed model, family/caregivers acting as the employer on behalf of the individual may not also be the CD employee;

e. Additional aide requirements under the agency-directed model:

~~(b) Have completed 40 hours of (1) Complete an appropriate aide training curriculum consistent with the DMAS standards. Prior to assigning an aide to a recipient an individual, the provider agency must ensure that the aide has satisfactorily completed a training program consistent with DMAS standards; DMAS requirements may be met in any of the following ways:~~

~~(a) Registration as a certified nurse aide (DMAS-enrolled personal care/respite care providers);~~

~~(b) Graduation from an approved educational curriculum that offers certificates qualifying the student as a nursing assistant, geriatric assistant or home health aide (DMAS-enrolled personal care/respite care providers);~~

~~(c) Completion of provider-offered training that is consistent with the basic course outline approved by DMAS (DMAS-enrolled personal care/respite care providers);~~

~~(d) Completion and passing of the DMHMRSAS standardized test (DMHMRSAS licensed providers);~~

~~(e) Be physically able to do the work;~~

~~(d) (2) Have a satisfactory work record as evidenced by two references from prior job experiences, including no evidence of possible abuse, neglect, or exploitation of aged or incapacitated adults or children; and~~

~~(e) Not be a member of the recipient's family (family is defined as parents of minor children, spouses, or legally responsible relatives. Payment will not be made for services furnished by other family members unless there is objective written documentation as to why there are no other providers available to provide the care.~~

~~(3) Be evaluated in his job performance by the supervisor.~~

f. Additional CD employee requirements under the consumer-directed model:

(1) Submit to a criminal records check and, if the individual is a minor, the child protective services registry. The employee will not be compensated for services provided to the individual if the records check verifies the employee has been convicted of crimes described in § 37.2-314 of the Code of Virginia or if the employee has a complaint confirmed by the DSS child protective services registry;

(2) Be willing to attend training at the [individual's request of the individual] or [his] family [caregiver's request /caregiver, as appropriate];

(3) Understand and agree to comply with the DMAS consumer-directed services requirements; and

(4) Receive an annual TB screening.

~~3. 8. Provider inability to render services and substitution of aides (agency-directed model). a. When a personal care an aide is absent and the agency has no other aide available to provide services, the provider agency is responsible for ensuring that services continue to recipients. the agency provider may either obtain another aide, obtain a substitute aide from another agency provider if the lapse in coverage is to be less than two weeks in duration, or transfer the recipient individual's services to another agency provider.~~

~~b. During temporary, short term lapses in coverage not to exceed two weeks in duration, the following procedures must apply:~~

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

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

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

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

9. Retention, hiring, and substitution of employees (consumer-directed model). Upon the individual's request, the CD services facilitator shall provide the individual or [his] family [/] caregiver [, as appropriate,] with a list of consumer-directed employees on the consumer-directed employee registry that may provide temporary assistance until the employee returns or the individual or [his] family [/] caregiver [, as appropriate,] is able to select and hire a new employee. If an individual or [his] family [/] caregiver [, as appropriate,] is consistently unable to hire and retain an employee to provide consumer-directed services, the services facilitator must contact the case manager and DMAS to transfer the individual, at the [individual's choice of the individual] or [his] family [caregiver's choice /caregiver], as appropriate,] to a provider that provides Medicaid-funded agency-directed personal care or respite care services. The CD services facilitator will make arrangements with the case manager to have the individual transferred.

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4. 10. Required documentation in recipients' individuals' records. The provider agency must maintain all records of each personal care recipient individual receiving services. Under the agency-directed model, these records must be separated from those of other nonwaiver services, such as home health services. At a minimum these records must contain:

a. The most recently updated CSP plan of care and supporting documentation, all provider agency documentation, and all DMAS-122 forms;

b. ~~All the DMAS utilization review forms;~~

e. b. Initial assessment by the RN supervisory nurse or case manager/services facilitator completed prior to or on the date services are initiated and, subsequent reassessments, and changes to the supporting documentation by the RN supervisory nurse or case manager/services facilitator;

d. ~~Nurses~~ c. Nurses' or case manager/services facilitator summarizing notes recorded and dated during any contacts with the personal care aide or CD employee and during supervisory visits to the recipient's individual's home;

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

f. ~~Reassessments made during the provision of services; and~~

g. e. Contacts made with family, physicians, DMAS, formal and informal service providers, and all professionals concerning the recipient individual;

h. f. Under the agency-directed model, all personal care aide records. The personal care aide record must contain:

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

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

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

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

i. (5) Signatures, times, and dates; these 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.

(6) Copies of all aide records; these records shall be subject to review by state and federal Medicaid representatives.

g. Additional documentation requirements under the consumer-directed model:

(1) All management training provided to the individuals or [their] family caregivers [, as appropriate,], including [the

individual's or family caregiver's] responsibility for the accuracy of the timesheets.

(2) All documents signed by the individual or [the individual's his] family [/] caregivers [, as appropriate,] that acknowledge the responsibilities of the services.

12 VAC 30-120-768. Respite care services. (Repealed.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) Whether respite care services continue to be appropriate.
- (2) Whether the supporting documentation is adequate to meet the recipient's needs or if changes need to be made.
- (3) The recipient's satisfaction with the service.
- (4) Any hospitalization or change in medical condition or functioning status.
- (5) Other services received and the amount.
- (6) The presence or absence of the aide in the home during the visit.

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

- a. Be able to read and write;
- b. Have completed 40 hours of training consistent with the DMAS standards. Prior to assigning an aide to a recipient, the provider agency must ensure that the aide has satisfactorily completed a training program consistent with the DMAS standards;
- e. Be evaluated in his job performance by the RN or LPN supervisor;
- d. Be physically able to do the work;

e. Have a satisfactory work record as evidenced by two references from prior job experiences, including no evidence of possible abuse, neglect or exploitation of aged or incapacitated adults or children; and

f. Not be a member of a recipient's family (family is defined as parents of minor children, spouses, or legally responsible relatives. Payment will not be made for services furnished by other family members unless there is objective written documentation as to why there are no other providers available to provide the care.

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

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

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

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

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

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

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

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

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respite care provider agency that has the aide capability to serve the recipient or recipients.

5. ~~Required documentation for recipients' records. The provider agency must maintain all records of each respite care recipient. These records must be separated from those of other nonwaiver services, such as home health services. These records will be reviewed periodically by the DMAS staff. At a minimum these records must contain:~~

- a. ~~The most recent CSP and supporting documentation, all respite care assessments, and all DMAS 122 forms;~~
- b. ~~All DMAS utilization review forms;~~
- c. ~~Initial assessment by the RN supervisory nurse completed prior to or on the date services are initiated and subsequent reassessments and changes to supporting documentation by the RN supervisory nurse;~~
- d. ~~Nurses' notes recorded and dated during significant contacts with the respite care aide and during supervisory visits to the recipient's home;~~
- e. ~~All correspondence to the recipient and to DMAS;~~
- f. ~~Reassessments made during the provision of services; and~~
- g. ~~Significant contacts made with family, physicians, DMAS, and all professionals concerning the recipient.~~

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

- a. ~~The specific services delivered to the recipient by the respite care aide and the recipient's response.~~
- b. ~~The arrival and departure time of the aide for respite care services only.~~
- c. ~~Comments or observations recorded weekly about the recipient. Aide comments must include, at a minimum, observation of the recipient's physical and emotional condition, daily activities, and the recipient's response to services rendered.~~
- d. ~~The signature of the aide and the recipient once each week to verify that respite care services have been rendered.~~
- e. ~~Signatures, times, and dates shall not be placed on the aide record prior to the last date of the week that the services are delivered.~~

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

12 VAC 30-120-770. Consumer-directed services: attendant care, companion care, and respite care model of service delivery.

A. Service definition.

1. a. Attendant services include hands-on care specific to the needs of a recipient. Attendant care includes assistance with

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

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

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

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

A. Criteria.

1. The IFDDS Waiver has three services, companion, personal care, and respite, that may be provided through a consumer-directed model.

2. Individuals who are eligible for consumer-directed services must have the capability to hire and train their consumer-directed employees and supervise the employee's work 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.

3. Responsibilities as employer. The individual, or if the individual is unable, then a family caregiver, is the employer in this service and is responsible for hiring, training, supervising, and firing employees. Specific duties include

checking references of employees, determining that employees meet basic qualifications, training employees, supervising the employees' performance, and submitting timesheets to the fiscal agent on a consistent and timely basis. The individual or [his] family [/] caregiver [, as appropriate,] must have an emergency back-up plan in case the employee does not show up for work.

4. DMAS shall contract for the services of a fiscal agent for ~~attendant~~ consumer-directed personal care, companion care, and ~~consumer directed~~ respite care services. The fiscal agent will be ~~reimbursed~~ paid by DMAS to perform certain tasks as an agent for the ~~recipient~~ individual/employer who is receiving consumer-directed services. The fiscal agent will handle responsibilities for the ~~recipient~~ 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.

5. Individuals choosing consumer-directed services must receive support from a CD services facilitator. Services facilitators assist the individual or [his] family/caregiver [, as appropriate,] as they become employers for consumer-directed services. This function includes providing the individual or [his] family/caregiver [, as appropriate,] with management training, review and explanation of the Employee Management Manual, and routine visits to monitor the employment process. The CD services facilitator assists the individual/employer with employer issues as they arise. The services facilitator meeting the stated qualifications may also complete the assessments, reassessments, and related supporting documentation necessary for consumer-directed services if the individual or [his] family/caregiver [, as appropriate,] chooses for the CD services facilitator to perform these tasks rather than the case manager. Services facilitation services are provided on an as-needed basis as determined by the individual, family/caregiver, and CD services facilitator. This must be documented in the supporting documentation for consumer-directed services and the services facilitation provider bills accordingly. If an individual enrolled in consumer-directed services has a lapse in [~~service facilitation~~ consumer-directed] services for more than 60 consecutive [calendar] days, the case manager must notify DMAS so that consumer-directed services may be discontinued and the option given to change to agency-directed services.

B. Criteria.

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

2. Consumer directed respite care may only be offered to recipients who have a primary unpaid caregiver living in the home who requires temporary relief to avoid

institutionalization of the recipient, and it is designed to focus on the need of the caregiver for temporary relief.

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

4. ~~Attendant care, companion care, and consumer directed respite services are available to recipients who would otherwise require the level of care provided in an ICF/MR. Recipients who are eligible for consumer directed services must have the capability to hire and train their own personal attendants or companions and supervise the attendant's or companion's performance. Recipients with cognitive impairments will not be able to manage their own care. If a recipient is unable to direct his own care, a family caregiver may serve as the employer on behalf of the recipient. Recipients are permitted to share hours for no more than two individuals living in the same home.~~

5. ~~Responsibilities as employer. The recipient, or if the recipient is unable then a family caregiver, is the employer in this service and is responsible for hiring, training, supervising, and firing personal attendants and companions. Specific duties include checking references of personal attendants/companions, determining that personal attendants/companions meet basic qualifications, training personal attendants/companions, supervising the personal attendant's/companion's performance, and submitting timesheets to the service coordinator and fiscal agent on a consistent and timely basis. The recipient or family caregiver must have an emergency back-up plan in case the personal attendant/companion does not show up for work as expected or terminates employment without prior notice.~~

C. Service units and service limitations.

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

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

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

4. ~~For attendant care and consumer directed respite care services, recipients or family caregivers will hire their own personal attendants and manage and supervise the attendants' performances.~~

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The attendant/companion 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 recipient's supporting documentation;
- c. Possess basic math, reading, and writing skills;
- d. Possess a valid Social Security number;
- e. Submit to a criminal records check and, if the recipient is a minor, the child protective services registry. The personal attendant/companion will not be compensated for services provided to the recipient if the records check verifies the personal attendant/companion has been convicted of crimes described in § 32.1-162.9:1 of the Code of Virginia or if the personal attendant/companion has a complaint confirmed by the DSS child protective services registry.
- f. Be willing to attend training at the recipient's or family caregiver's request;
- g. Understand and agree to comply with the DMAS IFDDS Waiver requirements;
- h. Receive periodic TB screening, CPR training and an annual flu shot; and
- i. Be willing to register in a personal attendant registry, which will be maintained by the consumer directed services facilitator chosen by the recipient or recipient's parent or guardian.

5. Restrictions. Attendants cannot be spouses, parents of minor children, or legally responsible relatives. Payment will not be made for services furnished by other family members unless there is objective written documentation as to why there are no other providers available to provide the care.

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

~~D. B.~~ B. Provider qualifications. In addition to meeting the general conditions and requirements for home and

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

1. To be enrolled as a Medicaid CD services facilitation provider and maintain provider status, the CD services facilitation provider must operate from a business office and have sufficient qualified staff who will function as CD services facilitators to perform the ~~needed plans of care development and monitoring, reassessments,~~ service coordination, facilitation and support activities as required. It is preferred that the employee of the CD services facilitation provider possess a minimum of an undergraduate degree in a human services field or be a registered nurse currently licensed to practice in the Commonwealth. In addition, it is preferable that the ~~individual have~~ CD services facilitator has two years of satisfactory experience in the human services field working with persons individuals with developmental disabilities related conditions.

2. The individual CD services facilitator must possess a combination of work experience and relevant education which indicates possession of the following knowledge, skills, and abilities. Such knowledge, skills and abilities must be documented on the application form, found in supporting documentation, or be observed during the job interview. Observations during the interview must be documented. The knowledge, skills, and abilities include:

a. Knowledge of:

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

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

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

~~(4) (1) Various long-term care program requirements, including nursing home, ICF/MR, and assisted living facility placement criteria, Medicaid waiver services, and other federal, state, and local resources that provide personal care services;~~

~~(5) IFDDS Waiver (2) DMAS consumer-directed services requirements, as well as and the administrative duties for which the recipient individual will be responsible;~~

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

- ~~(7)~~ (3) Interviewing techniques;
- ~~(8)~~ (4) The ~~recipient's individual's~~ right to make decisions about, direct the provisions of, and control his ~~attendant care~~ and consumer-directed ~~respite care~~ services, including hiring, training, managing, approving time sheets, and firing an ~~attendant employee~~;
- ~~(9)~~ (5) The principles of human behavior and interpersonal relationships; and
- ~~(10)~~ (6) General principles of record documentation.

(7) For CD services facilitators who also conduct assessments and reassessments, the following is also required. Knowledge of:

- (a) 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;
- (b) Physical assistance typically required by people with developmental disabilities, such as transferring, bathing techniques, bowel and bladder care, and the approximate time those activities normally take;
- (c) Equipment and environmental modifications commonly used and required by people with developmental disabilities that reduces the need for human help and improves safety;
- (d) Conducting assessments (including environmental, psychosocial, health, and functional factors) and their uses in care planning.

b. Skills in:

- (1) Negotiating with ~~recipients individuals~~ [, or their] family/caregivers [, as appropriate], and service providers;
- (2) Observing, recording, and reporting behaviors;
- (3) Identifying, developing, or providing services to persons with developmental disabilities; and
- (4) Identifying services within the established services system to meet the ~~recipient's individual'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 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 different types of persons from diverse cultural backgrounds; ~~and~~

(7) Interview.

~~2. If the CD services facilitation staff employed by the CD services facilitation provider is not an RN, the CD services facilitation provider must have RN consulting services available, either by a staffing arrangement or through a contracted consulting arrangement. The RN consultant is to be available as needed to consult with recipients and CD services facilitation providers on issues related to the health needs of the recipient.~~

3. If the CD services facilitator is not an RN, the CD services facilitator must inform the primary health care provider that services are being provided and request skilled nursing or other consultation as needed.

~~3.~~ 4. Initiation of services and service monitoring.

a. ~~Attendant care services.~~ If the services facilitator has responsibility for individual assessments and reassessments, these must be conducted as specified in 12 VAC 30-120-766 and 12 VAC 30-120-776.

b. Management training.

(1) The CD services facilitation provider must make an initial ~~comprehensive home visit to develop the supporting documentation~~ with the recipient individual or [his] family [/] caregiver [, as appropriate,] ~~and to provide management training. The initial management training is done only once upon the individual's entry into the service. If an individual served under the waiver changes CD services facilitation providers, the new CD services facilitator must bill for a regular management training in lieu of initial management training.~~

(2) After the initial visit, two routine ~~onsite~~ visits must occur ~~in the recipient's home~~ within 60 days of the initiation of care or the initial visit to monitor the ~~supporting documentation~~ employment process.

(3) For personal care services, the CD services facilitation provider will continue to monitor ~~the supporting documentation~~ on an as needed basis, not to exceed a maximum of one routine ~~onsite~~ visit every 30 [calendar] days but no less than the minimum of one routine ~~onsite~~ visit every 90 [calendar] days per ~~recipient individual~~. After the initial visit, the CD services facilitator will periodically review the utilization of companion services at a minimum of every six months and for respite services, either every six months or upon the use of 300 respite care hours, whichever comes first.

~~The initial comprehensive visit is done only once upon the recipient's entry into the service. If a waiver recipient changes CD services facilitation agencies, the new CD services~~

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~~facilitation provider must bill for a reassessment in lieu of a comprehensive visit.~~

~~b. Consumer directed respite and companion services. The CD services facilitation provider must make an initial comprehensive home visit to develop the supporting documentation with the recipient or family caregiver and will provide management training. After the initial visit, the CD services facilitator will periodically review the utilization of companion services at a minimum of every six months or, for respite services, either every six months or upon the use of 300 respite care hours, whichever comes first. The initial comprehensive visit is done only once upon the recipient's entry into the service. If a waiver recipient changes CD services facilitation agencies, the new CD services facilitation provider must bill for a reassessment in lieu of a comprehensive visit.~~

~~4. CD services facilitator reassessments for consumer-directed services. A reassessment of the recipient's level of care will occur six months after initial entry into the program, and subsequent reevaluations will occur at a minimum of every six months. During visits to the recipient's home, the CD services facilitation provider must observe, evaluate, and document the adequacy and appropriateness of personal attendant services with regard to the recipient's current functioning and cognitive status, medical, and social needs. The CD services facilitation provider's summary must include, but not necessarily be limited to:~~

~~a. Whether attendant care or consumer directed respite care services continue to be appropriate and medically necessary to prevent institutionalization;~~

~~b. Whether the service is adequate to meet the recipient's needs;~~

~~c. Any special tasks performed by the attendant/companion and the attendant's/companion's qualifications to perform these tasks;~~

~~d. Recipient's satisfaction with the service;~~

~~e. Hospitalization or change in medical condition, functioning, or cognitive status;~~

~~f. Other services received and their amount; and~~

~~g. The presence or absence of the attendant in the home during the CD services facilitator's visit.~~

~~[5. 4.] The CD services [facilitation provider facilitator] must be available to the recipient individual or [his] family/caregiver [, as appropriate,] by telephone during normal business hours, have voice mail capability, and return phone calls within 24 hours or have an approved back-up CD services facilitator.~~

~~[6. 5.] The CD services [facilitation provider fiscal contractor for DMAS] must submit a criminal record check~~

~~within 15 [calendar] days of employment pertaining to the personal attendant/companion consumer-directed employees on behalf of the recipient individual or family/caregiver and report findings of the criminal record check to the recipient individual or [the his] family/caregiver [and the program's fiscal agent, as appropriate]. Personal attendants/companions will not be reimbursed for services provided to the recipient effective with the date the criminal record check confirms a personal attendant has been found to have been convicted of a crime as described in § 32.1-162.9:1 of the Code of Virginia or if the personal attendant/companion has a confirmed record on the DSS Child Protective Services Registry. If the recipient is a minor, the personal attendant/companion must also be screened through the DSS child protective services registry.~~

~~[7. 6.] The CD services [facilitation provider facilitator] shall verify bi-weekly timesheets signed by the recipient individual or [the his] family caregiver [, as appropriate,] and the personal attendant/companion employee to ensure that the number of CSP plan of care approved hours are not exceeded. If discrepancies are identified, the CD services [facilitation provider facilitator] must contact the recipient individual to resolve discrepancies and must notify the fiscal agent. If a recipient an individual is consistently being identified as having discrepancies in his timesheets, the CD services [facilitation provider facilitator] must contact the support coordinator case manager to resolve the situation. The CD services facilitation provider cannot verify timesheets for personal attendants/companions who have been convicted of crimes described in § 32.1-162.9:1 of the Code of Virginia or who have a confirmed case with the DSS Child Protective Services Registry and must notify the fiscal agent.~~

~~[8. 7.] Personal attendant Consumer-directed employee registry. The CD services [facilitation provider facilitator] must maintain a personal attendant consumer-directed employee registry, updated on an ongoing basis.~~

~~[9. 8.] Required documentation in recipients' individuals' records. CD services facilitators responsible for individual assessment and reassessment must maintain records as described in 12 VAC 30-120-766 and 12 VAC 30-120-776. The CD services facilitation provider must maintain all records of each recipient. At a minimum these records must contain For [CD] services facilitators conducting management training, the following documentation is required in the individual's record:~~

~~a. All copies of the CSP plan of care, all supporting documentation related to consumer-directed services, and all DMAS-122 forms.~~

~~b. All DMAS utilization review forms.~~

~~e. b. CD services [facilitation provider facilitator's] notes contemporaneously recorded and dated during any contacts~~

~~with the recipient and during visits to the recipient's home at the time of service delivery.~~

~~d. c.~~ All correspondence to the ~~recipient~~ individual, others concerning the individual, and to DMAS.

~~e.~~ Reassessments made during the provision of services.

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

~~g.~~ d. All training provided to the ~~personal attendant/companion or attendants/companions~~ consumer-directed employees on behalf of the ~~recipient~~ [individual] or [his] family [/] caregiver [, as appropriate].

~~h.~~ e. All management training provided to the ~~recipients~~ individuals or [his] family [/] caregivers [, as appropriate], including the ~~recipient's~~ [individual's or family caregiver's] responsibility for the accuracy of the timesheets.

~~i.~~ f. All documents signed by the ~~recipient~~ individual or [the recipient's [individual's — family — caregivers his family/caregiver, as appropriate,] that acknowledge the responsibilities of the services.

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

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

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

C. Service units and service limitations. Services will be billed hourly and must be prior authorized. ~~Recipients~~ Family, as defined in this section, may receive up to 80 hours of family/caregiver training per ~~calendar~~ individual's plan of care year.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based

care waiver services participating providers as specified in 12 VAC 30-120-730 and 12 VAC 30-120-740, family/caregiver training providers must meet the following qualifications requirements:

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

2. Family/caregiver training must be provided by ~~individuals~~ providers with expertise ~~who work for an agency with in,~~ experience in, or demonstrated knowledge of the training topic identified in the plan of care, and who work for an agency or organization that ~~has~~ have a provider participation agreement with DMAS to provide these services. ~~Individuals~~ Providers must also have the appropriate licensure or certification as required for the specific professional field associated with the training area. ~~Licensed practical counselors, licensed clinical social workers, and licensed psychologists can enroll as individual practitioners with DMAS to provide family/caregiver training.~~ Providers include the following: qualified staff of provider agencies; psychologists; licensed clinical social workers; and licensed professional counselors. Qualified staff of provider agencies must be licensed and include occupational therapists, physical therapists, speech/language pathologists, physicians, psychologists, licensed clinical social workers, licensed professional counselors, registered nurses, and special education teachers. Provision of services is monitored by the individual [; or his] family/caregiver, [as appropriate,] and/or the case manager.

12 VAC 30-120-774. Personal emergency response system (PERS).

A. Service description. PERS is a service ~~which electronically~~ that monitors recipient individual safety in the home and provides access to emergency ~~crisis intervention~~ 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~~ individual's home telephone line. PERS may also include medication monitoring devices.

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

C. Service units and service limitations.

1. A unit of service shall include administrative costs, time, labor, and supplies associated with the installation, maintenance, ~~and~~ monitoring, and adjustments of the PERS.

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A unit of service is one-month rental price set by DMAS. The one-time installation of the unit includes installation, account activation, ~~recipient individual~~ and caregiver instruction, and removal of PERS equipment.

2. PERS services must be capable of being activated by a remote wireless device and be connected to the ~~recipient's 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 ~~recipient individual~~.

3. PERS cannot be used as a substitute for providing adequate supervision of the individual.

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

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

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

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

4. The PERS provider has the primary responsibility to furnish, install, maintain, test, and service the PERS equipment, as required to keep it fully operational. The provider shall replace or repair the PERS device within 24 hours of the ~~recipient's individual'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~~ the functioning telephone line of an individual receiving PERS and must furnish all supplies necessary to ensure that the system is installed and working properly.

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

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

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

a. Delivery date and installation date of the PERS;

b. ~~Enrollee [Individual or family/caregiver~~ The] signature [of the individual or his family/caregiver, as appropriate,] verifying receipt of PERS device;

c. Verification by a test that the PERS device is operational, monthly or more frequently as needed;

d. Updated and current ~~recipient individual~~ responder and contact information, as provided by the ~~recipient individual~~ or the ~~recipient's individual's~~ care provider, or case manager; and

e. A case log documenting ~~recipient system~~ the individual's utilization ~~and recipient of the system and contacts and communications with the individual [; or his] family/caregiver [, as appropriate], case manager, or responder-contacts and communications.~~

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

10. 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, which is the UL safety standard for home health care signaling equipment. The UL listing mark on the equipment will be accepted as evidence of the equipment's compliance with such standard. The PERS device must be automatically reset by the response center after each activation ensuring that subsequent signals can be transmitted without requiring manual reset by the ~~recipient individual~~.

11. A PERS provider must furnish education, data, and ongoing assistance to DMAS and case managers to familiarize staff with the service, allow for ongoing evaluation and refinement of the program, and must instruct the ~~recipient individual~~, [his] family/caregiver, [as appropriate,] and responders in the use of the PERS service.

12. The emergency response activator must be activated either by breath, by touch, or by some other means, and must be usable by persons who are visually or hearing impaired or physically disabled. The emergency response communicator

must be capable of operating without external power during a power failure at the ~~recipient's~~ individual'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 individual~~ resetting the system in the event it cannot get its signal accepted at the response center.

13. Monitoring agencies must be capable of continuously monitoring and responding to emergencies under all conditions, including power failures and mechanical malfunctions. It is the PERS provider's responsibility to ensure that the monitoring agency and the agency's equipment meets the following requirements. The monitoring agency must be capable of simultaneously responding to multiple signals for help from ~~recipients' multiple individuals'~~ 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 individual's~~ identification code, and the emergency code that indicates whether the signal is active, passive, or a responder test;
- d. A back-up power supply;
- e. A separate telephone service;
- f. A toll free number to be used by the PERS equipment in order to contact the primary or back-up response center; and
- g. A telephone line monitor, which must give visual and audible signals when the incoming telephone line is disconnected for more than 10 seconds.

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

15. The PERS provider shall document and furnish within 30 [calendar] days of the action taken a written report to the ~~support coordinator~~ case manager for each emergency signal that results in action being taken on behalf of the ~~recipient individual~~. This excludes test signals or activations made in error.

16. The PERS provider is prohibited from performing any type of direct marketing activities.

12 VAC 30-120-776. Companion ~~care~~ agency-directed model of care services.

A. Service description. Companion ~~care~~ services is a covered service when its purpose is to supervise or monitor those individuals who require the physical presence of an aide to ensure their safety during times when no other supportive ~~individuals~~ people are available. This service may be provided either through an agency-directed or a consumer-directed model.

B. Criteria.

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

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

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

4. Individuals choosing the consumer-directed option must receive support from a CD services facilitator and meet requirements for consumer direction as described in 12 VAC 30-120-770.

C. Service units and service limitations.

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

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

3. Companion ~~care~~ services will be authorized for family members to sleep either during the day or during the night

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when the recipient individual cannot be left alone at any time due to the recipient's individual's severe agitation and/or physically wandering behavior. Companion ~~aid~~ services must be necessary to ensure the recipient's individual's safety if the recipient individual cannot be left unsupervised due to health and safety concerns.

4. Companion ~~care~~ services may be authorized when no one else is in the home ~~who~~ is competent to call for help in an emergency.

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

1. Companion services providers shall include:

a. For the agency-directed model: companion providers include DMHMRSAS-licensed residential services providers; DMHMRSAS-licensed supportive, in-home residential service providers; DMHMRSAS-licensed day support service providers; DMHMRSAS-licensed respite service providers; and DMAS-enrolled personal care/respite care providers.

b. For the consumer-directed model: a services facilitator must meet the requirements found in 12 VAC 30-120-770.

~~1- 2.~~ Companion aid qualifications. ~~Agencies must employ individuals to provide companion care who~~ Companions must meet the following requirements:

a. Be at least 18 years of age;

b. Possess basic math skills and English reading, and writing skills, and math skills to the degree necessary to perform the tasks required;

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

d. Submit to a criminal history record check and if providing services to a minor, submit to a record check under the State's Child Protective Services Registry. The companion will not be compensated for services provided to the recipient individual if the records check verifies the companion has been convicted of crimes described in § ~~32.1-162.9-1~~ 37.2-416 of the Code of Virginia;

e. Possess a valid Social Security number; and

~~f. Be capable of aiding in the activities of daily living or instrumental activities of daily living. Have the required skills to perform services as specified in the individual's plan of care.~~

g. Additional CD employee requirements under the consumer-directed model:

(1) Be willing to attend training at the [individual's or family caregiver's] request [of the individual or his family/caregiver, as appropriate];

(2) Understand and agree to comply with the DMAS consumer-directed services requirements; and

(3) Receive an annual TB screening.

3. Companions may not be the individual's spouse. Other family members living under the same roof as the individual being served may not provide companion services unless there is objective, written documentation as to why there are no other providers available to provide the services. Companion services shall not be provided by adult foster care/family care providers or any other paid caregivers.

4. Family members who are reimbursed to provide companion services must meet the companion qualifications.

~~2- 5.~~ For the agency-directed model, companions will be ~~are~~ employees of agencies entities that will contract enroll with DMAS to provide companion services. ~~Agencies will be~~ Providers are required to have a companion ~~care~~ services supervisor to monitor companion ~~care~~ services. The supervisor must be ~~a certified Home Health Aide, an LPN, or an RN, and must~~ have a current license or certification to practice in the Commonwealth, and have at least one year of experience working with individuals with related conditions; or must have a bachelor's degree in a human services field and at least one year of experience working with individuals with related conditions.

6. Retention, hiring, and substitution of companions (consumer-directed model). Upon the individual's request, the CD services facilitator shall provide the individual or [his] family [/] caregiver [, as appropriate,] with a list of [potential] consumer-directed employees on the consumer-directed employee registry that may provide temporary assistance until the companion returns or the individual or [his] family [/] caregiver [as, appropriate,] is able to select and hire a new companion. If an individual or [his] family [/] caregiver [, as appropriate,] is consistently unable to hire and retain a companion to provide consumer-directed services, the CD services facilitator must contact the case manager and DMAS to transfer the individual, at the [individual's or family caregiver's] choice [of the individual or his family/caregiver, as appropriate], to a provider that provides Medicaid-funded agency-directed companion services. The CD services facilitator will make arrangements with the case manager to have the individual transferred.

~~3- 7.~~ The provider agency or case manager/services facilitator must conduct an initial home visit within the first three days of prior to initiating companion ~~care~~ services to document the efficacy and appropriateness of services and to establish a service plan of care for the recipient individual. Under the agency-directed model, the agency provider must provide

follow-up home visits ~~quarterly or as often as needed to monitor the provision of services every four months or as often as needed.~~ Under the consumer-directed model, the case manager/services facilitator will periodically review the utilization of companion services at a minimum of every six months or more often as needed. The ~~recipient individual~~ must be reassessed for services every six months.

8. Required documentation. The provider or case manager/services facilitator must maintain a record of each individual receiving companion services. At a minimum these records must contain the following:

a. An initial assessment completed prior to or on the date services are initiated and subsequent reassessments and changes to the supporting documentation.

b. The supporting documentation must be reviewed by the provider or case manager/services facilitator quarterly under the agency-directed model, semiannually under the consumer-directed model, annually, and more often, as needed, modified as appropriate, and the written results of these reviews submitted to the case manager. For the annual review and in cases where the supporting documentation is modified, the plan of care must be reviewed with the individual or [his] family/caregiver [, as appropriate].

c. All correspondence to the individual, family/caregiver, case manager, and DMAS.

d. Contacts made with family/caregiver, physicians, formal and informal service providers, and all professionals concerning the individual.

e. The companion services supervisor or case manager/service facilitator must document in the individual's record a summary note following significant contacts with the companion and quarterly or semiannual home visits with the individual. This summary must include the following at a minimum:

- (1) Whether companion services continue to be appropriate;
- (2) Whether the plan is adequate to meet the individual's needs or changes are indicated in the plan;
- (3) The individual's satisfaction with the service; and
- (4) The presence or absence of the companion during the visit.

f. A copy of the most recently completed DMAS-122 form. The provider must clearly document efforts to obtain the completed DMAS-122 form from the case manager.

g. Additional documentation requirements under the consumer-directed model:

(1) All training provided to the companion on behalf of the individual or [his] family [/] caregiver [, as appropriate],

(2) All management training provided to the [individuals individual] or [his] family [caregivers/caregiver, as appropriate], including [~~the individual's or family caregiver's~~] responsibility for the accuracy of the timesheets.

(3) All documents signed by the individual or [the individual's his] family [caregivers/caregiver, as appropriate,] that acknowledge the responsibilities of the services.

h. Under the agency-directed model, all companion records. The companion record must contain the following:

(1) The specific services delivered to the individual by the companion, dated the day of service delivery, and the individual's response;

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

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

(4) The [~~companion's and individual's or family/caregiver's~~] weekly signatures [of the companion and the individual or his family/caregiver, as appropriate,] recorded on the last day of service delivery for any given week to verify that companion services during that week have been rendered.

12 VAC 30-120-780. ~~Reevaluation of service need and utilization review.~~ (Repealed.)

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

~~1. The CSP shall be developed by the support coordinator mutually with other service providers, the recipient, the recipient's parents or legal guardians for minors, consultants, and other interested parties based on relevant, current assessment data. The CSP process determines the services to be rendered to recipients, the frequency of services, the type of service provider, and a description of the services to be offered. All CSPs developed by the support coordinators are subject to approval by DMAS. DMAS is the single state authority responsible for the supervision of the administration of the community based care waiver.~~

~~2. The support coordinator is responsible for continuous monitoring of the appropriateness of the recipient's supporting documentation and revisions to the CSP as indicated by the changing needs of the recipient. At a minimum, the support coordinator must review the CSP every three months to determine whether service goals and objectives are being met and whether any modifications to the CSP are necessary.~~

~~3. The DMAS staff shall review the CSP every 12 months or more frequently as required to assure proper utilization of~~

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services. Any modification to the amount or type of services in the CSP must be authorized by DMAS.

B. Review of level of care.

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

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

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

C. Documentation required.

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

a. ~~All assessment summaries and all CSPs completed for the recipient and maintained for a period of not less than five years;~~

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

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

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

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

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

a. ~~All supporting documentation developed for that recipient and maintained for a period of not less than five years;~~

b. ~~An attendance log which documents the date services were rendered and the amount and type of services rendered; and~~

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

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

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

B. The criteria are:

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

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

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

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

NOTICE: The forms used in administering 12 VAC 30-50, Amount, Duration, and Scope of Medical and Remedial Care and Services and 12 VAC 30-120, Waivered Services, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Medical Assistance Services, 600 East Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

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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).

IFDDS Waiver Level of Care Eligibility Form (eff. 5/07).

VA.R. Doc. No. R05-119; Filed May 22, 2007, 4:03 p.m.

Proposed Regulation

Title of Regulation: 12 VAC 30-70. Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services (amending 12 VAC 30-70-221).

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 August 10, 2007.

(See Calendar of Events section for additional information)

Agency Contact: William Lessard, Director, Provider Reimbursement, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4593, FAX (804) 786-1680, or email william.lessard@dmass.virginia.gov.

Basis: Section 32.1-325 grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. Section 32.1-324 authorizes the Director of 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. Item 326 PPP of the 2005 Appropriation Act directed DMAS to implement this regulatory change.

Purpose: This regulatory action will better articulate the definition of "Medicaid inpatient day" in the Medicaid hospital reimbursement regulations. This change will help protect the health, safety and welfare of the citizens of the Commonwealth by cutting down on the possibility of reimbursement errors in Medicaid hospital reimbursement system. Fewer errors means greater savings for the Commonwealth, helping to ensure the fiscal integrity of the Medicaid program and maintaining vital medical services for the most vulnerable Virginia citizens.

Substance: DMAS is amending 12 VAC 30-70-221 to provide clarification regarding what is includable in the definition of Medicaid utilization. Specifically, DMAS is stating that the definition includes all paid Medicaid days and nonpaid/denied Medicaid days (to include medically unnecessary days, inappropriate level of care service days, and days that exceed any maximum day limits). DMAS is stating that the definition of Medicaid days does not include any general assistance, Family Access to Medical Insurance Security (FAMIS), State and Local Hospitalization (SLH), charity care, low income, indigent care, uncompensated care, bad debt, or Medicare dually eligible days. DMAS is also stating that it does not include days for newborns not enrolled in Medicaid during the fiscal year even though the mother was Medicaid eligible during the birth.

Issues: The primary advantage of this proposed change is the clarification of important aspects of the Medicaid hospital reimbursement system. With this change, Medicaid providers applying for reimbursement for medical services provided to Medicaid enrollees will find it easier to calculate the appropriate reimbursement to which they are entitled. There are no disadvantages to the Commonwealth or the public concerning this action.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Regulation. The proposed amendments will clarify the definition of "Medicaid utilization" used in calculating Disproportional Share Hospital payments and delete a duplicative sentence. The proposed changes have been in effect since September 4, 2006, under emergency regulations.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. Pursuant to the Item 326 PPP of the 2005 Appropriation Act, the Department of Medical Assistance Services proposes to clarify the definition of

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“Medicaid utilization” used in calculating Disproportional Share Hospital payments. This change is proposed to better articulate the actual method of Disproportional Share Hospital payment calculations with no change in the method itself. Thus, no significant economic impact is expected other than the benefits that may result from avoiding potential confusions and misunderstandings.

The second proposed amendment deletes a duplicative sentence in the regulation. This proposed change is also not expected to create any significant economic impact other than reducing the regulatory language by one sentence.

The proposed changes have been in effect since September 4, 2006, under emergency regulations.

Businesses and Entities Affected. The proposed regulations apply to approximately 100 inpatient hospitals.

Localities Particularly Affected. The proposed regulations apply throughout the Commonwealth.

Projected Impact on Employment. The proposed regulations are not expected to have any impact on employment.

Effects on the Use and Value of Private Property. The proposed regulations are not expected to have any impact on the use and value of private property.

Small Businesses: Costs and Other Effects. None of the affected entities are believed to be a small business.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulations will not affect small businesses.

Legal mandate. 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 36 (06). 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive

or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB’s best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning Clarification to Medicaid Utilization Calculation to Match Cost Report Practice. The agency raises no issues with this analysis.

Summary:

Item 326 PPP of the 2005 Appropriation Act directed DMAS to clarify the definition of Medicaid Utilization to better articulate the actual practice of calculating Medicaid utilization from the facility cost reports. Medicaid Utilization is primarily used to determine whether a facility is eligible for Disproportionate Share Hospital (DSH) payment. The calculation is generally Medicaid inpatient days divided by total inpatient days at any given facility. However, there has been a lack of clarity in the regulations regarding what constitutes a "Medicaid inpatient day" for this calculation.

The proposed amendments provide that the definition of Medicaid days does not include any general assistance, Family Access to Medical Insurance Security (FAMIS), State and Local Hospitalization (SLH), charity care, low income, indigent care, uncompensated care, bad debt, or Medicare dually eligible days. Additionally, the proposed amendments state that the definition of Medicaid days does not include days for newborns not enrolled in Medicaid during the fiscal year even though the mother was Medicaid eligible during the birth.

12 VAC 30-70-221. General.

A. Effective July 1, 2000, the prospective (DRG-based) payment system described in this article shall apply to inpatient hospital services provided in enrolled general acute care hospitals, rehabilitation hospitals, and freestanding psychiatric facilities licensed as hospitals, unless otherwise noted.

B. The following methodologies shall apply under the prospective payment system:

1. As stipulated in 12 VAC 30-70-231, operating payments for DRG cases that are not transfer cases shall be determined on the basis of a hospital specific operating rate per case times relative weight of the DRG to which the case is assigned.
2. As stipulated in 12 VAC 30-70-241, operating payments for per diem cases shall be determined on the basis of a hospital specific operating rate per day times the covered days for the case with the exception of payments for per

diem cases in freestanding psychiatric facilities. Payments for per diem cases in freestanding psychiatric facilities licensed as hospitals shall be determined on the basis of a hospital specific rate per day that represents an all-inclusive payment for operating and capital costs.

3. As stipulated in 12 VAC 30-70-251, operating payments for transfer cases shall be determined as follows: (i) the transferring hospital shall receive an operating per diem payment, not to exceed the DRG operating payment that would have otherwise been made and (ii) the final discharging hospital shall receive the full DRG operating payment.

4. As stipulated in 12 VAC 30-70-261, additional operating payments shall be made for outlier cases. These additional payments shall be added to the operating payments determined in subdivisions 1 and 3 of this subsection.

5. As stipulated in 12 VAC 30-70-271, payments for capital costs shall be made on an allowable cost basis.

6. As stipulated in 12 VAC 30-70-281, payments for direct medical education costs of nursing schools and paramedical programs shall be made on an allowable cost basis. Payment for direct graduate medical education (GME) costs for interns and residents shall be made quarterly on a prospective basis, subject to cost settlement based on the number of full time equivalent (FTE) interns and residents as reported on the cost report.

7. As stipulated in 12 VAC 30-70-291, payments for indirect medical education costs shall be made quarterly on a prospective basis.

8. As stipulated in 12 VAC 30-70-301, payments to hospitals that qualify as disproportionate share hospitals shall be made quarterly on a prospective basis.

C. The terms used in this article shall be defined as provided in this subsection:

"Base year" means the state fiscal year for which data is used to establish the DRG relative weights, the hospital case-mix indices, the base year standardized operating costs per case, and the base year standardized operating costs per day. The base year will change when the DRG payment system is rebased and recalibrated. ~~In subsequent rebasing, the Commonwealth shall notify affected providers of the base year to be used in this calculation.~~ In subsequent rebasings, the Commonwealth shall notify affected providers of the base year to be used in this calculation.

"Base year standardized costs per case" reflects the statewide average hospital costs per discharge for DRG cases in the base year. The standardization process removes the effects of case-mix and regional variations in wages from the claims data and places all hospitals on a comparable basis.

"Base year standardized costs per day" reflects the statewide average hospital costs per day for per diem cases in the base year. The standardization process removes the effects of regional variations in wages from the claims data and places all hospitals on a comparable basis. Base year standardized costs per day were calculated separately, but using the same calculation methodology, for the different types of per diem cases identified in this subsection under the definition of "per diem cases."

"Cost" means allowable cost as defined in Supplement 3 (12 VAC 30-70-10 through 12 VAC 30-70-130) and by Medicare principles of reimbursement.

"Disproportionate share hospital" means a hospital that meets the following criteria:

1. A Medicaid utilization rate in excess of 15%, or a low-income patient utilization rate exceeding 25% (as defined in the Omnibus Budget Reconciliation Act of 1987 and as amended by the Medicare Catastrophic Coverage Act of 1988); and
2. At least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services under a state Medicaid plan. In the case of a hospital located in a rural area (that is, an area outside of a Metropolitan Statistical Area as defined by the Executive Office of Management and Budget), the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.
3. Subdivision 2 of this definition does not apply to a hospital:
 - a. At which the inpatients are predominantly individuals under 18 years of age; or
 - b. Which does not offer nonemergency obstetric services as of December 21, 1987.

"DRG cases" means medical/surgical cases subject to payment on the basis of DRGs. DRG cases do not include per diem cases.

"DRG relative weight" means the average standardized costs for cases assigned to that DRG divided by the average standardized costs for cases assigned to all DRGs.

"Groupable cases" means DRG cases having coding data of sufficient quality to support DRG assignment.

"Hospital case-mix index" means the weighted average DRG relative weight for all cases occurring at that hospital.

"Medicaid utilization percentage" is equal to the hospital's total Medicaid inpatient days divided by the hospital's total inpatient days for a given hospital fiscal year. The Medicaid utilization percentage includes days associated with inpatient hospital services provided to Medicaid patients but

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reimbursed by capitated managed care providers. This definition includes all paid Medicaid days and nonpaid/denied Medicaid days to include medically unnecessary days, inappropriate level of care service days, and days that exceed any maximum day limits. The definition of Medicaid days does not include any general assistance, Family Access to Medical Insurance Security (FAMIS), State and Local Hospitalization (SLH), charity care, low income, indigent care, uncompensated care, bad debt, or Medicare dually eligible days. It does not include days for newborns not enrolled in Medicaid during the fiscal year even though the mother was Medicaid eligible during the birth.

"Medicare wage index" and the "Medicare geographic adjustment factor" are published annually in the Federal Register by the Health Care Financing Administration. The indices and factors used in this article shall be those in effect in the base year.

"Operating cost-to-charge ratio" equals the hospital's total operating costs, less any applicable operating costs for a psychiatric DPU, divided by the hospital's total charges, less any applicable charges for a psychiatric DPU. The operating cost-to-charge ratio shall be calculated using data from cost reports from hospital fiscal years ending in the state fiscal year used as the base year.

"Outlier adjustment factor" means a fixed factor published annually in the Federal Register by the Health Care Financing Administration. The factor used in this article shall be the one in effect in the base year.

"Outlier cases" means those DRG cases, including transfer cases, in which the hospital's adjusted operating cost for the case exceeds the hospital's operating outlier threshold for the case.

"Outlier operating fixed loss threshold" means a fixed dollar amount applicable to all hospitals that shall be calculated in the base year so as to result in an expenditure for outliers operating payments equal to 5.1% of total operating payments for DRG cases. The threshold shall be updated in subsequent years using the same inflation values applied to hospital rates.

"Per diem cases" means cases subject to per diem payment and include (i) covered psychiatric cases in general acute care hospitals and distinct part units (DPUs) of general acute care hospitals (hereinafter "acute care psychiatric cases"), (ii) covered psychiatric cases in freestanding psychiatric facilities licensed as hospitals (hereinafter "freestanding psychiatric cases"), and (iii) rehabilitation cases in general acute care hospitals and rehabilitation hospitals (hereinafter "rehabilitation cases").

"Psychiatric cases" means cases with a principal diagnosis that is a mental disorder as specified in the ICD-9-CM. Not all mental disorders are covered. For coverage information, see Amount, Duration, and Scope of Services, Supplement 1

to Attachment 3.1 A & B (12 VAC 30-50-95 through 12 VAC 30-50-310). The limit of coverage of 21 days in a 60-day period for the same or similar diagnosis shall continue to apply to adult psychiatric cases.

"Psychiatric operating cost-to-charge ratio" for the psychiatric DPU of a general acute care hospital means the hospital's operating costs for a psychiatric DPU divided by the hospital's charges for a psychiatric DPU. In the base year, this ratio shall be calculated as described in the definition of "operating cost-to-charge ratio" in this subsection, using data from psychiatric DPUs.

"Readmissions" occur when patients are readmitted to the same hospital for the same or a similar diagnosis within five days of discharge. Such cases shall be considered a continuation of the same stay and shall not be treated as a new case. Similar diagnoses shall be defined as ICD-9-CM diagnosis codes possessing the same first three digits.

"Rehabilitation operating cost-to-charge ratio" for a rehabilitation unit or hospital means the provider's operating costs divided by the provider's charges. In the base year, this ratio shall be calculated as described in the definition of "operating cost-to-charge ratio" in this subsection, using data from rehabilitation units or hospitals.

"Statewide average labor portion of operating costs" means a fixed percentage applicable to all hospitals. The percentage shall be periodically revised using the most recent reliable data from the Virginia Health Information (VHI), or its successor.

"Transfer cases" means DRG cases involving patients (i) who are transferred from one general acute care hospital to another for related care or (ii) who are discharged from one general acute care hospital and admitted to another for the same or a similar diagnosis within five days of that discharge. Similar diagnoses shall be defined as ICD-9-CM diagnosis codes possessing the same first three digits.

"Type One" hospitals means those hospitals that were state-owned teaching hospitals on January 1, 1996. "Type Two" hospitals means all other hospitals.

"Ungroupable cases" means cases assigned to DRG 469 (principal diagnosis invalid as discharge diagnosis) and DRG 470 (ungroupable) as determined by the AP-DRG Grouper.

D. The All Patient Diagnosis Related Groups (AP-DRG) Grouper shall be used in the DRG payment system. Until notification of a change is given, Version 14.0 of this grouper shall be used. DMAS shall notify hospitals when updating the system to later grouper versions.

E. The primary data sources used in the development of the DRG payment methodology were the department's hospital computerized claims history file and the cost report file. The claims history file captures available claims data from all

enrolled, cost-reporting general acute care hospitals, including Type One hospitals. The cost report file captures audited cost and charge data from all enrolled general acute care hospitals, including Type One hospitals. The following table identifies key data elements that were used to develop the DRG payment methodology and that will be used when the system is recalibrated and rebased.

Data Elements for DRG Payment Methodology

Data Elements	Source
Total charges for each groupable case	Claims history file
Number of groupable cases in each DRG	Claims history file
Total number of groupable cases	Claims history file
Total charges for each DRG case	Claims history file
Total number of DRG cases	Claims history file
Total charges for each acute care psychiatric case	Claims history file
Total number of acute care psychiatric days for each acute care hospital	Claims history file
Total charges for each freestanding psychiatric case	Medicare cost reports
Total number of psychiatric days for each freestanding psychiatric hospital	Medicare cost reports
Total charges for each rehabilitation case	Claims history file
Total number of rehabilitation days for each acute care and freestanding rehabilitation hospital	Claims history file

Operating cost-to-charge ratio for each hospital	Costreport file
Operating cost-to-charge ratio for each freestanding psychiatric facility licensed as a hospital	Medicare cost reports
Psychiatric operating cost-to-charge ratio for the psychiatric DPU of each general acute care hospital	Cost report file
Rehabilitation cost-to-charge ratio for each rehabilitation unit or hospital	Cost report file
Statewide average labor portion of operating costs	VHI
Medicare wage index for each hospital	Federal Register
Medicare geographic adjustment factor for each hospital	Federal Register
Outlier operating fixed loss threshold	Claims history file
Outlier adjustment factor	Federal Register

VA.R. Doc. No. R06-317; Filed May 22, 2007, 4:02 p.m.

Fast-Track Regulation

REGISTRAR'S NOTICE: 12 VAC 30-80-190 as published below includes the 2005 legislative mandated physician rate increase effective July 11, 2007, which is published as a separate regulatory action in this issue of the *Virginia Register of Regulations*. Refer to the final regulation for 12 VAC 30-80-190 published in this issue of the *Virginia Register* for more information.

Titles of Regulations: 12 VAC 30-70. **Methods and Standards for Establishing Payment Rates; Inpatient Hospital Services (amending 12 VAC 30-70-331).**

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12 VAC 30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12 VAC 30-80-190).

12 VAC 30-90. Methods and Standards for Establishing Payment Rates for Long-Term Care (amending 12 VAC 30-90-41, 12 VAC 30-90-271 and 12 VAC 30-90-290).

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 5 p.m. on August 10, 2007.

(See Calendar of Events section for additional information)

Effective Date: August 25, 2007.

Agency Contact: Diane Hankins, Project Manager, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-5379, FAX (804) 786-1680.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the Director of 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. This fast-track regulation is based upon legislative mandates set forth in the 2006 Appropriation Act, Items 302 DD, KK and PP.

Purpose: This regulatory action is intended to implement the mandated rate increases included in the 2006 Appropriation Act, effective July 1, 2006, prior to the completion of the regulatory process. Item 302 DD of the 2006 Appropriation Act changes the methodology for determining nursing facility ceilings and eliminates limits on certain costs effective July 1, 2006. It also clarifies how costs for periods prior to July 1, 2005, will be adjusted in the prospective reimbursement rate-setting. Item 302 KK directed various physician rate increases with effective dates of July 1, 2006. Specifically, the Act mandated a 5.0% increase for pediatric services effective July 1, 2006. The other physician rate increases, required to be in effect on July 1, 2007, will be addressed in a future separate regulation package. Finally, Item 302 PP directs the Department of Medical Assistance Services to increase the adjustment factor for private inpatient hospitals from 76% to 78% effective July 1, 2006. This action is designed to protect the health and welfare of the Commonwealth; increasing provider reimbursement helps ensure that sufficient medical providers remain in the Medicaid provider network to maintain care coverage for Medicaid enrollees.

Rationale for Using Fast-Track Process: These reimbursement changes are not controversial. The General Assembly mandates were very specific leaving little discretion for the agency. These changes are currently in effect via direct legislative action; therefore the fast-track process appeared the best and most efficient option for implementing permanent regulations as quickly as possible.

Substance: 12 VAC 30-70-331 is amended to set the adjustment factor to 0.7800. Under the 2005 Appropriation Act, the adjustment factor for private (Type Two) hospitals was set to 0.7600 effective July 1, 2005. The 2006 Appropriation Act has increased the adjustment factor for private hospitals to .7800 effective July 1, 2006. An adjustment factor of .7800 translates to a discount taken by the Virginia Medicaid program of 22% relative to the statewide average cost for inpatient hospital care reimbursed through the fee-for-service Medicaid program.

12 VAC 30-80-190 is amended to provide a 5.0% increase to pediatric physician services effective July 1, 2006.

12 VAC 30-90-41 is amended to delete the provision increasing the ceilings by \$3.00 per day and to set the direct care ceiling at 117% and the indirect care ceiling at 107% of the day-weighted median of base year cost, effective July 1, 2006.

12 VAC 30-90-271 is amended to add IV therapy to the list of covered ancillary services. IV therapy is currently covered only under specialized care. DMAS eliminated specialized care for adult complex health and comprehensive rehabilitation in 2003 because it felt that residents with these needs would receive adequate reimbursement under the regular nursing home methodology with minor adjustments after the 2002 implementation of the case mix system based on Resource Utilization Groups. At that time, kinetic services, previously covered only under specialized care, was added as a covered ancillary service under regular nursing home care. DMAS overlooked IV therapy, which should have also been added as a covered ancillary service under regular nursing home care.

12 VAC 30-90-290 is amended to eliminate administrator salary limits, medical director salary limits and management fee limits, except when the administrator, medical director or contracted management firm is a related party. These limits within limits are unnecessary since there is already an overall ceiling on direct and indirect costs.

Issues: The regulatory action poses no disadvantages to the agency, public or the Commonwealth. The advantages of these reimbursement increases is that with more competitive reimbursement rates, the Medicaid program helps ensure continued access to medical care for the Medicaid population. The only disadvantage is that increased revenues are required in order to fund the reimbursement increase.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Regulation. Pursuant to Item 302 KK of the 2006 Appropriation Act, the proposed regulations will increase reimbursements for pediatric physician services by five percent effective July 1, 2006. Also, pursuant to Item 302 PP of the same act, the adjustment factor for private inpatient hospitals will be increased from 76 percent to 78 percent effective July 1, 2006. Item 302 DD of the act furthermore mandates changes to the methodology for determining nursing facility ceilings and eliminates limits on certain nursing facility management salaries and fees effective July 1, 2006. Finally, the Department of Medical Assistance Services (DMAS), at its discretion, proposes to add IV (intravenous) therapy to the list of covered ancillary nursing home services.

Result of Analysis. The benefits likely exceed the costs for most of the proposed changes.

Estimated Economic Impact. Pursuant to Item 302 KK of the 2006 Appropriation Act, one of the proposed changes will increase reimbursements for pediatric physician services by five percent effective July 1, 2006. The main economic effect of the proposed regulations is to increase reimbursements to pediatric physicians by about \$7 million annually. Approximately, \$3.3 million of this amount will be financed by the Commonwealth and the remaining \$3.6 million will be an increase in federal matching funds.

Increased funding to pediatric physician services is expected to strengthen their incentives to continue to participate in Virginia's Medicaid program and maintain Medicaid recipients' access to pediatric medical care.

Also, the flow into the Commonwealth of approximately \$3.6 million in federal funds represents a net injection into Virginia's economy and is expected to have an expansionary effect on the overall economic activity.

It appears that physician services category is one of few categories that do not receive periodic rate increases to cope with changes in general inflation, medical inflation, service mix, and other factors that may be relevant. Without periodic rate updates, the rates are adjusted irregularly and the magnitude of the adjustments often appear to be arbitrary. The current methodology may cause discrepancies in the price of physician services relative to all other Medicaid services and adversely affect provider incentives to participate in the program. In theory, the physician rates should be commensurate with the value of services provided. This is generally accomplished by establishing rates in a base year and revising the rate according to the factors affecting the value of the services. In this particular case, significant economic disincentives that may be present as a result of current irregular and arbitrary adjustments to the rates may be avoided by establishing a new reimbursement methodology

that takes into account, on a regular basis, changes in the general inflation, medical inflation, service mix, and other relevant factors.

Pursuant to Item 302 PP of the 2006 Appropriation Act, another proposed change will increase the adjustment factor used in private inpatient hospital reimbursement methodology from 0.76 to 0.78 effective July 1, 2006. An adjustment factor of 0.78 translates to a 22% discount taken by the Medicaid program relative to the statewide average cost of inpatient hospital care reimbursements made under the fee-for-service delivery method.

The main economic effect of this change is to increase inpatient hospital reimbursements to private hospitals by about \$15 million in fiscal year (FY) 2007, \$16.8 million in FY 2008 and thereafter. Approximately, one half of these amounts will be financed by the Commonwealth and the remaining half will be an increase in federal matching funds.

Increased funding to private inpatient hospitals is expected to strengthen their incentives to continue to participate in Virginia's Medicaid program and maintain Medicaid recipients' access to inpatient medical care.

Also, the flow into the Commonwealth of approximately \$7.5 million federal funds in FY 2007 and \$8.4 million federal funds in FY 2008 and forward represents a net injection into Virginia's economy and is expected to have an expansionary effect on the overall economic activity.

Pursuant to Item 302 DD of the 2006 Appropriation Act, the proposed regulations remove limits on nursing facility management salaries and fees of individuals who are not related to the facility and increase indirect care ceilings from 103.9 percent to 106.13 percent of the day-weighted median costs effective July 1, 2006. These changes are budget neutral. The budget neutrality is accomplished by eliminating a scheduled \$3 per day increase in both direct and indirect care ceilings that was to be effective July 1, 2006.

One rationale for removing certain administrative salary limits and fees is that they represent "limits within limits" and not considered necessary for cost containment as the direct and indirect care ceilings provide an overall reimbursement limit. Because the elimination of limits is offset by the elimination of a \$3 increase in ceilings, no fiscal impact is expected at this time. However, this change may lead to an increase in salaries and fees paid to outside managers and increase the unreimbursed direct and indirect costs of nursing homes which could provide a basis for future rate adjustment requests and create additional fiscal effects over the long-run. On the other hand, the facilities will be able to attract and maintain outside managerial resources that they currently cannot with limited flexibility on outside management salaries and fees.

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Pursuant to Item 302 DD of the 2006 Appropriation Act, the proposed regulations also increase the direct care cost ceiling from 112 percent to 117 percent of the day weighted median costs and indirect care cost ceiling from 103.9 percent (or 106.13 percent with the change discussed above) to 107 percent of the day weighted median costs. The estimated fiscal impact of this change is a \$7.8 million increase in FY 2007 and \$8 million increase in FY 2008 and forward provided to nursing home facilities. Approximately, one half of these amounts will be financed by the Commonwealth and the remaining half will be an increase in federal matching funds.

Prior to this change 63 percent of the facilities were under the direct care ceiling and 55 percent were under the indirect care ceiling. With this change, the percentage of facilities under the direct care ceiling will increase from 63 percent to 67 percent or by 12 facilities and the percentage of facilities under the indirect care ceiling will decrease from 55 percent to 47 percent or by 22 facilities. This means that an additional 12 facilities will now be reimbursed for a portion of their direct care costs that would not have been reimbursed otherwise. Also, 22 facilities will no longer be reimbursed for a portion of their indirect care costs. Although increasing indirect care ceiling should have reduced the number of facilities whose indirect care costs are covered, having 22 facilities with the opposite impact is the result of eliminating limits on outside management salaries and fees. As previously discussed, removing limits on outside management salaries and fees appears to increase the amount of unreimbursed indirect costs as expected.

Increased net funding to nursing homes is expected to strengthen their incentives to continue to participate in Virginia's Medicaid program and maintain Medicaid recipients' access to nursing facility care.

Also, the flow into the Commonwealth of approximately \$3.9 million federal funds in FY 2007 and \$4 million federal funds in FY 2008 and forward represents a net injection into Virginia's economy and is expected to have an expansionary effect on the overall economic activity.

Finally, DMAS proposes to add IV therapy to the list of covered ancillary services. This change is not mandated by a legislative action, but intended to correct an inadvertent exclusion of coverage for this service that occurred in 2003. The estimated fiscal effect of this change is about \$14,000 per year in total funds. Approximately, one half of these amounts will be financed by the Commonwealth and the remaining half will be an increase in federal matching funds. This funding for IV therapy is expected to remove any disincentives to provide this service that may have existed before and improve Medicaid recipients' access to IV therapy services.

The remaining changes related to nursing facility reimbursements are mere clarifications and are not expected

to have any significant economic effects other than avoiding some potential communication costs that may have resulted from unclear language.

Businesses and Entities Affected. The proposed regulations will increase Medicaid reimbursements for pediatric physician services, private inpatient hospital services, and nursing home services. Currently, there are approximately 96 hospitals, 6,900 physicians, and 260 nursing facilities.

Localities Particularly Affected. The proposed regulations apply throughout the Commonwealth.

Projected Impact on Employment. The proposed reimbursement increases will likely have an expansionary effect on the state economy. To the extent increased funding, particularly the federal portion of the increases, is directed toward purchase of goods and services within the state, there could be a positive effect on demand for labor.

Effects on the Use and Value of Private Property. The proposed regulations are likely to improve revenues and the future profit streams of affected providers. An increase in profits would, in turn, increase their asset values.

Small Businesses: Costs and Other Effects. The proposed regulations are not anticipated to have an adverse impact on small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulations are not anticipated to have an adverse impact on small businesses.

Legal Mandate. 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 36 (06). 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. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of

the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget regarding the fast-track regulation, 2006 Reimbursement Changes (12 VAC 30-70, 12 VAC 30-80 and 12 VAC 30-90). The agency concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The amendments to the regulation include three health care provider reimbursement enhancements that became effective July 1, 2006, by direct action of the Virginia General Assembly through the 2006 Appropriation Act. The amendments (i) raise the adjustment factor for private hospitals from 76% to 78%, (ii) provide a 5.0% reimbursement increase for pediatric physician services, and (iii) make an adjustment of various cost ceilings for nursing facilities that leads to an overall increase in available reimbursement for nursing facilities.

12 VAC 30-70-331. Statewide operating rate per case.

A. The statewide operating rate per case shall be equal to the base year standardized operating costs per case, as determined in 12 VAC 30-70-361, times the inflation values specified in 12 VAC 30-70-351 times the adjustment factor specified in subsection B of this section.

B. The adjustment factor shall be determined separately for Type One and Type Two hospitals:

1. For Type One hospitals the adjustment factor shall be a calculated percentage that causes the Type One hospital statewide operating rate per case to equal the Type Two hospital statewide operating rate per case;
2. Effective July 1, ~~2005~~ 2006, for Type Two hospitals the adjustment factor shall be ~~0.7600~~ 0.7800.

12 VAC 30-80-190. State agency fee schedule for RBRVS.

A. Reimbursement of fee-for-service providers. Effective for dates of service on or after July 1, 1995, the Department of Medical Assistance Services (DMAS) shall reimburse fee-for-service providers, with the exception of home health services (see 12 VAC 30-80-180) and durable medical equipment services (see 12 VAC 30-80-30), using a fee schedule that is based on a Resource Based Relative Value Scale (RBRVS).

B. Fee schedule.

1. For those services or procedures which are included in the RBRVS published by the Centers for Medicare and Medicaid Services (CMS) as amended from time to time,

DMAS' fee schedule shall employ the Relative Value Units (RVUs) developed by CMS as periodically updated.

2. DMAS shall calculate the RBRVS-based fees using conversion factors (CFs) published from time to time by CMS. DMAS shall adjust CMS' CFs by additional factors so that no change in expenditure will result solely from the implementation of the RBRVS-based fee schedule. DMAS may revise the additional factors when CMS updates its RVUs or CFs so that no change in expenditure will result solely from such updates. Except for this adjustment, DMAS' CFs shall be the same as those published from time to time by CMS. The calculation of the additional factors shall be based on the assumption that no change in services provided will occur as a result of these changes to the fee schedule. The determination of the additional factors required above shall be accomplished by means of the following calculation:

- a. The estimated amount of DMAS expenditures if DMAS were to use Medicare's RVUs and CFs without modification, is equal to the sum, across all relevant procedure codes, of the RVU value published by the CMS, multiplied by the applicable conversion factor published by the CMS, multiplied by the number of occurrences of the procedure code in DMAS patient claims in the most recent period of time (at least six months).
- b. The estimated amount of DMAS expenditures, if DMAS were not to calculate new fees based on the new CMS RVUs and CFs, is equal to the sum, across all relevant procedure codes, of the existing DMAS fee multiplied by the number of occurrences of the procedures code in DMAS patient claims in the period of time used in subdivision 2 a of this subsection.
- c. The relevant additional factor is equal to the ratio of the expenditure estimate (based on DMAS fees in subdivision 2 b of this subsection) to the expenditure estimate based on unmodified CMS values in subdivision 2 a of this subsection.
- d. DMAS shall calculate a separate additional factor for:
 - (1) Emergency room services (defined as the American Medical Association's (AMA) publication of the Current Procedural Terminology (CPT) codes 99281, 99282, 99283, 99284, and 992851 in effect at the time the service is provided);
 - (2) Obstetrical/gynecological services (defined as maternity care and delivery procedures, female genital system procedures, obstetrical/gynecological-related radiological procedures, and mammography procedures, as defined by the American Medical Association's (AMA) publication of the Current

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Procedural Terminology (CPT) manual in effect at the time the service is provided);

(3) Pediatric preventive services (defined as preventive E&M procedures, excluding those listed in subdivision 2 d (1) of this subsection as defined by the AMA's publication of the CPT manual, in effect at the time the service is provided, for recipients under age 21);

(4) Pediatric primary services (defined as evaluation and management (E&M) procedures, excluding those listed in subdivisions 2 d (1) and 2 d (3) of this subsection as defined by the AMA's publication of the CPT manual, in effect at the time the service is provided, for recipients under age 21);

(5) Adult primary and preventive services (defined as E&M procedures, excluding those listed in subdivision 2 d (1) of this subsection, as defined by the AMA's publication of the CPT manual, in effect at the time the service is provided, for recipients age 21 and over); and

(6) All other procedures set through the RBRVS process combined.

3. For those services or procedures for which there are no established RVUs, DMAS shall approximate a reasonable relative value payment level by looking to similar existing relative value fees. If DMAS is unable to establish a relative value payment level for any service or procedure, the fee shall not be based on a RBRVS, but shall instead be based on the previous fee-for-service methodology.

4. Fees shall not vary by geographic locality.

5. Effective for dates of service on or after July 1, 2007, fees for emergency room services (defined in subdivision 2 d (1) of this subsection) shall be increased by 5.0% relative to the fees that would otherwise be in effect.

C. Effective for dates of service on or after May 1, 2006, fees for obstetrical/gynecological services (defined in subdivision B 2 d (2) of this section) shall be increased by 2.5% relative to the fees in effect on July 1, 2005.

D. Effective for dates of service on or after May 1, 2006, fees for pediatric services (defined in subdivisions B 2 d (3) and (4) of this section) shall be increased by 5.0% relative to the fees in effect on July 1, 2005. Effective for dates of service on or after July 1, 2006, fees for pediatric services (defined in subdivisions B 2 d (3) and (4) of this section) shall be increased by 5.0% relative to the fees in effect on May 1, 2006. Effective for dates of service on or after July 1, 2007, fees for pediatric primary services (defined in subdivision B 2 d (4) of this section) shall be increased by 10% relative to the fees that would otherwise be in effect.

E. Effective for dates of service on or after July 1, 2007, fees for pediatric preventive services (defined in subdivision B 2 d

(3) of this section) shall be increased by 10% relative to the fees that would otherwise be in effect.

F. Effective for dates of service on or after May 1, 2006, fees for adult primary and preventive services (defined in subdivision B 2 d (4) of this section) shall be increased by 5.0% relative to the fees in effect on July 1, 2005. Effective for dates of service on or after July 1, 2007, fees for adult primary and preventive services (defined in subdivision B 2 d (5) of this section) shall be increased by 5.0% relative to the fees that would otherwise be in effect.

G. Effective for dates of service on or after July 1, 2007, fees for all other procedures set through the RBRVS process combined (defined in subdivision B 2 d (6) of this section) shall be increased by 5.0% relative to the fees that would otherwise be in effect.

12 VAC 30-90-41. Nursing facility reimbursement formula.

A. Effective on and after July 1, 2002, all NFs subject to the prospective payment system shall be reimbursed under "The Resource Utilization Group-III (RUG-III) System as defined in Appendix IV (12 VAC 30-90-305 through 12 VAC 30-90-307)." RUG-III is a resident classification system that groups NF residents according to resource utilization. Case-mix indices (CMIs) are assigned to RUG-III groups and are used to adjust the NF's per diem rates to reflect the intensity of services required by a NF's resident mix. See 12 VAC 30-90-305 through 12 VAC 30-90-307 for details on the Resource Utilization Groups.

1. Any NF receiving Medicaid payments on or after October 1, 1990, shall satisfy all the requirements of § 1919(b) through (d) of the Social Security Act as they relate to provision of services, residents' rights and administration and other matters.

2. Direct and indirect group ceilings and rates.

a. In accordance with 12 VAC 30-90-20 C, direct patient care operating cost peer groups shall be established for the Virginia portion of the Washington DC-MD-VA MSA, the Richmond-Petersburg MSA and the rest of the state. Direct patient care operating costs shall be as defined in 12 VAC 30-90-271.

b. Indirect patient care operating cost peer groups shall be established for the Virginia portion of the Washington DC-MD-VA MSA, for the rest of the state for facilities with less than 61 licensed beds, and for the rest of the state for facilities with more than 60 licensed beds.

3. Each facility's average case-mix index shall be calculated based upon data reported by that nursing facility to the Centers for Medicare and Medicaid Services (CMS) (formerly HCFA) Minimum Data Set (MDS) System. See 12 VAC 30-90-306 for the case-mix index calculations.

4. The normalized facility average Medicaid CMI shall be used to calculate the direct patient care operating cost prospective ceilings and direct patient care operating cost prospective rates for each semiannual period of a NFs subsequent fiscal year. See 12 VAC 30-90-306 D 2 for the calculation of the normalized facility average Medicaid CMI.

a. A NFs direct patient care operating cost prospective ceiling shall be the product of the NFs peer group direct patient care ceiling and the NFs normalized facility average Medicaid CMI. A NFs direct patient care operating cost prospective ceiling will be calculated semiannually.

b. A CMI rate adjustment for each semiannual period of a nursing facility's prospective fiscal year shall be applied by multiplying the nursing facility's normalized facility average Medicaid CMI applicable to each prospective semiannual period by the nursing facility's case-mix neutralized direct patient care operating cost base rate for the preceding cost reporting period (see 12 VAC 30-90-307).

c. See 12 VAC 30-90-307 for the applicability of case-mix indices.

~~5. Effective for services on and after July 1, 2002, the following changes shall be made to the direct and indirect payment methods. Direct and indirect ceiling calculations.~~

~~a. The Effective for services on and after July 1, 2006, the direct patient care operating ceiling shall be set at ~~112%~~ 117% of the respective peer group day-weighted median of the facilities' case-mix neutralized direct care operating costs per day. The calculation of the medians shall be based on cost reports from freestanding nursing homes for provider fiscal years ending in the most recent base year. The medians used to set the peer group direct patient care operating ceilings shall be revised and case-mix neutralized every two years using the most recent reliable calendar year cost settled cost reports for freestanding nursing facilities that have been completed as of September 1.~~

~~b. The indirect patient care operating ceiling shall be set at ~~103.9%~~ 107% of the respective peer group day-weighted median of the facility's specific indirect operating cost per day. The calculation of the peer group medians shall be based on cost reports from freestanding nursing homes for provider fiscal years ending in the most recent base year. The medians used to set the peer group indirect operating ceilings shall be revised every two years using the most recent reliable calendar year cost settled cost reports for freestanding nursing facilities that have been completed as of September 1.~~

6. Reimbursement for use of specialized treatment beds. Effective for services on and after July 1, 2005, nursing facilities shall be reimbursed an additional \$10 per day for those recipients who require a specialized treatment bed due to their having at least one Stage IV pressure ulcer. Recipients must meet criteria as outlined in 12 VAC 30-60-350, and the additional reimbursement must be preauthorized as provided in 12 VAC 30-60-40. Nursing facilities shall not be eligible to receive this reimbursement for individuals whose services are reimbursed under the specialized care methodology. Beginning July 1, 2005, this additional reimbursement shall be subject to adjustment for inflation in accordance with 12 VAC 30-90-41 B, except that the adjustment shall be made at the beginning of each state fiscal year, using the inflation factor that applies to provider years beginning at that time. This additional payment shall not be subject to direct or indirect ceilings and shall not be adjusted at year-end settlement.

B. Adjustment of ceilings and costs for inflation. Effective for provider fiscal years starting on and after July 1, 2002, ceilings and rates shall be adjusted for inflation each year using the moving average of the percentage change of the Virginia-Specific Nursing Home Input Price Index, updated quarterly, published by Standard & Poor's DRI. For state fiscal year 2003, peer group ceilings and rates for indirect costs will not be adjusted for inflation.

1. For provider years beginning in each calendar year, the percentage used shall be the moving average for the second quarter of the year, taken from the table published for the fourth quarter of the previous year. For example, in setting prospective rates for all provider years beginning in January through December 2002, ceilings and costs would be inflated using the moving average for the second quarter of 2002, taken from the table published for the fourth quarter of 2001.

2. Provider specific costs shall be adjusted for inflation each year from the cost reporting period to the prospective rate period using the moving average as specified in subdivision 1 of this subsection. If the cost reporting period or the prospective rate period is less than 12 months long, a fraction of the moving average shall be used that is equal to the fraction of a year from the midpoint of the cost reporting period to the midpoint of the prospective rate period.

3. Ceilings shall be adjusted from the common point established in the most recent rebasing calculation. Base period costs shall be adjusted to this common point using moving averages from the DRI tables corresponding to the provider fiscal period, as specified in subdivision 1 of this subsection. Ceilings shall then be adjusted from the common point to the prospective rate period using the moving average(s) for each applicable second quarter, taken from the DRI table published for the fourth quarter of

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the year immediately preceding the calendar year in which the prospective rate years begin. Rebased ceilings shall be effective on July 1 of each rebasing year, so in their first application they shall be adjusted to the midpoint of the provider fiscal year then in progress or then beginning. Subsequently, they shall be adjusted each year from the common point established in rebasing to the midpoint of the appropriate provider fiscal year. For example, suppose the base year is made up of cost reports from years ending in calendar year 2000, the rebasing year is SFY2003, and the rebasing calculation establishes ceilings that are inflated to the common point of July 1, 2002. Providers with years in progress on July 1, 2002, would receive a ceiling effective July 1, 2002, that would be adjusted to the midpoint of the provider year then in progress. In some cases this would mean the ceiling would be reduced from the July 1, 2002, ceiling level. The following table shows the application of these provisions for different provider fiscal periods.

9/30	7/1/02	9/30/02	Fourth Quarter 2000	9/30/03	Fourth Quarter 2001
12/31	7/1/02	12/31/02	Fourth Quarter 2000	12/31/03	Fourth Quarter 2001

In this example, when ceilings are inflated for the second PFY after the rebasing date, the ceilings will be inflated from July 1, 2002, using moving averages from the DRI table specified for the second PFY. That is, the ceiling for years ending June 30, 2004, will be the June 30, 2002, base period ceiling, adjusted by 1/2 of the moving average for the second quarter of 2002, compounded with the moving average for the second quarter of 2003. Both these moving averages will be taken from the fourth quarter 2002 DRI table.

Table I

Application of Inflation to Different Provider Fiscal Periods

Provider FYE	Effective Date of New Ceiling	First PFYE After Rebasing Date	Inflation Time Span from Ceiling Date to Midpoint of First PFY	Second PFYE After Rebasing Date	Inflation Time Span from Ceiling Date to Midpoint of Second PFY
3/31	7/1/02	3/31/03	+ 1/4 year	3/31/04	+ 1-1/4 years
6/30	7/1/02	6/30/03	+ 1/2 year	6/30/04	+ 1-1/2 years
9/30	7/1/02	9/30/02	- 1/4 year	9/30/03	+ 3/4 year
12/31	7/1/02	12/31/02	-0-	12/31/03	+ 1 year

The following table shows the DRI tables that would provide the moving averages for adjusting ceilings for different prospective rate years.

Table II

Source Tables for DRI Moving Average Values

Provider FYE	Effective Date of New Ceiling	First PFYE After Rebasing Date	Source DRI Table for First PFY Ceiling Inflation	Second PFYE After Rebasing Date	Source DRI Table for Second PFY Ceiling Inflation
3/31	7/1/02	3/31/03	Fourth Quarter 2001	3/31/04	Fourth Quarter 2002
6/30	7/1/02	6/30/03	Fourth Quarter 2001	6/30/04	Fourth Quarter 2002

C. The RUG-III Nursing Home Payment System shall require comparison of the prospective operating cost rates to the prospective operating ceilings. The provider shall be reimbursed the lower of the prospective operating cost rate or prospective operating ceiling.

D. Nonoperating costs. Plant or capital, as appropriate, costs shall be reimbursed in accordance with Articles 1, 2, and 3 of this subpart. Plant costs shall not include the component of cost related to making or producing a supply or service.

NATCEPs cost shall be reimbursed in accordance with 12 VAC 30-90-170.

E. The prospective rate for each NF shall be based upon operating cost and plant/capital cost components or charges, whichever is lower, plus NATCEPs costs. The disallowance of nonreimbursable operating costs in any current fiscal year shall be reflected in a subsequent year's prospective rate determination. Disallowances of nonreimbursable plant or capital, as appropriate, costs and NATCEPs costs shall be reflected in the year in which the nonreimbursable costs are included.

F. Effective July 1, 2001, for those NFs whose indirect operating cost rates are below the ceilings, an incentive plan shall be established whereby a NF shall be paid, on a sliding scale, up to 25% of the difference between its allowable indirect operating cost rates and the indirect peer group ceilings.

1. The following table presents four incentive examples:

Peer Group Ceilings	Allowable Cost Per Day	Difference	% of Ceiling	Sliding Scale	Scale % Difference
\$30.00	\$27.00	\$3.00	10%	\$0.30	10%
30.00	22.50	7.50	25%	1.88	25%
30.00	20.00	10.00	33%	2.50	25%
30.00	30.00	0	0		

2. Efficiency incentives shall be calculated only for the indirect patient care operating ceilings and costs. Effective July 1, 2001, a direct care efficiency incentive shall no longer be paid.

G. Quality of care requirement. A cost efficiency incentive shall not be paid for the number of days for which a facility is out of substantial compliance according to the Virginia Department of Health survey findings as based on federal regulations.

H. Sale of facility. In the event of the sale of a NF, the prospective base operating cost rates for the new owner's first fiscal period shall be the seller's prospective base operating cost rates before the sale.

I. Public notice. To comply with the requirements of § 1902(a)(28)(c) of the Social Security Act, DMAS shall make available to the public the data and methodology used in establishing Medicaid payment rates for nursing facilities. Copies may be obtained by request under the existing procedures of the Virginia Freedom of Information Act.

J. Effective July 1, 2005, the total per diem payment to each nursing home shall be increased by \$3.00 per day. This increase in the total per diem payment shall cease effective July 1, 2006, ~~at which time an increase of \$3.00 per day, adjusted for one year's inflation, shall be allocated between the direct care and indirect care ceilings for nursing facilities. The amount of \$1.68 plus one year of inflation shall be allocated to the direct ceiling, and \$1.32 plus one year of inflation to the indirect ceiling. This increase in the ceilings shall continue until ceilings are rebased using cost report data from fiscal years ending in the calendar year 2006 or later. In addition, effective~~ Effective July 1, 2006, when cost data that include time periods before July 1, 2005, are used to set facility specific rates, a portion of the \$3.00 per day amount identified above, based on the percentage of patient days in the provider's cost reporting period that fall before July 1, 2005, adjusted for appropriate inflation and multiplied times the provider's Medicaid utilization rate, shall be allocated between to the facility specific direct and indirect cost per day prior to comparison to the peer group ceilings. For purposes of this subsection, \$1.68 of the \$3.00 shall be considered direct costs and \$1.32 of the \$3.00 shall be considered indirect costs.

12 VAC 30-90-271. Direct patient care operating.

A. Nursing service expenses.

1. Salary--nursing administration. Gross salary (includes sick pay, holiday pay, vacation pay, staff development pay and overtime pay) of all licensed nurses in supervisory positions defined as follows (Director of Nursing, Assistant Director of Nursing, nursing unit supervisors, patient care coordinators and MDS coordinators).
2. Salaries--RNs. Gross salary of registered nurses.
3. Salaries--LPNs. Gross salary of licensed practical nurses.
4. Salaries--Nurse aides. Gross salary of certified nurse aides.

5. Salaries--Quality assurance nurses. Gross salary of licensed nurses who function as quality assurance coordinators and are responsible for quality assurance activities and programs. Quality assurance activities and programs are concerned with resident care and not with the administrative support that is needed to document the care. If a quality assurance coordinator is employed by the home office and spends a percentage of time at nursing facilities, report directly allocated costs to the nursing facility in this category rather than under the home office operating costs.

6. Nursing employee benefits. Benefits related to registered nurses, licensed practical nurses, certified nurse aides, quality assurance nurses, and nursing administration personnel as defined in subdivision 1 of this subsection. See 12 VAC 30-90-272 B for description of employee benefits.

7. Contract nursing services. Cost of registered nurses, licensed practical nurses, certified nurse aides, and quality assurance nurses on a contract basis.

8. Supplies. Cost of supplies, including nursing and charting forms, medication and treatment records, physician order forms.

9. Professional fees. Medical director and pharmacy consultant fees.

B. Minor medical and surgical supplies.

1. Salaries--medical supply. Gross salary of personnel responsible for procurement, inventory and distribution of minor medical and surgical supplies.
2. Medical supply employee benefits. Benefits related to medical supply personnel. See 12 VAC 30-90-272 B for description of employee benefits.
3. Supplies. Cost of items for which a separate identifiable charge is not customarily made, including, but not limited to, colostomy bags; dressings; chux; rubbing alcohol; syringes; patient gowns; basins; bed pans; ice-bags and canes, crutches, walkers, wheel chairs, traction equipment and other durable medical equipment for multi-patient use.
4. Oxygen. Cost of oxygen for which a separate charge is not customarily made.
5. Nutrient/tube feedings. Cost of nutrients for tube feedings.
6. Incontinence services. Cost of disposable and nondisposable incontinence supplies. The laundry supplies or purchased commercial laundry service for nondisposable incontinent services.

C. Ancillary service cost. Allowable ancillary service costs represents gross salary and related employee benefits of those employees engaged in covered ancillary services to Medicaid recipients, cost of all supplies used by the respective ancillary

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service departments, cost of ancillary services performed on a contract basis by other than employees and all other costs allocated to the ancillary service cost centers in accordance with Medicare principles of reimbursement.

Following is a listing of all covered ancillary services:

1. Radiology
2. Laboratory
3. Respiratory therapy
4. Physical therapy
5. Occupational therapy
6. Speech therapy
7. EKG
8. EEG
9. Medical supplies charged to patient
10. Kinetic therapy devices.

11. IV therapy.

12 VAC 30-90-290. Cost reimbursement limitations.

A. This appendix outlines operating, NATCEPs and plant cost limitations that are not referenced in previous sections of these regulations.

All of the operating cost limitations are further subject to the applicable operating ceilings.

B. Directors' fees.

1. Although Medicaid does not require a board of directors (Medicare requires only an annual stockholders' meeting), the Program will recognize reasonable costs for directors' meetings related to patient care.
2. It is not the intent of DMAS to reimburse a facility for the conduct of business related to owner's investments, nor is it the intent of the Program to recognize such costs in a closely held corporation where one person owns all stock, maintains all control, and approves all decisions.
3. To receive reimbursement for directors' meetings, the written minutes must reflect the name of the facility for which the meeting is called, the content and purpose of the meeting, members in attendance, the time the meeting began and ended, and the date. If multiple facilities are discussed during a meeting, total allowable director fees, as limited herein, shall be pro-rated between such facilities.
4. Bona fide directors may be paid an hourly rate of \$125 up to a maximum of four hours per month. These fees include reimbursement for time, travel, and services performed.

5. Compensation to owner/administrators who also serve as directors shall include any director's fees paid, subject to the above referenced limit set forth in these regulations.

C. Membership fees.

1. These allowable costs will be restricted to membership in health care organizations and appropriate professional societies which promote objectives in the provider's field of health care activities.
2. Membership fees in health care organizations and appropriate professional societies will be allowed for the administrator, owner, and home office personnel.
3. Comparisons will be made with other providers to determine reasonableness of the number of organizations to which the provider will be reimbursed for such membership and the claimed costs, if deemed necessary.

D. Management fees.

1. External management services shall only be reimbursed if they are necessary, cost effective, and nonduplicative of existing nursing facility internal management services.
2. Costs to the provider, based upon a percentage of net and/or gross revenues or other variations thereof, shall not be an acceptable basis for reimbursement. If allowed, management fees must be reasonable and based upon rates related to services provided.
3. Management fees paid to a related party may be recognized by the Program as the owner's compensation subject to administrator compensation guidelines.
4. A management fees service agreements exists when the contractor provides nonduplicative personnel, equipment, services, and supervision.
5. A consulting service agreement exists when the contractor provides nonduplicative supervisory or management services only.
6. Limits will be based upon comparisons with other similar size facilities and/or other DMAS guidelines and information.

Effective for all providers' cost reporting periods ending on or after October 1, 1990, a per patient day ceiling for all full service management service costs shall be established. The ceiling limitation for cost reporting periods ending on or after October 1, 1990, through December 31, 1990, shall be the median per patient day cost as determined from information contained in the most recent cost reports for all providers with fiscal years ending through December 31, 1989. These limits will be adjusted annually by a Consumer Price Index effective January 1 of each calendar year to be effective for all providers' cost reporting periods ending on or after that date. The limits will be published and distributed to providers

annually. Effective July 1, 2006, these limits apply only to related parties.

E. Pharmacy consultants fees. Costs will be allowed to the extent they are reasonable and necessary.

F. Physical therapy fees (for outside services). Limits are based upon current PRM-15 guidelines.

G. Inhalation therapy fees (for outside services). Limits are based upon current PRM-15 guidelines.

H. Medical directors' fees. Costs will be allowed up to the established limit per year to the extent that such fees are determined to be reasonable and proper. This limit will be escalated annually by the CPI-U January 1 of each calendar year to be effective for all providers' cost reporting periods ending on or after that date. The limits will be published and distributed to providers annually. Effective July 1, 2006, these limits apply only to related parties. The following limitations apply to the time periods as indicated:

Jan. 1, 1988--Dec. 31, 1988 \$6,204

Jan. 1, 1989--Dec. 31, 1989 \$6,625

I. Reimbursement for physical therapy, occupational therapy, and speech-language therapy services shall not be provided for any sums that the rehabilitation provider collects, or is entitled to collect, from the nursing facility or any other available source, and provided further, that this amendment shall in no way diminish any obligation of the nursing facility to DMAS to provide its residents such services, as set forth in any applicable provider agreement.

J. Personal automobile.

1. Use of personal automobiles when related to patient care will be reimbursed at the maximum of the allowable IRS mileage rate when travel is documented.

2. Flat rates for use of personal automobiles will not be reimbursed.

K. Seminar expenses.

These expenses will be treated as allowable costs, if the following criteria are met:

1. Seminar must be related to patient care activities, rather than promoting the interest of the owner or organization.

2. Expenses must be supported by:

a. Seminar brochure,

b. Receipts for room, board, travel, registration, and educational material.

3. Only the cost of two persons per facility will be accepted as an allowable cost for seminars which involve room, board, and travel.

L. Legal retainer fees. DMAS will recognize legal retainer fees if such fees do not exceed the following:

BED SIZE	LIMITATIONS
0 - 50	\$100 per month
51 - 100	\$150 per month
101 - 200	\$200 per month
201 - 300	\$300 per month
301 - 400	\$400 per month

The expense to be allowed by DMAS shall be supported by an invoice and evidence of payment.

M. Architect fees. Architect fees will be limited to the amounts and standards as published by the Virginia Department of General Services.

N. Administrator/owner compensation.

DMAS ADMINISTRATOR/OWNER COMPENSATION SCHEDULE

JANUARY 1, 1989--DECEMBER 31, 1989

BED SIZE	NORMAL ALLOWABLE FOR ONE ADMINISTRATOR	MAXIMUM FOR 2 OR MORE ADMINISTRATORS
1 - 75	32,708	49,063
76 - 100	35,470	53,201
101 - 125	40,788	61,181
126 - 150	46,107	69,160
151 - 175	51,623	77,436
176 - 200	56,946	85,415
201 - 225	60,936	91,399
226 - 250	64,924	97,388
251 - 275	68,915	103,370
276 - 300	72,906	108,375
301 - 325	76,894	115,344
326 - 350	80,885	121,330
351 - 375	84,929	127,394
376 & over	89,175	133,763

These limits will be escalated annually by the CPI-U effective January 1 of each calendar year to be effective for all providers' cost reporting periods ending on or after that date. The limits will be published and distributed to providers annually. Effective July 1, 2006, these limits apply only to related parties.

O. Kinetic therapy. For specialized care reimbursement effective December 1, 1996, a limitation per patient day on kinetic therapy shall be established based on historical data. This limit shall be reviewed annually by January 1 of each calendar year and compared to actual cost data, then revised if appropriate, to be effective for all providers' cost reporting

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periods ending on or after that date. The limit will be published and distributed to providers annually. It shall be:

December 1, 1996--December 31, 1997 \$102 per day

VA.R. Doc. No. R07-236; Filed May 23, 2007, 11:54 a.m.

Final Regulation

Title of Regulation: 12 VAC 30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12 VAC 30-80-30).

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

Effective Date: July 11, 2007.

Agency Contact: William Lessard, Reimbursement Analyst, Division of Reimbursement and Cost Settlement, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4593, FAX (804) 786-1680 or email wlessard@dmass.virginia.gov.

Summary:

This regulation creates a category of physicians who are members of practice plans affiliated with either a state academic health system or an academic health system under a state authority. The regulation authorizes Medicaid to make supplemental payments to these physicians for services provided to Medicaid recipients equal to the difference between the maximum permitted under federal law and regulations and what these providers are paid under the Medicaid physician fee schedule.

Changes from the proposed include authorizing DMAS to make supplemental payments to Type I physicians for services provided on or after July 2, 2002, and defining Type I physicians as members of a practice group organized or under the control of either a state academic health system or an academic health system that operates under a state authority and includes a hospital.

Another change establishes how to determine the supplemental payment. The supplemental payment is equal to the difference between the maximum amount allowed under federal law and regulation and the current Medicaid payment. However, the department cannot change payment amounts unless it meets federal notice requirements. The amount of the supplemental payment and the effective dates are based on the following public notices. DMAS published a public notice on July 1, 2002, that it would make supplemental payments equal to the difference between what Medicare would pay and what Medicaid pays. DMAS published a second notice on August 12, 2002, that it would make supplemental payments equal to the difference between the maximum amount allowed under federal law and regulation and the current Medicaid payment. The final regulation specifies the maximum amount allowed as

the average commercial payment expressed as a percentage of Medicare fees.

New divisions describe the frequency of supplemental payments and emphasize that DMAS will not make duplicate payments.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

12 VAC 30-80-30. Fee-for-service providers.

A. Payment for the following services, except for physician services, shall be the lower of the state agency fee schedule (12 VAC 30-80-190 has information about the state agency fee schedule) or actual charge (charge to the general public):

1. Physicians' services (12 VAC 30-80-160 has obstetric/pediatric fees). Payment for physician services shall be the lower of the state agency fee schedule or actual charge (charge to the general public), except that reimbursement rates for designated physician services when performed in hospital outpatient settings shall be 50% of the reimbursement rate established for those services when performed in a physician's office. The following limitations shall apply to emergency physician services.

a. Definitions. The following words and terms, when used in this subdivision 1 shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

"All-inclusive" means all emergency service and ancillary service charges claimed in association with the emergency department visit, with the exception of laboratory services.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"Emergency physician services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"Recent injury" means an injury that has occurred less than 72 hours prior to the emergency department visit.

b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency departments and reimburse physicians for nonemergency care rendered in emergency departments at a reduced rate.

(1) DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all physician services, including those obstetric and pediatric

procedures contained in 12 VAC 30-80-160, rendered in emergency departments that DMAS determines are nonemergency care.

(2) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(3) Services determined by the attending physician that may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology in subdivision 1 b (2) of this subsection. Services not meeting certain criteria shall be paid under the methodology in subdivision 1 b (1) of this subsection. Such criteria shall include, but not be limited to:

- (a) The initial treatment following a recent obvious injury.
- (b) Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.
- (c) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.
- (d) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.
- (e) Services provided for acute vital sign changes as specified in the provider manual.
- (f) Services provided for severe pain when combined with one or more of the other guidelines.

(4) Payment shall be determined based on ICD-9-CM diagnosis codes and necessary supporting documentation.

(5) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent objectives, the accuracy and effectiveness of the ICD-9-CM code designations, and the impact on recipients and providers.

2. Dentists' services.

3. Mental health services including: (i) community mental health services; (ii) services of a licensed clinical psychologist; or (iii) mental health services provided by a physician.

a. Services provided by licensed clinical psychologists shall be reimbursed at 90% of the reimbursement rate for psychiatrists.

b. Services provided by independently enrolled licensed clinical social workers, licensed professional counselors or licensed clinical nurse specialists-psychiatric shall be reimbursed at 75% of the reimbursement rate for licensed clinical psychologists.

4. Podiatry.

5. Nurse-midwife services.

6. Durable medical equipment (DME).

a. The rate paid for all items of durable medical equipment except nutritional supplements shall be the lower of the state agency fee schedule that existed prior to July 1, 1996, less 4.5%, or the actual charge.

b. The rate paid for nutritional supplements shall be the lower of the state agency fee schedule or the actual charge.

c. Certain durable medical equipment used for intravenous therapy and oxygen therapy shall be bundled under specified procedure codes and reimbursed as determined by the agency. Certain services/durable medical equipment such as service maintenance agreements shall be bundled under specified procedure codes and reimbursed as determined by the agency.

(1) Intravenous therapies. The DME for a single therapy, administered in one day, shall be reimbursed at the established service day rate for the bundled durable medical equipment and the standard pharmacy payment, consistent with the ingredient cost as described in 12 VAC 30-80-40, plus the pharmacy service day and dispensing fee. Multiple applications of the same therapy shall be included in one service day rate of reimbursement. Multiple applications of different therapies administered in one day shall be reimbursed for the bundled durable medical equipment service day rate as follows: the most expensive therapy shall be reimbursed at 100% of cost; the second and all subsequent most expensive therapies shall be reimbursed at 50% of cost. Multiple therapies administered in one day shall be reimbursed at the pharmacy service day rate plus 100% of every active therapeutic ingredient in the compound (at the lowest ingredient cost methodology) plus the appropriate pharmacy dispensing fee.

(2) Respiratory therapies. The DME for oxygen therapy shall have supplies or components bundled under a service day rate based on oxygen liter flow rate or blood gas levels. Equipment associated with respiratory therapy may have ancillary components

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bundled with the main component for reimbursement. The reimbursement shall be a service day per diem rate for rental of equipment or a total amount of purchase for the purchase of equipment. Such respiratory equipment shall include, but not be limited to, oxygen tanks and tubing, ventilators, noncontinuous ventilators, and suction machines. Ventilators, noncontinuous ventilators, and suction machines may be purchased based on the individual patient's medical necessity and length of need.

(3) Service maintenance agreements. Provision shall be made for a combination of services, routine maintenance, and supplies, to be known as agreements, under a single reimbursement code only for equipment that is recipient owned. Such bundled agreements shall be reimbursed either monthly or in units per year based on the individual agreement between the DME provider and DMAS. Such bundled agreements may apply to, but not necessarily be limited to, either respiratory equipment or apnea monitors.

7. Local health services, including services paid to local school districts.
8. Laboratory services (other than inpatient hospital).
9. Payments to physicians who handle laboratory specimens, but do not perform laboratory analysis (limited to payment for handling).
10. X-Ray services.
11. Optometry services.
12. Medical supplies and equipment.
13. Home health services. Effective June 30, 1991, cost reimbursement for home health services is eliminated. A rate per visit by discipline shall be established as set forth by 12 VAC 30-80-180.
14. Physical therapy; occupational therapy; and speech, hearing, language disorders services when rendered to noninstitutionalized recipients.
15. Clinic services, as defined under 42 CFR 440.90.

[~~16 (Reserved.)~~]

[~~17.~~ 16.] Supplemental payments for services provided by Type I physicians.

a. In addition to payments for physician services specified elsewhere in this State Plan, DMAS provides supplemental payments to Type I physicians for [furnished] services provided on or after July 2, 2002. A Type I physician is a member of a practice group organized by or under the control of a state academic health system or an academic health system that operates under a state authority [and includes a hospital], who

has entered into contractual agreements for the assignment of payments in accordance with 42 CFR 447.10.

b. Effective July 2, 2002, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for Type I physician services [and the lesser of billed charges or the Medicare fee schedule and Medicare rates]. Effective August 13, 2002, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for [Type I] physician services [and the maximum permitted under federal law and regulation and 143% of Medicare rates. This percentage was determined by dividing the total commercial allowed amounts for Type I physicians for at least the top five commercial insurers in CY 2004 by what Medicare would have allowed. The average commercial allowed amount was determined by multiplying the relative value units times the conversion factor for RBRVS procedures and by multiplying the unit cost times anesthesia units for anesthesia procedures for each insurer and practice group with Type I physicians and summing for all insurers and practice groups. The Medicare equivalent amount was determined by multiplying the total commercial relative value units for Type I physicians times the Medicare conversion factor for RBRVS procedures and by multiplying the Medicare unit cost times total commercial anesthesia units for anesthesia procedures for all Type I physicians and summing.

c. Supplemental payments shall be made quarterly.

d. Payment will not be made to the extent that this would duplicate payments based on physician costs covered by the supplemental payments].

17. Supplemental payments to nonstate government-owned or operated clinics.

a. In addition to payments for clinic services specified elsewhere in the regulations, DMAS provides supplemental payments to qualifying nonstate government-owned or operated clinics for outpatient services provided to Medicaid patients on or after July 2, 2002. Clinic means a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients. Outpatient services include those furnished by or under the direction of a physician, dentist or other medical professional acting within the scope of his license to an eligible individual. Effective July 1, 2005, a qualifying clinic is a clinic operated by a community services board. The state share for supplemental clinic payments will be funded by general fund appropriations.

b. The amount of the supplemental payment made to each qualifying nonstate government-owned or operated clinic is determined by:

(1) Calculating for each clinic the annual difference between the upper payment limit attributed to each clinic according to subdivision 17 d and the amount otherwise actually paid for the services by the Medicaid program;

(2) Dividing the difference determined in subdivision 17 b (1) for each qualifying clinic by the aggregate difference for all such qualifying clinics; and

(3) Multiplying the proportion determined in subdivision (2) of this subdivision 17 b by the aggregate upper payment limit amount for all such clinics as determined in accordance with 42 CFR 447.321 less all payments made to such clinics other than under this section.

c. Payments for furnished services made under this section may be made in one or more installments at such times, within the fiscal year or thereafter, as is determined by DMAS.

d. To determine the aggregate upper payment limit referred to in subdivision 17 b (3), Medicaid payments to nonstate government-owned or operated clinics will be divided by the "additional factor" whose calculation is described in Attachment 4.19-B, Supplement 4 (12VAC30-80-190 B) in regard to the state agency fee schedule for RBRVS. Medicaid payments will be estimated using payments for dates of service from the prior fiscal year adjusted for expected claim payments. Additional adjustments will be made for any program changes in Medicare or Medicaid payments.

B. Hospice services payments must be no lower than the amounts using the same methodology used under Part A of Title XVIII, and take into account the room and board furnished by the facility, equal to at least 95% of the rate that would have been paid by the state under the plan for facility services in that facility for that individual. Hospice services shall be paid according to the location of the service delivery and not the location of the agency's home office.

VA.R. Doc. No. R02-318; Filed May 21, 2007, 4:15 p.m.

Proposed Regulation

Title of Regulation: 12 VAC 30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12 VAC 30-80-30 and adding 12 VAC 30-80-75).

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 August 10, 2007.

(See Calendar of Events section for additional information)

Agency Contact: Mike Lupien, Provider Reimbursement Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-3673, FAX (804) 786-1680, or email michael.lupien@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 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.

Item 302 NN of Chapter 3 of the 2006 Acts of Assembly directed the agency to implement these changes and provided regulatory authority. These reimbursement changes were mandated by the Centers for Medicare and Medicaid Services (CMS) as all states are being required to implement cost-based reimbursement for schools effective with the 2006-2007 school year.

Purpose: This regulatory action is intended to implement reimbursement changes authorized by Item 302 NN of Chapter 3 of the 2006 Acts of Assembly. Reimbursement changes were mandated by the Centers for Medicare and Medicaid Services (CMS). CMS is requiring all states to implement cost-based reimbursement effective with the 2006-2007 school year. If DMAS declines to implement this federal mandate, CMS would not provide the federal funding it currently provides to Virginia for 50% of the costs for covered school health services. Without that funding stream, Virginia school divisions would be severely hampered in obtaining sufficient resources to maintain school health services, especially for disabled students. This would have a negative impact on the health and welfare of school-age children in the Commonwealth who qualify for school health services.

Substance: The reference to school divisions in 12 VAC 30-80-30 will be deleted. Currently this provision permits local school divisions to be paid under a fee-for-service methodology for the school health services that they render.

Effective November 21, 2006, DMAS promulgated an emergency regulation in order to repeal the fee-for-service reimbursement methodology and establish the cost-based reimbursement methodology. Payment for each school year will be based on actual cost as determined by completed and certified cost reports (approved by CMS) and a desk audit. Cost is limited to the amount of medical services and special transportation costs allocated to Medicaid, Medicaid expansion and FAMIS special education recipients.

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DMAS will pay each school division an interim rate for services provided. Final reimbursement will be based on each individual school division's cost as determined through annual cost reports. One cost report will be used for all medical services and a separate cost report will be used for special transportation. The proposed amendments will permanently change the current fee-for-service reimbursement methodology for school divisions to the cost settlement method.

Issues: Regulatory action poses no disadvantages to the public or Commonwealth. The action will allow DMAS to remain in compliance with CMS promoted methods for reimbursing school divisions for medical services provided to Medicaid and FAMIS-eligible students.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Regulation. Upon request by the Centers for Medicare and Medicaid Services and pursuant to Chapter 3, Item 302 NN of the 2006 Acts of Assembly, the proposed regulations will permanently change the current fee-for-service reimbursement methodology for school divisions to the cost settlement methodology.

The proposed changes have been in effect since November 21, 2006, under emergency regulations.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. Prior to July 2006, school divisions were being reimbursed for their Medicaid eligible special education health expenses based on a statewide fee-for-service schedule. The Medicaid reimbursement covers only the federal participation amount while the local governments are responsible for the state share. Covered services include skilled nursing, psychology, physical therapy, occupational therapy, and speech language pathology services. In fiscal year 2006, approximately 95 participating school divisions received \$5.4 million in federal matching dollars for covered services. These services were provided by approximately 74 service providers to about 5,976 recipients.

Upon request by the Centers for Medicare and Medicaid Services and pursuant to Chapter 3, Item 302 NN of the 2006 Acts of Assembly, the proposed regulations will permanently change the current fee-for-service reimbursement methodology for school divisions to the cost settlement methodology.

The proposed cost-based reimbursement is expected to increase the administrative costs of school divisions. Also, based on limited data, the proposed change in reimbursement methodology is estimated to generally lower per unit costs of services but the utilization of services may increase. Thus, the net fiscal impact of the proposed change in reimbursement methodology is not known with a reliable degree of certainty.

However, the proposed regulations are expected to produce a significant benefit in the sense that they will allow the Commonwealth school divisions to continue to finance one-half of their costs from the federal government as the Centers for Medicare and Medicaid Services would be unlikely to provide any funding if this required change has not been made.

Businesses and Entities Affected. In 2006, approximately 95 school divisions and 74 service providers were participating in this particular Medicaid reimbursement program.

Localities Particularly Affected. The proposed regulations apply throughout the Commonwealth.

Projected Impact on Employment. The proposed regulations are unlikely to create any significant effect on current employment. However, the avoidance of possibly losing federal matching funds and consequent impact on employment could be considered as a positive economic effect.

Effects on the Use and Value of Private Property. The proposed regulations are unlikely to create any significant effect on the use and value of private property. However, the avoidance of possibly losing federal matching funds and consequent impact on the asset value of providers could be considered as a positive economic effect.

Small Businesses: Costs and Other Effects. The proposed regulations are unlikely to introduce any significant costs on small businesses. However, the avoidance of possibly losing federal matching funds and consequent impact on the asset value of providers could be considered as a positive economic effect some small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulations are not anticipated to create an adverse impact on small businesses.

Legal Mandate. 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 36 (06). 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs

required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the economic impact analysis prepared by the Department of Planning and Budget regarding the proposed regulation, concerning Methods and Standards for Establishing Payment Rates; School Division Reimbursement (12 VAC 30-80-75).

Summary:

This proposed regulation changes reimbursement for school divisions from statewide fee-for-service to a cost settlement process. School division providers shall file annual cost reports for these services and the department shall settle reimbursement to actual costs. Reimbursement to school divisions shall continue to be subject to the provisions of § 32.1- 326.3 A 1 of the Code of Virginia that only the federal share shall be reimbursed for special education health services and that local governments fund the state match for special education health services provided by school divisions. This reimbursement methodology change is being required by the Centers for Medicare and Medicaid Services, the federal funding agency for the Medicaid program.

12 VAC 30-80-30. Fee-for-service providers.

A. Payment for the following services, except for physician services, shall be the lower of the state agency fee schedule (12 VAC 30-80-190 has information about the state agency fee schedule) or actual charge (charge to the general public):

1. Physicians' services (12 VAC 30-80-160 has obstetric/pediatric fees). Payment for physician services shall be the lower of the state agency fee schedule or actual charge (charge to the general public), except that reimbursement rates for designated physician services when performed in hospital outpatient settings shall be 50% of the reimbursement rate established for those services when performed in a physician's office. The following limitations shall apply to emergency physician services.

a. Definitions. The following words and terms when used in this subdivision 1 shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

"All-inclusive" means all emergency service and ancillary service charges claimed in association with

the emergency department visit, with the exception of laboratory services.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"Emergency physician services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"Recent injury" means an injury that has occurred less than 72 hours prior to the emergency department visit.

b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency departments and reimburse physicians for nonemergency care rendered in emergency departments at a reduced rate.

(1) DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all physician services, including those obstetric and pediatric procedures contained in 12 VAC 30-80-160, rendered in emergency departments that DMAS determines are nonemergency care.

(2) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(3) Services determined by the attending physician that may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology in subdivision 1 b (2) of this subsection. Services not meeting certain criteria shall be paid under the methodology in subdivision 1 b (1) of this subsection. Such criteria shall include, but not be limited to:

(a) The initial treatment following a recent obvious injury.

(b) Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

(c) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.

(d) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another

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facility for further treatment or a visit in which the recipient dies.

(e) Services provided for acute vital sign changes as specified in the provider manual.

(f) Services provided for severe pain when combined with one or more of the other guidelines.

(4) Payment shall be determined based on ICD-9-CM diagnosis codes and necessary supporting documentation.

(5) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent objectives, the accuracy and effectiveness of the ICD-9-CM code designations, and the impact on recipients and providers.

2. Dentists' services.

3. Mental health services including: (i) community mental health services; (ii) services of a licensed clinical psychologist; or (iii) mental health services provided by a physician.

a. Services provided by licensed clinical psychologists shall be reimbursed at 90% of the reimbursement rate for psychiatrists.

b. Services provided by independently enrolled licensed clinical social workers, licensed professional counselors, licensed clinical nurse specialists-psychiatric or licensed marriage and family therapists shall be reimbursed at 75% of the reimbursement rate for licensed clinical psychologists.

4. Podiatry.

5. Nurse-midwife services.

6. Durable medical equipment (DME).

a. The rate paid for all items of durable medical equipment except nutritional supplements shall be the lower of the state agency fee schedule that existed prior to July 1, 1996, less 4.5%, or the actual charge.

b. The rate paid for nutritional supplements shall be the lower of the state agency fee schedule or the actual charge.

c. Certain durable medical equipment used for intravenous therapy and oxygen therapy shall be bundled under specified procedure codes and reimbursed as determined by the agency. Certain services/durable medical equipment such as service maintenance agreements shall be bundled under specified procedure codes and reimbursed as determined by the agency.

(1) Intravenous therapies. The DME for a single therapy, administered in one day, shall be reimbursed at the established service day rate for the bundled durable medical equipment and the standard pharmacy payment, consistent with the ingredient cost as described in 12 VAC 30-80-40, plus the pharmacy service day and dispensing fee. Multiple applications of the same therapy shall be included in one service day rate of reimbursement. Multiple applications of different therapies administered in one day shall be reimbursed for the bundled durable medical equipment service day rate as follows: the most expensive therapy shall be reimbursed at 100% of cost; the second and all subsequent most expensive therapies shall be reimbursed at 50% of cost. Multiple therapies administered in one day shall be reimbursed at the pharmacy service day rate plus 100% of every active therapeutic ingredient in the compound (at the lowest ingredient cost methodology) plus the appropriate pharmacy dispensing fee.

(2) Respiratory therapies. The DME for oxygen therapy shall have supplies or components bundled under a service day rate based on oxygen liter flow rate or blood gas levels. Equipment associated with respiratory therapy may have ancillary components bundled with the main component for reimbursement. The reimbursement shall be a service day per diem rate for rental of equipment or a total amount of purchase for the purchase of equipment. Such respiratory equipment shall include, but not be limited to, oxygen tanks and tubing, ventilators, noncontinuous ventilators, and suction machines. Ventilators, noncontinuous ventilators, and suction machines may be purchased based on the individual patient's medical necessity and length of need.

(3) Service maintenance agreements. Provision shall be made for a combination of services, routine maintenance, and supplies, to be known as agreements, under a single reimbursement code only for equipment that is recipient owned. Such bundled agreements shall be reimbursed either monthly or in units per year based on the individual agreement between the DME provider and DMAS. Such bundled agreements may apply to, but not necessarily be limited to, either respiratory equipment or apnea monitors.

7. Local health services, ~~including services paid to local school districts.~~

8. Laboratory services (other than inpatient hospital).

9. Payments to physicians who handle laboratory specimens, but do not perform laboratory analysis (limited to payment for handling).

10. X-Ray services.

- 11. Optometry services.
- 12. Medical supplies and equipment.
- 13. Home health services. Effective June 30, 1991, cost reimbursement for home health services is eliminated. A rate per visit by discipline shall be established as set forth by 12 VAC 30-80-180.
- 14. Physical therapy; occupational therapy; and speech, hearing, language disorders services when rendered to noninstitutionalized recipients.
- 15. Clinic services, as defined under 42 CFR 440.90.
- 16. Supplemental payments for services provided by Type I physicians.
- 17. Supplemental payments to nonstate government-owned or operated clinics.
 - a. In addition to payments for clinic services specified elsewhere in the regulations, DMAS provides supplemental payments to qualifying nonstate government-owned or operated clinics for outpatient services provided to Medicaid patients on or after July 2, 2002. Clinic means a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients. Outpatient services include those furnished by or under the direction of a physician, dentist or other medical professional acting within the scope of his license to an eligible individual. Effective July 1, 2005, a qualifying clinic is a clinic operated by a community services board. The state share for supplemental clinic payments will be funded by general fund appropriations.
 - b. The amount of the supplemental payment made to each qualifying nonstate government-owned or operated clinic is determined by:
 - (1) Calculating for each clinic the annual difference between the upper payment limit attributed to each clinic according to subdivision 17 d and the amount otherwise actually paid for the services by the Medicaid program;
 - (2) Dividing the difference determined in subdivision 17 b (1) for each qualifying clinic by the aggregate difference for all such qualifying clinics; and
 - (3) Multiplying the proportion determined in subdivision (2) of this subdivision 17 b by the aggregate upper payment limit amount for all such clinics as determined in accordance with 42 CFR 447.321 less all payments made to such clinics other than under this section.
 - c. Payments for furnished services made under this section may be made in one or more installments at such times, within the fiscal year or thereafter, as is determined by DMAS.

d. To determine the aggregate upper payment limit referred to in subdivision 17 b (3), Medicaid payments to nonstate government-owned or operated clinics will be divided by the "additional factor" whose calculation is described in Attachment 4.19-B, Supplement 4 (12 VAC 30-80-190 B) in regard to the state agency fee schedule for RBRVS. Medicaid payments will be estimated using payments for dates of service from the prior fiscal year adjusted for expected claim payments. Additional adjustments will be made for any program changes in Medicare or Medicaid payments.

B. Hospice services payments must be no lower than the amounts using the same methodology used under Part A of Title XVIII, and take into account the room and board furnished by the facility, equal to at least 95% of the rate that would have been paid by the state under the plan for facility services in that facility for that individual. Hospice services shall be paid according to the location of the service delivery and not the location of the agency's home office.

12 VAC 30-80-75. Local Education Agency (LEA) providers.

A. Definitions.

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

"CMS" means Centers for Medicare and Medicaid Services.

"DMAS" means Department of Medical Assistance Services.

"FAMIS" means Family Access to Medical Insurance Security Plan.

"FFP" means Federal Financial Participation.

"IDEA" means Individuals with Disabilities Education Act.

"IEP" means Individual Education Plan.

"LEA" means Local Education Agency.

"MMIS" means Medicaid Management Information System.

B. Medical services provided by LEA providers for special education students. The following methodology will determine the reimbursement for (LEA) providers.

- 1. For each of the IDEA-related school-based medical services covered under the State Plan other than specialized transportation services, the LEA provider's actual cost of providing the services shall be certified and the FFP shall be paid to LEA providers based on the methodology described in subdivisions 2 through 7 of this subsection. All costs to be certified and used subsequently to determine reconciliation and final settlement amounts as well as interim rates are identified on the CMS-approved Medical Services Cost Report. Final payment for each school year is

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based on actual costs as determined by desk review or audit for each LEA provider.

2. Step 1: Develop the personnel cost base for medical services. Total annual salaries and benefits paid as well as contracted (vendor) payments shall be obtained initially from each LEA's payroll/benefits and financial system. This data shall be reported on the DMAS Medical Services Cost Report form for all direct service personnel (i.e., all personnel providing medical services covered under the State Plan). Personnel costs are reduced by any reimbursement that is not from state or local funding sources. The personnel cost base does not include any amounts for staff whose compensation is 100% reimbursed by a funding source other than state or local funds. The application of Step 1 results in total adjusted salary cost.

3. Step 2: Determine medical services personnel cost using a time study. A time study that incorporates the CMS-approved time study methodology shall be used to determine the percentage of time medical service personnel spend on medical services and general and administrative (G&A) time. This time study shall assure that there shall be no duplicate claiming relative to claiming for administrative costs. G&A time shall be allocated to medical services based on the percentage of time spent on medical services. To reallocate G&A time to medical services, the percentage of time spent on medical services shall be divided by 100% minus the percentage of time spent on G&A. This shall result in a percentage that represents the medical services with appropriate allocation of G&A. This percentage shall be multiplied by the personnel cost base as determined in Step 1 to allocate personnel cost to medical services. The product represents medical services personnel cost. A sufficient number of medical service personnel shall be sampled to ensure time study results that will have a confidence level of at least 95% with a precision of plus or minus 5.0% overall.

4. Step 3: Develop medical services nonpersonnel costs. Costs for materials and supplies, employee travel, and capital used in the delivery of medical services shall be obtained from each LEA's financial system. Capital costs must exceed \$5,000 and have a useful life greater than two years. The straight line method of depreciation is used for capital costs. Nonpersonnel costs shall be reduced by any reimbursement that is not from state or local funding sources.

5. Step 4: Determine indirect costs. Indirect costs shall be determined by multiplying each LEA's indirect rate assigned by the cognizant agency (the Department of Education) by total direct costs as determined under Steps 2 and 3. No additional indirect costs shall be recognized outside of the indirect costs determined by Step 4.

6. Step 5: Total medical services costs. Total medical services costs shall be determined by adding costs from Steps 2, 3 and 4.

7. Step 6: Allocate total medical services costs to Medicaid, Medicaid expansion and FAMIS. To determine the Medicaid, Medicaid expansion, and FAMIS medical services costs to be certified, total medical services costs shall be multiplied by the ratios of Medicaid, Medicaid expansion and FAMIS recipients with an IEP to all students with an IEP.

C. Special transportation services provided by LEA providers for special education students.

1. The participating LEA's actual cost of providing special transportation services shall be claimed for Medicaid FFP based on the methodology described in subdivisions 2 through 6 of this subsection. Special transportation refers to transportation on buses modified and dedicated for special education. All costs to be certified and used subsequently to determine the reconciliation and final settlement amounts as well as interim rates shall be identified on the CMS-approved Special Transportation Cost Report. Final payment for each school year shall be based on actual costs as determined by desk review or audit for each LEA provider.

2. Step 1: Develop special transportation nonpersonnel costs. The costs for special transportation fuel, repairs and maintenance, rentals, contract vehicle use costs, insurance and capital shall be obtained from the LEA's accounts payable system and reported on the Special Transportation Cost Report form. Nonpersonnel costs shall be reduced by any reimbursement that is not from state or local funding sources.

3. Step 2: Develop special transportation personnel costs. Total annual salaries and benefits paid as well as contract costs (vendor payments) for special transportation services shall be obtained from each LEA's payroll/benefits and financial systems. This data shall be reported on the Special Transportation Cost Report form for all direct service personnel.

4. Step 3: Determine indirect costs. Indirect cost shall be determined by multiplying each LEA's unrestricted indirect rate assigned by the cognizant agency (the Department of Education) by total special transportation costs as determined under Steps 1 and 2. No additional indirect costs shall be recognized outside of the indirect costs determined by Step 3.

5. Step 4: Total special transportation costs. Total special transportation services costs shall be determined by adding costs from Steps 1, 2 and 3.

6. Step 5: Allocate total special transportation services cost to Medicaid, Medicaid expansion, and FAMIS. Special

transportation drivers or other school personnel shall maintain logs of all students transported on each one-way trip. These logs shall be used to calculate reimbursable percentages for Medicaid, Medicaid expansion and FAMIS. The denominator shall be the total annual one-way trips on special buses. The numerator shall be Medicaid, Medicaid expansion or FAMIS special transportation one-way trips. To qualify as a special transportation trip, the student must be eligible for Medicaid, Medicaid expansion or FAMIS; transportation must be included in the IEP; and the student must have received a covered medical service on the day of the special transportation. To allocate special transportation costs to Medicaid, Medicaid expansion and FAMIS, total special transportation cost as determined under Step 4 shall be multiplied by the reimbursable percentages described above.

D. Reconciliation of the federal share of LEA-certified costs and MMIS paid claims.

1. Each LEA provider will complete the Medical Services and Special Transportation Cost Reports and submit the cost reports no later than five months after the end of the LEA's fiscal year. All cost reports shall be reviewed and the total certified expenditures shall be initially settled within 180 days of the receipt of a completed cost report based on a desk review by the agency's audit contractor. DMAS may conduct additional desk or field audits up to two years after the fiscal year-end based on risk assessment developed by DMAS. LEA providers may appeal audit findings in accordance with DMAS appeal procedures.

2. The agency's audit contractor shall reconcile the FFP from the Medical Services and Special Transportation Cost Reports against the MMIS paid claims data and DMAS shall issue a notice of reconciliation that denotes the amount due to or from the LEA provider. This reconciliation shall be inclusive of both medical services and special transportation services provided by the LEA provider.

a. If the interim payments exceed the FFP of the certified costs of an LEA's Medicaid, Medicaid expansion or FAMIS services, DMAS shall recoup the overpayment in one of the following methods:

- (1) Offset all future claim payments from the affected LEA until the amount of the overpayment is recovered;
- (2) Recoup an agreed upon percentage from future claims payments to the LEA to ensure recovery of the overpayment within one year; or
- (3) Recoup an agreed upon dollar amount from future claims payments to the LEA to ensure recovery of the overpayment within one year.

b. If the FFP of the certified costs exceed interim payments, DMAS shall pay the difference to the LEA provider.

E. Interim rates. At the end of each settlement, interim rates for each LEA provider shall be determined by dividing total medical services cost and special transportation services cost by an estimate of the number of units of service. For the initial interim rates or for new providers, interim rates shall be based on pro forma cost data. Interim rates shall be provisional in nature pending completion of the cost report.

F. Billing. Each LEA provider shall submit claims in accordance with the school division manual and shall be paid an interim rate for approved claims.

G. State monitoring. If DMAS becomes aware of potential instances of fraud, misuse or abuse of services and funds, it shall perform timely audits and investigations to identify and take the necessary actions to remedy and resolve the problems.

H. Other services. Other covered services provided to Medicaid, Medicaid expansion, and FAMIS recipients shall be reimbursed according to the agency fee schedule for all providers. These costs shall not be included on the cost report.

NOTICE: The forms used in administering 12 VAC 30-80, Methods and Standards for Establishing Payment Rates; Other Types of Care, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Medical Assistance Services, 600 East Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Pharmacy Claim Form (3/96).

Compound Prescription Pharmacy Claim Form (3/96).

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

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

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

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

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

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

Direct Services Cost Report Form (eff. 3/07).

VA.R. Doc. No. R07-50; Filed May 21, 2007, 4:18 p.m.

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Final Regulation

Title of Regulation: 12 VAC 30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12 VAC 30-80-190).

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia; Title XIX of the Social Security Act (42 USC § 1396).

Effective Date: July 11, 2007.

Agency Contact: William Lessard, Provider Reimbursement, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4593, FAX (804) 786-1680 or email william.lessard@dmas.virginia.gov.

Summary:

The amendments implement the mandated physician rate increases included in the 2005 Appropriation Act. Items 325 VVV, WWW, and XXX directed various physician rate increases for an effective date of May 1, 2006. Specifically, the Act mandated a 2.5% increase for obstetrical and gynecological services, a 5.0% increase for pediatric services and a 5.0% increase for adult primary and preventive care services.

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.

12 VAC 30-80-190. State agency fee schedule for RBRVS.

A. Reimbursement of fee-for-service providers. Effective for dates of service on or after July 1, 1995, the Department of Medical Assistance Services (DMAS) shall reimburse fee-for-service providers, with the exception of home health services (see 12 VAC 30-80-180) and durable medical equipment services (see 12 VAC 30-80-30), using a fee schedule that is based on a Resource Based Relative Value Scale (RBRVS).

B. Fee schedule.

1. For those services or procedures which are included in the RBRVS published by the Centers for Medicare and Medicaid Services (CMS) as amended from time to time, DMAS' fee schedule shall employ the Relative Value Units (RVUs) developed by CMS as periodically updated.

2. DMAS shall calculate the RBRVS-based fees using conversion factors (CFs) published from time to time by CMS. DMAS shall adjust CMS' CFs by additional factors so that no change in expenditure will result solely from the implementation of the RBRVS-based fee schedule. ~~DMAS shall calculate a separate additional factor for obstetrical/gynecological procedures (defined as maternity care and delivery procedures, female genital system~~

~~procedures, obstetrical/gynecological-related radiological procedures, and mammography procedures, as defined by the American Medical Association's (AMA) publication of the Current Procedural Terminology (CPT) manual in effect at the time the service is provided).~~ DMAS may revise the additional factors when CMS updates its RVUs or CFs so that no change in expenditure will result solely from such updates. Except for this adjustment, DMAS' CFs shall be the same as those published from time to time by CMS. The calculation of the additional factors shall be based on the assumption that no change in services provided will occur as a result of these changes to the fee schedule. The determination of the additional factors required above shall be accomplished by means of the following calculation:

a. The estimated amount of DMAS expenditures if DMAS were to use Medicare's RVUs and CFs without modification, is equal to the sum, across all relevant procedure codes, of the RVU value published by the CMS, multiplied by the applicable conversion factor published by the CMS, multiplied by the number of occurrences of the procedure code in DMAS patient claims in the most recent period of time (at least six months).

b. The estimated amount of DMAS expenditures, if DMAS were not to calculate new fees based on the new CMS RVUs and CFs, is equal to the sum, across all relevant procedure codes, of the existing DMAS fee multiplied by the number of occurrences of the procedures code in DMAS patient claims in the period of time used in subdivision 2 a of this subsection.

c. The relevant additional factor is equal to the ratio of the expenditure estimate (based on DMAS fees in subdivision 2 b of this subsection) to the expenditure estimate based on unmodified CMS values in subdivision 2 a of this subsection.

d. DMAS shall calculate a separate additional factor for:

(1) Emergency room services (defined as the American Medical Association's (AMA) publication of the Current Procedural Terminology (CPT) codes 99281, 99282, 99283, 99284, and 992851 in effect at the time the service is provided);

(2) ~~Reserved~~ Obstetrical/gynecological services (defined as maternity care and delivery procedures, female genital system procedures, obstetrical/gynecological-related radiological procedures, and mammography procedures, as defined by the American Medical Association's (AMA) [annual] publication of the Current Procedural Terminology (CPT) manual [in effect at the time the service is provided]);

(3) Pediatric preventive services (defined as preventive E&M procedures, excluding those listed in [~~(B)(2)(d)(1) above subdivision 2 d (1) of this subsection~~], as defined by the AMA's publication of the CPT manual, in effect at the time the service is provided, for recipients under age 21);

(4) Pediatric primary services (defined as evaluation and management (E&M) procedures, excluding those listed in [~~(B)(2)(d)(1) and (B) (2) (d) (3) above subdivisions 2 d (1) and 2 d (3) of this subsection~~], as defined by the AMA's publication of the CPT manual, in effect at the time the service is provided, for recipients under age 21);

(5) ~~Reserved~~ Adult primary and preventive services (defined as E&M procedures, excluding those listed in subdivision 2 d (1) of this subsection, as defined by the AMA's publication of the CPT manual, [in effect at the time the service is provided,] for recipients age 21 and over); and

(6) All other procedures set through the RBRVS process combined.

3. For those services or procedures for which there are no established RVUs, DMAS shall approximate a reasonable relative value payment level by looking to similar existing relative value fees. If DMAS is unable to establish a relative value payment level for any service or procedure, the fee shall not be based on a RBRVS, but shall instead be based on the previous fee-for-service methodology.

4. Fees shall not vary by geographic locality.

5. Effective for dates of service on or after July 1, 2007, fees for emergency room services (defined in subdivision 2 d (1) of this subsection) shall be increased by 5.0% relative to the fees that would otherwise be in effect.

C. Effective for dates of service on or after ~~September~~ May 1, 2004 ~~2006~~, fees for obstetrical/gynecological ~~procedures~~ services (defined as ~~maternity care and delivery procedures, female genital system procedures, obstetrical/gynecological-related radiological procedures, and mammography procedures, as defined by the American Medical Association's (AMA) publication of the Current Procedural Terminology (CPT) manual in effect at the time the service is provided~~) in subdivision B 2 d (2) of this section) shall be increased by ~~34%~~ 2.5% relative to the fees in effect on July 1, ~~2004~~ 2005. This ~~34% increase shall be a one time increase, but shall be included in subsequent calculations of the relevant additional factor described in subdivision 2 of this subsection.~~

D. Effective for dates of service on or after May 1, 2006, fees for pediatric services (defined in [subdivision subdivisions] B 2 d [~~iii~~ (3)] and [~~iv~~ (4)] of this section) shall be increased by 5.0% relative to the fees in effect on July 1, 2005.

Effective for dates of service on or after July 1, 2007, fees for pediatric primary services (defined in subdivision [~~(B)(2)(d)(4) above B 2 d (4) of this section~~]) shall be increased by 10% relative to the fees that would otherwise be in effect.

E. Effective for dates of service on or after July 1, 2007, fees for pediatric preventive services (defined in [~~(B)(2)(d)(3) above subdivision B 2 d (3) of this section~~]) shall be increased by 10% relative to the fees that would otherwise be in effect.

F. Effective for dates of service on or after May 1, 2006, fees for adult primary and preventive services (defined in subdivision B 2 d (4) of this section) shall be increased by 5.0% relative to the fees in effect on July 1, 2005. Effective for dates of service on or after July 1, 2007, fees for adult primary and preventive services (defined in [~~(B)(2)(d)(5) above subdivision B 2 d (5) of this section~~]) shall be increased by 5.0% relative to the fees that would otherwise be in effect.

G. Effective for dates of service on or after July 1, 2007, fees for all other procedures set through the RBRVS process combined (defined in [~~(B)(2)(d)(6) above subdivision B 2 d (6) of this section~~]) shall be increased by 5.0% relative to the fees that would otherwise be in effect.

VA.R. Doc. No. R06-200; Filed May 23, 2007, 12:52 p.m.

Final Regulation

Title of Regulation: 12 VAC 30-120. Waivered Services (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 Date: July 11, 2007.

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 email teja.stokes@dmas.virginia.gov.

Summary:

The amendments 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, 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,

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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 Alzheimer's Assisted Living (AAL) Waiver, recipients will be able to receive an appropriate level of care within special care units of assisted living facilities.

The emergency regulation implementing the General Assembly mandate contained an eligibility requirement that an individual applying for entry into this waiver program be age 55 or older. This requirement was referenced in 12 VAC 30-120-1610 A, B and D. After consultation with the Department of Planning and Budget and the Secretary of Health and Human Resources, DMAS has removed this eligibility requirement.

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

12 VAC 30-120-1600. Definitions.

The following words or terms when used in this regulation shall have the following meanings unless the content clearly indicates otherwise.

"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 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.

"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 § 32.1-162.9:1 of the Code of Virginia.

"Comprehensive assessment" means the Virginia Uniform Assessment Instrument and other relevant social, psychological and medical information gathered by the assisted living facility staff 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.

"Direct marketing" means either (i) conducting directly or indirectly 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 individuals or family/caregivers as inducements to use the providers' services; (v) 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.

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

"Related dementia" means a diagnosis of Dementia of the Alzheimer's Type as defined by the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition (DSM-IV-TR), published by the American Psychiatric Association.

"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.

"Virginia 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 level of care for certain publicly funded long-term care programs such as nursing facility services.

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 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 § 1614 of the Social Security Act; or

b. Disabled as defined by § 1614 of the Social Security Act.

2. The individual must meet the criteria for admission to a nursing facility as determined by a preadmission screening team using the full UAI.

3. 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 may not have a diagnosis of mental retardation as defined by the American Association on Mental Retardation in Mental Retardation - Definition, Classifications and Systems of Supports, 10th Edition, or a serious mental illness as defined in 42 CFR 483.102(b).

4. 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.

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's establishment of Medicaid eligibility.

D. Enrollment. After an initial 60-day application period and a random selection process 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. If there is not a waiver slot available for an individual, the individual shall be placed on the waiting list. Individuals must meet all waiver eligibility criteria in order to be placed on the waiting list.

E. Preauthorization. Before a provider can bill DMAS for AAL Waiver services, preauthorization must be obtained from DMAS. 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 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.

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F. Review of level of care. DMAS conducts this review 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, Eligibility and Appeals. DMAS may terminate AAL Waiver care services for any of the following reasons:

1. The AAL Waiver is no longer required 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 AAL Waiver criteria;
5. The individual has been absent from, or has not received services from, the assisted living facility for more than 30 consecutive 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 VDSS or standards set by DMAS for service providers.

12 VAC 30-120-1620. Covered services.

A. Assisted living services include 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. Medications shall be administered only by an individual currently licensed to administer medications (physician, physician assistant, pharmacist, nurse practitioner, RN, or LPN), except on the 11 p.m. to 7 a.m. shift when medications may be administered by a medication aide that meets the regulatory requirements as set forth by the Department of Social Services and the Board of Nursing;
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. Skilled nursing services are 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 staff 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 VDSS.

B. For DMAS to approve provider agreements with AAL Waiver providers, providers must meet staffing, financial solvency and disclosure of ownership requirements.

1. Approved providers must assure freedom of choice to individuals, or their authorized representative, 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. Approved providers must assure the individual's freedom to refuse medical care, treatment, and services;

3. Approved providers must accept referrals for services only when staff is available to initiate and perform such services on an ongoing basis;

4. Approved providers must 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 (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;

5. Approved providers must provide services and supplies to individuals of the same quality as [is are] provided to the general public;

6. Approved providers must 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. Approved providers must 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 for service documentation, the provider must include all elements required by DMAS in the provider's service documentation;

8. Approved providers must use DMAS-designated billing forms for submission of charges;

9. Approved providers must perform no direct marketing activities to Medicaid individuals;

10. Approved providers must 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 storage location, as well as the agent or trustee, shall be within the Commonwealth;

11. Approved providers must furnish information on request and in the form requested, to DMAS, the Office of 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. Approved providers must 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. Approved providers must 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, 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.

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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. Approved providers must immediately notify DMAS, in writing, of any change in the information that the provider previously submitted to DMAS.

C. 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 of the conviction, notify the Virginia Medicaid Program 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 VDSS 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.

2. In an emergency situation when the health and safety of the individual or provider personnel is endangered, the participating provider must notify DMAS immediately prior to discontinuing services. The written notification period shall not be required. If appropriate, local DSS Adult Protective Services must also 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 licensed 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 meet the regulatory requirements as set forth by the Department of Social Services (22 VAC 40-71-60 et seq.) and the Board of Long-Term Care Administrators (18 VAC 95-20-10 through 18 VAC 95-20-471).

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 persons with disabilities;
- 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 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) or licensed practical nurse (LPN) under the supervision of an RN, awake, on duty, and on-site in the facility for at least eight hours a day, 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. An RN must complete a comprehensive assessment of each resident upon admission. The comprehensive assessment includes the UAI and other 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 and 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 shall:

(1) Develop the resident's plan of care and formulate interventions to address the specific problems identified;

(2) Evaluate both the facility's implementation and the resident's response to the plan of care; and

(3) 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; and

(11) Change in levels of dependence in ADLs [§ .]

4. In a facility with fewer than 16 waiver recipients, the facility may employ an RN as part time or as a contracted employee.

The facility's RN may also serve as the administrator. In all instances where the facility's RN is assigned duties as an administrator, the facility shall assure that the RN devotes sufficient time and effort to all clinical duties to secure health, safety, and welfare of recipients.

Any facility having more than 16 waiver recipients must employ full time an RN to be responsible for the clinical needs of the recipients.

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 nurse aide (CNA) with at least one year experience in a DMAS-approved assisted living facility or nursing home or other setting that involves working with vulnerable adults.

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;

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2. Be eligible for certification as a therapeutic recreation specialist or an activities professional by a recognized accrediting body;

3. Have at least 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 VDSS-approved training.

I. Certified nurse aides. In order to provide services in this waiver, the assisted living facility must use certified nurse 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 within 30 days of employment. The training must be conducted by a health care educator, adult education professional, or a licensed professional, with expertise in dementia. 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 that 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 three years of experience in the health care 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 six 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, VDSS, the recipient, or other related parties; and

3. A log that 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 AAL Waiver recipient authorized to receive assisted living services. Except for 14 days of leave each calendar year as described in subsection C of this section, 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 pursuant to 22 VAC 40-25 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 DMAS will not pay for the service. The resident or 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, but shall not exceed the auxiliary grant rate in effect at the time of the resident's absence.

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 on a regular basis. All quality management and level of care reviews will be performed at least annually and will be performed on site.

NOTICE: The following form has been filed by the Department of Medical Assistance Services. The form is available for public inspection at the Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219, or the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219. Copies of the form may be obtained from Teja Stokes, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219, telephone (804) 786-0527.

[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~~ 10/06).
- 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).]

DOCUMENTS INCORPORATED BY REFERENCE

Mental Retardation: Definition, Classification, and Systems of Supports, 10th Edition, 2002, American Association on Mental Retardation.

Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV-TR), 2000, American Psychiatric Association.

VA.R. Doc. No. R06-50; Filed May 22, 2007, 4:03 p.m.

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

Final Regulation

Title of Regulation: 12 VAC 35-105. Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation, Substance Abuse, the Individual and Family Developmental Disabilities Support Waiver, and Residential Brain Injury Services (adding 12 VAC 35-105-925).

Statutory Authority: § 37.2-203 of the Code of Virginia.

Effective Date: July 11, 2007.

Agency Contact: Leslie Anderson, Director, Office of Licensing, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, 1220 Bank Street, Richmond, VA 23218, telephone (804) 371-6885, FAX (804) 692-0066, or email leslie.anderson@co.dmhmrsva.virginia.gov.

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Summary:

The amendments provide specific standards for evaluating the need and appropriateness for the issuance of new licenses for providers of treatment of persons with opioid addiction through the use of methadone or other opioid replacements. As required by Chapter 7 of the 2005 Acts of Assembly, these standards include consideration of demographic and geographic factors, the availability of qualified staff and support services, the suitability of the service site, and several other related attributes of a proposed service provider.

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

PART VI.

ADDITIONAL REQUIREMENTS FOR SELECTED SERVICES.

Article 1.

Opioid Treatment Services.

12 VAC 35-105-925. Standards for the evaluation of the need for new licenses for providers of services to persons with opioid addiction.

A. Applicants requesting an initial license to provide a new service for the treatment of opioid addiction through the use of methadone or any other controlled substance shall supply information to demonstrate the need for, and appropriateness of, the proposed service in accordance with this section.

B. Applicants shall demonstrate that the geographic and demographic parameters of the service area are reasonable and the proposed service is expected to serve a sufficient number of individuals to justify the service as documented in subsection D of this section. For purposes of demonstrating need, applicants shall define a service area that is located entirely in Virginia and does not extend more than 100 miles from the proposed location of the service. Applicants also shall identify the number of individuals they seek to be licensed to serve.

C. Applicants shall submit admission policies that give priority to individuals residing in the service area for admission and placement on waiting lists.

D. Applicants shall demonstrate that there are persons residing in their service areas who have an opioid addiction who would benefit from the proposed service. The following information may be used by the applicant to document that individuals in the service area are known or reasonably expected to need the proposed service:

1. Numbers of persons on waiting lists for admission to any existing opioid addiction or other public substance abuse

treatment program in the service area for the most recent available 12-month period;

2. Numbers of opioid use disorder cases (e.g., overdoses) originating from the proposed service area that have been treated in hospital emergency rooms for the most recent available 12-month period;

3. Projections of the number of persons in the service area who are likely to obtain services for opioid addiction, based on drug-use forecasting data;

4. Data reported on suicidal and accidental deaths related to opioid use in the proposed service area for the most recent available 12-month period;

5. Data regarding arrests from local law-enforcement officials in the proposed service area related to illicit opioid activities;

6. Data on communicable diseases for the proposed service area related to injection drug abuse (e.g. HIV, AIDS, TB, and Hepatitis B and C);

7. Data on the availability of any evidence-based alternative service or services that have been proven effective in the treatment of opioid addiction and that are accessible to persons within the proposed service area, including services provided by physicians' offices; and

8. Letters of support from citizens, governmental officials, or health care providers, that indicate that there are conditions or problems associated with substance abuse in the community that demonstrate a need for opioid treatment services in the service area.

E. The department shall determine whether a need exists for the proposed service based on the documentation provided in accordance with subsection D of this section and the consideration of the following standards:

1. Whether there are a sufficient number of persons in the proposed service area who are likely to need the specific opioid treatment service that the applicant intends to provide;

2. Whether the data indicate that evidence-based service capacity in the service area is not responsive to or sufficient enough to meet the needs of individuals with opioid addiction; and

3. Whether there is documentation of support to confirm the need for the proposed service in the proposed service area.

F. The proposed site of the service shall comply with § 37.2-406 of the Code of Virginia and, with the exception of services that are proposed to be located in Planning District 8, shall not be located within one-half mile of a public or private licensed day care center or a public or private K-12 school.

G. In jurisdictions without zoning ordinances, the department shall request that the local governing body advise it as to whether the proposed site is suitable for and compatible with use as an office and the delivery of health care services. The department shall make this request when it notifies the local governing body of a pending application.

H. Applicants shall demonstrate that the building or space to be used to provide the proposed service is suitable for the treatment of opioid addiction by submitting documentation of the following:

1. The proposed site complies with the requirements of the local building regulatory entity;
2. The proposed site complies with local zoning laws or ordinances, including any required business licenses;
3. In the absence of local zoning ordinances, the proposed site is suitable for and compatible with use as offices and the delivery of health care services;
4. In jurisdictions where there are no parking ordinances, the proposed site has sufficient off-street parking to accommodate the needs of the individuals being served and prevent the disruption of traffic flow;
5. The proposed site can accommodate individuals during periods of inclement weather;
6. The proposed site complies with the Virginia Statewide Fire Prevention Code; and
7. The applicant has a written plan to ensure security for storage of methadone at the site, which complies with regulations of the Drug Enforcement Agency (DEA), and the Virginia Board of Pharmacy.

I. Applicants shall submit information to demonstrate that there are sufficient personnel available to meet the following staffing requirements and qualifications:

1. The program director shall be licensed or certified by the applicable Virginia health regulatory board or by a nationally recognized certification board, or eligible for this license or certification with relevant training, experience, or both, in the treatment of persons with opioid addiction;
2. The medical director shall be a board-certified addictionologist or have successfully completed or will complete within one year, a course of study in opiate addiction that is approved by the department;
3. A minimum of one pharmacist;
4. Nurses;
5. Counselors shall be licensed or certified by the applicable Virginia health regulatory board or by a nationally recognized certification board, or eligible for this license or certification; and

6. Personnel to provide support services.

J. Applicants shall submit a description for the proposed service that includes:

1. Proposed mission, philosophy, and goals of the provider;
2. Care, treatment, and services to be provided, including a comprehensive discussion of levels of care provided and alternative treatment strategies offered;
3. Proposed hours and days of operation;
4. Plans for on-site security; and
5. A diversion control plan for dispensed medications, including policies for use of drug screens.

K. Applicants shall, in addition to the requirements of 12 VAC 35-105-580 C 2, provide documentation of their capability to provide the following services and support directly or by arrangement with other specified providers when such services and supports are (i) requested by an individual being served or (ii) identified as an individual need, based on the assessment conducted in accordance with 12 VAC 35-105-60 B and included in the individualized services plan:

1. Psychological services;
2. Social services;
3. Vocational services;
4. Educational services; and
5. Employment services.

L. Applicants shall submit documentation of contact with community services boards or behavioral health authorities in their service areas to discuss its plans for operating in the area and to develop joint agreements, as appropriate.

M. Applicants shall provide policies and procedures that require every six months each individual served to be assessed by the treatment team to determine if that individual is appropriate for safe and voluntary medically supervised withdrawal, alternative therapies including other medication assisted treatments, or continued federally approved pharmacotherapy treatment for opioid addiction.

N. Applicants shall submit policies and procedures describing services they will provide to individuals who wish to discontinue opioid treatment services.

O. Applicants shall provide assurances that the service will have a community liaison responsible for developing and maintaining cooperative relationships with community organizations, other service providers, local law enforcement, local government officials, and the community at large.

P. The department, including the Office of Licensing, Office of Human Rights, or Office of Substance Abuse Services,

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shall conduct announced and unannounced reviews and complaint investigations, in collaboration with the state methadone authority, Board of Pharmacy, and DEA to determine compliance with the regulations.

VA.R. Doc. No. R06-88; Filed May 18, 2007, 10:29 a.m.

◆ ————— ◆

TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Housing and Community Development is claiming an exemption from the Administrative Act pursuant to § 2.2-4006 A 13 of the Code of Virginia, which excludes regulations adopted by the Board of Housing and Community Development pursuant to the Statewide Fire Prevention Code (§ 27-94 et seq. of the Code of Virginia) and the Uniform Statewide Building Code (§ 36-97 et seq. of the Code of Virginia), provided the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007 B, (ii) publishes the proposed regulation and provides an opportunity for oral and written comments as provided in § 2.2-4007 F, and (iii) conducts at least one public hearing as provided in §§ 2.2-4009 and 36-100 prior to the publishing of the proposed regulations.

Title of Regulation: 13 VAC 5-51. Virginia Statewide Fire Prevention Code (amending 13 VAC 5-51-21, 13 VAC 5-51-31, 13 VAC 5-51-41, 13 VAC 5-51-81, 13 VAC 5-51-91, 13 VAC 5-51-130, 13 VAC 5-51-132, 13 VAC 5-51-133.5, 13 VAC 5-51-134, 13 VAC 5-51-135, 13 VAC 5-51-145, 13 VAC 5-51-150, 13 VAC 5-51-154; repealing 13 VAC 5-51-152).

Statutory Authority: § 27-97 of the Code of Virginia.

Public Hearing Date: July 24, 2007 - 10 a.m.

Public comments may be submitted until 5 p.m. on August 11, 2007.

(See Calendar of Events section for additional information)

Agency Contact: Vernon Hodge, Technical Services Manager, Department of Housing and Community Development, 501 North 2nd Street, Richmond, VA 23219, telephone (804) 371-7174, FAX (804) 371-7092 or email vernon.hodge@dhcd.virginia.gov.

Summary:

The Virginia Statewide Fire Prevention Code (SFPC) is a regulation governing the maintenance of fire-safety features in existing buildings and structures and fire-safety

related operations on property. The SFPC uses a nationally recognized model code produced by the International Code Council as a companion code to that used under the Virginia Uniform Statewide Building Code (13 VAC 5-63). Every three years, a new edition of the model code become available. At that time, the Board of Housing and Community Development initiates a regulatory action to incorporate the newer edition of the model code into the regulation through the publishing of a proposed regulation.

Changes in the proposed regulation may be categorized into three groups. The first group are changes necessary to incorporate the newest edition of the nationally recognized model code into the regulation.

The second group of changes are general clarifications and correlation changes. These changes are simply to more closely match legislative language, to coordinate the application of the regulations with the other building and fire regulations of the board and to remove provisions in the existing SFPC that have been successfully added to the latest model code through the code changes process of the model code organization, thus eliminating the need for those changes in the SFPC.

The third group of changes consists of several changes that were considered by committees or by client groups to reach a degree of consensus enabling their inclusion in the proposed regulation. This group of changes includes a slight increase in fees charged by the State Fire Marshal's Office for permits for fireworks displays to more closely cover the costs associated with such permits; and permitting additional time for existing stationary LP-Gas tanks to be recertified in accordance with established standards.

13 VAC 5-51-21. Section 102.0. Applicability.

A. 102.1. General: The provisions of the SFPC shall apply to all matters affecting or relating to structures, processes and premises as set forth in Section 101.0. The SFPC shall supersede any fire prevention regulations previously adopted by a local government or other political subdivision.

B. 102.1.1. Changes: No change shall be made in the use or occupancy of any structure that would place the structure in a different division of the same group of occupancies, unless such structure is made to comply with the requirements of this code and the USBC.

C. 102.2. Application to pre-1973 buildings and structures: Buildings and structures constructed prior to the USBC (1973) shall comply with the maintenance requirements of the SFPC to the extent that equipment, systems, devices, and safeguards which were provided and approved when constructed shall be maintained. Such buildings and structures, if subject to the state fire and public building

regulations (Virginia Public Building Safety Regulations, VR 394-01-05) in effect prior to March 31, 1986, shall also be maintained in accordance with those regulations.

D. 102.3. Application to post-1973 buildings and structures: Buildings and structures constructed under any edition of the USBC shall comply with the maintenance requirements of the SFPC to the extent that equipment, systems, devices, and safeguards which were provided and approved when constructed shall be maintained.

E. 102.4. Referenced codes and standards: The codes and standards referenced in the IFC shall be those listed in Chapter 45 and considered part of the requirements of the SFPC to the prescribed extent of each such reference. Where differences occur between the provisions of this code and the referenced standards, the provisions of this code shall apply.

F. 102.5. ~~Subsequent alteration: Subsequent alteration, enlargement, repair, or conversion of the occupancy classification of structures shall be subject to the current USBC.~~

~~G. 102.6. State~~ State-owned buildings and structures: The SFPC shall be applicable to all state-owned buildings and structures in the manner and extent described in § 27-99 of the Code of Virginia and the State Fire Marshal shall have the authority to enforce this code in state-owned buildings and structures as is prescribed in §§ 27-98 and 27-99 of the Code of Virginia.

~~H. 102.7. G. 102.6. Relationship to USBC: In accordance with §§ 27-34.4, 36-105.1 and 36-119.1 of the Code of Virginia, the USBC does not supersede the provisions of this code that prescribe standards to be complied within existing buildings and structures, provided that this code shall not impose requirements that are more restrictive than those of the USBC under which the buildings or structures were constructed. Subsequent alteration, enlargement, rehabilitation, repair or conversion of the occupancy classification of such buildings and structures shall be subject to the construction and rehabilitation provisions of the USBC. Construction inspections of structures, Inspection of buildings other than state-owned structures, buildings under construction and the review and approval of their construction documents building plans for these structures for enforcement of the USBC shall be the sole responsibility of the appropriate local building department inspectors.~~

~~I. 102.8. Existing structures: Upon the completion of such structures, responsibility for fire safety protection shall pass to the local fire official marshal or official designated by the locality to enforce this code in those localities that enforce the SFPC or to the State Fire Marshal, who shall also have the authority, in cooperation with any local governing body, to enforce this code. The State Fire Marshal shall also have authority to enforce this code in those jurisdictions in~~

~~localities which the local governments that do not enforce this code.~~

~~J. 102.9. H. 102.7. Inspections for USBC requirements: The fire official shall require that existing structures subject to the requirements of the applicable retrofitting provisions relating to the fire protection equipment and system requirements of the USBC, Part I, Construction, Sections 103.7 and 3411, comply with the provisions located therein.~~

13 VAC 5-51-31. Section 103.0. Incorporation by reference.

A. 103.1. General: The following document is adopted and incorporated by reference to be an enforceable part of the SFPC:

The International Fire Code--~~2003~~ 2006 Edition, hereinafter referred to as "IFC," published by the International Code Council, Inc., 5203 Leesburg Pike, Suite ~~708~~ 600, Falls Church, VA 22041-3401, phone (703)-931-4533.

B. 103.1.1. Deletion: Delete IFC Chapter 1.

C. 103.1.2. Appendices: The appendices in the IFC are not considered part of the IFC for the purposes of Section 103.1.

Note: Section 101.5 references authority contained in the Code of Virginia for local fire prevention regulations that may be evaluated by localities to determine whether provisions in the IFC appendices may be considered for local fire prevention regulations.

D. 103.2. Amendments: All requirements of the referenced codes and standards that relate to fees, permits, unsafe notices, disputes, condemnation, inspections, scope of enforcement and all other procedural, and administrative matters are deleted and replaced by the provisions of Chapter 1 of the SFPC.

E. 103.2.1. Other amendments: The SFPC contains provisions adopted by the Virginia Board of Housing and Community Development (BHCD), some of which delete, change or amend provisions of the IFC and referenced standards. Where conflicts occur between such changed provisions and the unchanged provisions of the IFC and referenced standards, the provisions changed by the BHCD shall govern.

Note: The IFC and its referenced standards contain some areas of regulation outside of the scope of the SFPC, as established by the BHCD and under state law. Where conflicts have been readily noted, changes have been made to the IFC and its referenced standards to bring it within the scope of authority; however, in some areas, judgment will have to be made as to whether the provisions of the IFC and its referenced standards are fully applicable.

F. 103.3. International Fire Code. Retroactive fire protection system requirements contained in the IFC shall not be enforced unless specified by the USBC.

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13 VAC 5-51-41. Section 104.0. Enforcement.

A. 104.1. Local enforcement: Any local government may enforce the SFPC following official action by such body. The official action shall (i) require compliance with the provisions of the SFPC in its entirety or with respect only to those provisions of the SFPC relating to open burning, fire lanes, fireworks, and hazardous materials and (ii) assign enforcement responsibility to the local agency or agencies of its choice. Any local governing body may establish such procedures or requirements as may be necessary for the administration and enforcement of this code. If a local governing body elects to enforce only those provisions of the SFPC relating to open burning, it may do so in all or in any designated geographic areas of its jurisdiction. The terms "enforcing agency" and "fire official" are intended to apply to the agency or agencies to which responsibility for enforcement of the SFPC has been assigned. The terms "building official" or "building department" are intended to apply only to the local building official or local building department.

B. 104.1.1. Enforcement of fireworks provisions by law-enforcement officers: In accordance with § 27-100.1 of the Code of Virginia, law-enforcement officers who are otherwise authorized to enforce certain provisions of this code shall not be subject to the certification requirements of Sections 105.2 or 105.3.2.

C. 104.2. State enforcement: ~~The State Fire Marshal shall have the authority to enforce the SFPC as follows:~~

- ~~1. In cooperation with any local governing body;~~
- ~~2. In those jurisdictions in which the local governments do not enforce the SFPC; and~~
3. In all state owned buildings and structures In accordance with § 27-98 of the Code of Virginia, the State Fire Marshal shall also have the authority, in cooperation with any local governing body, to enforce the SFPC. The State Fire Marshal shall also have authority to enforce the SFPC in those jurisdictions in which the local governments do not enforce the SFPC and may establish such procedures or requirements as may be necessary for the administration and enforcement of the SFPC in such jurisdictions.

D. 104.3. State structures: Every agency, commission or institution of this Commonwealth, including all institutions of higher education, shall permit, at all reasonable hours, the fire official reasonable access to existing structures or a structure

C. Add Table 107.2 as follows:

Table 107.2. OPERATIONAL PERMIT REQUIREMENTS (to be filled in by local jurisdiction).			
Description	Permit Required (yes or no)	Permit fee	Inspection fee

under construction or renovation, for the purpose of performing an informational and advisory fire safety inspection. The fire official is permitted to submit, subsequent to performing such inspection, his findings and recommendations, including a list of corrective actions necessary to ensure that such structure is reasonably safe from the hazards of fire, to the appropriate official of such agency, commission, or institution and the State Fire Marshal. Such agency, commission or institution shall notify, within 60 days of receipt of such findings and recommendations, the State Fire Marshal and the fire official of the corrective measures taken to eliminate the hazards reported by the fire official. The State Fire Marshal shall have the same power in the enforcement of this section as is provided for in § 27-98 of the Code of Virginia. The State Fire Marshal may enter into an agreement as is provided for in § 36-139.4 of the Code of Virginia with any local enforcement agency that enforces the SFPC to enforce this section and to take immediate enforcement action upon verification of a complaint of an imminent hazard such as a chained or blocked exit door, improper storage of flammable liquids, use of decorative materials, and overcrowding.

13 VAC 5-51-81. Section 107.0. Permits.

A. 107.1. Prior notification: The fire official may require notification prior to (i) activities involving the handling, storage or use of substances, materials or devices regulated by the SFPC; (ii) conducting processes which produce conditions hazardous to life or property; or (iii) establishing a place of assembly.

B. 107.2. Permits required: Permits may be required by the fire official as permitted under the SFPC in accordance with Table 107.2, except that the fire official shall require permits for the manufacturing, storage, handling, use, and sale of explosives. An application for a permit to manufacture, store, handle, use, or sell explosives shall only be made by an individual certified as a blaster in accordance with Section 3301.4, or by a person who has been issued a background clearance card in accordance with Section 3301.2.3.1.1.

Exception: Such permits shall not be required for the storage of explosives or blasting agents by the Virginia Department of State Police provided notification to the fire official is made annually by the Chief Arson Investigator listing all storage locations.

Aerosol products. An operational permit is required to manufacture, store or handle an aggregate quantity of Level 2 or Level 3 aerosol products in excess of 500 pounds (227 kg) net weight.																		
Amusement buildings. An operational permit is required to operate a special amusement building.																		
Aviation facilities. An operational permit is required to use a Group H or Group S occupancy for aircraft servicing or repair and aircraft fuel-servicing vehicles. Additional permits required by other sections of this code include, but are not limited to, hot work, hazardous materials and flammable or combustible finishes.																		
Carnivals and fairs. An operational permit is required to conduct a carnival or fair.																		
Battery systems. An operational permit is required to install stationary lead-acid battery systems having a liquid capacity of more than 50 gallons (189 L).																		
Cellulose nitrate film. An operational permit is required to store, handle or use cellulose nitrate film in a Group A occupancy.																		
Combustible dust-producing operations. An operational permit is required to operate a grain elevator, flour starch mill, feed mill, or a plant pulverizing aluminum, coal, cocoa, magnesium, spices or sugar, or other operations producing combustible dusts as defined in Chapter 2.																		
Combustible fibers. An operational permit is required for the storage and handling of combustible fibers in quantities greater than 100 cubic feet (2.8 m ³). Exception: An operational permit is not required for agricultural storage.																		
Compressed gas. An operational permit is required for the storage, use or handling at normal temperature and pressure (NTP) of compressed gases in excess of the amounts listed below. Exception: Vehicles equipped for and using compressed gas as a fuel for propelling the vehicle. Permit Amounts for Compressed Gases <table border="0"> <tr> <td>Type of Gas</td> <td>Amount (cubic feet at NTP)</td> </tr> <tr> <td>Corrosive</td> <td>200</td> </tr> <tr> <td>Flammable (except cryogenic fluids and liquefied petroleum gases)</td> <td>200</td> </tr> <tr> <td>Highly toxic</td> <td>Any Amount</td> </tr> <tr> <td>Inert and simple asphyxiant</td> <td>6,000</td> </tr> <tr> <td>Oxidizing (including oxygen)</td> <td>504</td> </tr> <tr> <td>Toxic</td> <td>Any Amount</td> </tr> </table> For SI: 1 cubic foot = 0.02832 m ³ .	Type of Gas	Amount (cubic feet at NTP)	Corrosive	200	Flammable (except cryogenic fluids and liquefied petroleum gases)	200	Highly toxic	Any Amount	Inert and simple asphyxiant	6,000	Oxidizing (including oxygen)	504	Toxic	Any Amount				
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Oxidizing (including oxygen)	504																	
Toxic	Any Amount																	
Covered mall buildings. An operational permit is required for: 1. The placement of retail fixtures and displays, concession equipment, displays of highly combustible goods and similar items in the mall. 2. The display of liquid- or gas-fired equipment in the mall. 3. The use of open-flame or flame-producing equipment in the mall.																		
Cryogenic fluids. An operational permit is required to produce, store, transport on site, use, handle or dispense cryogenic fluids in excess of the amounts listed below. Exception: Operational permits are not required for vehicles equipped for and using cryogenic fluids as a fuel for propelling the vehicle or for refrigerating the lading. Permit Amounts for Cryogenic Fluids <table border="0"> <tr> <td>Type of Cryogenic Fluid</td> <td>Inside Building (gallons)</td> <td>Outside Building (gallons)</td> </tr> <tr> <td>Flammable</td> <td>More than 1</td> <td>60</td> </tr> <tr> <td>Inert</td> <td>60</td> <td>500</td> </tr> <tr> <td>Oxidizing (includes oxygen)</td> <td>10</td> <td>50</td> </tr> <tr> <td>Physical or health hazard not indicated above</td> <td>Any Amount</td> <td>Any Amount</td> </tr> </table> For SI: 1 gallon = 3.785 L.	Type of Cryogenic Fluid	Inside Building (gallons)	Outside Building (gallons)	Flammable	More than 1	60	Inert	60	500	Oxidizing (includes oxygen)	10	50	Physical or health hazard not indicated above	Any Amount	Any Amount			
Type of Cryogenic Fluid	Inside Building (gallons)	Outside Building (gallons)																
Flammable	More than 1	60																
Inert	60	500																
Oxidizing (includes oxygen)	10	50																
Physical or health hazard not indicated above	Any Amount	Any Amount																
Cutting and welding. An operational permit is required to conduct cutting or welding operations within the jurisdiction.																		
Dry cleaning plants. An operational permit is required to engage in the business of dry cleaning or to change to a more hazardous cleaning solvent used in existing dry cleaning equipment.																		

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Exhibits and trade shows. An operational permit is required to operate exhibits and trade shows.			
Explosives. An operational permit is required for the manufacture, storage, handling, sale or use of any quantity of explosive, explosive material, fireworks, or pyrotechnic special effects within the scope of Chapter 33.			
Fire hydrants and valves. An operational permit is required to use or operate fire hydrants or valves intended for fire suppression purposes that are installed on water systems and accessible to a fire apparatus access road that is open to or generally used by the public. Exception: An operational permit is not required for authorized employees of the water company that supplies the system or the fire department to use or operate fire hydrants or valves.			
Flammable and combustible liquids. An operational permit is required: 1. To use or operate a pipeline for the transportation within facilities of flammable or combustible liquids. This requirement shall not apply to the offsite transportation in pipelines regulated by the Department of Transportation (DOTn) (see § 3501.1.2) nor does it apply to piping systems (see § 3503.6). 2. To store, handle or use Class I liquids in excess of 5 gallons (19 L) in a building or in excess of 10 gallons (37.9 L) outside of a building, except that a permit is not required for the following: 2.1. The storage or use of Class I liquids in the fuel tank of a motor vehicle, aircraft, motorboat, mobile power plant or mobile heating plant, unless such storage, in the opinion of the fire official, would cause an unsafe condition. 2.2. The storage or use of paints, oils, varnishes or similar flammable mixtures when such liquids are stored for maintenance, painting or similar purposes for a period of not more than 30 days. 3. To store, handle or use Class II or Class IIIA liquids in excess of 25 gallons (95 L) in a building or in excess of 60 gallons (227 L) outside a building, except for fuel oil used in connection with oil-burning equipment. 4. To remove Class I or Class II liquids from an underground storage tank used for fueling motor vehicles by any means other than the approved, stationary on-site pumps normally used for dispensing purposes. 5. To operate tank vehicles, equipment, tanks, plants, terminals, wells, fuel-dispensing stations, refineries, distilleries and similar facilities where flammable and combustible liquids are produced, processed, transported, stored, dispensed or used. 6. To install, alter, remove, abandon, place temporarily out of service (for more than 90 days) or otherwise dispose of an underground, protected above-ground or above-ground flammable or combustible liquid tank. 7. To change the type of contents stored in a flammable or combustible liquid tank to a material that poses a greater hazard than that for which the tank was designed and constructed. 8. To manufacture, process, blend or refine flammable or combustible liquids.			
Floor finishing. An operational permit is required for floor finishing or surfacing operations exceeding 350 square feet (33 m ²) using Class I or Class II liquids.			
Fruit and crop ripening. An operational permit is required to operate a fruit- or crop-ripening facility or conduct a fruit-ripening process using ethylene gas.			
Fumigation and thermal insecticidal fogging. An operational permit is required to operate a business of fumigation or thermal insecticidal fogging and to maintain a room, vault or chamber in which a toxic or flammable fumigant is used.			
Hazardous materials. An operational permit is required to store, transport on site, dispense, use or handle hazardous materials in excess of the amounts listed below. Permit Amounts for Hazardous Materials Type of Material Amount Combustible liquids See flammable and combustible liquids Corrosive materials Gases See compressed gases Liquids 55 gallons Solids 1000 pounds Explosive materials See explosives			

Flammable materials				
Gases	See compressed gases			
Liquids	See flammable and combustible liquids			
Solids	100 pounds			
Highly toxic materials				
Gases	See compressed gases			
Liquids	Any Amount			
Solids	Any Amount			
Oxidizing materials				
Gases	See compressed gases			
Liquids				
Class 4	Any Amount			
Class 3	1 gallon			
Class 2	10 gallons			
Class 1	55 gallons			
Solids				
Class 4	Any Amount			
Class 3	10 pounds			
Class 2	100 pounds			
Class 1	500 pounds			
Organic peroxides				
Liquids				
Class I	Any Amount			
Class II	Any Amount			
Class III	1 gallon			
Class IV	2 gallons			
Class V	No Permit Required			
Solids				
Class I	Any Amount			
Class II	Any Amount			
Class III	10 pounds			
Class IV	20 pounds			
Class V	No Permit Required			
Pyrophoric materials				
Gases	See compressed gases			
Liquids	Any Amount			
Solids	Any Amount			
Toxic materials				
Gases	See compressed gases			
Liquids	10 gallons			
Solids	100 pounds			
Unstable (reactive) materials				
Liquids				
Class 4	Any Amount			
Class 3	Any Amount			
Class 2	5 gallons			
Class 1	10 gallons			
Solids				

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<p>Class 4 Any Amount Class 3 Any Amount Class 2 50 pounds Class 1 100 pounds</p> <p>Water-reactive Materials</p> <p>Liquids</p> <p>Class 3 Any Amount Class 2 5 gallons Class 1 55 gallons</p> <p>Solids</p> <p>Class 3 Any Amount Class 2 50 pounds Class 1 500 pounds</p> <p>For SI: 1 gallon = 3.785 L, 1 pound = 0.454 kg.</p>			
HPM facilities. An operational permit is required to store, handle or use hazardous production materials.			
High piled storage. An operational permit is required to use a building or portion thereof as a high-piled storage area exceeding 500 square feet (46 m ²).			
<p>Hot work operations. An operational permit is required for hot work including, but not limited to:</p> <ol style="list-style-type: none"> 1. Public exhibitions and demonstrations where hot work is conducted. 2. Use of portable hot work equipment inside a structure. <p>Exception: Work that is conducted under a construction permit.</p> <ol style="list-style-type: none"> 3. Fixed-site hot work equipment such as welding booths. 4. Hot work conducted within a hazardous fire area. 5. Application of roof coverings with the use of an open-flame device. 6. When approved, the fire official shall issue a permit to carry out a Hot Work Program. This program allows approved personnel to regulate their facility's hot work operations. The approved personnel shall be trained in the fire safety aspects denoted in this chapter and shall be responsible for issuing permits requiring compliance with the requirements found in this chapter. These permits shall be issued only to their employees or hot work operations under their supervision. 			
Industrial ovens. An operational permit is required for operation of industrial ovens regulated by Chapter 21.			
Lumber yards and woodworking plants. An operational permit is required for the storage or processing of lumber exceeding 100,000 board feet (8,333 ft ³) (236 m ³).			
Liquid- or gas-fueled vehicles or equipment in assembly buildings. An operational permit is required to display, operate or demonstrate liquid- or gas-fueled vehicles or equipment in assembly buildings.			
<p>LP-gas. An operational permit is required for:</p> <ol style="list-style-type: none"> 1. Storage and use of LP-gas. <p>Exception: An operational permit is not required for individual containers with a 500-gallon (1893 L) water capacity or less serving occupancies in Group R-3.</p> <ol style="list-style-type: none"> 2. Operation of cargo tankers that transport LP-gas. 			
Magnesium. An operational permit is required to melt, cast, heat treat or grind more than 10 pounds (4.54 kg) of magnesium.			
Miscellaneous combustible storage. An operational permit is required to store in any building or upon any premises in excess of 2,500 cubic feet (71 m ³) gross volume of combustible empty packing cases, boxes, barrels or similar containers, rubber tires, rubber, cork or similar combustible material.			
<p>Open burning. An operational permit is required for the kindling or maintaining of an open fire or a fire on any public street, alley, road, or other public or private ground. Instructions and stipulations of the permit shall be adhered to.</p> <p>Exception: Recreational fires.</p>			

Open flames and candles. An operational permit is required to remove paint with a torch; use a torch or open-flame device in a hazardous fire area; or to use open flames or candles in connection with assembly areas, dining areas of restaurants or drinking establishments.			
Organic coatings. An operational permit is required for any organic-coating manufacturing operation producing more than 1 gallon (4 L) of an organic coating in one day.			
Assembly/educational. An operational permit is required to operate a place of assembly /educational occupancy.			
Private fire hydrants. An operational permit is required for the removal from service, use or operation of private fire hydrants. Exception: An operational permit is not required for private industry with trained maintenance personnel, private fire brigade or fire departments to maintain, test and use private hydrants.			
Pyrotechnic special effects material. An operational permit is required for use and handling of pyrotechnic special effects material.			
Pyroxylin plastics. An operational permit is required for storage or handling of more than 25 pounds (11 kg) of cellulose nitrate (pyroxylin) plastics and for the assembly or manufacture of articles involving pyroxylin plastics.			
Refrigeration equipment. An operational permit is required to operate a mechanical refrigeration unit or system regulated by Chapter 6.			
Repair garages and service stations. An operational permit is required for operation of repair garages and automotive, marine and fleet service stations.			
Rooftop heliports. An operational permit is required for the operation of a rooftop heliport.			
Spraying or dipping. An operational permit is required to conduct a spraying or dipping operation utilizing flammable or combustible liquids or the application of combustible powders regulated by Chapter 15.			
Storage of scrap tires and tire byproducts. An operational permit is required to establish, conduct or maintain storage of scrap tires and tire byproducts that exceeds 2,500 cubic feet (71 m ³) of total volume of scrap tires and for indoor storage of tires and tire byproducts.			
Temporary membrane structures, tents and canopies. An operational permit is required to operate an air-supported temporary membrane structure or a tent. Exceptions: 1. Tents used exclusively for recreational camping purposes. 2. Tents and air-supported structures that cover an area of 900 square feet (84 m ²) or less, including all connecting areas or spaces with a common means of egress or entrance and with an occupant load of 50 or less persons. 3. Fabric canopies and awnings open on all sides which comply with all of the following: 3.1. Individual canopies shall have a maximum size of 700 square feet (65 m ²). 3.2. The aggregate area of multiple canopies placed side by side without a fire break clearance of 12 feet (3658 mm) shall not exceed 700 square feet (65 m ²) total. 3.3. A minimum clearance of 12 feet (3658 mm) to structures and other tents shall be provided.			
Tire-rebuilding plants. An operational permit is required for the operation and maintenance of a tire-rebuilding plant.			
Waste handling. An operational permit is required for the operation of wrecking yards, junk yards and waste material-handling facilities.			
Wood products. An operational permit is required to store chips, hogged material, lumber or plywood in excess of 200 cubic feet (6 m ³).			

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D. 107.3. Application for permit: Application for a permit shall be made on forms prescribed by the fire official.

E. 107.4. Issuance of permits: Before a permit is issued, the fire official shall make such inspections or tests as are necessary to assure that the use and activities for which application is made comply with the provisions of this code.

F. 107.5. Conditions of permit: A permit shall constitute permission to store or handle materials or to conduct processes in accordance with the SFPC, and shall not be construed as authority to omit or amend any of the provisions of this code. Permits shall remain in effect until revoked or for such period as specified on the permit. Permits are not transferable.

G. 107.5.1. Special conditions for the State Fire Marshal's Office: Permits issued by the State Fire Marshal's Office for the use of explosives in special operations or under emergency conditions shall be valid for one week from the date of issuance and shall not be renewable.

H. 107.6. State Fire Marshal: Permits will not be required by the State Fire Marshal except for the manufacturing, storage, handling, use, and sale of explosives in localities not enforcing the SFPC, and for the display of fireworks on state-owned property.

Exception: Such permits shall not be required for the storage of explosives or blasting agents by the Virginia Department of State Police provided notification to the State Fire Marshal is made annually by the Chief Arson Investigator listing all storage locations within areas where enforcement is provided by the State Fire Marshal's office.

I. 107.7. Annual: The enforcing agency may issue annual permits for the manufacturing, storage, handling, use, or sales of explosives to any state regulated public utility.

J. 107.8. Approved plans: Plans approved by the fire official are approved with the intent that they comply in all respects to this code. Any omissions or errors on the plans do not relieve the applicant of complying with all applicable requirements of this code.

K. 107.9. Posting: Issued permits shall be kept on the premises designated therein at all times and shall be readily available for inspection by the fire official.

L. 107.10. Suspension of permit: A permit shall become invalid if the authorized activity is not commenced within six months after issuance of the permit, or if the authorized activity is suspended or abandoned for a period of six months after the time of commencement.

M. 107.11. Revocation of permit: The fire official may revoke a permit or approval issued under the SFPC if conditions of the permit have been violated, or if the approved application, data or plans contain misrepresentation as to material fact.

N. 107.12. Local permit fees: Fees may be levied by the local governing body in order to defray the cost of enforcement and appeals under the SFPC.

O. 107.13. State explosives, blasting agents and fireworks permit fees: Fees for permits issued by the State Fire Marshal's office for the storage, use, sale or manufacture of explosives or blasting agents, and for the display of fireworks on state-owned property shall be as follows:

1. \$100 per year per magazine to store explosives and blasting agents.
2. \$150 per year per city or county to use explosives and blasting agents.
3. \$150 per year to sell explosives and blasting agents.
4. \$200 per year to manufacture explosives, blasting agents and fireworks.
5. ~~\$250~~ \$300 per day for fireworks, pyrotechnics or proximate audience displays conducted ~~indoor of in~~ any state-owned ~~buildings~~ building and ~~\$75~~ \$150 per day for each subsequent day.
6. ~~\$150~~ \$200 per day for fireworks, pyrotechnics or proximate audience displays conducted out-of-doors on any state-owned property and ~~\$75~~ \$150 per day for each subsequent day.
7. \$75 per event for the use of explosives in special operations or emergency conditions.

P. 107.14 State annual inspection permit fees. Annual fees for inspection permits issued by the State Fire Marshal's office for the inspection of buildings shall be as follows:

1. Nightclubs.
 - 1.1. \$350 for occupant load of 100 or less.
 - 1.2. \$450 for occupant load of 101 to 200.
 - 1.3. \$500 for occupant load of 201 to 300.
 - 1.4. \$500 plus \$50 for each 100 occupants where occupant loads exceed 300.
2. Private schools (kindergarten through 12th grade) and private college dormitories with or without assembly areas. If containing assembly areas, such assembly areas are not included in the computation of square footage.
 - 2.1. \$150 for 3500 square feet or less.
 - 2.2. \$200 for greater than 3500 square feet up to 7000 square feet.
 - 2.3. \$250 for greater than 7000 square feet up to 10,000 square feet.
 - 2.4. \$250 plus \$50 for each additional 3000 square feet where square footage exceeds 10,000.

3. Assembly areas that are part of private schools (kindergarten through 12th grade) or private college dormitories.

3.1. \$50 for 10,000 square feet or less provided the assembly area is within or attached to a school or dormitory building.

3.2. \$100 for greater than 10,000 square feet up to 25,000 square feet provided the assembly area is within or attached to a school or dormitory building, such as gymnasiums, auditoriums or cafeterias.

3.3. \$100 for up to 25,000 square feet provided the assembly area is in a separate or separate buildings such as gymnasiums, auditoriums or cafeterias.

3.4. \$150 for greater than 25,000 square feet for assembly areas within or attached to a school or dormitory building or in a separate or separate buildings such as gymnasiums, auditoriums or cafeterias.

4. Hospitals.

4.1. \$300 for 1 to 50 beds.

4.2. \$400 for 51 to 100 beds.

4.3. \$500 for 101 to 150 beds.

4.4. \$600 for 151 to 200 beds.

4.5. \$600 plus \$100 for each additional 100 beds where the number of beds exceeds 200.

Exception: Annual inspection permits for any building or groups of buildings on the same site may not exceed \$2500.

Q. 107.15. Fee schedule: The local governing body may establish a fee schedule. The schedule shall incorporate unit rates, which may be based on square footage, cubic footage, estimated cost of inspection or other appropriate criteria.

R. 107.16. Payment of fees: A permit shall not be issued until the designated fees have been paid.

Exception: The fire official may authorize delayed payment of fees.

13 VAC 5-51-91. Section 109.0. Inspection.

A. 109.1. Inspection: The fire official may inspect all structures and premises for the purposes of ascertaining and causing to be corrected any conditions liable to cause fire, contribute to the spread of fire, interfere with firefighting operations, endanger life, or any violations of the provisions or intent of the SFPC.

Exception: Single family dwellings and dwelling units in two family and multiple family dwellings and farm structures shall be exempt from routine inspections. This exemption shall not preclude the fire official from inspecting under § 27-98.2 of the Code of Virginia for hazardous conditions relating

to explosives, flammable and combustible conditions, and hazardous materials.

B. 109.1.1. Right to entry: The fire official may enter any structure or premises at any reasonable time to inspect subject to constitutional restrictions on unreasonable searches and seizures. If entry is refused or not obtained, the fire official may pursue recourse as provided by law.

Note: Specific authorization and procedures for inspections and issuing warrants are set out in §§ 27-98.1 through 27-98.5 of the Code of Virginia and shall be taken into consideration.

C. 109.1.2. Credentials: The fire official and technical assistants shall carry proper credentials of office when inspecting in the performance of their duties under the SFPC.

D. 109.2. Coordinated inspections: The fire official shall coordinate inspections and administrative orders with any other state and local agencies having related inspection authority, and shall coordinate those inspections required by the USBC for new construction when involving provisions of the amended IFC, so that the owners and occupants will not be subjected to numerous inspections or conflicting orders.

Note: The USBC requires the building official to coordinate such inspections with the fire official.

E. 109.3. Other inspections: ~~The~~ In accordance with § 36-139.3 of the Code of Virginia, the State Fire Marshal, upon presenting proper credentials, shall make annual inspections for hazards incident to fire in all (i) residential care facilities operated by any state agency; (ii) ~~adult care residences~~ assisted living facilities licensed or subject to licensure ~~under~~ pursuant to Chapter 9 18 (§ 63.1-172 63.2-1800 et seq.) of Title ~~63.1 63.2~~ of the Code of Virginia which are not inspected by a local fire marshal; (iii) student- residence facilities owned or operated by the public institutions of higher education in the Commonwealth; and (iv) public schools in the Commonwealth which are not inspected by a local fire marshal. In the event that any such facility or residence is found to be nonconforming to the SFPC, the State Fire Marshal or local fire marshal may petition any court of competent jurisdiction for the issuance of an injunction.

13 VAC 5-51-130. IFC Section 202.0. Definitions.

A. Add the following definitions:

Background clearance card: See Section 3301.0.

Blaster, restricted: See Section 3301.0.

Blaster, unrestricted: See Section 3301.0.

DHCD: The Virginia Department of Housing and Community Development.

Local government, local governing body or locality: The governing body of any county, city, or town, other political

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subdivision and state agency in this Commonwealth charged with the enforcement of the SFPC under state law.

Night club: Any building or portion thereof in which the main use is a place of public assembly that provides exhibition, performance or other forms or entertainment; serves alcoholic beverages; and provides music and space for dancing.

State Fire Marshal: The State Fire Marshal as provided for by § 36-139.2 of the Code of Virginia.

State Regulated Care Facility (SRCF): A building or part thereof occupied by persons in the care of others where program regulatory oversight is provided by the Virginia Department of Social Services; Virginia Department Mental Health, Mental Retardation and Substance Abuse Services; Virginia Department of Education or Virginia Department of Juvenile Justice (Groups R-2, R-3, R-4 and R-5).

Technical Assistant: Any person employed by or under an extended contract to a local enforcing agency for enforcing the SFPC. For the purposes of this definition, an extended contract shall be a contract with an aggregate term of 18 months or longer.

TRB: The Virginia State Building Code Technical Review Board.

USBC: The Virginia Uniform Statewide Building Code (13 VAC 5-63).

B. Add the following definition under the term "Occupancy Classification--Residential Group R":

R-5 Detached one and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories high with separate means of egress and their accessory structures. The terms "R-5" and "one and two-family dwelling" where used in this code shall be interchangeable.

C. Change the following definition to read:

~~Code official, fire official or~~ Fire code official: The officer or other designated authority charged with administration and enforcement of this code, or a duly authorized representative. For the purpose of this code, the ~~term~~ terms "code official;" and "fire official;" ~~or "fire code official"~~ shall have the same meaning as ~~used the term "fire code official" and, in addition, such official shall have the powers outlined in § 27-98.1 of the Code of Virginia.~~

13 VAC 5-51-132. IFC Chapter 4. Emergency Planning and Preparedness.

A. Add Section 401.1.1 to read:

401.1.1. State Regulated Care Facilities: when a state license is required by the Virginia Department of Social Services; Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services; Virginia Department of Education; or Virginia Department of Juvenile Justice to

operate, SRCF shall comply with this section and the provisions of Section 404.0.

B. Add item ~~12~~ 14 to Section 404.2 to read:

~~12.~~ 14. SRCF.

C. Add exception to Section 405.1 to read:

Exception: Emergency evacuation drills shall not be conducted in school buildings during periods of mandatory testing required by the Virginia Board of Education.

D. Add the following category to Table 405.2 to read:

Group or occupancy	Frequency	Participation
SRCF	Monthly	All occupants

E. Add Section 405.2.1 to read:

405.2.1. High-rise buildings. Fire exit drills shall be conducted annually by building staff personnel or the owner of the building in accordance with the fire safety plan and shall not affect other current occupants.

F. Add Section 408.1.1 to read:

408.1.1. Maintaining occupant load posting. Occupant load postings required by the building code are required to be maintained.

G. Change Section 408.2 to read:

408.2. Group A occupancies. Group A occupancies shall comply with applicable requirements of Sections 408.2.1 through 408.2.3 and 401 through 406.

H. Add Sections 408.2.3, 408.2.3.1 and 408.2.3.2 to read:

408.2.3. Night clubs. Night clubs shall comply with Sections 408.2.3.1 and 408.2.3.2.

408.2.3.1. Audible announcements. Audible announcements shall be made to the occupants no longer than 10 minutes prior to the start of the entertainment and at each intermission to notify the occupants of the location of the exits to be used in the event of a fire or other emergency.

408.2.3.2. Occupant load count. Upon request of the fire code official, the owner or operator, or both, will be required to keep a running count of the occupant load to provide to the fire code official during performance hours of operation, entertainment hours of operation, or both.

13 VAC 5-51-133.5. IFC Chapter 6. Building Services and Systems.

~~A. Change Section 603.5.2 to read:~~

~~603.5.2. Heating appliance installation and maintenance. Heating appliances shall be installed and maintained in accordance with the manufacturer's instructions, the International Building Code, the International Mechanical~~

~~Code, the International Fuel Gas Code and the ICC Electrical Code.~~

~~B.~~ Add a note to Section 603.7 to read:

Note: The fire code official may request a copy of the latest certificate of inspection from the Virginia Department of Labor and Industry for boilers and pressure vessels subject to such requirements. When the certificate is not available, the fire code official shall notify the Department of Labor and Industry to ensure that the required maintenance and testing is performed in accordance the Virginia Boiler and Pressure Vessel Regulations (16 VAC 25-50).

13 VAC 5-51-134. IFC Chapter 8. Interior Finish, Decorative Materials and Furnishings.

~~Change~~ Add exception 3 to Section ~~804.1.1~~ 806.1.1 to read:

~~804.1.1. Restricted occupancies. Natural cut trees shall be prohibited in Group A, E, I 1, I2, I 3, I 4, M, R 1, R 2 and R 4 occupancies.~~

~~Exceptions:~~

~~1. Trees located in areas protected by an approved automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2 shall not be prohibited in Groups A, E, M, R 1 and R 2.~~

~~2. Trees shall be permitted within dwelling units in Group R 2 occupancies.~~

3. Trees shall be permitted in places of worship in Group A occupancies.

13 VAC 5-51-135. IFC Chapter 9. Fire Protection Systems.

A. Change Section 901.4.2 to read:

901.4.2. Nonrequired fire protection systems. Nonrequired fire protection systems shall be maintained to function as originally installed. If any such systems are to be reduced in function or discontinued, approval shall be obtained from the building official in accordance with Section 103.8.1 of Part I of the USBC.

B. Delete Section 901.4.3.

C. Change Section 901.6 to read:

901.6. Inspection, testing and maintenance. To the extent that equipment, systems, devices, and safeguards, such as fire detection, alarm and extinguishing systems, which were provided and approved by the building official when constructed, shall be maintained in an operative condition at all times. And where such equipment, systems, devices, and safeguards are found not to be in an operative condition, the fire official shall order all such equipment to be rendered safe in accordance with the USBC.

~~Exception:~~ D. Add Section 901.10 to read:

901.10. Defective equipment. When the fire official determines through investigation or testing or reports by a nationally recognized testing agency that specific, required water sprinkler or water-spray extinguishing equipment has been identified as failing to perform or operate through not less than 30 randomly selected sprinkler heads at four or more building sites anywhere in the nation, the fire official shall order all such equipment to be rendered safe.

~~D.~~ E. Change the following definition in Section 902 to read:

Automatic fire-extinguishing system. An approved system of devices and equipment which automatically detects a fire and discharges an approved fire-extinguishing agent onto or in the area of a fire. Such system shall include an automatic sprinkler system, unless otherwise expressly stated.

~~E.~~ F. Change item 1 in Section 906.1 to read:

1. In Group A, B, E, F, H, I, M, R-1, R-4 and S occupancies.

~~F.~~ G. Add a note to Section 906.1 to read:

Note: In existing buildings, whether fire extinguishers are needed is determined by the USBC or other code in effect when such buildings were constructed.

~~G.~~ Change Section ~~906.2~~ to read:

~~906.2. General requirements. Fire extinguishers shall be selected, installed and maintained in accordance with this section and NFPA 10.~~

~~Exceptions:~~

~~1. The travel distance to reach an extinguisher shall not apply to the spectator seating portions of Group A 5 occupancies.~~

~~2. The use of a supervised, listed electronic monitoring device shall be allowed in lieu of 30 day interval inspections, when approved.~~

H. Change Section 907.20.2 to read:

907.20.2. Testing. Testing shall be performed in accordance with the schedules in Chapter 7 of NFPA 72 or more frequently where required by the fire code official. Where automatic testing is performed at least weekly by a remotely monitored fire alarm control unit specifically listed for the application, the manual testing frequency shall be permitted to be extended to annual. In Group R-1 occupancies, battery-powered single station smoke detectors shall be tested and inspected at one-month intervals.

Exception: Devices or equipment that are inaccessible for safety considerations shall be tested during scheduled shutdowns where approved by the fire code official, but not less than every 18 months.

13 VAC 5-51-145. IFC Chapter 27. Hazardous Materials-General Provisions.

~~A.~~ Add exception 10 to Section ~~2701.1~~ to read:

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~~10. The use of wall mounted dispensers containing nonaerosol alcohol-based hand rubs classified as Class I or Class II liquids when in accordance with Section 3405.5.~~

~~B.~~ Change Section 2701.5.1 to read:

2701.5.1. Hazardous Materials Management Plan. Where required by the fire code official, each application for a permit shall include a Hazardous Materials Management Plan (HMMP). The HMMP shall be maintained onsite for use by emergency responders, and shall be updated not less than annually. The HMMP shall include a facility site plan designating the following:

1. Storage and use areas.
2. Maximum amount of each material stored or used in each area.
3. Range of container sizes.
4. Locations of emergency isolation and mitigation valves and devices.
5. Product conveying piping containing liquids or gases, other than utility-owned fuel gas lines and low-pressure fuel gas lines.
6. On and off positions of valves for valves that are of the self-indicating type.
7. Storage plan showing the intended storage arrangement, including the location and dimensions of aisles.
8. The location and type of emergency equipment. The plans shall be legible and drawn approximately to scale. Separate distribution systems are allowed to be shown on separate pages.

~~C.~~ B. Change Section 2701.5.2 to read:

2701.5.2. Hazardous Materials Inventory Statement (HMIS). Where required by the fire code official, an application for a permit shall include an HMIS, such as SARA (Superfund Amendments and Reauthorization Act of 1986) Title III, Tier II Report, or other approved statement. The HMIS shall be maintained onsite or readily available through another means where approved by the fire code official for use by temporary responders, and shall be updated not less than annually. The HMIS shall include the following information:

1. Manufacturer's name.
2. Chemical name, trade names, hazardous ingredients.
3. Hazard classification.
4. MSDS or equivalent.
5. United Nations (UN), North America (NA) or the Chemical Abstract Service (CAS) identification number.
6. Maximum quantity stored or used on-site at one time.

7. Storage conditions related to the storage type, temperature and pressure.

~~D.~~ C. Add Sections 2701.5.3, 2701.5.3.1 and 2701.5.3.2 to read:

2701.5.3. Repository container. When a HMMP or HMIS is required, the owner or operator shall provide a repository container (lock box) or other approved means for the storage of items required in Sections 2701.5.1 and 2701.5.2 so as to be readily available to emergency response personnel.

2701.5.3.1. Location and identification. The repository container (lock box) shall be located, installed and identified in an approved manner.

2701.5.3.2. Keying. All repository containers (lock boxes) shall be keyed as required by the fire code official.

~~E.~~ D. Change Section 2703.3.1.4 to read:

2703.3.1.4. Responsibility for cleanup. The person, firm or corporation responsible for an unauthorized discharge shall institute and complete all actions necessary to remedy the effects of such unauthorized discharge, whether sudden or gradual, at no cost to the jurisdiction. The fire code official may require records and receipts to verify cleanup and proper disposal of unauthorized discharges. When deemed necessary by the fire code official, cleanup may be initiated by the fire department or by an authorized individual or firm. Costs associated with such cleanup shall be borne by the owner, operator or other person responsible for the unauthorized discharge.

13 VAC 5-51-150. IFC Chapter 33. Explosives and Fireworks.

A. Change exception 4 in Section 3301.1 to read:

4. The possession, storage, and use of not more than 15 pounds (6.81 kg) of commercially manufactured sporting black powder, 20 pounds (9 kg) of smokeless powder and any amount of small arms primers for hand loading of small arms ammunition for personal consumption.

B. Add exceptions 10, 11 and 12 to Section 3301.1 to read:

10. The storage, handling, or use of explosives or blasting agents pursuant to the provisions of Title 45.1 of the Code of Virginia.

11. The display of small arms primers in Group M when in the original manufacturer's packaging.

12. The possession, storage and use of not more than 50 pounds (23 kg) of commercially manufactured sporting black powder, 100 pounds (45 kg) of smokeless powder, and small arms primers for hand loading of small arms ammunition for personal consumption in Group R-3 or R-5, or 200 pounds (91 kg) of smokeless powder when stored in the manufacturer's original containers in detached Group U

structures at least 10 feet (3048 mm) from inhabited buildings and are accessory to Group R-3 or R-5.

C. Change exception 4 in Section 3301.1.3 to read:

4. The possession, storage, sale, handling and use of permissible fireworks where allowed by applicable local or state laws, ordinances and regulations provided such fireworks comply with CPSC 16 CFR, Parts 1500-1507, and DOTn 49 CFR, Parts 100-178, for consumer fireworks.

D. Add exception 5 to Section 3301.1.3 to read:

5. The sale or use of materials or equipment when such materials or equipment is used or to be used by any person for signaling or other emergency use in the operation of any boat, railroad train or other vehicle for the transportation of persons or property.

E. Change entire Section 3301.2 to read:

3301.2. Permit required. Permits shall be required as set forth in Section 107.2 and regulated in accordance with this section. The manufacture, storage, possession, sale and use of fireworks or explosives shall not take place without first applying for and obtaining a permit.

3301.2.1. Residential uses. No person shall keep or store, nor shall any permit be issued to keep, possess or store, any fireworks or explosives at any place of habitation, or within 100 feet (30,480 mm) thereof.

Exception: Storage of smokeless propellant, black powder, and small arms primers for personal use and not for resale in accordance with Section 3306.

3301.2.2. Sale and retail display. Except for the Armed Forces of the United States, Coast Guard, National Guard, federal, state and local regulatory, law enforcement and fire agencies acting in their official capacities, explosives shall not be sold, given, delivered or transferred to any person or company not in possession of a valid permit. The holder of a permit to sell explosives shall make a record of all transactions involving explosives in conformance with Section 3303.2 and include the signature of any receiver of the explosives. No person shall construct a retail display nor offer for sale explosives, explosive materials, or fireworks upon highways, sidewalks, public property, or in assembly or educational occupancies.

3301.2.3. Permit restrictions. The fire official is authorized to limit the quantity of explosives, explosive materials, or fireworks permitted at a given location. No person, possessing a permit for storage of explosives at any place, shall keep or store an amount greater than authorized in such permit. Only the kind of explosive specified in such a permit shall be kept or stored.

3301.2.3.1. Permit applicants. The fire official shall not issue a permit to manufacture, store, handle, use or sell explosives or blasting agents to any individual applicant who

is not certified by the DHCD as a blaster in accordance with Section 3301.4.1, or who is not in the possession of a background clearance card or to designated persons representing an applicant that is not an individual and who is not in possession of a background clearance card issued in accordance with Section 3301.2.3.1.1. The DHCD shall process all applications for a background clearance card for compliance with § 27-97.2 of the Code of Virginia and will be the sole provider of background clearance cards.

3301.2.3.1.1. Background clearance card: A background clearance card may be issued upon completion of the following requirements:

1. Any firm or company manufacturing, storing, using or selling explosives in the Commonwealth shall provide the name of a designated person or persons who will be a representative of the company and be responsible for (i) ensuring compliance with state law and regulations relating to blasting agents and explosives and (ii) applying for permits from the fire official.

2. Using a form provided by the DHCD, all individual applicants and all designated persons representing an applicant that is not an individual, shall submit to a background investigation, to include a national criminal history record check, for a permit to manufacture, store, handle, use or sell explosives, and for any applicant for certification as a blaster.

3. Each such applicant shall submit fingerprints and provide personal descriptive information to the DHCD to be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining a national criminal history record check regarding such applicant.

3301.2.3.1.2. Issuance of a background clearance card: The issuance of a background clearance card shall be denied if the applicant or designated person representing an applicant has been convicted of any felony, whether such conviction occurred under the laws of the Commonwealth, or any other state, the District of Columbia, the United States or any territory thereof, unless his civil rights have been restored by the Governor or other appropriate authority.

3301.2.3.1.3. Fee for background clearance card: The fee for obtaining or renewing a background clearance card from DHCD shall be \$150 plus any additional fees charged by other agencies for fingerprinting and for obtaining a national criminal history record check through the Central Criminal Records Exchange to the Federal Bureau of Investigation.

3301.2.3.1.4. Revocation of a background clearance card: After issuance of a background clearance card, subsequent conviction of a felony will be grounds for immediate revocation of a background clearance card, whether such conviction occurred under the laws of the Commonwealth, or any other state, the District of Columbia, the United States or

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any territory thereof. The card shall be returned to the DHCD immediately. An individual may reapply for his background clearance card if his civil rights have been restored by the Governor or other appropriate authority.

3301.2.4. Financial responsibility. Before a permit is issued, as required by Section 3301.2, the applicant shall file with the jurisdiction a corporate surety bond in the principal sum of \$500,000 or a public liability insurance policy for the same amount, for the purpose of the payment of all damages to persons or property which arise from, or are caused by, the conduct of any act authorized by the permit upon which any judicial judgment results. The legal department of the jurisdiction may specify a greater amount when conditions at the location of use indicate a greater amount is required. Government entities shall be exempt from this bond requirement.

3301.2.4.1. Blasting. Before approval to do blasting is issued, the applicant for approval shall file a bond or submit a certificate of insurance in such form, amount, and coverage as determined by the legal department of the jurisdiction to be adequate in each case to indemnify the jurisdiction against any and all damages arising from permitted blasting but in no case shall the value of the coverage be less than \$500,000.

Exception: Filing a bond or submitting a certificate of liability insurance is not required for blasting on real estate parcels of five or more acres conforming to the definition of "real estate devoted to agricultural use" or "real estate devoted to horticultural use" in § 58.1-3230 of the Code of Virginia and conducted by the owner of such real estate.

3301.2.4.2. Fireworks display. The permit holder shall furnish a bond or certificate of insurance in an amount deemed adequate by the legal department of the jurisdiction for the payment of all potential damages to a person or persons or to property by reason of the permitted display, and arising from any acts of the permit holder, the agent, employees or subcontractors.

F. Change entire Section 3301.4 to read:

3301.4. Qualifications. Persons in charge of magazines, blasting, fireworks display, or pyrotechnic special effect operations shall not be under the influence of alcohol or drugs which impair sensory or motor skills, shall be at least 21 years of age and possess knowledge of all safety precautions related to the storage, handling or use of explosives, explosive materials or fireworks.

3301.4.1. Certification of blasters. Certificates as a restricted or unrestricted blaster will be issued upon proof of successful completion of an examination approved by the DHCD and a background investigation for compliance with § 27-97.2 of the Code of Virginia. The applicant for certification shall submit proof to the DHCD of the following experience:

1. For certification as a restricted blaster, at least one year under direct supervision by a certified unrestricted blaster, certified restricted blaster or other person(s) approved by the DHCD.

2. For certification as an unrestricted blaster, at least one year under direct supervision by a certified unrestricted blaster or other person or persons approved by the DHCD.

The DHCD shall process all certification applicants for compliance with § 27-97.2 of the Code of Virginia and will be the sole provider of blaster certifications.

Exception: The owner of real estate parcels of five or more acres conforming to the definition of "real estate devoted to agricultural use" or "real estate devoted to horticultural use" in § 58.1-3230 of the Code of Virginia when blasting on such real estate.

3301.4.2. Certification issuance. The issuance of a certification as a blaster shall be denied if the applicant has been convicted of any felony, whether such conviction occurred under the laws of the Commonwealth, or any other state, the District of Columbia, the United States or any territory thereof, unless his civil rights have been restored by the Governor or other appropriate authority.

3301.4.3. Fee for certification. The fee for obtaining or renewing a blaster certificate from DHCD shall be \$150 plus any additional fees charged by other agencies for fingerprinting and for obtaining a national criminal history record check through the Central Criminal Records Exchange to the Federal Bureau of Investigation.

3301.4.4. Revocation of a blaster certification. After issuance of a blaster certification, subsequent conviction of a felony will be grounds for immediate revocation of a blaster certification, whether such conviction occurred under the laws of the Commonwealth, or any other state, the District of Columbia, the United States or any territory thereof. The certification shall be returned to DHCD immediately. An individual may subsequently reapply for his blaster certification if his civil rights have been restored by the Governor or other appropriate authority.

3301.4.5. Expiration and renewal of a blaster certification. A certificate for an unrestricted or restricted blaster shall be valid for three years from the date of issuance. A background clearance card shall be valid for three years from the date of issuance. Renewal of the unrestricted blaster certificate will be issued upon proof of at least 16 hours of continued training or education in the use of explosives within three consecutive years and a background investigation for compliance with § 27-97.2 of the Code of Virginia. Renewal of the restricted blaster certificate will be issued upon proof of at least eight hours of continued training or education in the use of explosives within three consecutive years and a background investigation for compliance with § 27-97.2 of the Code of Virginia. The continued training or education required for

renewal of a blaster certificate shall be obtained during the three years immediately prior to the certificate's published expiration date. Failure to renew a blaster certificate in accordance with this section shall cause an individual to obtain another blaster certificate upon compliance with Section 3301.4.1 to continue engaging in the unsupervised use of explosives.

G. Change Section 3301.7 to read:

3301.7. Seizure. The fire official is authorized to remove or cause to be removed or disposed of in an approved manner, at the expense of the owner, fireworks offered or exposed for sale, stored, possessed or used in violation of this chapter.

H. Add the following definitions to Section 3302.1 to read:

Background clearance card. An identification card issued to an individual who is not a certified blaster and is representing himself or acting as a representative of a company, corporation, firm or other entity, solely for the purpose of submitting an application to the fire official for a permit to manufacture, use, handle, store, or sell explosive materials.

Blaster, restricted. Any person engaging in the use of explosives or blasting agents utilizing five pounds (2.25 kg) or less per blasting operation and using instantaneous detonators.

Blaster, unrestricted. Any person engaging in the use of explosives or blasting agents without limit to the amount of explosives or blasting agents or type of detonator.

Permissible fireworks. Any sparklers, fountains, Pharaoh's serpents, caps for pistols, or pinwheels commonly known as whirligigs or spinning jennies.

I. Change the following definitions in Section 3302.1 to read:

Fireworks. Any firecracker, torpedo, skyrocket, or other substance or object, of whatever form or construction, that contains any explosive or inflammable compound or substance, and is intended, or commonly known, as fireworks and that explodes, rises into the air or travels laterally, or fires projectiles into the air. Fireworks shall not include automobile flares, paper caps containing not more than an average of 0.25 grain (16 mg) of explosive content per cap or toy pistols, toy canes, toy guns or other devices utilizing such caps and items commonly known as party poppers, pop rocks and snap-n-pops. Fireworks may be further delineated and referred to as:

Fireworks, 1.4G. (Formerly known as Class C, Common Fireworks.) Small fireworks devices containing restricted amounts of pyrotechnic composition designed primarily to produce visible or audible effects by combustion. Such 1.4G fireworks that comply with the construction, chemical composition, and labeling regulations of the DOTn for Fireworks, UN 0336, and the U.S. Consumer Product Safety

Commission as set forth in CPSC 16 CFR: Parts 1500 and 1507, are not explosive materials for the purpose of this code.

Fireworks, 1.3G. (Formerly Class B, Special Fireworks.) Large fireworks devices, which are explosive materials, intended for use in fireworks displays and designed to produce audible or visible effects by combustion, deflagration, or detonation. Such 1.3G fireworks include, but are not limited to, firecrackers containing more than 130 milligrams (2 grains) of explosive composition, aerial shells containing more than 40 grams of pyrotechnic composition, and other display pieces that exceed the limits for classification as 1.4G fireworks. Such 1.3G fireworks are also described as Fireworks, UN0335 by the DOTn.

Smokeless propellants. Solid propellants, commonly referred to as smokeless powders or any propellant classified by DOTn as a smokeless propellant in accordance with "NA3178, Smokeless Powder for Small Arms," used in small arms ammunition, firearms, cannons, rockets, propellant-actuated devices, and similar articles.

J. Change Section 3305.1 to read:

3305.1. General. The manufacture, assembly and testing of explosives, ammunition, blasting agents and fireworks shall comply with the requirements of this section, Title 59.1, Chapter 11 of the Code of Virginia, and NFPA 495 or NFPA 1124.

Exceptions:

1. The hand loading of small arms ammunition prepared for personal use and not offered for resale.
2. The mixing and loading of blasting agents at blasting sites in accordance with NFPA 495.
3. The use of binary explosives or phosphoric materials in blasting or pyrotechnic special effects applications in accordance with NFPA 495 or NFPA 1126.

K. Add Section 3305.1.1 to read:

3305.1.1. Permits. Permits for the manufacture, assembly and testing of explosives, ammunition, blasting agents and fireworks shall be required as set forth in Section 107.2 and regulated in accordance with this section. A permit to manufacture any explosive material in any quantity shall be prohibited unless such manufacture is authorized by a federal license and conducted in accordance with recognized safety practices.

L. Change Section 3306.4 to read:

3306.4. Storage in residences. Propellants for personal use in quantities not exceeding 50 pounds (23 kg) of black powder or 100 pounds (45 kg) of smokeless powder shall be stored in original containers in occupancies limited to Group R-3 and R-5, or 200 pounds (91 kg) of smokeless powder when stored in the manufacturer's original containers in

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detached Group U structures that are at least 10 feet from inhabited buildings and are accessory to Group R-3 or R-5. In other than Group R-3 or R-5, smokeless powder in quantities exceeding 20 pounds (9 kg) but not exceeding 50 pounds (23 kg) shall be kept in a wooden box or cabinet having walls of at least one inch (25 mm) nominal thickness or equivalent.

M. Delete Sections 3306.4.1 and 3306.4.2.

N. Change Section 3306.5.1.1 to read:

3306.5.1.1. Smokeless propellant. No more than 100 pounds (45 kg) of smokeless propellants, in containers of 8 pounds (3.6 kg) or less capacity, shall be displayed in Group M occupancies.

O. Delete Section 3306.5.1.3.

P. Change Section 3306.5.2.1 to read:

3306.5.2.1 Smokeless propellant. Commercial stocks of smokeless propellants shall be stored as follows:

1. Quantities exceeding 20 pounds (9 kg), but not exceeding 100 pounds (45 kg) shall be stored in portable wooden boxes having walls of at least one inch (25 mm) nominal thickness or equivalent.
2. Quantities exceeding 100 pounds (45 kg), but not exceeding 800 pounds (363 kg), shall be stored in storage cabinets having walls at least one inch (25 mm) nominal thickness or equivalent. Not more than 400 pounds (182 kg) shall be stored in any one cabinet, and cabinets shall be separated by a distance of at least 25 feet (7620 mm) or by a fire partition having a fire-resistance rating of at least one hour.
3. Storage of quantities exceeding 800 pounds (363 kg), but not exceeding 5,000 pounds (2270 kg) in a building shall comply with all of the following:
 - 3.1. The storage is inaccessible to unauthorized personnel.
 - 3.2. Smokeless propellant shall be stored in nonportable storage cabinets having wood walls at least one inch (25 mm) nominal thickness or equivalent and having shelves with no more than three feet (914 mm) of vertical separation between shelves.
 - 3.3. No more than 400 pounds (182 kg) is stored in any one cabinet.
 - 3.4. Cabinets shall be located against walls with at least 40 feet (12 192 mm) between cabinets. The minimum required separation between cabinets may be reduced to 20 feet (6096 mm) provided that barricades twice the height of the cabinets are attached to the wall, midway between each cabinet. The barricades must extend a minimum of 10 feet (3048 mm) outward, be firmly attached to the wall, and be constructed of steel not less

than 0.25 inch thick (6.4 mm), two-inch (51 mm) nominal thickness wood, brick, or concrete block.

3.5. Smokeless propellant shall be separated from materials classified as combustible liquids, flammable liquids, flammable solids, or oxidizing materials by a distance of 25 feet (7620 mm) or by a fire partition having a fire-resistance rating of one hour.

3.6. The building shall be equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1.

4. Smokeless propellants not stored according to Item 1, 2, or 3 above shall be stored in a Type 2 or 4 magazine in accordance with Section 3304 and NFPA 495.

Q. ~~Change Section 3306.5.2.3 to read:~~

~~3306.5.2.3 Small arms primers. Commercial stocks of small arms primers shall be stored as follows:~~

- ~~1. Quantities not to exceed 750,000 small arms primers stored in a building shall be arranged such that not more than 100,000 small arms primers are stored in any one pile and piles are at least 15 feet (4572 mm) apart.~~
- ~~2. Quantities exceeding 750,000 small arms primers stored in a building shall comply with all of the following:
 - ~~2.1. The warehouse or storage building shall not be accessible to unauthorized personnel.~~
 - ~~2.2. Small arms primers shall be stored in cabinets. No more than 200,000 small arms primers shall be stored in any one cabinet.~~
 - ~~2.3. Shelves in cabinets shall have vertical separation of at least two feet (610 mm).~~
 - ~~2.4. Cabinets shall be located against walls of the warehouse or storage room with at least 40 feet (12 192 mm) between cabinets. The minimum required separation between cabinets may be reduced to 20 feet (6096 mm) provided that barricades twice the height of the cabinets are attached to the wall, midway between each cabinet. The barricades shall be firmly attached to the wall, and shall be constructed of steel not less than 0.25 inch thick (6.4 mm), two-inch (51 mm) nominal thickness wood, brick, or concrete block.~~
 - ~~2.5. Small arms primers shall be separated from materials classified as combustible liquids, flammable liquids, flammable solids, or oxidizing materials by a distance of 25 feet (7620 mm) or by a fire partition having a fire resistance rating of one hour.~~
 - ~~2.6. The building shall be protected throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1.~~~~

~~3. Small arms primers not stored in accordance with Item 1 or 2 of this section shall be stored in a magazine meeting the requirements of Section 3304 and NFPA 495.~~

~~R.~~ Change Section 3307.1 to read:

3307.1. General. Blasting operations shall be conducted only by persons certified by the DHCD as a restricted or unrestricted blaster or shall be supervised on-site by a person properly certified by the DHCD as restricted or unrestricted blaster.

~~S.~~ R. Add Section 3307.16 to read:

3307.16. Blast records. A record of each blast shall be kept and retained for at least five years and shall be available for inspection by the code official. The record shall contain the following minimum data:

1. Name of contractor;
2. Location and time of blast;
3. Name of certified blaster in charge;
4. Type of material blasted;
5. Number of holes bored and spacing;
6. Diameter and depth of holes;
7. Type and amount of explosives;
8. Amount of explosive per delay of 8 milliseconds or greater;
9. Method of firing and type of circuit;
10. Direction and distance in feet to nearest dwelling, public building, school, church, commercial or institutional building;
11. Weather conditions;
12. Whether or not mats or other precautions were used;
13. Type of detonator and delay period;
14. Type and height of stemming; and
15. Seismograph record when utilized.

Exception: Subdivisions 8 and 13 of this section are not applicable to restricted blasters.

~~T.~~ S. Add exception to Section 3308.2 to read:

Exception: Permits are not required for the supervised use or display of permissible fireworks on private property with the consent of the owner of such property.

~~U.~~ T. Delete Section 3308.11.

13 VAC 5-51-152. IFC Chapter 34. Flammable and Combustible Liquids. (Repealed.)

~~A.~~ Add the following definition to Section 3402.1 to read:

~~Alcohol based hand rub. An alcohol containing preparation designed for application to the hands for reducing the number of viable microorganisms on the hands and containing ethanol or isopropanol in an amount not exceeding 70% by volume.~~

~~B.~~ Add Section 3405.5 to read:

~~3405.5. Alcohol based hand rubs classified as Class I or Class II liquids. The use of wall mounted dispensers containing nonaerosol, alcohol based hand rubs classified as Class I or Class II liquids shall be in accordance with the following:~~

- ~~1. When located in a corridor, the minimum corridor width shall be 72 inches (1829 mm).~~
- ~~2. The maximum capacity of each dispenser shall be 41 ounces (1.2 L).~~
- ~~3. The minimum separation between dispensers shall be 48 inches (1219 mm).~~
- ~~4. The dispensers shall not be installed directly adjacent to, directly above or below an electrical receptacle, switch, appliance, device or other ignition source. The wall space between the dispenser and the floor shall remain clear and unobstructed.~~
- ~~5. Dispensers shall be mounted so that the bottom of the dispenser is a minimum of 42 inches (1067 mm) and a maximum of 48 inches (1219 mm) above finished floor.~~
- ~~6. Dispensers shall not release their contents except when the dispenser is manually activated.~~
- ~~7. Dispensers installed in occupancies with carpeted flooring shall only be allowed in smoke compartments or fire areas equipped throughout with an approved automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2.~~
- ~~8. Projections into a corridor shall be in accordance with Section 1003.3.3.~~
- ~~9. Storage of alcohol based hand rubs shall be in accordance with the applicable provisions of Section 3404.~~

13 VAC 5-51-154. IFC Chapter 38. Liquefied Petroleum Gases.

~~A.~~ Change Section 3801.2 to read:

~~3801.2. Permits. Permits shall be required as set forth in Section 107.2. Distributors shall not fill an LP-gas container for which a permit is required unless a permit for installation has been issued for that location by the fire code official, except when the container is for temporary use on construction sites.~~

~~B.~~ Change Section 3806.2 to read:

~~3806.2. Overfilling. Liquefied petroleum gas containers shall not be filled or maintained with LP-gas in excess of either the volume determined using the fixed liquid level gauge~~

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~~installed by the manufacturer, or the weight determined by the required percentage of the water capacity marked on the container. Portable containers shall not be refilled unless equipped with an overfilling prevention device (OPD) in accordance with NFPA 58.~~

~~C.~~ B. Add Section 3806.4 to read:

3806.4. DOT cylinders filled on site. DOT cylinders in stationary service that are filled on site and therefore are not under the jurisdiction of DOT either shall be requalified in accordance with DOT requirements or shall be visually inspected within 12 years of the date of manufacture or within five years from [the effective date of this code], whichever is later, and within every five years thereafter, in accordance with the following:

1. Any cylinder that fails one or more of the criteria in Item 3 shall not be refilled or continued in service until the condition is corrected.
2. Personnel shall be trained and qualified to perform inspections.
3. Visual inspection shall be performed in accordance with the following:
 - 3.1. The cylinder is checked for exposure to fire, dents, cuts, digs, gouges, and corrosion according to CGA C-6, Standards for Visual Inspection of Steel Compressed Gas Cylinders, except that paragraph 4.2.1(1) of that standard (which requires tare weight certification), shall not be part of the required inspection criteria.
 - 3.2. The cylinder protective collar (where utilized) and the foot ring are intact and are firmly attached.
 - 3.3. The cylinder is painted or coated to retard corrosion.
 - 3.4. The cylinder pressure relief valve indicates no visible damage, corrosion of operating components, or obstructions.
 - 3.5. There is no leakage from the cylinder or its appurtenances that is detectable without the use of instruments.
 - 3.6. The cylinder is installed on a firm foundation and is not in contact with the soil.
 - 3.7. A cylinder that passed the visual inspection shall be marked with the month and year of the examination followed by the letter "E" (example: 10-01E, indicating requalification in October 2001 by the external inspection method).
 - 3.8. The results of the visual inspection shall be documented, and a record of the inspection shall be retained for a five-year period.

Exception: Any inspection procedure outlined in Items 3.1 through 3.8 that would require a cylinder be moved in such a

manner that disconnection from the piping system would be necessary shall be omitted, provided the other inspection results do not indicate further inspection is warranted.

~~D.~~ Change Section 3809.12 to read:

~~3809.12. Location of storage outside of buildings. Storage outside of buildings, for containers awaiting use, resale or part of a cylinder exchange program shall be located not less than 10 feet (3048 mm) from openings into buildings, 20 feet (6096 mm) from any motor vehicle fuel dispenser and 10 feet (3048 mm) from any combustible material and in accordance with Table 3809.12.~~

~~E.~~ Change Table 3809.12 to read:

Table 3809.12 Location of Containers Awaiting Use or Resale Stored Outside of Buildings	
Quantity of LP Gas Stored	Distances to a Building or Group of Buildings, Public Way or Lot Line of Property That Can Be Built Upon (feet)
2500 pounds or less	0
2,501 to 6,000 pounds	10 ^a
6,001 to 10,000 pounds	20
Over 10,000 pounds	25

For SI: 1 foot = 304.8 mm, 1 pound = 0.454 kg.

^aContainers are allowed to be located a lesser distance.

~~F.~~ Change Section 3809.14 to read:

~~3809.14. Separation from means of egress for permanent containers located outside of buildings. Permanent containers located outside of buildings shall not be located within 10 feet (3048 mm) of any exit access doors, exits, stairways or in areas normally used, or intended to be used, as a means of egress.~~

~~G.~~ C. Change Section 3811.2 to read:

3811.2. Unattended parking. The unattended parking of LP-gas tank vehicles shall be in accordance with Sections 3811.2.1 and 3811.2.2.

Exception: The unattended outdoor parking of LP-gas tank vehicles may also be in accordance with Section ~~6-6-2-1~~ 9.7.2 of NFPA 58.

DOCUMENTS INCORPORATED BY REFERENCE

The International Fire Code – ~~2003~~ 2006 Edition, International Code Council, Inc., 5203 Leesburg Pike, Suite 708 600, Falls Church, VA 22041-3401.

~~NFPA 10 – 98, Standard for Portable Fire Extinguishers, 1998 Edition, National Fire Protection Association, Batterymarch Park, Quincy, MA 02269.~~

~~NFPA 58 – 01 NFPA 58 – 04~~, Liquefied Petroleum Gas Code, ~~2004~~ 2004 Edition, National Fire Protection Association, Batterymarch Park, Quincy, MA 02269.

CGA C-6-2001, Standards for Visual Inspection of Steel Compressed Gas Cylinders, Eighth Edition, Compressed Gas Association, 1725 Jefferson Davis Highway, 5th Floor, Arlington, VA 22202-4102.

VA.R. Doc. No. R07-124; Filed May 22, 2007, 2:16 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Housing and Community Development is claiming an exemption from the Administrative Act pursuant to § 2.2-4006 A 13 of the Code of Virginia, which excludes regulations adopted by the Board of Housing and Community Development pursuant to the Statewide Fire Prevention Code (§ 27-94 et seq. of the Code of Virginia) and the Uniform Statewide Building Code (§ 36-97 et seq. of the Code of Virginia), provided the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007 B, (ii) publishes the proposed regulation and provides an opportunity for oral and written comments as provided in § 2.2-4007 F, and (iii) conducts at least one public hearing as provided in §§ 2.2-4009 and 36-100 of the Code of Virginia prior to the publishing of the proposed regulations.

* * *

Due to its length, the following regulatory action filed by the Board of Housing and Community Development (13 VAC 5-63) is not being published. However, in accordance with § 2.2-4031 of the Code of Virginia, the summary is being published in lieu of the full text. The full text of the regulation is available for public inspection at the office of the Registrar of Regulations and at the Board of Housing and Community Development (see contact information below) and is accessible on the Virginia Register of Regulations website at <http://register.state.va.us/vol23/Welcome.htm>.

Title of Regulation: 13 VAC 5-63. **Virginia Uniform Statewide Building Code (amending 13 VAC 5-63-10, 13 VAC 5-63-20, 13 VAC 5-63-30, 13 VAC 5-63-40, 13 VAC 5-63-120, 13 VAC 5-63-130, 13 VAC 5-63-150, 13 VAC 5-63-190, 13 VAC 5-63-210, 13 VAC 5-63-220, 13 VAC 5-63-230, 13 VAC 5-63-240, 13 VAC 5-63-245, 13 VAC 5-63-250, 13 VAC 5-63-260, 13 VAC 5-63-270, 13 VAC 5-63-280, 13 VAC 5-63-310, 13 VAC 5-63-320, 13 VAC 5-63-330, 13 VAC 5-63-360, 13 VAC 5-63-400, 13 VAC 5-63-430, 13 VAC 5-63-434, 13 VAC 5-63-436, 13 VAC 5-63-437, 13 VAC 5-63-438, 13 VAC 5-63-440, 13 VAC 5-63-450, 13 VAC 5-63-470, 13 VAC 5-63-480, 13 VAC 5-63-500, 13 VAC 5-63-520; adding 13 VAC 5-63-**

335; repealing 13 VAC 5-63-225, 13 VAC 5-63-265, 13 VAC 5-63-432, 13 VAC 5-63-550).

Statutory Authority: § 36-98 of the Code of Virginia.

Public Hearing Date: July 24, 2007 - 10 a.m.

Public comments may be submitted until 5 p.m. on August 11, 2007.

(See Calendar of Events section for additional information)

Agency Contact: Vernon Hodge, Technical Services Manager, Board of Housing and Community Development, 501 North Second Street, Richmond, VA 23219, telephone (804) 371-7174, FAX (804) 371-7092, or email vernon.hodge@dhcd.virginia.gov.

Summary:

The amendments to the regulation are categorized into three groups. The first group is amendments necessary to incorporate the newest editions of the nationally recognized model codes and standards into the regulation. These changes are located in 13 VAC 5-63-10, 13 VAC 5-63-210 G, 13 VAC 5-63-400 and 13 VAC 5-63-450. The newest editions of the model codes are the 2006 editions.

The second group of amendments is general clarifications and correlation changes. These amendments are to more closely match legislative language, to coordinate the application of the regulations with the other building and fire regulations of the board, and to remove provisions in the existing USBC that have been successfully added to the latest model codes through the code changes process of the model code organization, thus eliminating the need for those changes in the USBC. This group of changes is located in 13 VAC 5-63-20, 13 VAC 5-63-30, 13 VAC 5-63-40, 13 VAC 5-63-210, 13 VAC 5-63-220, 13 VAC 6-63-240, 13 VAC 5-63-245, 13 VAC 5-63-250, 13 VAC 5-63-265, 13 VAC 5-63-270, 13 VAC 5-63-280, 13 VAC 5-63-310, 13 VAC 5-63-320, 13 VAC 5-63-330, 13 VAC 5-63-360, 13 VAC 5-63-400, 13 VAC 5-63-430, 13 VAC 5-63-432, 13 VAC 5-63-434, 13 VAC 5-63-436, 13 VAC 5-63-438, 13 VAC 5-63-450, 13 VAC 5-63-480, 13 VAC 5-63-520 and 13 VAC 5-63-550.

The third group of amendments consists of a number of changes that were considered by committees or by client groups to reach a degree of consensus enabling their inclusion in the proposed regulation. This group of amendments is summarized by section number as follows:

13 VAC 5-63-30 L limits the instances where building permits can be withheld to the functional design requirements of other departments or agencies.

13 VAC 5-63-130 J establishes minimum criteria for third-party inspector policies of the local building departments.

Regulations

13 VAC 5-63-150 C requires the building owner to request documentation of the existence of violations after the statute of limitations time period expires.

13 VAC 5-63-190 E and 13 VAC 5-63-500 E change the time frame for filing an appeal of the local building department's application of the code to 30 days for construction issues and 14 days for maintenance issues.

13 VAC 5-63-210 F permits bed and breakfast-type occupancies having up to 10 occupants total to be classified as a single-family dwelling.

13 VAC 5-63-210 K 22 maintains the standards for concrete and masonry foundation walls for single-family dwellings consistent with the existing provisions instead of using the newest model code provisions.

13 VAC 5-63-210 K 28 establishes new standards for wall bracing in single-family dwelling construction that facilitate ease in application.

13 VAC 5-63-320 B removes a prohibition from the use of plumbing drainage piping in exposed ceiling areas in food service establishments.

13 VAC 5-63-335 establishes standards for the construction of public swimming pools.

VA.R. Doc. No. R07-125; Filed May 22, 2007, 2:18 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

Fast-Track Regulation

Title of Regulation: 18 VAC 30-10. Public Participation Guidelines (amending 18 VAC 30-10-10 through 18 VAC 30-10-80, 18 VAC 30-10-100, 18 VAC 30-10-110 and 18 VAC 30-10-120).

Statutory Authority: §§ 2.2-4007.02 (effective July 1, 2007) and 54.1-2400 of the Code of Virginia.

Public Hearing Date: N/A - Public comments may be submitted until 5 p.m. on August 10, 2007.

(See Calendar of Events section for additional information)

Effective Date: August 25, 2007.

Agency Contact: Lisa R. Hahn, Executive Director, Board of Audiology and Speech-Language Pathology, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9930, FAX (804) 662-9523, or email lisa.hahn@dhp.virginia.gov.

Basis: Section 2.2-4007 D (§ 2.2-4007.02 effective July 1, 2007) of the Administrative Process Act mandates the adoption of public participation guidelines for soliciting the input of interested parties in the formation and development of an agency's regulations.

Section 54.1-2400 of the Code of Virginia provides the general authority to the board to promulgate regulations.

Purpose: The board has updated and clarified its guidelines for public participation in the development and promulgation of initial, amended or repealed regulations, such as inclusion of electronic notification and the Virginia Regulatory Townhall as an option for comment. Changes are recommended by a committee of board and/or department staff, which reviewed each regulation for effectiveness, consistency and clarity. The intent is for amendments to be clarifying rather than substantive. Full participation by the public and regulated entities in the regulatory process is necessary to ensure that regulations fulfill the purpose of protecting the health and safety of the public in a manner that is not overly burdensome to those being regulated.

Rationale for Using Fast-Track Process: The fast-track process is being used to promulgate the amendments because there is general agreement with the changes proposed. The action is not controversial, as is reflected by the fact that there were no public comments on a Notice of Intended Regulatory Action filed by other boards within the Department of Health Professions. Both the Department of Planning and Budget and the Governor's office have recommended that these amendments be promulgated by a fast-track action.

Substance: The regulation has been reviewed for consistency with law, clarity and ease of compliance. There are no substantive amendments.

Issues: These amendments pose no disadvantages to the public. Clarification of the definition of regulation, additional opportunity for comment, and an extension of service for an ad hoc committee appointed to advise the board on the development of a regulation are all intended to give interested parties more access to the process.

There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Regulation. The Board of Audiology and Speech-Language Pathology (board) proposes to amend its Public Participation Guidelines. The board proposes to require that notification of all final regulatory actions, as well as the text of the regulations being changed, be posted to the board's website before the 30-day adoption period begins. The board also proposes to extend the time limit under which ad hoc committees function and eliminate

language that requires the board review its regulations at least every two years.

Result of Analysis. The benefits likely exceed the costs for these proposed regulatory changes.

Estimated Economic Impact. Current regulation requires the board to notify individuals on its notification lists, either by regular mail or email, whenever a final-stage regulation is about to enter its 30-day adoption period. This current regulatory notification requirement is more stringent than what is required by either the Administrative Process Act or Executive Order 36 (both of these rulemaking documents are silent on this matter). The board proposes to delete this portion of its public participation guidelines and, instead, will post notices of adoption of final regulation, as well as the text of the regulation being changed, on the board's website. The board believes that the changed notification requirements in the proposed regulation will allow staff time to be used more efficiently while still protecting the public's ability to be involved in the final stage of the rulemaking process. Individuals who are following board regulations through the process may be slightly inconvenienced by having to go to the board's website to get information rather than having that information mailed to them. These individuals, and the public generally, will likely benefit slightly from having staff time spent on more important tasks.

Current regulation requires that the board review all of its regulations every two years "unless otherwise directed by executive order." The proposed regulation will require the board to conduct "periodic review of its regulations consistent with an executive order of the Governor and with § 2.2-4007.1 of the Code of Virginia." Currently it takes, on average, approximately 18 months for all regulatory requirements for a new or amended regulation to be met. Given this, the public will likely benefit (slightly) from the removal of language that likely sets an unrealistic timeline for the periodic review of regulations.

Current regulation limits ad hoc committees to 12 months' existence before they must be dissolved. The proposed regulation will extend this term limit to 18 months and allow the board to authorize continuance of ad hoc committees past their regulatory time limit if their set task has not been completed. This proposal will likely have no economic impact on the citizens of the Commonwealth.

Businesses and Entities Affected. The proposed regulation will affect all individuals who involve themselves in the administrative rulemaking actions of the board.

Localities Particularly Affected. The proposed regulation will affect all localities in the Commonwealth.

Projected Impact on Employment. The proposed regulation is unlikely to have any affect on employment in the Commonwealth.

Effects on the Use and Value of Private Property. The proposed regulation will likely have no affect on the use or value of private property within the Commonwealth.

Small Businesses: Costs and Other Effects. The proposed regulation will likely have no adverse impact on any small businesses in the Commonwealth.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulation will likely have no adverse impact on any small businesses in the Commonwealth.

Legal mandate. 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Audiology and Speech-Language Pathology concurs with the analysis of the Department of Planning and Budget on proposed amended regulations for 18 VAC 30-10, Public Participation Guidelines.

Summary:

The amendments update and clarify the board's guidelines for public participation in the development and promulgation of initial, amended or repealed regulations by (i) including electronic notification and the Virginia Regulatory Town Hall as an option for public comment, (ii) clarifying certain terms, (iii) requiring the board to post notice of final regulations on its website rather than sending them to its notification lists, and (iv) extending the time limitation on ad hoc committees.

Regulations

18 VAC 30-10-10. Purpose.

The purpose of this chapter is to provide guidelines for the involvement of the public in the ~~development and promulgation~~ initial formation and development, amendment or repeal of regulations of the Board of Audiology and Speech-Language Pathology. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act. These rules seek to expand participation by providing for electronic exchange with the public and thereby increasing participation, reducing costs, and improving the speed of communication.

18 VAC 30-10-20. Definitions.

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

"Administrative Process Act" means Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Board" means the Board of Audiology and Speech-Language Pathology.

"Notification lists" means lists used by the board to notify persons pursuant to these rules. Such lists may include electronic ~~mailing~~ lists maintained through ~~a state website~~ the Virginia Regulatory Town Hall or ~~regular mailing~~ lists maintained by the board.

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

"Regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, adopted by the board in accordance with the authority conferred on it by applicable laws.

18 VAC 30-10-30. Composition of notification lists.

A. The board shall maintain lists of persons who have requested to be notified of the initial formation and promulgation, development, amendment or repeal of regulations.

B. Any person may request to be placed on a notification list by indicating so electronically or in writing to the board. The board may add to a list any person it believes will serve the purpose of enhancing participation in the regulatory process.

C. The board may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. The board shall periodically request those persons on the notification lists to indicate their desire to either continue to receive documents by regular mail, be notified electronically or be deleted from the lists. Persons who elect to be included on an electronic mailing list may also request that all notices and mailings be sent in hard copy. When either regular or

electronic mail is returned as undeliverable or there has been no response to the request from the board, such persons shall be deleted from the list.

18 VAC 30-10-40. Documents to be sent to persons on the notification lists.

A. Persons on the notification lists, as described in 18 VAC 30-10-30, shall be mailed or have electronically transmitted the following documents related to the promulgation of regulations:

1. A notice of intended regulatory action.
2. A notice of the comment period on a proposed regulation and instructions as to how to obtain a copy of the regulation and any supporting documents, either electronically or from the board office.
- ~~3. A notification of the adoption of a final regulation and instructions as to how to obtain a copy of the regulation and any supporting documents, either electronically or from the board office.~~
4. ~~3.~~ A notice soliciting comment on a final regulation when the regulatory process has been extended.

B. Notification of the adoption of a final regulation and copies of the regulation shall be posted on the board's website prior to the 30-day adoption period.

C. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation otherwise adopted in accordance with this chapter.

18 VAC 30-10-50. Petition for ~~rule making~~ rulemaking.

A. As provided in § 2.2-4007 of the Code of Virginia, any person may petition the board to develop a new regulation or amend an existing regulation.

B. A petition shall include but need not be limited to the following:

1. The petitioner's name, mailing address, telephone number, and, if applicable, the organization represented in the petition.
2. The number and title of the regulation to be addressed.
3. A description of the regulatory problem or need to be addressed.
4. A recommended addition, deletion, or amendment to the regulation.

C. The board shall receive, consider and respond to a petition within 180 days and shall have the sole authority to dispose of the petition.

D. Nothing herein shall prohibit the board from receiving information from the public and proceeding on its own motion for ~~rule making~~ rulemaking.

18 VAC 30-10-60. Notice of Intended Regulatory Action.

A. ~~Except as provided in § 2.2-4012.1 of the Code of Virginia, the board shall issue a notice of intended regulatory action (NOIRA) whenever it considers the adoption, amendment or repeal of a regulation. The notice of intended regulatory action (NOIRA) NOIRA shall state the purpose of the action and a brief statement of the need or problem the proposed action will address.~~

B. The NOIRA shall indicate whether the board intends to hold a public hearing on the proposed regulation after it is published. If the board does not intend to hold a public hearing, it shall so state ~~the reason~~ in the NOIRA.

C. If prior to the close of the 30-day comment period on the NOIRA, the board receives a request for a public hearing on the proposed regulation from at least 25 persons or if the Governor directs the board to hold a public hearing, such a hearing shall be scheduled.

18 VAC 30-10-70. Notice of comment period.

A. ~~The board shall issue a notice of comment period (NOCP) whenever it proposes to initiate, amend or repeal a regulation. The notice of comment period (NOCP) NOCP shall indicate that copies of the proposed regulation are available electronically or from the board and may be requested in writing from the contact person specified in the NOCP.~~

B. The NOCP shall indicate that copies of the statement of substance, issues, basis, purpose, and estimated impact of the proposed regulation may also be requested in writing.

C. The NOCP shall make provision for comments pertaining to the proposed regulation by regular mail, ~~Internet~~, facsimile or electronic means. With the exception of comment received at a scheduled public hearing, oral comment ~~may~~ shall not be accepted.

18 VAC 30-10-80. Notice of meeting.

A. At any meeting of the board or advisory committee at which the formation, ~~amendment, repeal~~, or adoption of a regulation is anticipated, the subject shall be described in a notice of meeting, which has been posted electronically on the ~~Internet~~ Virginia Regulatory Town Hall and transmitted to the Registrar of Regulations for inclusion in the Virginia Register.

B. If the board anticipates action on a regulation for which an exemption to the Administrative Process Act is claimed, the notice of meeting shall indicate that a copy of the proposed regulation ~~is available on a state website or upon request to~~ may be requested from the board at least two days prior to the meeting. A copy of the regulation shall be made available to the public attending such meeting.

18 VAC 30-10-100. Periodic review of regulations.

A. ~~Unless otherwise directed by executive order, the The board shall conduct an informational proceeding at least every two years a periodic review of its regulations consistent with an executive order issued by the Governor and with § 2.2-4007.1 of the Code of Virginia to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance.~~

B. Such ~~proceeding review~~ may be conducted separately or in conjunction with other ~~informational proceedings~~ meetings or hearings.

C. Notice of the proceeding shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register and shall be sent to the ~~mailing list~~ notification lists identified in 18 VAC 30-10-30.

PART IV.

ADVISORY AD HOC COMMITTEES.

18 VAC 30-10-110. Appointment of committees.

A. The board may appoint an ad hoc ~~advisory~~ committee whose responsibility shall be to assist in the review and development of regulations for the board.

B. The board may appoint an ad hoc ~~advisory~~ committee to provide professional specialization or technical assistance when the board determines that such expertise is necessary to address a specific regulatory issue or need or when groups of individuals register an interest in working with the agency.

18 VAC 30-10-120. Limitation of service.

A. An advisory ad hoc committee that has been appointed by the board may be dissolved by the board when:

1. There is no response to the Notice of Intended Regulatory Action; or
2. The board determines that the promulgation of the regulation is either exempt or excluded from the requirements of the Administrative Process Act.

B. An advisory ad hoc committee shall remain in existence no longer than ~~42~~ 18 months from its initial appointment. ~~1. If unless the board determines that the specific regulatory need continues to exist beyond that time, it shall set a specific term for the committee of not more than six additional months. The board may authorize the ad hoc committee to continue for an additional specified period of time to complete the task for which it was appointed.~~

2. ~~At the end of that extended term, the board shall evaluate the continued need and may continue the committee for additional six month terms.~~

VA.R. Doc. No. R07-221; Filed May 23, 2007, 11:12 a.m.

Regulations

Proposed Regulation

Title of Regulation: 18 VAC 30-20. Regulations Governing the Practice of Audiology and Speech-Language Pathology (amending 18 VAC 30-20-80, 18 VAC 30-20-170; adding 18 VAC 30-20-171).

Statutory Authority: § 54.1-2400 and Chapter 26 (§ 54.1-2600 et seq.) of the Code of Virginia.

Public Hearing Date: July 12, 2007 -- 9 a.m.

Public comments may be submitted until 5 p.m. on August 10, 2007.

(See Calendar of Events section for additional information)

Agency Contact: Lisa R. Hahn, Executive Director, Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9930, FAX (804) 662-9523, or email lisa.hahn@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Audiology and Speech-Language Pathology the authority to promulgate regulations to administer the regulatory system.

The legal authority to license and regulate audiologists and to issue provisional licenses may be found in Chapter 26 (§ 54.1-2600 et seq.) of Title 54.1 of the Code of Virginia.

Purpose: By the year 2007, all graduate programs in audiology will be transformed into doctoral programs, as the master's degree programs fade. Currently, graduate programs in audiology are transitioning into the doctoral program in which a student graduates with a Bachelor of Arts or Bachelor of Science degree and proceeds to a doctoral program. Formerly, the student would first obtain a master's degree before proceeding to a doctoral degree. The new transitional program requires a supervised postgraduate clinical experience. It is the general requirement within the profession to have all the students work under supervision during the postgraduate clinical experience. Our neighboring states, North Carolina, West Virginia, Maryland, and Kentucky, provide some type of temporary, limited or provisional licensure for these students. The establishment of a provisional license allows students who have completed all of the requirements of a master's degree or an equivalent number of hours to practice audiology, yet they are supervised to ensure the needed training by a licensed audiologist to protect the consuming public prior to the issuance of the doctoral or terminal degree. The intent of the regulatory action is to comply with the requirements of Chapter 97 of the 2006 Acts of Assembly to implement provisional licensure in audiology.

Substance: The amended regulations (i) establish the application fee of \$50 for provisional licensure; (ii) set the requirements for granting a provisional license in audiology

to include the educational equivalent of a master's degree and passage of a qualifying examination; (iii) set a 12-month expiration date for the provisional license; and (iv) set out the requirements for supervision and monitoring of persons practicing with a provisional license.

Issues: The primary advantage to the public of having a provisional license in audiology is the accountability for the practice of such an individual in the care and treatment rendered to the public. While a provisional licensee must practice under the supervision of a preceptor, the provisional licensee is held responsible for the safe performance of those direct patient care tasks to which he has been assigned. There are no disadvantages; the board will not be issuing a full license to an individual who is completing a clinical fellowship within the doctoral program, but the provisional license will enable a person to work in audiology while gaining practical experience.

There are no disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Regulation. Pursuant to Chapter 97 of the 2006 Acts of Assembly, the Board of Audiology and Speech-Language Pathology (board) proposes to amend its regulations to create provisional licensure for doctoral students who have obtained at least the equivalent of a master's education and who have passed a required examination.

Result of Analysis. The benefits likely exceed the costs for this proposed regulatory change.

Estimated Economic Impact. Prior to implementation of emergency regulations in September 2006, individuals who had passed the national audiology accrediting examination and had been awarded (i) a master's degree from a master's program in audiology, (ii) the equivalent of a master's education in a doctoral program or (iii) a doctoral degree from a doctoral program in audiology were eligible for licensure. This, theoretically, allowed all audiology students to gain licensure after they had completed at least a master's or its equivalent.

The national accrediting group for audiologists, the American Speech-language Hearing Association (ASHA), has, however, mandated that only doctoral programs in audiology will be accredited as of 2012. Additionally, doctoral programs have been reluctant to certify that their students have gained a "master's level" education (for the purpose of gaining full licensure). Students in these programs have been left at a disadvantage as they have been left ineligible for licensure until they completed their doctorates.

To address this inequity, the General Assembly has directed the board to implement a provisional licensure program for

doctoral students in audiology who have finished master's level coursework. These proposed regulations, and the emergency regulations that they replace, will allow doctoral students to apply for provisional licensure once they have finished the equivalent of a master's education and have passed the required exam (the fee for this license is \$50). Provisionally licensed individuals will have their work supervised by a licensed audiologist and may work in a clinical setting. This provisional license will allow them to complete the one year practical fellowship that is required for full ASHA accreditation sooner than if they had to wait until they graduated.

There will be a short-term difference in licensure between fully licensed audiologists who have just completed their master's degrees but have not completed their clinical fellowships and provisionally licensed audiologists who have completed coursework equivalent to a master's degree in a doctoral program but have not completed their clinical fellowships (at least until 2012 when master's programs will no longer be accredited). Taken at face value, this licensure difference allows the individuals with master's degrees an advantage as they have no supervision restrictions that they must practice under. In practice, the Department of Health Professions (DHP) reports, facilities that hire audiologists would not allow fully licensed but not yet accredited individuals any greater freedom of practice than will be afforded to provisionally licensed individuals.

Businesses and entities affected. This proposed regulatory change will affect students who are enrolled in audiology and speech pathology doctoral programs. DHP reports that the board has issued two provisional licenses to such students since emergency regulations were promulgated in September 2006.

Localities Particularly Affected. No locality in the Commonwealth will be particularly affected by this proposed regulation.

Projected Impact on Employment. This proposed regulatory change will allow affected doctoral students to attain a provisional license, and complete their year-long clinical fellowship, before they graduate. This will allow them to be fully accredited at the time they finish their degree and will increase their chance of being fully employed in their chosen field a year sooner.

Effects on the Use and Value of Private Property. This regulatory change will allow affected doctoral students to be fully employable approximately one year sooner than they otherwise would be; because of this, the total lifelong value of their degree and license will likely increase.

Small Businesses: Costs and Other Effects. DHP reports that none of the regulated entities that will be affected by the proposed regulatory change qualify as small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. This proposed regulatory change will not affect any small businesses in the Commonwealth.

Legal Mandate. 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Audiology and Speech-Language Pathology concurs with the analysis of the Department of Planning and Budget on the amendments for provisional licensure for 18 VAC 30-20, Regulations Governing the Practice of Audiology and Speech-Language Pathology.

Summary:

The amended regulations (i) establish requirements and fees for provisional licensure in audiology for applicants who have met the educational and examination qualifications in order to complete their clinical fellowship year, and (ii) set out the requirements for supervision of persons practicing with a provisional license.

18 VAC 30-20-80. Fees.

A. The following fees shall be paid as applicable for licensure:

- | | |
|---|-------|
| 1. Application for audiology or speech-language pathology license | \$135 |
| 2. Application for school speech-language pathology license | \$70 |
| 3. Verification of licensure requests from other | \$20 |

Regulations

states	
4. Annual renewal of audiology or speech-language pathology license	\$75
5. Late renewal of audiology or speech-language pathology license	\$25
6. Annual renewal of school speech-language pathology license	\$40
7. Late renewal of school speech-language pathology license	\$15
8. Reinstatement of audiology or speech-language pathology license	\$135
9. Reinstatement of school speech-language pathology license	\$70
10. Duplicate wall certificates	\$25
11. Duplicate license	\$5
12. Returned check	\$35
13. Inactive license renewal for audiology or speech-language pathology	\$40
14. Inactive license renewal for school speech-language pathology	\$20
15. Approval of a continuing education sponsor	\$200
<u>16. Application for provisional license in audiology</u>	<u>\$50</u>
<u>17. Renewal of provisional license in audiology</u>	<u>\$25</u>

B. Fees shall be made payable to the Treasurer of Virginia and shall not be refunded once submitted.

18 VAC 30-20-170. Requirements for licensure.

A. The board may grant a license to an applicant who:

1. Holds a current and unrestricted Certificate of Clinical Competence in the area in which he seeks licensure issued by the American Speech-Language-Hearing Association, certification issued by the American Board of Audiology or any other accrediting body recognized by the board. Verification of currency shall be in the form of a certified letter from a recognized accrediting body issued within six months prior to licensure; and
2. Has passed the qualifying examination from an accrediting body recognized by the board within three years preceding the date of applying for licensure, or has been actively engaged in the respective profession for which he seeks licensure for one of the past three consecutive years preceding the date of application; or

B. The board may grant a license to an applicant who:

1. Holds a master's ~~degree or its equivalent as determined by the board~~ or a doctoral degree from a college or

university whose audiology and speech-language program is regionally accredited by the American Speech-Language-Hearing Association or an equivalent accrediting body; and

2. Has passed a qualifying examination from an accrediting body recognized by the board within three years preceding the date of applying for licensure in Virginia or has been actively engaged in the respective profession for which he seeks licensure for one of the past three consecutive years preceding the date of application.

C. The board may grant a license to an applicant as a school speech-language pathologist who:

1. Holds a master's degree in speech-language-pathology; and
2. Holds an endorsement in speech-language pathology from the Virginia Department of Education.

18 VAC 30-20-171. Provisional licensure in audiology.

A. The board may grant a provisional license in audiology to an applicant who submits a completed application and fee with documentation that the applicant:

1. Is currently enrolled in a doctoral program in audiology at a college or university whose audiology program is accredited by the American Speech-Language-Hearing Association or an equivalent accrediting body;
2. Has successfully completed all the coursework required for the doctoral degree as documented by the audiology program; and
3. Has passed a qualifying examination from an accrediting body recognized by the board within three years preceding the date of applying for provisional licensure in Virginia.

B. A provisional license shall expire 12 months from the date of issuance and may be renewed for an additional 12 months by payment of a renewal fee. Renewal of a provisional license beyond 24 months shall be for good cause shown as determined by a committee of the board.

C. The holder of a provisional license in audiology shall only practice under the supervision of a licensed audiologist in order to obtain clinical experience as required for licensure in 18 VAC 30-20-170. The provisional licensee shall be responsible and accountable for the safe performance of those direct patient care tasks to which he has been assigned.

D. Licensed audiologists providing supervision shall:

1. Document the frequency and nature of the supervision of provisional licensees;
2. Be responsible and accountable for the assignment of patients and tasks based on their assessment and evaluation of the provisional licensee's knowledge and skills; and

3. Monitor clinical performance and intervene if necessary for the safety and protection of the patients.

E. The identity of a provisional licensee shall be disclosed to the client prior to treatment and shall be made a part of the client's file.

NOTICE: The forms used in administering 18 VAC 30-20, Regulations Governing the Practice of Audiology and Speech-Language Pathology, are not being published; 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 a License to Practice by ASHA Certification (rev. 6/04).

Application for a License to Practice by ABA (AAA) Certification (rev. 6/04).

Application for Provisional Licensure to Practice Audiology (eff. 7/06).

Form A, Certification of Audiology Education (eff. 7/06).

Application for a License to Practice by Education (rev. 6/04).

Application for a License as a School Speech-Language Pathologist (rev. 6/04).

Application for Reinstatement of License to Practice (rev. 10/02).

Application for Reinstatement of License to Practice as: School Speech Language Pathologist (rev. 6/04).

Renewal Notice and Application, 2201 (rev. 6/04).

Renewal Notice and Application, 2202 (rev. 6/04).

Renewal Notice and Application, 2203 (rev. 6/04).

Continued Competency Activity and Assessment Form (eff. 3/01).

Application for Approval as a Continuing Competency Sponsor (rev. 6/04).

VA.R. Doc. No. R06-325; Filed May 23, 2007, 10:47 a.m.

BOARD OF DENTISTRY

Fast-Track Regulation

Title of Regulation: 18 VAC 60-10. Public Participation Guidelines (amending 18 VAC 60-10-10 through 18 VAC 60-10-80, 18 VAC 60-10-100, 18 VAC 60-10-110 and 18 VAC 60-10-120).

Statutory Authority: §§ 2.2-4007.02 (effective July 1, 2007) and 54.1-2400 of the Code of Virginia.

Public Hearing Date: N/A - Public comments may be submitted until 5 p.m. on August 10, 2007.

(See Calendar of Events section for additional information)

Effective Date: August 25, 2007.

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

Basis: Section 2.2-4007 D (§ 2.2-4007.02 effective July 1, 2007) of the Administrative Process Act mandates the adoption of public participation guidelines for soliciting the input of interested parties in the formation and development of an agency's regulations.

Section 54.1-2400 of the Code of Virginia provides the general authority to the board to promulgate regulations.

Purpose: The board has updated and clarified its guidelines for public participation in the development and promulgation of initial, amended or repealed regulations, such as inclusion of electronic notification and the Virginia Regulatory Townhall as an option for comment. Changes are recommended by a committee of board and/or department staff, which reviewed each regulation for effectiveness, consistency and clarity. The intent is for amendments to be clarifying rather than substantive. Full participation by the public and regulated entities in the regulatory process is necessary to ensure that regulations fulfill the purpose of protecting the health and safety of the public in a manner that is not overly burdensome to those being regulated.

Rationale for Using Fast-Track Process: The fast-track process is being used to promulgate the amendments because there is general agreement with the changes proposed. The action is not controversial, as is reflected by the fact that there were no public comments on a Notice of Intended Regulatory Action filed by other boards within the Department of Health Professions. Both the Department of Planning and Budget and the Governor's office have recommended that these amendments be promulgated by a fast-track action.

Substance: The regulation has been reviewed for consistency with law, clarity and ease of compliance. There are no substantive amendments.

Issues: These amendments pose no disadvantages to the public. Clarification of the definition of regulation, additional opportunity for comment, and an extension of service for an ad hoc committee appointed to advise the board on the development of a regulation are all intended to give interested parties more access to the process.

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There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Regulation. The Board of Dentistry (board) proposes to amend its Public Participation Guidelines. The board proposes to require that notification of all final regulatory actions, as well as the text of the regulations being changed, be posted to the board's website before the 30-day adoption period begins. The board also proposes to extend the time limit under which ad hoc committees function and eliminate language that requires the board review its regulations at least every two years.

Result of Analysis. The benefits likely exceed the costs for these proposed regulatory changes.

Estimated Economic Impact. Current regulation requires the board to notify individuals on its notification lists, either by regular mail or email, whenever a final-stage regulation is about to enter its 30-day adoption period. This current regulatory notification requirement is more stringent than what is required by either the Administrative Process Act or Executive Order 36 (both of these rulemaking documents are silent on this matter). The board proposes to delete this portion of its public participation guidelines and, instead, will post notices of adoption of final regulation, as well as the text of the regulation being changed, on the board's website. The board believes that the changed notification requirements in the proposed regulation will allow staff time to be used more efficiently while still protecting the public's ability to be involved in the final stage of the rulemaking process. Individuals who are following board regulations through the process may be slightly inconvenienced by having to go to the board's website to get information rather than having that information mailed to them. These individuals, and the public generally, will likely benefit slightly from having staff time spent on more important tasks.

Current regulation requires that the board review all of its regulations every two years "unless otherwise directed by executive order." The proposed regulation will require the board to conduct "periodic review of its regulations consistent with an executive order of the Governor and with § 2.2-4007.1 of the Code of Virginia." Currently it takes, on average, approximately 18 months for all regulatory requirements for a new or amended regulation to be met. Given this, the public will likely benefit (slightly) from the removal of language that likely sets an unrealistic timeline for the periodic review of regulations.

Current regulation limits ad hoc committees to 12 months' existence before they must be dissolved. The proposed regulation will extend this term limit to 18 months and allow the board to authorize continuance of ad hoc committees past their regulatory time limit if their set task has not been

completed. This proposal will likely have no economic impact on the citizens of the Commonwealth.

Businesses and Entities Affected. The proposed regulation will affect all individuals who involve themselves in the administrative rulemaking actions of the board.

Localities Particularly Affected. The proposed regulation will affect all localities in the Commonwealth.

Projected Impact on Employment. The proposed regulation is unlikely to have any affect on employment in the Commonwealth.

Effects on the Use and Value of Private Property. The proposed regulation will likely have no affect on the use or value of private property within the Commonwealth.

Small Businesses: Costs and Other Effects. The proposed regulation will likely have no adverse impact on any small businesses in the Commonwealth.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulation will likely have no adverse impact on any small businesses in the Commonwealth.

Legal mandate. 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Dentistry concurs with the analysis of the Department of Planning and Budget on proposed amended regulations for 18 VAC 60-10, Public Participation Guidelines.

Summary:

The amendments update and clarify the board's guidelines for public participation in the development and promulgation of initial, amended or repealed regulations by (i) including electronic notification and the Virginia Regulatory Town Hall as an option for public comment, (ii) clarifying certain terms, (iii) requiring the board to post notice of final regulations on its website rather than sending them to its notification lists, and (iv) extending the time limitation on ad hoc committees.

18 VAC 60-10-10. Purpose.

The purpose of this chapter is to provide guidelines for the involvement of the public in the ~~development and promulgation~~ initial formation and development, amendment or repeal of regulations of the Board of Dentistry. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act. These rules seek to expand participation by providing for electronic exchange with the public and thereby increasing participation, reducing costs, and improving the speed of communication.

18 VAC 60-10-20. Definitions.

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

"Administrative Process Act" means Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Board" means the Board of Dentistry.

"Notification lists" means lists used by the board to notify persons pursuant to these rules. Such lists may include electronic ~~mailing~~ lists maintained through ~~a state website~~ the Virginia Regulatory Town Hall or ~~regular mailing~~ lists maintained by the board.

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

"Regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, adopted by the board in accordance with the authority conferred on it by applicable laws.

18 VAC 60-10-30. Composition of notification lists.

A. The board shall maintain lists of persons who have requested to be notified of the initial formation and promulgation, development, amendment or repeal of regulations.

B. Any person may request to be placed on a notification list by indicating so electronically or in writing to the board. The board may add to a list any person it believes will serve the purpose of enhancing participation in the regulatory process.

C. The board may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. The board shall periodically request those persons on the notification lists to indicate their desire to either continue to receive documents by regular mail, be notified electronically or be deleted from the lists. Persons who elect to be included on an electronic mailing list may also request that all notices and mailings be sent in hard copy. When either regular or electronic mail is returned as undeliverable or there has been no response to the request from the board, such persons shall be deleted from the list.

18 VAC 60-10-40. Documents to be sent to persons on the notification lists.

A. Persons on the notification lists, as described in 18 VAC 60-10-30, shall be mailed or have electronically transmitted the following documents related to the promulgation of regulations:

1. A notice of intended regulatory action.
2. A notice of the comment period on a proposed regulation and instructions as to how to obtain a copy of the regulation and any supporting documents, either electronically or from the board office.
- ~~3. A notification of the adoption of a final regulation and instructions as to how to obtain a copy of the regulation and any supporting documents, either electronically or from the board office.~~
4. 3. A notice soliciting comment on a final regulation when the regulatory process has been extended.

B. Notification of the adoption of a final regulation and copies of the regulation shall be posted on the board's website prior to the 30-day adoption period.

C. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation otherwise adopted in accordance with this chapter.

18 VAC 60-10-50. Petition for ~~rule making~~ rulemaking.

A. As provided in § 2.2-4007 of the Code of Virginia, any person may petition the board to develop a new regulation or amend an existing regulation.

B. A petition shall include but need not be limited to the following:

1. The petitioner's name, mailing address, telephone number, and, if applicable, the organization represented in the petition.
2. The number and title of the regulation to be addressed.
3. A description of the regulatory problem or need to be addressed.

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4. A recommended addition, deletion, or amendment to the regulation.

C. The board shall receive, consider and respond to a petition within 180 days and shall have the sole authority to dispose of the petition.

D. Nothing herein shall prohibit the board from receiving information from the public and proceeding on its own motion for ~~rule making~~ rulemaking.

18 VAC 60-10-60. Notice of Intended Regulatory Action.

A. Except as provided in § 2.2-4012.1 of the Code of Virginia, the board shall issue a notice of intended regulatory action (NOIRA) whenever it considers the adoption, amendment or repeal of a regulation. ~~The notice of intended regulatory action (NOIRA)~~ NOIRA shall state the purpose of the action and a brief statement of the need or problem the proposed action will address.

B. The NOIRA shall indicate whether the board intends to hold a public hearing on the proposed regulation after it is published. If the board does not intend to hold a public hearing, it shall so ~~state the reason~~ in the NOIRA.

C. If prior to the close of the 30-day comment period on the NOIRA, the board receives a request for a public hearing on the proposed regulation from at least 25 persons or if the Governor directs the board to hold a public hearing, such a hearing shall be scheduled.

18 VAC 60-10-70. Notice of comment period.

A. The board shall issue a notice of comment period (NOCP) whenever it proposes to initiate, amend or repeal a regulation. ~~The notice of comment period (NOCP)~~ NOCP shall indicate that copies of the proposed regulation are available electronically or from the board and may be requested in writing from the contact person specified in the NOCP.

B. The NOCP shall indicate that copies of the statement of substance, issues, basis, purpose, and estimated impact of the proposed regulation may also be requested in writing.

C. The NOCP shall make provision for comments pertaining to the proposed regulation by regular mail, ~~Internet,~~ facsimile or electronic means. With the exception of comment received at a scheduled public hearing, oral comment ~~may~~ shall not be accepted.

18 VAC 60-10-80. Notice of meeting.

A. At any meeting of the board or advisory committee at which the formation, amendment, repeal, or adoption of a regulation is anticipated, the subject shall be described in a notice of meeting, which has been posted electronically on the ~~Internet~~ Virginia Regulatory Town Hall and transmitted to the Registrar of Regulations for inclusion in the Virginia Register.

B. If the board anticipates action on a regulation for which an exemption to the Administrative Process Act is claimed, the notice of meeting shall indicate that a copy of the proposed regulation ~~is available on a state website or upon request to~~ may be requested from the board at least two days prior to the meeting. A copy of the regulation shall be made available to the public attending such meeting.

18 VAC 60-10-100. Periodic review of regulations.

A. ~~Unless otherwise directed by executive order, the~~ The board shall conduct ~~an informational proceeding at least every two years~~ a periodic review of its regulations consistent with an executive order issued by the Governor and with § 2.2-4007.1 of the Code of Virginia to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance.

B. Such ~~proceeding~~ review may be conducted separately or in conjunction with other ~~informational proceedings~~ meetings or hearings.

C. Notice of the proceeding shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register and shall be sent to the ~~mailing list~~ notification lists identified in 18 VAC 60-10-30.

PART IV.

ADVISORY AD HOC COMMITTEES.

18 VAC 60-10-110. Appointment of committees.

A. The board may appoint an ad hoc ~~advisory~~ committee whose responsibility shall be to assist in the review and development of regulations for the board.

B. The board may appoint an ad hoc ~~advisory~~ committee to provide professional specialization or technical assistance when the board determines that such expertise is necessary to address a specific regulatory issue or need or when groups of individuals register an interest in working with the agency.

18 VAC 60-10-120. Limitation of service.

A. An ~~advisory~~ ad hoc committee that has been appointed by the board may be dissolved by the board when:

1. There is no response to the Notice of Intended Regulatory Action; or
2. The board determines that the promulgation of the regulation is either exempt or excluded from the requirements of the Administrative Process Act.

B. An ~~advisory~~ ad hoc committee shall remain in existence no longer than ~~12~~ 18 months from its initial appointment. ~~If unless the board determines that the specific regulatory need continues to exist beyond that time, it shall set a specific term for the committee of not more than six additional months.~~ The board may authorize the ad hoc committee to continue for an additional specified period of time to complete the task for which it was appointed.

~~2. At the end of that extended term, the board shall evaluate the continued need and may continue the committee for additional six month terms.~~

V.A.R. Doc. No. R07-224; Filed May 23, 2007, 11:17 a.m.

Fast-Track Regulation

Title of Regulation: **18 VAC 60-20. Regulations Governing the Practice of Dentistry and Dental Hygiene (amending 18 VAC 60-20-210).**

Statutory Authority: § 54.1-2400 and Chapter 27 (§ 54.1-2700 et seq.) of Title 54.1 of the Code of Virginia.

Public Hearing Date: August 3, 2007 -- 8:30 a.m.

Public comments may be submitted until 5 p.m. on August 10, 2007.

(See Calendar of Events section for additional information)

Effective Date: August 25, 2007.

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

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Dentistry the authority to promulgate regulations to administer the regulatory system.

Purpose: The board has become aware that many dentists encounter situations in which a patient who has an order for dental care by a hygienist under general supervision is not able to get that care within the seven-month limitation on the order. The recommended interval for dental care is six months, but for a variety of reasons, a patient is not always able to return for an appointment within that time frame. The board believes the dental hygienist should be able to provide the prescribed care under general supervision (without the presence of the dentist) for a period not to exceed 10 months if so specified by the dentist writing the order. The ability of dental hygienists to care for patients under general supervision expands access and potentially reduces the cost of dental care. Therefore, any expansion of care by hygienists while still under supervision by dentists is in the best interest of public health and safety.

Rationale for Using Fast-Track Process: As stated above, the board is aware that many dentists across Virginia are having difficulty complying with the seven-month limitation on orders for care under general supervision. There is agreement within the dental and dental hygiene community that the limit needs to be expanded. If care of patients by hygienists practicing under general supervision is to be more efficient and cost effective, it is necessary to revise the requirement as soon as possible.

Substance: The proposed action will allow the dentist to enter an order for dental care in a patient's record with

services to be provided by a dental hygienist practicing under general supervision within a specific time period, not to exceed 10 months from the date the dentist last saw the patient. The current limitation is seven months from the last time the dentistry saw the patient.

Issues: This amendment poses no disadvantages to the public. Consumers of dental services will have more opportunities to be seen in the dental office by either the dentist or by the hygienist practicing under the order of a dentist. In any case, the dentist must see a patient to write the order for routine care by the hygienist for the intervening visit.

There are no disadvantages to the agency or the Commonwealth; a revised regulation should reduce the number of comments and potential violations of the rule.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Under the current regulations a dental hygienist may perform duties specified by a supervising dentist in a written order without the dentist present for up to seven months from the date the dentist last examined the patient. The Board of Dentistry (board) proposes to permit dental hygienists to perform duties specified by a supervising dentist in a written order without the dentist present for up to 10 months from the date the dentist last examined the patient.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. Under these regulations dental hygienists are required to work under the supervision of a dentist. Certain duties are required to be performed with the dentist present, while other specified duties may be performed without the dentist present if the supervising dentist has examined the patient and issued a written order for the specific, authorized services to be provided by the dental hygienist when the dentist is not present in the facility. The latter is called general supervision.

According to the Department of Health Professions (department),

The Board has become aware that many dentists encounter situations in which a patient who has an order for dental care by a hygienist under general supervision is not able to get that care within the seven-month limitation on the order. The recommended interval for dental care is six months, but for a variety of reasons, a patient is not always able to return for an appointment within that time frame. The Board believes the dental hygienist should be able to provide the prescribed care under general supervision (without the presence of the dentist) for a period not to exceed ten months, if so specified by the dentist writing the order. The ability of dental hygienists to care for patients

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under general supervision expands access and potentially reduces the cost of dental care. Therefore, any expansion of care by hygienists while still under supervision by dentists is in the best interest of public health and safety.

Additionally, research by the U.S. Federal Trade Commission found that the services provided by hygienists under general supervision are considered unlikely to produce additional health and safety risks when conducted without a dentist present.¹ Thus, expanding the time limit from seven to 10 months will likely reduce costs without increasing health risks. Therefore, the proposed amendment will most likely produce a net benefit.

Businesses and Entities Affected. The proposed amendment affects dentists, dental hygienists, and their patients. According to the department, there are 5,826 dentists and 4,261 dental hygienists licensed in Virginia. The practices for most, if not all of the dentists, are small businesses.

Localities Particularly Affected. The proposed amendment does not particularly affect specific localities.

Projected Impact on Employment. Some dental hygienists may work moderately greater hours.

Effects on the Use and Value of Private Property. The proposed amendment will allow dental practices to use their staff somewhat more productively. Thus, the value of some dental practices may moderately increase.

Small Businesses: Costs and Other Effects. The proposed amendment will moderately reduce costs for some small businesses, i.e., dental practices.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendment does not adversely affect small businesses.

Legal mandate. 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 36 (06). 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small

businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Dentistry concurs with the analysis of the Department of Planning and Budget for the proposed regulation, 18 VAC 60-20, Regulations Governing the Practice of Dentistry and Dental Hygiene, relating to an extension of the time frame for an order under general supervision.

Summary:

The proposed amendment expands from seven to 10 months the time limit for an order given by the dentist to be performed by a hygienist under general supervision without the presence of the dentist.

18 VAC 60-20-210. Requirements for direction and general supervision.

A. In all instances, a licensed dentist assumes ultimate responsibility for determining, on the basis of his diagnosis, the specific treatment the patient will receive and which aspects of treatment will be delegated to qualified personnel in accordance with this chapter and the Code of Virginia.

B. Dental hygienists shall engage in their respective duties only while in the employment of a licensed dentist or governmental agency or when volunteering services as provided in 18 VAC 60-20-200. Persons acting within the scope of a license issued to them by the board under § 54.1-2725 of the Code of Virginia to teach dental hygiene and those persons licensed pursuant to § 54.1-2722 of the Code of Virginia providing oral health education and preliminary dental screenings in any setting are exempt from this section.

C. Duties delegated to a dental hygienist under direction shall only be performed when the dentist is present in the facility and examines the patient during the time services are being provided.

D. Duties that are delegated to a dental hygienist under general supervision shall only be performed if the following requirements are met:

1. The treatment to be provided shall be ordered by a dentist licensed in Virginia and shall be entered in writing in the record. The services noted on the original order shall be rendered within a specific time period, not to exceed ~~seven~~ 10 months from the date the dentist last examined the patient. Upon expiration of the order, the dentist shall have

¹ Source: Liang, J. Nellie and Jonathan D. Ogur. 1987. "Restrictions on Dental Auxiliaries: An Economic Policy Analysis." Bureau of Economics Staff Report to the U.S. Federal Trade Commission.

examined the patient before writing a new order for treatment.

2. The dental hygienist shall consent in writing to providing services under general supervision.

3. The patient or a responsible adult shall be informed prior to the appointment that no dentist will be present, that no anesthesia can be administered, and that only those services prescribed by the dentist will be provided.

4. Written basic emergency procedures shall be established and in place, and the hygienist shall be capable of implementing those procedures.

E. General supervision shall not preclude the use of direction when, in the professional judgment of the dentist, such direction is necessary to meet the individual needs of the patient.

V.A.R. Doc. No. R07-232; Filed May 23, 2007, 11:10 a.m.

BOARD OF HEALTH PROFESSIONS

Fast-Track Regulation

Title of Regulation: 18 VAC 75-10. Public Participation Guidelines (amending 18 VAC 75-10-10 through 18 VAC 75-10-80, 18 VAC 75-10-100, 18 VAC 75-10-110 and 18 VAC 75-10-120).

Statutory Authority: §§ 2.2-4007.02 (effective July 1, 2007) and 54.1-2400 of the Code of Virginia.

Public Hearing Date: N/A - Public comments may be submitted until 5 p.m. on August 10, 2007.

(See Calendar of Events section for additional information)

Effective Date: August 25, 2007.

Agency Contact: Elizabeth A. Carter, Ph.D., Executive Director, Board of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9910, FAX (804) 662-9943, or email elizabeth.carter@dhp.virginia.gov.

Basis: Section 2.2-4007 D (§ 2.2-4007.02 effective July 1, 2007) of the Administrative Process Act mandates the adoption of public participation guidelines for soliciting the input of interested parties in the formation and development of an agency's regulations.

Section 54.1-2400 of the Code of Virginia provides the general authority to the board to promulgate regulations.

Purpose: The board has updated and clarified its guidelines for public participation in the development and promulgation of initial, amended or repealed regulations, such as inclusion of electronic notification and the Virginia Regulatory Townhall as an option for comment. Changes are recommended by a committee of board and/or department

staff, which reviewed each regulation for effectiveness, consistency and clarity. The intent is for amendments to be clarifying rather than substantive. Full participation by the public and regulated entities in the regulatory process is necessary to ensure that regulations fulfill the purpose of protecting the health and safety of the public in a manner that is not overly burdensome to those being regulated.

Rationale for Using Fast-Track Process: The fast-track process is being used to promulgate the amendments because there is general agreement with the changes proposed. The action is not controversial, as is reflected by the fact that there were no public comments on a Notice of Intended Regulatory Action filed by other boards within the Department of Health Professions. Both the Department of Planning and Budget and the Governor's office have recommended that these amendments be promulgated by a fast-track action.

Substance: The regulation has been reviewed for consistency with law, clarity and ease of compliance. There are no substantive amendments.

Issues: These amendments pose no disadvantages to the public. Clarification of the definition of regulation, additional opportunity for comment, and an extension of service for an ad hoc committee appointed to advise the board on the development of a regulation are all intended to give interested parties more access to the process.

There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Regulation. The Board of Health Professions (board) proposes to amend its Public Participation Guidelines. The board proposes to require that notification of all final regulatory actions, as well as the text of the regulations being changed, be posted to the board's website before the 30-day adoption period begins. The board also proposes to extend the time limit under which ad hoc committees function and eliminate language that requires the board review its regulations at least every two years.

Result of Analysis. The benefits likely exceed the costs for these proposed regulatory changes.

Estimated Economic Impact. Current regulation requires the board to notify individuals on its notification lists, either by regular mail or email, whenever a final-stage regulation is about to enter its 30-day adoption period. This current regulatory notification requirement is more stringent than what is required by either the Administrative Process Act or Executive Order 36 (both of these rulemaking documents are silent on this matter). The board proposes to delete this portion of its public participation guidelines and, instead, will post notices of adoption of final regulation, as well as the text of the regulation being changed, on the board's website. The

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board believes that the changed notification requirements in the proposed regulation will allow staff time to be used more efficiently while still protecting the public's ability to be involved in the final stage of the rulemaking process. Individuals who are following board regulations through the process may be slightly inconvenienced by having to go to the board's website to get information rather than having that information mailed to them. These individuals, and the public generally, will likely benefit slightly from having staff time spent on more important tasks.

Current regulation requires that the board review all of its regulations every two years "unless otherwise directed by executive order." The proposed regulation will require the board to conduct "periodic review of its regulations consistent with an executive order of the Governor and with § 2.2-4007.1 of the Code of Virginia." Currently it takes, on average, approximately 18 months for all regulatory requirements for a new or amended regulation to be met. Given this, the public will likely benefit (slightly) from the removal of language that likely sets an unrealistic timeline for the periodic review of regulations.

Current regulation limits ad hoc committees to 12 months' existence before they must be dissolved. The proposed regulation will extend this term limit to 18 months and allow the board to authorize continuance of ad hoc committees past their regulatory time limit if their set task has not been completed. This proposal will likely have no economic impact on the citizens of the Commonwealth.

Businesses and Entities Affected. The proposed regulation will affect all individuals who involve themselves in the administrative rulemaking actions of the board.

Localities Particularly Affected. The proposed regulation will affect all localities in the Commonwealth.

Projected Impact on Employment. The proposed regulation is unlikely to have any affect on employment in the Commonwealth.

Effects on the Use and Value of Private Property. The proposed regulation will likely have no affect on the use or value of private property within the Commonwealth.

Small Businesses: Costs and Other Effects. The proposed regulation will likely have no adverse impact on any small businesses in the Commonwealth.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulation will likely have no adverse impact on any small businesses in the Commonwealth.

Legal mandate. 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Health Professions concurs with the analysis of the Department of Planning and Budget on proposed amended regulations for 18 VAC 75-10, Public Participation Guidelines.

Summary:

The amendments update and clarify the board's guidelines for public participation in the development and promulgation of initial, amended or repealed regulations by (i) including electronic notification and the Virginia Regulatory Town Hall as an option for public comment, (ii) clarifying certain terms, (iii) requiring the board to post notice of final regulations on its website rather than sending them to its notification lists, and (iv) extending the time limitation on ad hoc committees.

18 VAC 75-10-10. Purpose.

The purpose of this chapter is to provide guidelines for the involvement of the public in the ~~development and promulgation~~ initial formation and development, amendment or repeal of regulations of the Board of Health Professions. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act. These rules seek to expand participation by providing for electronic exchange with the public and thereby increasing participation, reducing costs, and improving the speed of communication.

18 VAC 75-10-20. Definitions.

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

"Administrative Process Act" means Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Board" means the Board of Health Professions.

"Notification lists" means lists used by the board to notify persons pursuant to these rules. Such lists may include electronic ~~mailing~~ lists maintained through ~~a state website~~ the Virginia Regulatory Town Hall or ~~regular mailing~~ lists maintained by the board.

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

"Regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, adopted by the board in accordance with the authority conferred on it by applicable laws.

18 VAC 75-10-30. Composition of notification lists.

A. The board shall maintain lists of persons who have requested to be notified of the initial formation and promulgation, development, amendment or repeal of regulations.

B. Any person may request to be placed on a notification list by indicating so electronically or in writing to the board. The board may add to a list any person it believes will serve the purpose of enhancing participation in the regulatory process.

C. The board may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. The board shall periodically request those persons on the notification lists to indicate their desire to either continue to receive documents by regular mail, be notified electronically or be deleted from the lists. Persons who elect to be included on an electronic mailing list may also request that all notices and mailings be sent in hard copy. When either regular or electronic mail is returned as undeliverable or there has been no response to the request from the board, such persons shall be deleted from the list.

18 VAC 75-10-40. Documents to be sent to persons on the notification lists.

A. Persons on the notification lists, as described in 18 VAC 75-10-30, shall be mailed or have electronically transmitted the following documents related to the promulgation of regulations:

1. A notice of intended regulatory action.
2. A notice of the comment period on a proposed regulation and instructions as to how to obtain a copy of the regulation and any supporting documents, either electronically or from the board office.

~~3. A notification of the adoption of a final regulation and instructions as to how to obtain a copy of the regulation and any supporting documents, either electronically or from the board office.~~

~~4. 3.~~ A notice soliciting comment on a final regulation when the regulatory process has been extended.

B. Notification of the adoption of a final regulation and copies of the regulation shall be posted on the board's website prior to the 30-day adoption period.

C. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation otherwise adopted in accordance with this chapter.

18 VAC 75-10-50. Petition for ~~rule making~~ rulemaking.

A. As provided in § 2.2-4007 of the Code of Virginia, any person may petition the board to develop a new regulation or amend an existing regulation.

B. A petition shall include but need not be limited to the following:

1. The petitioner's name, mailing address, telephone number, and, if applicable, the organization represented in the petition.
2. The number and title of the regulation to be addressed.
3. A description of the regulatory problem or need to be addressed.
4. A recommended addition, deletion, or amendment to the regulation.

C. The board shall receive, consider and respond to a petition within 180 days and shall have the sole authority to dispose of the petition.

D. Nothing herein shall prohibit the board from receiving information from the public and proceeding on its own motion for ~~rule making~~ rulemaking.

18 VAC 75-10-60. Notice of Intended Regulatory Action.

A. Except as provided in § 2.2-4012.1 of the Code of Virginia, the board shall issue a notice of intended regulatory action (NOIRA) whenever it considers the adoption, amendment or repeal of a regulation. The ~~notice of intended regulatory action (NOIRA)~~ NOIRA shall state the purpose of the action and a brief statement of the need or problem the proposed action will address.

B. The NOIRA shall indicate whether the board intends to hold a public hearing on the proposed regulation after it is published. If the board does not intend to hold a public hearing, it shall so state ~~the reason~~ in the NOIRA.

C. If prior to the close of the 30-day comment period on the NOIRA, the board receives a request for a public hearing on the proposed regulation from at least 25 persons or if the

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Governor directs the board to hold a public hearing, such a hearing shall be scheduled.

18 VAC 75-10-70. Notice of comment period.

A. ~~The board shall issue a notice of comment period (NOCP) whenever it proposes to initiate, amend or repeal a regulation. The notice of comment period (NOCP) NOCP shall indicate that copies of the proposed regulation are available electronically or from the board and may be requested in writing from the contact person specified in the NOCP.~~

B. The NOCP shall indicate that copies of the statement of substance, issues, basis, purpose, and estimated impact of the proposed regulation may also be requested in writing.

C. The NOCP shall make provision for comments pertaining to the proposed regulation by regular mail, ~~Internet~~, facsimile or electronic means. With the exception of comment received at a scheduled public hearing, oral comment ~~may~~ shall not be accepted.

18 VAC 75-10-80. Notice of meeting.

A. At any meeting of the board or advisory committee at which the formation, amendment, repeal, or adoption of a regulation is anticipated, the subject shall be described in a notice of meeting, which has been posted electronically on the ~~Internet~~ Virginia Regulatory Town Hall and transmitted to the Registrar of Regulations for inclusion in the Virginia Register.

B. If the board anticipates action on a regulation for which an exemption to the Administrative Process Act is claimed, the notice of meeting shall indicate that a copy of the proposed regulation ~~is available on a state website or upon request to~~ may be requested from the board at least two days prior to the meeting. A copy of the regulation shall be made available to the public attending such meeting.

18 VAC 75-10-100. Periodic review of regulations.

A. ~~Unless otherwise directed by executive order, the~~ The board shall conduct an informational proceeding at least every two years a periodic review of its regulations consistent with an executive order issued by the Governor and with § 2.2-4007.1 of the Code of Virginia to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance.

B. Such ~~proceeding~~ review may be conducted separately or in conjunction with other ~~informational proceedings~~ meetings or hearings.

C. Notice of the proceeding shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register and shall be sent to the ~~mailing list~~ notification lists identified in 18 VAC 75-10-30.

PART IV. ~~ADVISORY AD HOC COMMITTEES.~~

18 VAC 75-10-110. Appointment of committees.

A. The board may appoint an ad hoc ~~advisory~~ committee whose responsibility shall be to assist in the review and development of regulations for the board.

B. The board may appoint an ad hoc ~~advisory~~ committee to provide professional specialization or technical assistance when the board determines that such expertise is necessary to address a specific regulatory issue or need or when groups of individuals register an interest in working with the agency.

18 VAC 75-10-120. Limitation of service.

A. An ~~advisory ad hoc~~ committee that has been appointed by the board may be dissolved by the board when:

1. There is no response to the Notice of Intended Regulatory Action; or
2. The board determines that the promulgation of the regulation is either exempt or excluded from the requirements of the Administrative Process Act.

B. An ~~advisory ad hoc~~ committee shall remain in existence no longer than ~~42~~ 18 months from its initial appointment. ~~1. If unless the board determines that the specific regulatory need continues to exist beyond that time, it shall set a specific term for the committee of not more than six additional months. The board may authorize the ad hoc committee to continue for an additional specified period of time to complete the task for which it was appointed.~~

~~2. At the end of that extended term, the board shall evaluate the continued need and may continue the committee for additional six month terms.~~

VA.R. Doc. No. R07-225; Filed May 23, 2007, 11:17 a.m.

DEPARTMENT OF HEALTH PROFESSIONS

Fast-Track Regulation

Title of Regulation: **18 VAC 76-30. Public Participation Guidelines (amending 18 VAC 76-30-10 through 18 VAC 76-30-80, 18 VAC 76-30-100, 18 VAC 76-30-110 and 18 VAC 76-30-120).**

Statutory Authority: §§ 2.2-4007.02 (effective July 1, 2007) and 54.1-2505 of the Code of Virginia.

Public Hearing Date: N/A - Public comments may be submitted until 5 p.m. on August 10, 2007.

(See Calendar of Events section for additional information)

Effective Date: August 25, 2007.

Agency Contact: Elaine J. Yeatts, Senior Policy Analyst, Department of Health Professions, 6603 West Broad Street,

5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9918, FAX (804) 662-9114, or email elaine.yeatts@dhp.virginia.gov.

Basis: Section 2.2-4007 D (§ 2.2-4007.02 effective July 1, 2007) of the Administrative Process Act mandates the adoption of public participation guidelines for soliciting the input of interested parties in the formation and development of an agency's regulations.

Section 54.1-2400 of the Code of Virginia provides the general authority to the department to promulgate regulations.

Purpose: The department has updated and clarified its guidelines for public participation in the development and promulgation of initial, amended or repealed regulations, such as inclusion of electronic notification and the Virginia Regulatory Townhall as an option for comment. Changes are recommended by a committee of department and/or department staff, which reviewed each regulation for effectiveness, consistency and clarity. The intent is for amendments to be clarifying rather than substantive. Full participation by the public and regulated entities in the regulatory process is necessary to ensure that regulations fulfill the purpose of protecting the health and safety of the public in a manner that is not overly burdensome to those being regulated.

Rationale for Using Fast-Track Process: The fast-track process is being used to promulgate the amendments because there is general agreement with the changes proposed. The action is not controversial, as is reflected by the fact that there were no public comments on a Notice of Intended Regulatory Action filed by other departments within the Department of Health Professions. Both the Department of Planning and Budget and the Governor's office have recommended that these amendments be promulgated by a fast-track action.

Substance: The regulation has been reviewed for consistency with law, clarity and ease of compliance. There are no substantive amendments.

Issues: These amendments pose no disadvantages to the public. Clarification of the definition of regulation, additional opportunity for comment, and an extension of service for an ad hoc committee appointed to advise the department on the development of a regulation are all intended to give interested parties more access to the process.

There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Regulation. The Department of Health Professions (department) proposes to amend its Public Participation Guidelines. The department proposes to require that notification of all final regulatory actions, as well as the text of the regulations being changed, be posted to the

department's website before the 30-day adoption period begins. The department also proposes to extend the time limit under which ad hoc committees function and eliminate language that requires the department review its regulations at least every two years.

Result of Analysis. The benefits likely exceed the costs for these proposed regulatory changes.

Estimated Economic Impact. Current regulation requires the department to notify individuals on its notification lists, either by regular mail or email, whenever a final-stage regulation is about to enter its 30-day adoption period. This current regulatory notification requirement is more stringent than what is required by either the Administrative Process Act or Executive Order 36 (both of these rulemaking documents are silent on this matter). The department proposes to delete this portion of its public participation guidelines and, instead, will post notices of adoption of final regulation, as well as the text of the regulation being changed, on the department's website. The department believes that the changed notification requirements in the proposed regulation will allow staff time to be used more efficiently while still protecting the public's ability to be involved in the final stage of the rulemaking process. Individuals who are following department regulations through the process may be slightly inconvenienced by having to go to the department's website to get information rather than having that information mailed to them. These individuals, and the public generally, will likely benefit slightly from having staff time spent on more important tasks.

Current regulation requires that the department review all of its regulations every two years "unless otherwise directed by executive order." The proposed regulation will require the department to conduct "periodic review of its regulations consistent with an executive order of the Governor and with § 2.2-4007.1 of the Code of Virginia." Currently it takes, on average, approximately 18 months for all regulatory requirements for a new or amended regulation to be met. Given this, the public will likely benefit (slightly) from the removal of language that likely sets an unrealistic timeline for the periodic review of regulations.

Current regulation limits ad hoc committees to 12 months' existence before they must be dissolved. The proposed regulation will extend this term limit to 18 months and allow the department to authorize continuance of ad hoc committees past their regulatory time limit if their set task has not been completed. This proposal will likely have no economic impact on the citizens of the Commonwealth.

Businesses and Entities Affected. The proposed regulation will affect all individuals who involve themselves in the administrative rulemaking actions of the department.

Localities Particularly Affected. The proposed regulation will affect all localities in the Commonwealth.

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Projected Impact on Employment. The proposed regulation is unlikely to have any affect on employment in the Commonwealth.

Effects on the Use and Value of Private Property. The proposed regulation will likely have no affect on the use or value of private property within the Commonwealth.

Small Businesses: Costs and Other Effects. The proposed regulation will likely have no adverse impact on any small businesses in the Commonwealth.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulation will likely have no adverse impact on any small businesses in the Commonwealth.

Legal mandate. 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Health Professions concurs with the analysis of the Department of Planning and Budget on proposed amended regulations for 18 VAC 76-30, Public Participation Guidelines.

Summary:

The amendments update and clarify the department's guidelines for public participation in the development and promulgation of initial, amended or repealed regulations by (i) including electronic notification and the Virginia Regulatory Town Hall as an option for public comment, (ii) clarifying certain terms, (iii) requiring the department to

post notice of final regulations on its website rather than sending them to its notification lists, and (iv) extending the time limitation on ad hoc committees.

18 VAC 76-30-10. Purpose.

The purpose of this chapter is to provide guidelines for the involvement of the public in the ~~development and promulgation~~ initial formation and development, amendment or repeal of regulations of the Department of Health Professions. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act. These rules seek to expand participation by providing for electronic exchange with the public and thereby increasing participation, reducing costs, and improving the speed of communication.

18 VAC 76-30-20. Definitions.

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

"Administrative Process Act" means Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Department" means the Department of Health Professions.

"Notification lists" means lists used by the department to notify persons pursuant to these rules. Such lists may include electronic ~~mailing~~ lists maintained through ~~a state website~~ the Virginia Regulatory Town Hall or ~~regular mailing~~ lists maintained by the department.

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

"Regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, adopted by the department in accordance with the authority conferred on it by applicable laws.

18 VAC 76-30-30. Composition of notification lists.

A. The department shall maintain lists of persons who have requested to be notified of the initial formation and promulgation, development, amendment or repeal of regulations.

B. Any person may request to be placed on a notification list by indicating so electronically or in writing to the department. The department may add to a list any person it believes will serve the purpose of enhancing participation in the regulatory process.

C. The department may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. The department shall periodically request those persons on the notification lists to indicate their desire to either continue

to receive documents by regular mail, be notified electronically or be deleted from the lists. Persons who elect to be included on an electronic mailing list may also request that all notices and mailings be sent in hard copy. When either regular or electronic mail is returned as undeliverable or there has been no response to the request from the department, such persons shall be deleted from the list.

18 VAC 76-30-40. Documents to be sent to persons on the notification lists.

A. Persons on the notification lists, as described in 18 VAC 76-30-30, shall be mailed or have electronically transmitted the following documents related to the promulgation of regulations:

1. A notice of intended regulatory action.
2. A notice of the comment period on a proposed regulation and instructions as to how to obtain a copy of the regulation and any supporting documents, either electronically or from the department office.
- ~~3. A notification of the adoption of a final regulation and instructions as to how to obtain a copy of the regulation and any supporting documents, either electronically or from the department office.~~
4. 3. A notice soliciting comment on a final regulation when the regulatory process has been extended.

B. Notification of the adoption of a final regulation and copies of the regulation shall be posted on the department's website prior to the 30-day adoption period.

C. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation otherwise adopted in accordance with this chapter.

18 VAC 76-30-50. Petition for ~~rule-making~~ rulemaking.

A. As provided in § 2.2-4007 of the Code of Virginia, any person may petition the department to develop a new regulation or amend an existing regulation.

B. A petition shall include but need not be limited to the following:

1. The petitioner's name, mailing address, telephone number, and, if applicable, the organization represented in the petition.
2. The number and title of the regulation to be addressed.
3. A description of the regulatory problem or need to be addressed.
4. A recommended addition, deletion, or amendment to the regulation.

C. The department shall receive, consider and respond to a petition within 180 days and shall have the sole authority to dispose of the petition.

D. Nothing herein shall prohibit the department from receiving information from the public and proceeding on its own motion for ~~rule-making~~ rulemaking.

18 VAC 76-30-60. Notice of Intended Regulatory Action.

A. Except as provided in § 2.2-4012.1 of the Code of Virginia, the department shall issue a notice of intended regulatory action (NOIRA) whenever it considers the adoption, amendment or repeal of a regulation. ~~The notice of intended regulatory action (NOIRA)~~ NOIRA shall state the purpose of the action and a brief statement of the need or problem the proposed action will address.

B. The NOIRA shall indicate whether the department intends to hold a public hearing on the proposed regulation after it is published. If the department does not intend to hold a public hearing, it shall so state ~~the reason~~ in the NOIRA.

C. If prior to the close of the 30-day comment period on the NOIRA, the department receives a request for a public hearing on the proposed regulation from at least 25 persons or if the Governor directs the department to hold a public hearing, such a hearing shall be scheduled.

18 VAC 76-30-70. Notice of comment period.

A. The department shall issue a notice of comment period (NOCP) whenever it proposes to initiate, amend or repeal a regulation. ~~The notice of comment period (NOCP)~~ NOCP shall indicate that copies of the proposed regulation are available electronically or from the department and may be requested in writing from the contact person specified in the NOCP.

B. The NOCP shall indicate that copies of the statement of substance, issues, basis, purpose, and estimated impact of the proposed regulation may also be requested in writing.

C. The NOCP shall make provision for comments pertaining to the proposed regulation by regular mail, ~~Internet~~, facsimile or electronic means. With the exception of comment received at a scheduled public hearing, oral comment ~~may~~ shall not be accepted.

18 VAC 76-30-80. Notice of meeting.

A. At any meeting of the department or advisory committee at which the formation, amendment, repeal, or adoption of a regulation is anticipated, the subject shall be described in a notice of meeting, which has been posted electronically on the ~~Internet~~ Virginia Regulatory Town Hall and transmitted to the Registrar of Regulations for inclusion in the Virginia Register.

B. If the department anticipates action on a regulation for which an exemption to the Administrative Process Act is claimed, the notice of meeting shall indicate that a copy of the proposed regulation ~~is available on a state website or upon request to~~ may be requested from the department at least two

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days prior to the meeting. A copy of the regulation shall be made available to the public attending such meeting.

18 VAC 76-30-100. Periodic review of regulations.

A. ~~Unless otherwise directed by executive order, the~~ The department shall conduct ~~an informational proceeding at least every two years~~ a periodic review of its regulations consistent ~~with an executive order issued by the Governor and with § 2.2-4007.1 of the Code of Virginia~~ to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance.

B. Such ~~proceeding~~ review may be conducted separately or in conjunction with other ~~informational proceedings meetings~~ or hearings.

C. Notice of the proceeding shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register and shall be sent to the ~~mailing list~~ notification lists identified in 18 VAC 76-30-30.

PART IV. ~~ADVISORY AD HOC~~ COMMITTEES.

18 VAC 76-30-110. Appointment of committees.

A. The department may appoint an ad hoc ~~advisory~~ committee whose responsibility shall be to assist in the review and development of regulations for the department.

B. The department may appoint an ad hoc ~~advisory~~ committee to provide professional specialization or technical assistance when the department determines that such expertise is necessary to address a specific regulatory issue or need or when groups of individuals register an interest in working with the agency.

18 VAC 76-30-120. Limitation of service.

A. An ~~advisory ad hoc~~ committee that has been appointed by the department may be dissolved by the department when:

1. There is no response to the Notice of Intended Regulatory Action; or
2. The department determines that the promulgation of the regulation is either exempt or excluded from the requirements of the Administrative Process Act.

B. An ~~advisory ad hoc~~ committee shall remain in existence no longer than ~~42~~ 18 months from its initial appointment. ~~1. If unless the department determines that the specific regulatory need continues to exist beyond that time, it shall set a specific term for the committee of not more than six additional months. The department may authorize the ad hoc committee to continue for an additional specified period of time to complete the task for which it was appointed.~~

- ~~2. At the end of that extended term, the department shall evaluate the continued need and may continue the committee for additional six-month terms.~~

VA.R. Doc. No. R07-222; Filed May 23, 2007, 11:20 a.m.

BOARD OF MEDICINE

Fast-Track Regulation

Title of Regulation: **18 VAC 85-10. Public Participation Guidelines (amending 18 VAC 85-10 through 18 VAC 85-10-70, 18 VAC 85-10-90, 18 VAC 85-10-100 and 18 VAC 85-10-110).**

Statutory Authority: § 2.2-4007.02 (effective July 1, 2007) and 54.1-2400 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until 5 p.m. on August 10, 2007.

(See Calendar of Events section
for additional information)

Effective Date: August 25, 2007.

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

Basis: Section 2.2-4007 D (§ 2.2-4007.02 effective July 1, 2007) of the Administrative Process Act mandates the adoption of public participation guidelines for soliciting the input of interested parties in the formation and development of an agency's regulations.

Section 54.1-2400 of the Code of Virginia provides the general authority to the board to promulgate regulations.

Purpose: The board has updated and clarified its guidelines for public participation in the development and promulgation of initial, amended or repealed regulations, such as inclusion of electronic notification and the Virginia Regulatory Townhall as an option for comment. Changes are recommended by a committee of board and/or department staff, which reviewed each regulation for effectiveness, consistency and clarity. The intent is for amendments to be clarifying rather than substantive. Full participation by the public and regulated entities in the regulatory process is necessary to ensure that regulations fulfill the purpose of protecting the health and safety of the public in a manner that is not overly burdensome to those being regulated.

Rationale for Using Fast-Track Process: The fast-track process is being used to promulgate the amendments because there is general agreement with the changes proposed. The action is not controversial, as is reflected by the fact that there were no public comments on a Notice of Intended Regulatory Action filed by other boards within the Department of Health Professions. Both the Department of Planning and Budget and the Governor's office have recommended that these amendments be promulgated by a fast-track action.

Substance: The regulation has been reviewed for consistency with law, clarity and ease of compliance. There are no substantive amendments.

Issues: These amendments pose no disadvantages to the public. Clarification of the definition of regulation, additional opportunity for comment, and an extension of service for an ad hoc committee appointed to advise the board on the development of a regulation are all intended to give interested parties more access to the process.

There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Regulation. The Board of Medicine (board) proposes to amend its Public Participation Guidelines. The board proposes to require that notification of all final regulatory actions, as well as the text of the regulations being changed, be posted to the board's website before the 30-day adoption period begins. The board also proposes to extend the time limit under which ad hoc committees function and eliminate language that requires the board review its regulations at least every two years.

Result of Analysis. The benefits likely exceed the costs for these proposed regulatory changes.

Estimated Economic Impact. Current regulation requires the board to notify individuals on its notification lists, either by regular mail or email, whenever a final-stage regulation is about to enter its 30-day adoption period. This current regulatory notification requirement is more stringent than what is required by either the Administrative Process Act or Executive Order 36 (both of these rulemaking documents are silent on this matter). The board proposes to delete this portion of its public participation guidelines and, instead, will post notices of adoption of final regulation, as well as the text of the regulation being changed, on the board's website. The board believes that the changed notification requirements in the proposed regulation will allow staff time to be used more efficiently while still protecting the public's ability to be involved in the final stage of the rulemaking process. Individuals who are following board regulations through the process may be slightly inconvenienced by having to go to the board's website to get information rather than having that information mailed to them. These individuals, and the public generally, will likely benefit slightly from having staff time spent on more important tasks.

Current regulation requires that the board review all of its regulations every two years "unless otherwise directed by executive order." The proposed regulation will require the board to conduct "periodic review of its regulations consistent with an executive order of the Governor and with § 2.2-4007.1 of the Code of Virginia." Currently it takes, on average, approximately 18 months for all regulatory

requirements for a new or amended regulation to be met. Given this, the public will likely benefit (slightly) from the removal of language that likely sets an unrealistic timeline for the periodic review of regulations.

Current regulation limits ad hoc committees to 12 months' existence before they must be dissolved. The proposed regulation will extend this term limit to 18 months and allow the board to authorize continuance of ad hoc committees past their regulatory time limit if their set task has not been completed. This proposal will likely have no economic impact on the citizens of the Commonwealth.

Businesses and Entities Affected. The proposed regulation will affect all individuals who involve themselves in the administrative rulemaking actions of the board.

Localities Particularly Affected. The proposed regulation will affect all localities in the Commonwealth.

Projected Impact on Employment. The proposed regulation is unlikely to have any affect on employment in the Commonwealth.

Effects on the Use and Value of Private Property. The proposed regulation will likely have no affect on the use or value of private property within the Commonwealth.

Small Businesses: Costs and Other Effects. The proposed regulation will likely have no adverse impact on any small businesses in the Commonwealth.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulation will likely have no adverse impact on any small businesses in the Commonwealth.

Legal Mandate. 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected

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small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Medicine concurs with the analysis of the Department of Planning and Budget on proposed amended regulations for 18 VAC 85-10, Public Participation Guidelines.

Summary:

The amendments update and clarify the board's guidelines for public participation in the development and promulgation of initial, amended or repealed regulations by (i) including electronic notification and the Virginia Regulatory Town Hall as an option for public comment, (ii) clarifying certain terms, (iii) requiring the board to post notice of final regulations on its website rather than sending them to its notification lists, and (iv) extending the time limitation on ad hoc committees.

18 VAC 85-10-10. Purpose.

The purpose of this chapter is to provide guidelines for the involvement of the public in the ~~development and promulgation~~ initial formation and development, amendment or repeal of regulations of the Board of Medicine. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (see § 2.2-4006 of the Code of Virginia). These rules seek to expand participation by providing for electronic exchange with the public and thereby increasing participation, reducing costs, and improving the speed of communication.

18 VAC 85-10-15. Definitions.

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

"Administrative Process Act" means Chapter ~~1-1-1~~ (§ ~~9-6.14-1~~ 2.2-4000 et seq.) of Title ~~9~~ 2.2 of the Code of Virginia.

"Board" means the Board of Medicine.

"Notification lists" means lists used by the board to notify persons pursuant to these rules. Such lists may include electronic ~~mailing~~ lists maintained through ~~a state website~~ the Virginia Regulatory Town Hall or ~~regular mailing~~ lists maintained by the board.

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

"Regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any

person, adopted by the board in accordance with the authority conferred on it by applicable laws.

18 VAC 85-10-20. Composition of notification lists.

A. The board shall maintain lists of persons who have requested to be notified of the initial formation and promulgation, development, amendment or repeal of regulations.

B. Any person may request to be placed on a notification list by indicating so electronically or in writing to the board. The board may add to a list any person it believes will serve the purpose of enhancing participation in the regulatory process.

C. The board may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. The board shall periodically request those persons on the notification lists to indicate their desire to either continue to receive documents by regular mail, be notified electronically or be deleted from the lists. Persons who elect to be included on an electronic mailing list may also request that all notices and mailings be sent in hard copy. When either regular or electronic mail is returned as undeliverable or there has been no response to the request from the board, such persons shall be deleted from the list.

18 VAC 85-10-30. Documents to be sent to persons on the notification lists.

A. Persons on the notification lists, as described in 18 VAC 85-10-20, shall be mailed or have electronically transmitted the following documents related to the promulgation of regulations:

1. A notice of intended regulatory action.
2. A notice of the comment period on a proposed regulation and instructions as to how to obtain a copy of the regulation and any supporting documents, either electronically or from the board office.
- ~~3. A notification of the adoption of a final regulation and instructions as to how to obtain a copy of the regulation and any supporting documents, either electronically or from the board office.~~
- ~~4.~~ 3. A notice soliciting comment on a final regulation when the regulatory process has been extended.

B. Notification of the adoption of a final regulation and copies of the regulation shall be posted on the board's website prior to the 30-day adoption period.

C. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation otherwise adopted in accordance with this chapter.

18 VAC 85-10-40. Petition for rulemaking

A. As provided in § 2.2-4007 of the Code of Virginia, any person may petition the board to develop a new regulation or amend an existing regulation.

B. A petition shall include but need not be limited to the following:

1. The petitioner's name, mailing address, telephone number, and, if applicable, the organization represented in the petition.
2. The number and title of the regulation to be addressed.
3. A description of the regulatory problem or need to be addressed.
4. A recommended addition, deletion, or amendment to the regulation.

C. The board shall receive, consider and respond to a petition within 180 days, and shall have the sole authority to dispose of the petition.

D. Nothing herein shall prohibit the board from receiving information from the public and proceeding on its own motion for rulemaking.

18 VAC 85-10-50. Notice of Intended Regulatory Action.

A. Except as provided in § 2.2-4012.1 of the Code of Virginia, the board shall issue a notice of intended regulatory action (NOIRA) whenever it considers the adoption, amendment or repeal of a regulation. The notice of intended regulatory action (NOIRA) shall state the purpose of the action and a brief statement of the need or problem the proposed action will address.

B. The NOIRA shall indicate whether the board intends to hold a public hearing on the proposed regulation after it is published. If the board does not intend to hold a public hearing, it shall so state ~~the reason~~ in the NOIRA.

C. If prior to the close of the 30-day comment period on the NOIRA, the board receives a request for a public hearing on the proposed regulation from at least 25 persons or if the Governor directs the board to hold a public hearing, such a hearing shall be scheduled.

18 VAC 85-10-60. Notice of comment period.

A. The board shall issue a notice of comment period (NOCP) whenever it proposes to initiate, amend or repeal a regulation. The notice of comment period (NOCP) NOCP shall indicate that copies of the proposed regulation are available electronically or from the board and may be requested in writing from the contact person specified in the NOCP.

B. The NOCP shall indicate that copies of the statement of substance, issues, basis, purpose, and estimated impact of the proposed regulation may also be requested in writing.

C. The NOCP shall make provision for comments pertaining to the proposed regulation by regular mail, ~~Internet~~, facsimile or electronic means. With the exception of comment received at a scheduled public hearing, oral comment ~~may~~ shall not be accepted.

18 VAC 85-10-70. Notice of meeting.

A. At any meeting of the board or advisory committee at which the formation, amendment, repeal, or adoption of a regulation is anticipated, the subject shall be described in a notice of meeting, which has been posted electronically on the ~~Internet~~ Virginia Regulatory Town Hall and transmitted to the Registrar of Regulations for inclusion in the Virginia Register.

B. If the board anticipates action on a regulation for which an exemption to the Administrative Process Act is claimed ~~under § 2.2-4002 or 2.2-4006 of the Code of Virginia~~, the notice of meeting shall indicate that a copy of the proposed regulation ~~is available on a state website or upon request to~~ may be requested from the board at least two days prior to the meeting. A copy of the regulation shall be made available to the public attending such meeting.

18 VAC 85-10-90. Periodic review of regulations.

A. ~~Unless otherwise directed by executive order, the~~ The board shall conduct an informational proceeding a periodic review of its regulations at least every two years consistent with an executive order issued by the Governor and with § 2.2-4007.1 of the Code of Virginia to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance.

B. Such ~~proceeding~~ review may be conducted separately or in conjunction with other ~~informational proceedings~~ meetings or hearings.

C. Notice of the proceeding shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register and shall be sent to the ~~mailing list~~ notification lists identified in 18 VAC 85-10-20.

PART IV.

ADVISORY AD HOC COMMITTEES.

18 VAC 85-10-100. Appointment of advisory board or committee.

A. The board may appoint an ad hoc ~~advisory~~ board or committee whose responsibility shall be to assist in the review and development of regulations for the board.

B. The board may appoint an ad hoc ~~advisory~~ board or committee to provide professional specialization or technical assistance when the board determines that such experience is necessary to address a specific regulatory issue or need or when groups or individuals register an interest in working with the agency.

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18 VAC 85-10-110. Limitation of service.

A. An advisory ad hoc board or committee which has been appointed by the board may be dissolved by the board when:

1. There is no response to the Notice of Intended Regulatory Action, or
2. The board determines that the promulgation of the regulation is either exempt or excluded from the requirements of the Administrative Process Act (~~§ 2.2-4006 of the Code of Virginia~~).

B. An advisory ad hoc board or committee shall remain in existence no longer than ~~12~~ 18 months from its initial appointment unless. ~~1. If the board determines that the specific regulatory need continues to exist beyond that time, it shall set a specific term for the committee of not more than six additional months. The board may authorize the ad hoc committee to continue for an additional specified period of time to complete the task for which it was appointed.~~

~~2. At the end of that extended term, the board shall evaluate the continued need and may continue the committee for additional six-month terms.~~

VA.R. Doc. No. R07-233; Filed May 23, 2007, 11:02 a.m.

Fast-Track Regulation

Title of Regulation: 18 VAC 85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (amending 18 VAC 85-20-30).

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

Public Hearing Date: June 21, 2007.

Public comments may be submitted until 5 p.m. on August 10, 2007.

(See Calendar of Events section for additional information)

Effective Date: August 25, 2007.

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 email william.harp@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of Chapter 24 (§ 54.1-2400 et seq.) of Title 54.1 of the Code of Virginia. Section 54.1-2400 (6) provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system.

In the Medical Practice Act (§ 54.1-2915 of the Code of Virginia), there is a prohibition on advertising claims of superiority or performing any act likely to deceive or defraud the public.

Purpose: Current regulations prohibit advertising that is false, misleading or deceptive. If a group of practitioners

places an advertisement, regulations require the name of the practitioner who is accountable for the validity and truthfulness of the ad to be maintained by the practice for at least two years. What is missing in regulation is a requirement that the practitioner also be able to substantiate any claim made in an advertisement with scientific or other evidence in support of its validity and truthfulness. Without such documentation, the board often has great difficulty in proving that the ad is false, misleading or deceptive. Further clarification of the practitioner's responsibility should result in fewer advertisements that are intended to falsely promote a service or mislead the public into selecting a health care practitioner based on unsubstantiated claims.

Rationale for Using Fast-Track Process: The fast-track process is being used to promulgate the amendment because it is strongly recommended that regulations be clarified to ensure that the practitioner is aware of his responsibility for documenting that a claim made in an advertisement is not false or likely to deceive or defraud the public. The action should not be controversial, as it is reflective of the current standard for ethical practice and is in the interest of public safety and protection.

Substance: The proposed fast-track action clarifies the practitioner has the responsibility for maintaining documentation to support claims made in an advertisement for at least two years.

Issues: There are no disadvantages to the public of this amendment. If an advertisement claims certain services or pricing packages are available or that certain outcomes can be guaranteed with a practitioner or a procedure, the practitioner has an obligation to be able to substantiate the truthfulness of such a claim. The public has a definite advantage with a requirement for maintaining such documentation, because it will help to ensure that there is some validity for such a claim.

There are no disadvantages to the agency or the Commonwealth; the proposal will facilitate the investigation of a complaint made regarding the validity or truthfulness of an advertisement.

There are no other pertinent matters of interest.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Regulation. The Board of Medicine (board) proposes to require that documents that support advertising claims be maintained and available for board review for at least two years.

Result of Analysis. The benefits likely exceed the costs for this proposed regulatory change.

Estimated Economic Impact. Current regulation prohibits board licensees from putting out advertising material that is false or deceptive. Current regulation also specifies that

licensees who practice alone are "responsible and accountable for the validity and truthfulness" of any advertising claims and that, for practices staffed by more than one licensee, "the name of the practitioner or practitioners responsible and accountable for the content of the advertisement shall be documented and maintained by the practice for at least two years." Regulation does not currently require, however, that named licensees be able to produce evidence to back the advertising claims for which they are accountable. As a result, although licensees can be disciplined for making false or misleading advertising claims, the onus of disproving those claims lies with the board.

This proposed regulation will require that evidence to back advertising claims be maintained and available to the board for at least two years. This change will allow the board to more effectively police any advertising claims made by its licensees. It may also help insure that individuals make better informed health care decisions (or at least decisions that are not influenced by erroneous or fraudulent advertising claims). Licensees who advertise will likely incur some added expenses on account of this regulatory change. To the extent that licensees have actual evidence to back their claims of superiority (or popularity), these costs should be minimal and will likely only include the explicit costs of copying and storing that proof as well as the implicit cost of their time spent.

Businesses and Entities Affected. All board licensees will be affected by this regulatory change. This regulated community comprises 857 athletic trainers, 1577 chiropractors, 347 acupuncturists, 20 midwives, 29,635 medical doctors, 2378 occupational therapists, 1269 osteopathic doctors, 463 podiatrists and 3319 respiratory care practitioners.

Localities Particularly Affected. This regulatory change will affect all localities in the Commonwealth.

Projected Impact on Employment. This regulatory change is unlikely to have an appreciable affect on employment in the Commonwealth.

Effects on the Use and Value of Private Property. Licensees who have seen their profits increase because of advertising claims, but who can't prove those claims, may see their profits fall once they have to stop their suspect advertising.

Small Businesses: Costs and Other Effects. Licensees who choose to advertise may experience a minimal increase in copying and storage fees on account of this regulatory change.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There are likely no alternative methods to accomplish the board's goal that would be less costly than the methods mandated by this regulatory change.

Legal Mandate. 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Medicine concurs with the analysis of the Department of Planning and Budget for amendments to 18 VAC 85-20, relating to requirements to maintain documentation supporting claims made in advertisements by licensees.

Summary:

The proposed action would place the responsibility on the practitioner to have and maintain documentation in support of claims made in advertisements.

18 VAC 85-20-30. Advertising ethics.

A. Any statement specifying a fee, whether standard, discounted or free, for professional services which does not include the cost of all related procedures, services and products which, to a substantial likelihood, will be necessary for the completion of the advertised service as it would be understood by an ordinarily prudent person shall be deemed to be deceptive or misleading, or both. Where reasonable disclosure of all relevant variables and considerations is made, a statement of a range of prices for specifically described services shall not be deemed to be deceptive or misleading.

B. Advertising a discounted or free service, examination, or treatment and charging for any additional service, examination, or treatment that is performed as a result of and within 72 hours of the initial office visit in response to such advertisement is unprofessional conduct unless such professional services rendered are as a result of a bonafide

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emergency. This provision may not be waived by agreement of the patient and the practitioner.

C. Advertisements of discounts shall disclose the full fee that has been discounted. The practitioner shall maintain documented evidence to substantiate the discounted fees and shall make such information available to a consumer upon request.

D. A licensee shall disclose the complete name of the specialty board that conferred the certification when using or authorizing the use of the term "board certified" or any similar words or phrase calculated to convey the same meaning in any advertising for his practice.

E. A licensee of the board shall not advertise information that is false, misleading, or deceptive. For an advertisement for a single practitioner, it shall be presumed that the practitioner is responsible and accountable for the validity and truthfulness of its content. For an advertisement for a practice in which there is more than one practitioner, the name of the practitioner or practitioners responsible and accountable for the content of the advertisement shall be documented and maintained by the practice for at least two years.

F. Documentation, scientific and otherwise, supporting claims made in an advertisement shall be maintained and available for the board's review for at least two years.

VA.R. Doc. No. R07-234; Filed May 23, 2007, 11:01 a.m.

Proposed Regulations

Titles of Regulations: **18 VAC 85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (amending 18 VAC 85-20-22; adding 18 VAC 85-20-226).**

18 VAC 85-40. Regulations Governing the Practice of Respiratory Care Practitioners (amending 18 VAC 85-40-35; adding 18 VAC 85-40-67).

18 VAC 85-50. Regulations Governing the Practice of Physician Assistants (amending 18 VAC 85-50-35; adding 18 VAC 85-50-61).

18 VAC 85-80. Regulations Governing the Licensure of Occupational Therapists (amending 18 VAC 85-80-26; adding 18 VAC 85-80-73).

18 VAC 85-101. Regulations Governing the Licensure of Radiologic Technologists and Radiologic Technologists-Limited (amending 18 VAC 85-101-25; adding 18 VAC 85-101-153).

18 VAC 85-110. Regulations Governing the Practice of Licensed Acupuncturists (amending 18 VAC 85-110-35; adding 18 VAC 85-110-161).

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

Public Hearing Date: June 21, 2007- 8:30 a.m.

Public comments may be submitted until 5 p.m. on August 10, 2007.

(See Calendar of Events section for additional information)

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943 or email 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 Board was mandated to promulgate regulations for restricted volunteer licenses by Chapter 881 of the 2006 Acts of Assembly.

Purpose: The purpose of the action is compliance with a statutory mandate for the promulgation of regulations to establish a restricted volunteer license under the Board of Medicine for persons to practice without compensation in free clinics. Regulations set out the requirements for applying for such a license, the fees for application and renewal and the hours of continuing education necessary for the second renewal. The goal of the regulation was to establish minimal fees and continuing education requirements to facilitate and encourage practitioners who are retired or taking a break from active practice to obtain such a license and volunteer their services in a free clinic. At the same time, there was concern that practitioners maintain current knowledge and technique as necessary to serve patients in free clinics with the same degree of professionalism and skill as could be expected in other health care settings.

Issues: The primary advantage to the public is the creation of a license that a person who is retiring from active practice can obtain in order to practice in a free clinic without compensation. The free clinics requested support for legislation and regulation to authorize such a license, with the hope that a drastically reduced licensure fee and hours of continuing education, more practitioners would be willing to volunteer their services. In so doing, the clinics may have the advantage of skilled practitioners who do not want the pressures of a full-time practice but are still extremely competent and able to use their knowledge and professional abilities to deliver badly needed health care services to an underserved population. There are no disadvantages to the public; the clinics would continue to be primarily staffed and supervised by fully licensed practitioners who would provide oversight for the volunteers. There are no advantages or disadvantages to the agency or the Commonwealth. There are no other matters of interest.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Regulation. Pursuant to Chapter 881 of the 2006 Acts of Assembly, the Board of Medicine

(board) proposes to establish a restricted volunteer license. This license will allow temporarily or permanently retired health care practitioners to volunteer their services at free clinics throughout the Commonwealth without having to pay all the fees, and obtain all of the continuing education, required for active licensure.

Result of Analysis. The benefits very likely exceed the costs for these proposed regulatory changes.

Estimated Economic Impact. Before emergency regulations to implement Chapter 881 were put in place on September 1, 2006, health care practitioners who wanted to donate their time and skills to free clinics had to have an active license. This requirement likely dissuaded some retired health care practitioners (or practitioners who had allowed their license to lapse because they did not intend to practice for a time) from volunteering.

The General Assembly passed legislation, during its 2006 session, which grants the board the option of implementing a restricted volunteer license program. These proposed regulations, and the emergency regulations that they replace, allow retired medical doctors, osteopathic doctors, podiatrists, chiropractors, respiratory care practitioners, physician assistants, occupational therapists, radiologic technologists (who have held either full or limited licenses) and acupuncturists to obtain a restricted volunteer license if they held an unrestricted license which lapsed. These licenses must be renewed biannually and may only be used to practice “without compensation in a clinic which is organized in whole or in part for the delivery of health care services without charge.” Health care practitioners who have not engaged in active practice for four or more years may give care under a restricted volunteer license but must have their cases reviewed by a health care practitioner with an active, unrestricted Virginia license.

Initial application and renewal fees for restricted volunteer licenses vary according to what type of health care professional is being licensed but for all professions these fees are approximately half the fee for renewal of an inactive license. So respiratory therapists, for example, have to pay \$70 for the biannual renewal of an inactive license but would only have to pay \$35 to get or renew a restricted volunteer license. Additionally, fees for late renewal of a restricted volunteer license will be 1/3 of the renewal fee. Holders of restricted volunteer licenses will be able to renew their licenses once without meeting any continuing education requirements. Thereafter health care practitioners who renew restricted volunteer licenses will have to complete half of the educational hours that would be needed to renew a comparable active license. Physician assistants, for example, must complete 100 hour of continuing education biannually to renew their active license but will only have to complete 50 hours to renew a biannual restricted volunteer license.

These regulations will cut the cost of practicing the healing arts on a volunteer basis by half (for professionals who do not hold active licenses). This cost reduction will likely increase the chance that retired healthcare professionals will choose to use their time and skills to help their communities. The Department of Health Professions (DHP) reports that there has been concern that retired professionals’ skills may have ossified to the point that they would be offering sub par care to their patients. This concern is addressed by continuing education requirements and by requiring professionals who have not actively practiced for a number of years to have their work reviewed by actively licensed coworkers. These restrictions, taken together, will likely ensure that the care given by holders of restricted volunteer licenses is on par with care given by colleagues who hold unrestricted active licenses. Because of this, the public will likely receive an unalloyed benefit from these proposed regulations.

Businesses and Entities Affected. Retired medical doctors, osteopathic doctors, podiatrists, chiropractors, respiratory care practitioners, physician assistants, occupational therapists, radiologic technologists (who have held either full or limited licenses) and acupuncturists will be affected by these proposed regulations. Free clinics and the patients they serve will also be affected. DHP reports that they issued three restricted volunteer licenses to medical doctors between September 1, 2006 and October 15, 2006.

Localities Particularly Affected. All localities in Virginia will be affected by these proposed regulations.

Projected Impact on Employment. These proposed regulations are unlikely to have any measurable affect on employment in the Commonwealth.

Effects on the Use and Value of Private Property. These proposed regulations are unlikely to have any measurable affect on the use or value of private property in the Commonwealth.

Small Businesses: Cost and Other Effects. Small businesses in the Commonwealth will not incur any costs on account of these regulations.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Small businesses in the Commonwealth will not incur any costs on account of these regulations.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 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

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implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Medicine concurs with the analysis of the Department of Planning and Budget for amendments to regulations of the board for issuance of a volunteer restricted license.

Summary:

Pursuant to Chapter 881 of the 2006 Acts of Assembly, the Board of Medicine proposes to establish a restricted volunteer license. This license will allow temporarily or permanently retired health care practitioners to volunteer their services at free clinics throughout the Commonwealth without having to pay all fees and obtain all of the continuing education required for active licensure.

18 VAC 85-20-22. Required fees.

- A. Unless otherwise provided, fees established by the board shall not be refundable.
- B. All examination fees shall be determined by and made payable as designated by the board.
- C. The application fee for licensure in medicine, osteopathic medicine, and podiatry shall be \$302, and the fee for licensure in chiropractic shall be \$277.
- D. The fee for a temporary authorization to practice medicine pursuant to § 54.1-2927 B (i) and (ii) of the Code of Virginia shall be \$25.
- E. The application fee for a limited professorial or fellow license issued pursuant to 18 VAC 85-20-210 shall be \$55. The annual renewal fee shall be \$35. An additional fee for late renewal of licensure shall be \$15.
- F. The application fee for a limited license to interns and residents pursuant to 18 VAC 85-20-220 shall be \$55. The annual renewal fee shall be \$35. An additional fee for late renewal of licensure shall be \$15.
- G. The fee for a duplicate wall certificate shall be \$15; the fee for a duplicate license shall be \$5.

H. The fee for biennial renewal shall be \$337 for licensure in medicine, osteopathic medicine and podiatry and \$312 for licensure in chiropractic, due in each even-numbered year in the licensee's birth month. An additional fee for processing a late renewal application within one renewal cycle shall be \$115 for licensure in medicine, osteopathic medicine and podiatry and \$105 for licensure in chiropractic.

I. The fee for requesting reinstatement of licensure or certification pursuant to § 54.1-2408.2 of the Code of Virginia or for requesting reinstatement after any petition to reinstate the certificate or license of any person has been denied shall be \$2,000.

J. The fee for reinstatement of a license issued by the Board of Medicine pursuant to § 54.1-2904 of the Code of Virginia that has expired for a period of two years or more shall be \$382 for licensure in medicine, osteopathic medicine and podiatry and \$367 for licensure in chiropractic in addition to the late fee for each year in which the license has been lapsed, not to exceed a total of four years. The fee shall be submitted with an application for licensure reinstatement.

K. The fee for a letter of verification of licensure to another jurisdiction shall be \$10, and the fee for certification of grades to another jurisdiction by the board shall be \$25. Fees shall be due and payable upon submitting a request for verification or certification to the board.

L. The fee for biennial renewal of an inactive license shall be \$168, due in the licensee's birth month. An additional fee for late renewal of licensure shall be \$55 for each renewal cycle.

M. The fee for an application or for the biennial renewal of a restricted volunteer license shall be \$75, due in the licensee's birth month. An additional fee for late renewal of licensure shall be \$25 for each renewal cycle.

~~M. N.~~ The fee for a returned check shall be \$35.

18 VAC 85-20-226. Restricted volunteer license.

A. Any doctor of medicine, osteopathic medicine, podiatry or chiropractic who held an unrestricted license issued by the Virginia Board of Medicine or by a board in another state as a licensee in good standing at the time the license expired or became inactive may be issued a restricted volunteer license to practice without compensation in a clinic that is organized in whole or in part for the delivery of health care services without charge in accordance with § 54.1-106 of the Code of Virginia.

B. To be issued a restricted volunteer license, a doctor of medicine, osteopathic medicine, podiatry or chiropractic shall submit an application to the board that documents compliance with requirements of § 54.1-2928.1 of the Code of Virginia and the application fee prescribed in 18 VAC 85-20-22.

C. The licensee who intends to continue practicing with a restricted volunteer license shall renew biennially during his

birth month, meet the continued competency requirements prescribed in subsection D of this section, and pay to the board the renewal fee prescribed in 18 VAC 85-20-22.

D. The holder of a restricted volunteer license shall not be required to attest to hours of continuing education for the first renewal of such a license. For each renewal thereafter, the licensee shall attest to 30 hours obtained during the two years immediately preceding renewal with at least 15 hours of Type 1 activities or courses offered by an accredited sponsor or organization sanctioned by the profession and no more than 15 hours of Type 2 activities or courses.

18 VAC 85-40-35. Fees.

The following fees are required:

1. The application fee, payable at the time the application is filed, shall be \$130.
2. The biennial fee for renewal of active licensure shall be \$135 and for renewal of inactive licensure shall be \$70, payable in each odd-numbered year in the license holder's birth month.
3. The additional fee for late renewal of licensure within one renewal cycle shall be \$50.
4. The fee for reinstatement of a license issued by the Board of Medicine pursuant to § 54.1-2904 of the Code of Virginia, which has lapsed for a period of two years or more, shall be \$180 and must be submitted with an application for licensure reinstatement.
5. The fee for reinstatement of a license pursuant to § 54.1-2408.2 of the Code of Virginia shall be \$2,000.
6. The fee for a duplicate license shall be \$5, and the fee for a duplicate wall certificate shall be \$15.
7. The fee for a returned check shall be \$35.
8. The fee for a letter of good standing/verification to another jurisdiction shall be \$10; the fee for certification of grades to another jurisdiction shall be \$25.
9. The fee for an application or for the biennial renewal of a restricted volunteer license shall be \$35, due in the licensee's birth month. An additional fee for late renewal of licensure shall be \$15 for each renewal cycle.

18 VAC 85-40-67. Restricted volunteer license.

A. A respiratory care practitioner who held an unrestricted license issued by the Virginia Board of Medicine or by a board in another state as a licensee in good standing at the time the license expired or became inactive may be issued a restricted volunteer license to practice without compensation in a clinic that is organized in whole or in part for the delivery of health care services without charge in accordance with § 54.1-106 of the Code of Virginia.

B. To be issued a restricted volunteer license, a respiratory care practitioner shall submit an application to the board that documents compliance with requirements of § 54.1-2928.1 of the Code of Virginia and the application fee prescribed in 18 VAC 85-40-35.

C. The licensee who intends to continue practicing with a restricted volunteer license shall renew biennially during his birth month, meet the continued competency requirements prescribed in subsection D of this section, and pay to the board the renewal fee prescribed in 18 VAC 85-40-35.

D. The holder of a restricted volunteer license shall not be required to attest to hours of continuing education for the first renewal of such a license. For each renewal thereafter, the licensee shall attest to obtaining 10 hours of continuing education as approved and documented by a sponsor recognized by the AARC or in courses directly related to the practice of respiratory care as approved by the American Medical Association for Category 1 CME credit within the last biennium.

18 VAC 85-50-35. Fees.

Unless otherwise provided, the following fees shall not be refundable:

1. The initial application fee for a license, payable at the time application is filed, shall be \$130.
2. The biennial fee for renewal of an active license shall be \$135 and for renewal of an inactive license shall be \$70, payable in each odd-numbered year in the birth month of the licensee.
3. The additional fee for late renewal of licensure within one renewal cycle shall be \$50.
4. A restricted volunteer license shall expire 12 months from the date of issuance and may be renewed without charge by receipt of a renewal application that verifies that the physician assistant continues to comply with provisions of § 54.1-2951.3 of the Code of Virginia.
5. The fee for review and approval of a new protocol submitted following initial licensure shall be \$15.
6. The fee for reinstatement of a license pursuant to § 54.1-2408.2 of the Code of Virginia shall be \$2,000.
7. The fee for a duplicate license shall be \$5, and the fee for a duplicate wall certificate shall be \$15.
8. The fee for a returned check shall be \$35.
9. The fee for a letter of good standing/verification to another jurisdiction shall be \$10.
10. The fee for an application or for the biennial renewal of a restricted volunteer license shall be \$35, due in the licensee's birth month. An additional fee for late renewal of licensure shall be \$15 for each renewal cycle.

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18 VAC 85-50-61. Restricted volunteer license.

A. A physician assistant who held an unrestricted license issued by the Virginia Board of Medicine or by a board in another state as a licensee in good standing at the time the license expired or became inactive may be issued a restricted volunteer license to practice without compensation in a clinic that is organized in whole or in part for the delivery of health care services without charge in accordance with § 54.1-106 of the Code of Virginia.

B. To be issued a restricted volunteer license, a physician assistant shall submit an application to the board that documents compliance with requirements of § 54.1-2928.1 of the Code of Virginia and the application fee prescribed in 18 VAC 85-50-35.

C. The licensee who intends to continue practicing with a restricted volunteer license shall renew biennially during his birth month, meet the continued competency requirements prescribed in subsection D of this section, and pay to the board the renewal fee prescribed in 18 VAC 85-50-35.

D. The holder of a restricted volunteer license shall not be required to attest to hours of continuing education for the first renewal of such a license. For each renewal thereafter, the licensee shall attest to obtaining 50 hours of continuing education during the biennial renewal period with at least 25 hours in Type 1 and no more than 25 hours in Type 2 as acceptable to the NCCPA.

18 VAC 85-80-26. Fees.

A. The following fees have been established by the board:

1. The initial fee for the occupational therapist license shall be \$130.
2. The fee for reinstatement of the occupational therapist license that has been lapsed for two years or more shall be \$180.
3. The fee for active license renewal shall be \$135 and for inactive license renewal shall be \$70 and shall be due in the birth month of the licensed therapist in each even-numbered year.
4. The additional fee for processing a late renewal application within one renewal cycle shall be \$50.
5. The fee for a letter of good standing or verification to another state for a license shall be \$10.
6. The fee for reinstatement of licensure pursuant to § 54.1-2408.2 of the Code of Virginia shall be \$2,000.
7. The fee for a returned check shall be \$35.
8. The fee for a duplicate license shall be \$5, and the fee for a duplicate wall certificate shall be \$15.
9. The fee for an application or for the biennial renewal of a restricted volunteer license shall be \$35, due in the

licensee's birth month. An additional fee for late renewal of licensure shall be \$15 for each renewal cycle.

B. Unless otherwise provided, fees established by the board shall not be refundable.

18 VAC 85-80-73. Restricted volunteer license.

A. An occupational therapist who held an unrestricted license issued by the Virginia Board of Medicine or by a board in another state as a licensee in good standing at the time the license expired or became inactive may be issued a restricted volunteer license to practice without compensation in a clinic that is organized in whole or in part for the delivery of health care services without charge in accordance with § 54.1-106 of the Code of Virginia.

B. To be issued a restricted volunteer license, an occupational therapist shall submit an application to the board that documents compliance with requirements of § 54.1-2928.1 of the Code of Virginia and the application fee prescribed in 18 VAC 85-80-26.

C. The licensee who intends to continue practicing with a restricted volunteer license shall renew biennially during his birth month, meet the continued competency requirements prescribed in subsection D of this section, and pay to the board the renewal fee prescribed in 18 VAC 85-80-26.

D. The holder of a restricted volunteer license shall not be required to attest to hours of continuing education for the first renewal of such a license. For each renewal thereafter, the licensee shall attest to obtaining 10 hours of continuing education during the biennial renewal period with at least five hours of Type 1 and no more than five hours of Type 2 as specified in 18 VAC 85-80-71.

18 VAC 85-101-25. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Initial licensure fees.

1. The application fee for radiologic technologist licensure shall be \$130.
2. The application fee for the radiologic technologist-limited licensure shall be \$90.
3. All examination fees shall be determined by and made payable as designated by the board.

C. Licensure renewal and reinstatement.

1. The fee for active license renewal for a radiologic technologist shall be \$135 and for a radiologic technologist-limited shall be \$70. The fee for inactive license renewal for a radiologic technologist shall be \$70 and for a radiologic technologist-limited shall be \$35.
2. An additional fee of \$50 for a radiologic technologist and \$25 for a radiologic technologist-limited to cover

administrative costs for processing a late renewal application within one renewal cycle shall be imposed by the board.

3. The fee for reinstatement of a license that has lapsed for a period of two years or more shall be \$180 for a radiologic technologist and \$120 for a radiologic technologist-limited and shall be submitted with an application for licensure reinstatement.

4. The fee for reinstatement of a license pursuant to § 54.1-2408.2 of the Code of Virginia shall be \$2,000.

D. Other fees.

1. The application fee for a traineeship as a radiologic technologist shall be \$25.

2. The fee for a letter of good standing or verification to another state for licensure shall be \$10; the fee for certification of grades to another jurisdiction shall be \$25.

3. The fee for a returned check shall be \$35.

4. The fee for a duplicate license shall be \$5.00, and the fee for a duplicate wall certificate shall be \$15.

5. The fee for an application or for the biennial renewal of a restricted volunteer license shall be \$35, due in the licensee's birth month. An additional fee for late renewal of licensure shall be \$15 for each renewal cycle.

18 VAC 85-101-153. Restricted volunteer license.

A. A licensed radiologic technologist or a radiologic technologist-limited who held an unrestricted license issued by the Virginia Board of Medicine or by a board in another state as a licensee in good standing at the time the license expired or became inactive may be issued a restricted volunteer license to practice without compensation in a clinic that is organized in whole or in part for the delivery of health care services without charge in accordance with § 54.1-106 of the Code of Virginia.

B. To be issued a restricted volunteer license, a licensed radiologic technologist or a radiologic technologist-limited shall submit an application to the board that documents compliance with requirements of § 54.1-2928.1 of the Code of Virginia and the application fee prescribed in 18 VAC 85-101-25.

C. The licensee who intends to continue practicing with a restricted volunteer license shall renew biennially during his birth month, meet the continued competency requirements prescribed in subsection D of this section, and pay to the board the renewal fee prescribed in 18 VAC 85-101-25.

D. The holder of a restricted volunteer license shall not be required to attest to hours of continuing education for the first renewal of such a license. For each renewal thereafter, a licensed radiologic technologist shall attest to having completed 12 hours of Category A continuing education as

acceptable to and documented by the ARRT within the last biennium. A radiologic technologist-limited shall attest to having completed six hours of Category A continuing education within the last biennium that corresponds to the anatomical areas in which the limited licensee practices. Hours shall be acceptable to and documented by the ARRT or by any other entity approved by the board for limited licensees whose scope of practice is podiatry or bone densitometry.

18 VAC 85-110-35. Fees.

Unless otherwise provided, the following fees shall not be refundable:

1. The application fee for a license to practice as an acupuncturist shall be \$130.

2. The fee for biennial active license renewal shall be \$135; the fee for biennial inactive license renewal shall be \$70.

3. The additional fee for processing a late renewal within one renewal cycle shall be \$50.

4. The fee for reinstatement of a license which has expired for two or more years shall be \$180.

5. The fee for a letter of good standing/verification of a license to another jurisdiction shall be \$10.

6. The fee for reinstatement of a license pursuant to § 54.1-2408.2 of the Code of Virginia shall be \$2,000.

7. The fee for a duplicate wall certificate shall be \$15.

8. The fee for a duplicate renewal license shall be \$5.

9. The fee for a returned check shall be \$35.

10. The fee for an application or for the biennial renewal of a restricted volunteer license shall be \$35, due in the licensee's birth month. An additional fee for late renewal of licensure shall be \$15 for each renewal cycle.

18 VAC 85-110-161. Restricted volunteer license.

A. A licensed acupuncturist who held an unrestricted license issued by the Virginia Board of Medicine or by a board in another state as a licensee in good standing at the time the license expired or became inactive may be issued a restricted volunteer license to practice without compensation in a clinic that is organized in whole or in part for the delivery of health care services without charge in accordance with § 54.1-106 of the Code of Virginia.

B. To be issued a restricted volunteer license, a licensed acupuncturist shall submit an application to the board that documents compliance with requirements of § 54.1-2928.1 of the Code of Virginia and the application fee prescribed in 18 VAC 85-110-35.

C. The licensee who intends to continue practicing with a restricted volunteer license shall renew biennially during his

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birth month, meet the continued competency requirements prescribed in subsection D of this section, and pay to the board the renewal fee prescribed in 18 VAC 85-110-35.

D. The holder of a restricted volunteer license shall not be required to attest to hours of continuing education for the first renewal of such a license. For each renewal thereafter, the licensee shall attest to obtaining 20 hours of continuing education acceptable to the NCCAOM, obtained within the last biennium.

VA.R. Doc. No. R06-337; Filed May 23, 2007, 11:09 a.m.

BOARD OF NURSING

Fast-Track Regulation

Title of Regulation: **18 VAC 90-10. Public Participation Guidelines (amending 18 VAC 90-10-10 through 18 VAC 90-10-80, 18 VAC 90-10-100, 18 VAC 90-10-110 and 18 VAC 90-10-120).**

Statutory Authority: §§ 2.2-4007.02 (effective July 1, 2007) and 54.1-2400 of the Code of Virginia.

Public Hearing Date: N/A - Public comments may be submitted until 5 p.m. on August 10, 2007.

(See Calendar of Events section for additional information)

Effective Date: August 25, 2007.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9909, FAX (804) 662-9512, or email jay.douglas@dhp.virginia.gov.

Basis: Section 2.2-4007 D (§ 2.2-4007.02 effective July 1, 2007) of the Administrative Process Act mandates the adoption of public participation guidelines for soliciting the input of interested parties in the formation and development of an agency's regulations.

Section 54.1-2400 of the Code of Virginia provides the general authority to the board to promulgate regulations.

Purpose: The board has updated and clarified its guidelines for public participation in the development and promulgation of initial, amended or repealed regulations, such as inclusion of electronic notification and the Virginia Regulatory Townhall as an option for comment. Changes are recommended by a committee of board and/or department staff, which reviewed each regulation for effectiveness, consistency and clarity. The intent is for amendments to be clarifying rather than substantive. Full participation by the public and regulated entities in the regulatory process is necessary to ensure that regulations fulfill the purpose of protecting the health and safety of the public in a manner that is not overly burdensome to those being regulated.

Rationale for Using Fast-Track Process: The fast-track process is being used to promulgate the amendments because there is general agreement with the changes proposed. The action is not controversial, as is reflected by the fact that there were no public comments on a Notice of Intended Regulatory Action filed by other boards within the Department of Health Professions. Both the Department of Planning and Budget and the Governor's office have recommended that these amendments be promulgated by a fast-track action.

Substance: The regulation has been reviewed for consistency with law, clarity and ease of compliance. There are no substantive amendments.

Issues: These amendments pose no disadvantages to the public. Clarification of the definition of regulation, additional opportunity for comment, and an extension of service for an ad hoc committee appointed to advise the board on the development of a regulation are all intended to give interested parties more access to the process.

There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Regulation. The Board of Nursing (board) proposes to amend its Public Participation Guidelines. The board proposes to require that notification of all final regulatory actions, as well as the text of the regulations being changed, be posted to the board's website before the 30-day adoption period begins. The board also proposes to extend the time limit under which ad hoc committees function and eliminate language that requires the board review its regulations at least every two years.

Result of Analysis. The benefits likely exceed the costs for these proposed regulatory changes.

Estimated Economic Impact. Current regulation requires the board to notify individuals on its notification lists, either by regular mail or email, whenever a final-stage regulation is about to enter its 30-day adoption period. This current regulatory notification requirement is more stringent than what is required by either the Administrative Process Act or Executive Order 36 (both of these rulemaking documents are silent on this matter). The board proposes to delete this portion of its public participation guidelines and, instead, will post notices of adoption of final regulation, as well as the text of the regulation being changed, on the board's website. The board believes that the changed notification requirements in the proposed regulation will allow staff time to be used more efficiently while still protecting the public's ability to be involved in the final stage of the rulemaking process. Individuals who are following board regulations through the process may be slightly inconvenienced by having to go to the board's website to get information rather than having that information mailed to them. These individuals, and the public

generally, will likely benefit slightly from having staff time spent on more important tasks.

Current regulation requires that the board review all of its regulations every two years “unless otherwise directed by executive order.” The proposed regulation will require the board to conduct “periodic review of its regulations consistent with an executive order of the Governor and with § 2.2-4007.1 of the Code of Virginia.” Currently it takes, on average, approximately 18 months for all regulatory requirements for a new or amended regulation to be met. Given this, the public will likely benefit (slightly) from the removal of language that likely sets an unrealistic timeline for the periodic review of regulations.

Current regulation limits ad hoc committees to 12 months' existence before they must be dissolved. The proposed regulation will extend this term limit to 18 months and allow the board to authorize continuance of ad hoc committees past their regulatory time limit if their set task has not been completed. This proposal will likely have no economic impact on the citizens of the Commonwealth.

Businesses and Entities Affected. The proposed regulation will affect all individuals who involve themselves in the administrative rulemaking actions of the board.

Localities Particularly Affected. The proposed regulation will affect all localities in the Commonwealth.

Projected Impact on Employment. The proposed regulation is unlikely to have any affect on employment in the Commonwealth.

Effects on the Use and Value of Private Property. The proposed regulation will likely have no affect on the use or value of private property within the Commonwealth.

Small Businesses: Costs and Other Effects. The proposed regulation will likely have no adverse impact on any small businesses in the Commonwealth.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulation will likely have no adverse impact on any small businesses in the Commonwealth.

Legal mandate. 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. Further, if the proposed

regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Nursing concurs with the analysis of the Department of Planning and Budget on proposed amended regulations for 18 VAC 90-10, Public Participation Guidelines.

Summary:

The amendments update and clarify the board's guidelines for public participation in the development and promulgation of initial, amended or repealed regulations by (i) including electronic notification and the Virginia Regulatory Town Hall as an option for public comment, (ii) clarifying certain terms, (iii) requiring the board to post notice of final regulations on its website rather than sending them to its notification lists, and (iv) extending the time limitation on ad hoc committees.

18 VAC 90-10-10. Purpose.

The purpose of this chapter is to provide guidelines for the involvement of the public in the ~~development and promulgation~~ initial formation and development, amendment or repeal of regulations of the Board of Nursing. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act. These rules seek to expand participation by providing for electronic exchange with the public and thereby increasing participation, reducing costs, and improving the speed of communication.

18 VAC 90-10-20. Definitions.

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

"Administrative Process Act" means Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Board" means the Board of Nursing.

"Notification lists" means lists used by the board to notify persons pursuant to these rules. Such lists may include electronic ~~mailing~~ lists maintained through ~~a state website~~ the Virginia Regulatory Town Hall or ~~regular mailing~~ lists maintained by the board.

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

"Regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, adopted by the board in accordance with the authority conferred on it by applicable laws.

18 VAC 90-10-30. Composition of notification lists.

A. The board shall maintain lists of persons who have requested to be notified of the initial formation and promulgation, development, amendment or repeal of regulations.

B. Any person may request to be placed on a notification list by indicating so electronically or in writing to the board. The board may add to a list any person it believes will serve the purpose of enhancing participation in the regulatory process.

C. The board may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. The board shall periodically request those persons on the notification lists to indicate their desire to either continue to receive documents by regular mail, be notified electronically or be deleted from the lists. Persons who elect to be included on an electronic mailing list may also request that all notices and mailings be sent in hard copy. When either regular or electronic mail is returned as undeliverable or there has been no response to the request from the board, such persons shall be deleted from the list.

18 VAC 90-10-40. Documents to be sent to persons on the notification lists.

A. Persons on the notification lists, as described in 18 VAC 90-10-30, shall be mailed or have electronically transmitted the following documents related to the promulgation of regulations:

1. A notice of intended regulatory action.
2. A notice of the comment period on a proposed regulation and instructions as to how to obtain a copy of the regulation and any supporting documents, either electronically or from the board office.
- ~~3. A notification of the adoption of a final regulation and instructions as to how to obtain a copy of the regulation and any supporting documents, either electronically or from the board office.~~
4. 3. A notice soliciting comment on a final regulation when the regulatory process has been extended.

B. Notification of the adoption of a final regulation and copies of the regulation shall be posted on the board's website prior to the 30-day adoption period.

C. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation otherwise adopted in accordance with this chapter.

18 VAC 90-10-50. Petition for ~~rule making~~ rulemaking.

A. As provided in § 2.2-4007 of the Code of Virginia, any person may petition the board to develop a new regulation or amend an existing regulation.

B. A petition shall include but need not be limited to the following:

1. The petitioner's name, mailing address, telephone number, and, if applicable, the organization represented in the petition.
2. The number and title of the regulation to be addressed.
3. A description of the regulatory problem or need to be addressed.
4. A recommended addition, deletion, or amendment to the regulation.

C. The board shall receive, consider and respond to a petition within 180 days and shall have the sole authority to dispose of the petition.

D. Nothing herein shall prohibit the board from receiving information from the public and proceeding on its own motion for ~~rule making~~ rulemaking.

18 VAC 90-10-60. Notice of Intended Regulatory Action.

A. Except as provided in § 2.2-4012.1 of the Code of Virginia, the board shall issue a notice of intended regulatory action (NOIRA) whenever it considers the adoption, amendment or repeal of a regulation. ~~The notice of intended regulatory action (NOIRA)~~ NOIRA shall state the purpose of the action and a brief statement of the need or problem the proposed action will address.

B. The NOIRA shall indicate whether the board intends to hold a public hearing on the proposed regulation after it is published. If the board does not intend to hold a public hearing, it shall so state ~~the reason~~ in the NOIRA.

C. If prior to the close of the 30-day comment period on the NOIRA, the board receives a request for a public hearing on the proposed regulation from at least 25 persons or if the Governor directs the board to hold a public hearing, such a hearing shall be scheduled.

18 VAC 90-10-70. Notice of comment period.

A. The board shall issue a notice of comment period (NOCP) whenever it proposes to initiate, amend or repeal a regulation. ~~The notice of comment period (NOCP)~~ NOCP shall indicate that copies of the proposed regulation are available electronically or from the board and may be requested in writing from the contact person specified in the NOCP.

B. The NOCP shall indicate that copies of the statement of substance, issues, basis, purpose, and estimated impact of the proposed regulation may also be requested in writing.

C. The NOCP shall make provision for comments pertaining to the proposed regulation by regular mail, ~~Internet~~, facsimile or electronic means. With the exception of comment received at a scheduled public hearing, oral comment ~~may~~ shall not be accepted.

18 VAC 90-10-80. Notice of meeting.

A. At any meeting of the board or advisory committee at which the formation, ~~amendment, repeal,~~ or adoption of a regulation is anticipated, the subject shall be described in a notice of meeting, which has been posted electronically on the ~~Internet~~ Virginia Regulatory Town Hall and transmitted to the Registrar of Regulations for inclusion in the Virginia Register.

B. If the board anticipates action on a regulation for which an exemption to the Administrative Process Act is claimed, the notice of meeting shall indicate that a copy of the proposed regulation ~~is available on a state website or upon request to~~ may be requested from the board at least two days prior to the meeting. A copy of the regulation shall be made available to the public attending such meeting.

18 VAC 90-10-100. Periodic review of regulations.

A. ~~Unless otherwise directed by executive order, the~~ The board shall conduct ~~an informational proceeding at least every two years~~ a periodic review of its regulations consistent ~~with an executive order issued by the Governor and with § 2.2-4007.1 of the Code of Virginia~~ to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance.

B. Such ~~proceeding review~~ proceeding may be conducted separately or in conjunction with other ~~informational proceedings~~ meetings or hearings.

C. Notice of the proceeding shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register and shall be sent to the ~~mailing list~~ notification lists identified in 18 VAC 90-10-30.

PART IV.
ADVISORY AD HOC COMMITTEES.

18 VAC 90-10-110. Appointment of committees.

A. The board may appoint an ad hoc ~~advisory~~ committee whose responsibility shall be to assist in the review and development of regulations for the board.

B. The board may appoint an ad hoc ~~advisory~~ committee to provide professional specialization or technical assistance when the board determines that such expertise is necessary to address a specific regulatory issue or need or when groups of individuals register an interest in working with the agency.

18 VAC 90-10-120. Limitation of service.

A. An ~~advisory~~ ad hoc committee that has been appointed by the board may be dissolved by the board when:

1. There is no response to the Notice of Intended Regulatory Action; or
2. The board determines that the promulgation of the regulation is either exempt or excluded from the requirements of the Administrative Process Act.

B. An ~~advisory~~ ad hoc committee shall remain in existence no longer than ~~42~~ 18 months from its initial appointment. ~~1. If unless the board determines that the specific regulatory need continues to exist beyond that time, it shall set a specific term for the committee of not more than six additional months. The board may authorize the ad hoc committee to continue for an additional specified period of time to complete the task for which it was appointed.~~

~~2. At the end of that extended term, the board shall evaluate the continued need and may continue the committee for additional six month terms.~~

VA.R. Doc. No. R07-230; Filed May 23, 2007, 11:13 a.m.

JOINT BOARDS OF NURSING AND MEDICINE

Proposed Regulation

Title of Regulation: **18 VAC 90-30. Regulations Governing the Licensure of Nurse Practitioners (amending 18 VAC 90-30-10, 18 VAC 90-30-120; adding 18 VAC 90-30-121).**

Statutory Authority: §§ 54.1-2400 and 54.1-2957 of the Code of Virginia.

Public Hearing Date: July 17, 2007 -- 11:30 a.m.

Public comments may be submitted until 5 p.m. on August 10, 2007.

(See Calendar of Events section for additional information)

Agency Contact: Jay P. Douglas, R.N., Executive Director, Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9909, FAX (804) 662-9512, or email jay.douglas@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Boards of Nursing and Medicine the authority to promulgate regulations to administer the regulatory system.

Section 54.1-2957 authorizes the Boards of Medicine and Nursing to jointly prescribe regulations governing the licensure of nurse practitioners.

In addition, § 54.1-2957 requires that the Boards of Medicine and Nursing shall jointly promulgate regulations specifying collaboration and consultation among physicians and certified nurse midwives that shall include the development of, and

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periodic review and revision of, a written protocol; guidelines for availability and ongoing communications that define consultation among the collaborating parties and the patient; and periodic joint evaluation of the services delivered.

Purpose: The purpose of the amended regulation is to make the terminology in the regulation consistent with the amended Code of Virginia, which specifies the practice of a nurse midwife is to be in collaboration and consultation with a licensed physician.

Other sections of law specify that the certified nurse midwife, along with other types of nurse practitioners, must practice with the supervision of a licensed physician. For example, § 54.1-2957.02 specifies that: “Whenever any law or regulation requires a signature, certification, stamp, verification, affidavit or endorsement by a physician, it shall be deemed to include a signature, certification, stamp, verification, affidavit or endorsement by a nurse practitioner.” The enactment for that new section of Code (Chapter 855 of the 2004 Acts of Assembly) required the boards to amend regulations to “require inclusion of the nurse practitioner’s authority for signatures, certifications, stamps, verifications, affidavits and endorsements in the written protocol between the supervising physician and the nurse practitioner.” Therefore, the boards did not amend the requirement for the written protocol to include the nurse midwife’s authority for signatures, certifications, etc.

Additionally, § 54.1-2957.01 of the Code of Virginia authorizes nurse practitioners (including nurse midwives) to prescribe controlled substances provided they have “a written agreement with a licensed physician which provides for the direction and supervision by such physician of the prescriptive practices of the nurse practitioner. Such written agreements shall include the controlled substances the nurse practitioner is or is not authorized to prescribe and may restrict such prescriptive authority as deemed appropriate by the physician providing direction and supervision.” Therefore, regulations for prescriptive authority (18 VAC 90-40) are not amended, and certified nurse midwives who prescribe drugs as a part of their practice remain subject to § 54.1-2957.01 and the boards’ regulations that specify medical direction and supervision.

Substance: Amendments separate regulations for the practice of certified nurse midwives from the practice of other categories of licensed nurse practitioners for the purpose of describing the appropriate relationship with a licensed physician – whether they practice under medical direction and supervision or with collaboration and consultation. Senate Bill 488 (Chapter 750) of the 2006 Acts of Assembly defined the relationship for licensed nurse practitioners as practice “under the supervision of a duly licensed physician,” whereas a certified nurse midwife renders care “in collaboration and consultation with a duly licensed physician.”

Issues: To the extent the change from medical direction and supervision to collaboration and consultation may facilitate the practice of certified nurse midwives, there is an advantage in increased access to obstetrical care for women in Virginia. There are no disadvantages to the public in that the statutory and regulatory definition of the relationship between physicians and certified nurse midwives continues to include requirements for a written protocol including provisions for periodic review, guidelines for availability and ongoing communication on patient care, and periodic evaluation of services being provided.

There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget’s Economic Impact Analysis:

Summary of the Proposed Regulation. The Board of Nursing and Medicine (board) proposes to amend the regulations governing the licensure of nurse practitioners (18 VAC 90-30) and specify the relationship of collaboration and consultation among physicians and certified nurse midwives, in response to changes in the Code of Virginia. The proposed regulations will replace the emergency regulations that became effective September 2006.

Results of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. Chapter 750 of the 2006 Acts of Assembly clarifies the relationship between licensed physicians and nurse practitioners, categorized as certified nurse midwives, as one of collaboration and consultation, rather than as one of supervision. The board has promulgated an emergency regulation to modify the supervisory relationship of physicians and certified nurse midwives that became effective since September 2006. Now the board proposes to promulgate a permanent replacement regulation.

The proposed regulations will separate regulations for the practice of certified nurse midwives from the practice of other categories of licensed nurse practitioners for the purpose of describing the appropriate relationship with a licensed physician. Licensed physicians are defined as practice “under the supervision of a duly licensed physician,” whereas a certified nurse midwife renders care “in collaboration and consultation with a duly licensed physician.” According to the proposed regulations, “collaboration and consultation” means practice in accordance with the Standards for the Practice of Nurse-midwifery (Revised 2003) defined by the American College of Nurse-Midwives to include participation in the development of a written protocol including provision for periodic review and revision; development of guidelines for availability and ongoing communications that provide for and define consultation among the collaborating parties and the patient; periodic joint evaluation of services provided; and review of patient care outcomes. Guidelines for availability

shall address at a minimum the availability of the collaborating physician proportionate to such factors as practice setting, acuity, and geography.”

The proposed regulations will likely facilitate the practice of certified nurse midwives,¹ while maintaining the quality of health care provided to the patients by means of written protocol including provisions for periodic review, guidelines for availability and ongoing communication on patient care, and periodic joint evaluation of the services delivered. The proposed regulatory changes will likely increase access to obstetrical care for women in Virginia. The Department of Health Professionals (DHP) estimates that there will be a small administrative cost of less than \$1,000 involved in mailings and conducting a public hearing, which will very likely be exceeded by the increased benefits.

Businesses and Entities Affected. The proposed regulations will likely facilitate the practice of certified nurse midwives except for prescribing controlled substances and services by authorized certified nurse midwives. DHP reports that there are 192 persons licensed as nurse practitioners in the category of certified nurse midwives, and 144 of them have prescriptive authority. Hospitals and clinics that grant privileges to certified nurse midwives may expect a small increase in the number of patients. The proposed regulations will likely benefit women in Virginia with increased access to obstetrical care while maintaining the quality of services.

Localities Particularly Affected. The proposed regulation affects localities throughout the Commonwealth.

Projected Impact on Employment. The proposed regulations will likely increase the hours worked by certified nurse midwives and may have a small positive impact on the number of certified nurse midwives practicing in the Commonwealth.

Effects on the Use and Value of Private Property. Private hospitals and clinics may experience a small positive impact from increased hours of services provided by certified nurse midwives and possibly increased number of patients, which may have a slight positive impact on the value of their asset.

Small Businesses: Costs and Other Effects. Small clinics will likely benefit from the proposed regulations.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulations will likely not have any adverse impact on small businesses.

Legal Mandate. 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB’s best estimate of these economic impacts.

Agency’s Response to the Department of Planning and Budget’s Economic Impact Analysis: The Boards of Nursing and Medicine concur with the analysis of the Department of Planning and Budget for the proposed action on regulations for certified nurse midwives in 18 VAC 90-30, Regulations Governing the Practice of Nurse Practitioners.

Summary:

The proposed amendments respond to Chapter 750 of the 2006 Acts of Assembly, which modified the supervisory relationship of physicians and certified nurse midwives.

The proposed amendments separate regulations for the practice of certified nurse midwives from the practice of other categories of licensed nurse practitioners for the purpose of describing the appropriate relationship with a licensed physician. Chapter 750 defined the relationship for licensed nurse practitioners as practice “under the supervision of a duly licensed physician,” whereas a certified nurse midwife renders care “in collaboration and consultation with a duly licensed physician.” Amendments to regulations are necessary for consistency with the Code of Virginia.

18 VAC 90-30-10. Definitions.

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

"Approved program" means a nurse practitioner education program that is accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs/Schools, American

¹ The practice that will be affected does not include prescribing controlled substances by the authorized nurse midwives. Section 54.1-2957.01 of the Code of Virginia still requires that authorized nurse practitioners (including nurse midwives) prescribe controlled substances and services under the “direction and supervision” of a licensed physician.

Regulations

College of Nurse Midwives, Commission on Collegiate Nursing Education or the National League for Nursing Accrediting Commission or is offered by a school of nursing or jointly offered by a school of medicine and a school of nursing which grant a graduate degree in nursing and which hold a national accreditation acceptable to the boards.

"Boards" means the Virginia Board of Nursing and the Virginia Board of Medicine.

~~"Collaboration" means the process by which a nurse practitioner, in association with a physician, delivers health care services within the scope of practice of the nurse practitioner's professional education and experience and with medical direction and supervision, consistent with this chapter.~~

"Committee" means the Committee of the Joint Boards of Nursing and Medicine.

"Controlling institution" means the college or university offering a nurse practitioner education program.

"Licensed nurse practitioner" means a registered nurse who has met the requirements for licensure as stated in Part II (18 VAC 90-30-60 et seq.) of this chapter.

"Licensed physician" means a person licensed by the Board of Medicine to practice medicine or osteopathy.

~~"Medical direction and supervision" means participation in the development of a written protocol including provision for periodic review and revision; development of guidelines for availability and ongoing communications which provide for and define consultation among the collaborating parties and the patient; and periodic joint evaluation of services provided, e.g., chart review, and review of patient care outcomes. Guidelines for availability shall address at a minimum the availability of the collaborating physician proportionate to such factors as practice setting, acuity, and geography.~~

"National certifying body" means a national organization that is accredited by an accrediting agency recognized by the U. S. Department of Education or deemed acceptable by the National Council of State Boards of Nursing and has as one of its purposes the certification of nurse anesthetists, nurse midwives or nurse practitioners, referred to in this chapter as professional certification, and whose certification of such persons by examination is accepted by the committee.

"Preceptor" means a physician or a licensed nurse practitioner who supervises and evaluates the nurse practitioner student.

"Protocol" means a written statement, jointly developed by the collaborating physician(s) and the licensed nurse practitioner(s), that directs and describes the procedures to be followed and the delegated medical acts appropriate to the specialty practice area to be performed by the licensed nurse practitioner(s) in the care and management of patients.

18 VAC 90-30-120. Practice of licensed nurse practitioners other than certified nurse midwives.

A. A ~~licensed~~ nurse practitioner licensed in a category other than certified nurse midwife shall be authorized to engage in practices constituting the practice of medicine in collaboration with and under the medical direction and supervision of a licensed physician.

B. The practice of licensed nurse practitioners shall be based on specialty education preparation as a nurse practitioner in accordance with standards of the applicable certifying organization and written protocols as defined in 18 VAC 90-30-10.

C. The written protocol shall include the nurse practitioner's authority for signatures, certifications, stamps, verifications, affidavits and endorsements provided it is:

1. In accordance with the specialty license of the nurse practitioner and with the scope of practice of the supervising physician;
2. Permitted by § 54.1-2957.02 or applicable sections of the Code of Virginia; and
3. Not in conflict with federal law or regulation.

D. A certified registered nurse anesthetist shall practice in accordance with the functions and standards defined by the American Association of Nurse Anesthetists (Scope and Standards for Nurse Anesthesia Practice, Revised 2005) and under the medical direction and supervision of a doctor of medicine or a doctor of osteopathy or the medical direction and supervision of a dentist in accordance with rules and regulations promulgated by the Board of Dentistry.

~~E. A certified nurse midwife shall practice in accordance with the Standards for the Practice of Nurse-Midwifery (Revised 1993) defined by the American College of Nurse-Midwives.~~

E. For purposes of this section, the following definitions shall apply:

"Collaboration" means the process by which a nurse practitioner, in association with a physician, delivers health care services within the scope of practice of the nurse practitioner's professional education and experience and with medical direction and supervision, consistent with this chapter.

"Medical direction and supervision" means participation in the development of a written protocol including provision for periodic review and revision; development of guidelines for availability and ongoing communications that provide for and define consultation among the collaborating parties and the patient; and periodic joint evaluation of services provided, e.g., chart review, and review of patient care outcomes. Guidelines for availability shall address at a minimum the availability of the collaborating physician proportionate to such factors as practice setting, acuity, and geography.

18 VAC 90-30-121. Practice of nurse practitioners licensed as certified nurse midwives.

A. A nurse practitioner licensed as a certified nurse midwife shall be authorized to engage in practices constituting the practice of medicine in collaboration and consultation with a licensed physician.

B. The practice of certified nurse midwives shall be based on specialty education preparation as a nurse practitioner and in accordance with standards of the applicable certifying organization and written protocols as defined in 18 VAC 90-30-10.

C. The written protocol shall include the nurse practitioner's authority for signatures, certifications, stamps, verifications, affidavits and endorsements provided it is:

1. In accordance with the specialty license of the nurse practitioner and within the scope of practice of the supervising physician;
2. Permitted by § 54.1-2957.02 of the Code of Virginia or applicable sections of the Code of Virginia; and
3. Not in conflict with federal law or regulation.

D. A certified nurse midwife, in collaboration and consultation with a duly licensed physician, shall practice in accordance with the Standards for the Practice of Nurse-Midwifery (Revised 2003) defined by the American College of Nurse-Midwives.

E. For purposes of this section, the following definition shall apply:

"Collaboration and consultation" means practice in accordance with the Standards for the Practice of Nurse-Midwifery (Revised 2003) defined by the American College of Nurse-Midwives to include participation in the development of a written protocol including provision for periodic review and revision; development of guidelines for availability and ongoing communications that provide for and define consultation among the collaborating parties and the patient; periodic joint evaluation of services provided and review of patient care outcomes. Guidelines for availability shall address at a minimum the availability of the collaborating physician proportionate to such factors as practice setting, acuity, and geography.

DOCUMENTS INCORPORATED BY REFERENCE

Guidelines Scope and Standards for Nurse Anesthesia Practice, 1998 revised 2005, American Association of Nurse Anesthetists.

Standards for the Practice of Nurse-Midwifery, 1993 revised 2003, American College of Nurse-Midwives.

V.A.R. Doc. No. R06-341; Filed May 23, 2007, 11:09 a.m.

BOARD OF OPTOMETRY

Fast-Track Regulation

Title of Regulation: 18 VAC 105-10. Public Participation Guidelines (amending 18 VAC 105-10-10 through 18 VAC 105-10-80, 18 VAC 105-10-100, 18 VAC 105-10-110 and 18 VAC 105-10-120).

Statutory Authority: §§ 2.2-4007.02 (effective July 1, 2007) and 54.1-2400 of the Code of Virginia.

Public Hearing Date: N/A - Public comments may be submitted until 5 p.m. on August 10, 2007.

(See Calendar of Events section for additional information)

Effective Date: August 25, 2007.

Agency Contact: Elizabeth A. Carter, Ph.D., Executive Director, Board of Optometry, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9910, FAX (804) 662-7098, or email elizabeth.carter@dhp.virginia.gov.

Basis: Section 2.2-4007 D (§ 2.2-4007.02 effective July 1, 2007) of the Administrative Process Act mandates the adoption of public participation guidelines for soliciting the input of interested parties in the formation and development of an agency's regulations.

Section 54.1-2400 of the Code of Virginia provides the general authority to the board to promulgate regulations.

Purpose: The board has updated and clarified its guidelines for public participation in the development and promulgation of initial, amended or repealed regulations, such as inclusion of electronic notification and the Virginia Regulatory Townhall as an option for comment. Changes are recommended by a committee of board and/or department staff, which reviewed each regulation for effectiveness, consistency and clarity. The intent is for amendments to be clarifying rather than substantive. Full participation by the public and regulated entities in the regulatory process is necessary to ensure that regulations fulfill the purpose of protecting the health and safety of the public in a manner that is not overly burdensome to those being regulated.

Rationale for Using Fast-Track Process: The fast-track process is being used to promulgate the amendments because there is general agreement with the changes proposed. The action is not controversial, as is reflected by the fact that there were no public comments on a Notice of Intended Regulatory Action filed by other boards within the Department of Health Professions. Both the Department of Planning and Budget and the Governor's office have recommended that these amendments be promulgated by a fast-track action.

Substance: The regulation has been reviewed for consistency with law, clarity and ease of compliance. There are no substantive amendments.

Regulations

Issues: These amendments pose no disadvantages to the public. Clarification of the definition of regulation, additional opportunity for comment, and an extension of service for an ad hoc committee appointed to advise the board on the development of a regulation are all intended to give interested parties more access to the process.

There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Regulation. The Board of Optometry (board) proposes to amend its Public Participation Guidelines. The board proposes to require that notification of all final regulatory actions, as well as the text of the regulations being changed, be posted to the board's website before the 30-day adoption period begins. The board also proposes to extend the time limit under which ad hoc committees function and eliminate language that requires the board review its regulations at least every two years.

Result of Analysis. The benefits likely exceed the costs for these proposed regulatory changes.

Estimated Economic Impact. Current regulation requires the board to notify individuals on its notification lists, either by regular mail or email, whenever a final-stage regulation is about to enter its 30-day adoption period. This current regulatory notification requirement is more stringent than what is required by either the Administrative Process Act or Executive Order 36 (both of these rulemaking documents are silent on this matter). The board proposes to delete this portion of its public participation guidelines and, instead, will post notices of adoption of final regulation, as well as the text of the regulation being changed, on the board's website. The board believes that the changed notification requirements in the proposed regulation will allow staff time to be used more efficiently while still protecting the public's ability to be involved in the final stage of the rulemaking process. Individuals who are following board regulations through the process may be slightly inconvenienced by having to go to the board's website to get information rather than having that information mailed to them. These individuals, and the public generally, will likely benefit slightly from having staff time spent on more important tasks.

Current regulation requires that the board review all of its regulations every two years "unless otherwise directed by executive order." The proposed regulation will require the board to conduct "periodic review of its regulations consistent with an executive order of the Governor and with § 2.2-4007.1 of the Code of Virginia." Currently it takes, on average, approximately 18 months for all regulatory requirements for a new or amended regulation to be met. Given this, the public will likely benefit (slightly) from the

removal of language that likely sets an unrealistic timeline for the periodic review of regulations.

Current regulation limits ad hoc committees to 12 months' existence before they must be dissolved. The proposed regulation will extend this term limit to 18 months and allow the board to authorize continuance of ad hoc committees past their regulatory time limit if their set task has not been completed. This proposal will likely have no economic impact on the citizens of the Commonwealth.

Businesses and Entities Affected. The proposed regulation will affect all individuals who involve themselves in the administrative rulemaking actions of the board.

Localities Particularly Affected. The proposed regulation will affect all localities in the Commonwealth.

Projected Impact on Employment. The proposed regulation is unlikely to have any affect on employment in the Commonwealth.

Effects on the Use and Value of Private Property. The proposed regulation will likely have no affect on the use or value of private property within the Commonwealth.

Small Businesses: Costs and Other Effects. The proposed regulation will likely have no adverse impact on any small businesses in the Commonwealth.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulation will likely have no adverse impact on any small businesses in the Commonwealth.

Legal mandate. 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of

the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Optometry concurs with the analysis of the Department of Planning and Budget on proposed amended regulations for 18 VAC 105-10, Public Participation Guidelines.

Summary:

The amendments update and clarify the board's guidelines for public participation in the development and promulgation of initial, amended or repealed regulations by (i) including electronic notification and the Virginia Regulatory Town Hall as an option for public comment, (ii) clarifying certain terms, (iii) requiring the board to post notice of final regulations on its website rather than sending them to its notification lists, and (iv) extending the time limitation on ad hoc committees.

18 VAC 105-10-10. Purpose.

The purpose of this chapter is to provide guidelines for the involvement of the public in the ~~development and promulgation~~ initial formation and development, amendment or repeal of regulations of the Board of Optometry. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act. These rules seek to expand participation by providing for electronic exchange with the public and thereby increasing participation, reducing costs, and improving the speed of communication.

18 VAC 105-10-20. Definitions.

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

"Administrative Process Act" means Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Board" means the Board of Optometry.

"Notification lists" means lists used by the board to notify persons pursuant to these rules. Such lists may include electronic ~~mailing~~ lists maintained through a ~~state website~~ the Virginia Regulatory Town Hall or ~~regular mailing~~ lists maintained by the board.

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

"Regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, adopted by the board in accordance with the authority conferred on it by applicable laws.

18 VAC 105-10-30. Composition of notification lists.

A. The board shall maintain lists of persons who have requested to be notified of the initial formation and promulgation, development, amendment or repeal of regulations.

B. Any person may request to be placed on a notification list by indicating so electronically or in writing to the board. The board may add to a list any person it believes will serve the purpose of enhancing participation in the regulatory process.

C. The board may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. The board shall periodically request those persons on the notification lists to indicate their desire to either continue to receive documents by regular mail, be notified electronically or be deleted from the lists. Persons who elect to be included on an electronic mailing list may also request that all notices and mailings be sent in hard copy. When either regular or electronic mail is returned as undeliverable or there has been no response to the request from the board, such persons shall be deleted from the list.

18 VAC 105-10-40. Documents to be sent to persons on the notification lists.

A. Persons on the notification lists, as described in 18 VAC 105-10-30, shall be mailed or have electronically transmitted the following documents related to the promulgation of regulations:

1. A notice of intended regulatory action.
2. A notice of the comment period on a proposed regulation and instructions as to how to obtain a copy of the regulation and any supporting documents, either electronically or from the board office.
- ~~3. A notification of the adoption of a final regulation and instructions as to how to obtain a copy of the regulation and any supporting documents, either electronically or from the board office.~~
4. 3. A notice soliciting comment on a final regulation when the regulatory process has been extended.

B. Notification of the adoption of a final regulation and copies of the regulation shall be posted on the board's website prior to the 30-day adoption period.

C. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation otherwise adopted in accordance with this chapter.

18 VAC 105-10-50. Petition for ~~rule-making~~ rulemaking.

A. As provided in § 2.2-4007 of the Code of Virginia, any person may petition the board to develop a new regulation or amend an existing regulation.

Regulations

B. A petition shall include but need not be limited to the following:

1. The petitioner's name, mailing address, telephone number, and, if applicable, the organization represented in the petition.
2. The number and title of the regulation to be addressed.
3. A description of the regulatory problem or need to be addressed.
4. A recommended addition, deletion, or amendment to the regulation.

C. The board shall receive, consider and respond to a petition within 180 days and shall have the sole authority to dispose of the petition.

D. Nothing herein shall prohibit the board from receiving information from the public and proceeding on its own motion for ~~rule making~~ rulemaking.

18 VAC 105-10-60. Notice of Intended Regulatory Action.

A. Except as provided in § 2.2-4012.1 of the Code of Virginia, the board shall issue a notice of intended regulatory action (NOIRA) whenever it considers the adoption, amendment or repeal of a regulation. ~~The notice of intended regulatory action (NOIRA)~~ NOIRA shall state the purpose of the action and a brief statement of the need or problem the proposed action will address.

B. The NOIRA shall indicate whether the board intends to hold a public hearing on the proposed regulation after it is published. If the board does not intend to hold a public hearing, it shall so state ~~the reason~~ in the NOIRA.

C. If prior to the close of the 30-day comment period on the NOIRA, the board receives a request for a public hearing on the proposed regulation from at least 25 persons or if the Governor directs the board to hold a public hearing, such a hearing shall be scheduled.

18 VAC 105-10-70. Notice of comment period.

A. The board shall issue a notice of comment period (NOCP) whenever it proposes to initiate, amend or repeal a regulation. ~~The notice of comment period (NOCP)~~ NOCP shall indicate that copies of the proposed regulation are available electronically or from the board and may be requested in writing from the contact person specified in the NOCP.

B. The NOCP shall indicate that copies of the statement of substance, issues, basis, purpose, and estimated impact of the proposed regulation may also be requested in writing.

C. The NOCP shall make provision for comments pertaining to the proposed regulation by regular mail, ~~Internet,~~ facsimile or electronic means. With the exception of comment received at a scheduled public hearing, oral comment ~~may~~ shall not be accepted.

18 VAC 105-10-80. Notice of meeting.

A. At any meeting of the board or advisory committee at which the formation, amendment, repeal, or adoption of a regulation is anticipated, the subject shall be described in a notice of meeting, which has been posted electronically on the ~~Internet~~ Virginia Regulatory Town Hall and transmitted to the Registrar of Regulations for inclusion in the Virginia Register.

B. If the board anticipates action on a regulation for which an exemption to the Administrative Process Act is claimed, the notice of meeting shall indicate that a copy of the proposed regulation ~~is available on a state website or upon request to~~ may be requested from the board at least two days prior to the meeting. A copy of the regulation shall be made available to the public attending such meeting.

18 VAC 105-10-100. Periodic review of regulations.

A. ~~Unless otherwise directed by executive order, the~~ The board shall conduct ~~an informational proceeding at least every two years~~ a periodic review of its regulations consistent with an executive order issued by the Governor and with § 2.2-4007.1 of the Code of Virginia to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance.

B. Such ~~proceeding~~ review may be conducted separately or in conjunction with other ~~informational proceedings~~ meetings or hearings.

C. Notice of the proceeding shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register and shall be sent to the ~~mailing list~~ notification lists identified in 18 VAC 105-10-30.

PART IV. ~~ADVISORY AD HOC~~ COMMITTEES.

18 VAC 105-10-110. Appointment of committees.

A. The board may appoint an ad hoc ~~advisory~~ committee whose responsibility shall be to assist in the review and development of regulations for the board.

B. The board may appoint an ad hoc ~~advisory~~ committee to provide professional specialization or technical assistance when the board determines that such expertise is necessary to address a specific regulatory issue or need or when groups of individuals register an interest in working with the agency.

18 VAC 105-10-120. Limitation of service.

A. An ~~advisory ad hoc~~ committee that has been appointed by the board may be dissolved by the board when:

1. There is no response to the Notice of Intended Regulatory Action; or

2. The board determines that the promulgation of the regulation is either exempt or excluded from the requirements of the Administrative Process Act.

B. An advisory ad hoc committee shall remain in existence no longer than ~~12~~ 18 months from its initial appointment. ~~1. If unless~~ the board determines that the specific regulatory need continues to exist beyond that time, ~~it shall set a specific term for the committee of not more than six additional months.~~ The board may authorize the ad hoc committee to continue for an additional specified period of time to complete the task for which it was appointed.

~~2. At the end of that extended term, the board shall evaluate the continued need and may continue the committee for additional six month terms.~~

VA.R. Doc. No. R07-223; Filed May 23, 2007, 11:19 a.m.

BOARD OF PHARMACY
Fast-Track Regulation

Title of Regulation: **18 VAC 110-10. Public Participation Guidelines (amending 18 VAC 110-10-10 through 18 VAC 110-10-80, 18 VAC 110-10-100, 18 VAC 110-10-110 and 18 VAC 110-10-120).**

Statutory Authority: §§ 2.2-4007.02 (effective July 1, 2007) and 54.1-2400 of the Code of Virginia.

Public Hearing Date: N/A - Public comments may be submitted until 5 p.m. on August 10, 2007.

(See Calendar of Events section for additional information)

Effective Date: August 25, 2007.

Agency Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 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.

Basis: Section 2.2-4007 D (§ 2.2-4007.02 effective July 1, 2007) of the Administrative Process Act mandates the adoption of public participation guidelines for soliciting the input of interested parties in the formation and development of an agency's regulations.

Section 54.1-2400 of the Code of Virginia provides the general authority to the board to promulgate regulations.

Purpose: The board has updated and clarified its guidelines for public participation in the development and promulgation of initial, amended or repealed regulations, such as inclusion of electronic notification and the Virginia Regulatory Townhall as an option for comment. Changes are recommended by a committee of board and/or department staff, which reviewed each regulation for effectiveness, consistency and clarity. The intent is for amendments to be clarifying rather than substantive. Full participation by the

public and regulated entities in the regulatory process is necessary to ensure that regulations fulfill the purpose of protecting the health and safety of the public in a manner that is not overly burdensome to those being regulated.

Rationale for Using Fast-Track Process: The fast-track process is being used to promulgate the amendments because there is general agreement with the changes proposed. The action is not controversial, as is reflected by the fact that there were no public comments on a Notice of Intended Regulatory Action filed by other boards within the Department of Health Professions. Both the Department of Planning and Budget and the Governor's office have recommended that these amendments be promulgated by a fast-track action.

Substance: The regulation has been reviewed for consistency with law, clarity and ease of compliance. There are no substantive amendments.

Issues: These amendments pose no disadvantages to the public. Clarification of the definition of regulation, additional opportunity for comment, and an extension of service for an ad hoc committee appointed to advise the board on the development of a regulation are all intended to give interested parties more access to the process.

There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Regulation. The Board of Pharmacy (board) proposes to amend its Public Participation Guidelines. The board proposes to require that notification of all final regulatory actions, as well as the text of the regulations being changed, be posted to the board's website before the 30-day adoption period begins. The board also proposes to extend the time limit under which ad hoc committees function and eliminate language that requires the board review its regulations at least every two years.

Result of Analysis. The benefits likely exceed the costs for these proposed regulatory changes.

Estimated Economic Impact. Current regulation requires the board to notify individuals on its notification lists, either by regular mail or email, whenever a final-stage regulation is about to enter its 30-day adoption period. This current regulatory notification requirement is more stringent than what is required by either the Administrative Process Act or Executive Order 36 (both of these rulemaking documents are silent on this matter). The board proposes to delete this portion of its public participation guidelines and, instead, will post notices of adoption of final regulation, as well as the text of the regulation being changed, on the board's website. The board believes that the changed notification requirements in the proposed regulation will allow staff time to be used more efficiently while still protecting the public's ability to be

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involved in the final stage of the rulemaking process. Individuals who are following board regulations through the process may be slightly inconvenienced by having to go to the board's website to get information rather than having that information mailed to them. These individuals, and the public generally, will likely benefit slightly from having staff time spent on more important tasks.

Current regulation requires that the board review all of its regulations every two years "unless otherwise directed by executive order." The proposed regulation will require the board to conduct "periodic review of its regulations consistent with an executive order of the Governor and with § 2.2-4007.1 of the Code of Virginia." Currently it takes, on average, approximately 18 months for all regulatory requirements for a new or amended regulation to be met. Given this, the public will likely benefit (slightly) from the removal of language that likely sets an unrealistic timeline for the periodic review of regulations.

Current regulation limits ad hoc committees to 12 months' existence before they must be dissolved. The proposed regulation will extend this term limit to 18 months and allow the board to authorize continuance of ad hoc committees past their regulatory time limit if their set task has not been completed. This proposal will likely have no economic impact on the citizens of the Commonwealth.

Businesses and Entities Affected. The proposed regulation will affect all individuals who involve themselves in the administrative rulemaking actions of the board.

Localities Particularly Affected. The proposed regulation will affect all localities in the Commonwealth.

Projected Impact on Employment. The proposed regulation is unlikely to have any affect on employment in the Commonwealth.

Effects on the Use and Value of Private Property. The proposed regulation will likely have no affect on the use or value of private property within the Commonwealth.

Small Businesses: Costs and Other Effects. The proposed regulation will likely have no adverse impact on any small businesses in the Commonwealth.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulation will likely have no adverse impact on any small businesses in the Commonwealth.

Legal mandate. 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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 on proposed amended regulations for 18 VAC 110-10, Public Participation Guidelines.

Summary:

The amendments update and clarify the board's guidelines for public participation in the development and promulgation of initial, amended or repealed regulations by (i) including electronic notification and the Virginia Regulatory Town Hall as an option for public comment, (ii) clarifying certain terms, (iii) requiring the board to post notice of final regulations on its website rather than sending them to its notification lists, and (iv) extending the time limitation on ad hoc committees.

18 VAC 110-10-10. Purpose.

The purpose of this chapter is to provide guidelines for the involvement of the public in the ~~development and promulgation~~ initial formation and development, amendment or repeal of regulations of the Board of Pharmacy. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act. These rules seek to expand participation by providing for electronic exchange with the public and thereby increasing participation, reducing costs, and improving the speed of communication.

18 VAC 110-10-20. Definitions.

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

"Administrative Process Act" means Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Board" means the Board of Pharmacy.

"Notification lists" means lists used by the board to notify persons pursuant to these rules. Such lists may include electronic ~~mailing~~ lists maintained through ~~a state website~~ the Virginia Regulatory Town Hall or ~~regular mailing~~ lists maintained by the board.

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

"Regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, adopted by the board in accordance with the authority conferred on it by applicable laws.

18 VAC 110-10-30. Composition of notification lists.

A. The board shall maintain lists of persons who have requested to be notified of the initial formation and promulgation, development, amendment or repeal of regulations.

B. Any person may request to be placed on a notification list by indicating so electronically or in writing to the board. The board may add to a list any person it believes will serve the purpose of enhancing participation in the regulatory process.

C. The board may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. The board shall periodically request those persons on the notification lists to indicate their desire to either continue to receive documents by regular mail, be notified electronically or be deleted from the lists. Persons who elect to be included on an electronic mailing list may also request that all notices and mailings be sent in hard copy. When either regular or electronic mail is returned as undeliverable or there has been no response to the request from the board, such persons shall be deleted from the list.

18 VAC 110-10-40. Documents to be sent to persons on the notification lists.

A. Persons on the notification lists, as described in 18 VAC 110-10-30, shall be mailed or have electronically transmitted the following documents related to the promulgation of regulations:

1. A notice of intended regulatory action.
2. A notice of the comment period on a proposed regulation and instructions as to how to obtain a copy of the regulation and any supporting documents, either electronically or from the board office.
- ~~3. A notification of the adoption of a final regulation and instructions as to how to obtain a copy of the regulation and any supporting documents, either electronically or from the board office.~~

~~4. 3.~~ A notice soliciting comment on a final regulation when the regulatory process has been extended.

B. Notification of the adoption of a final regulation and copies of the regulation shall be posted on the board's website prior to the 30-day adoption period.

C. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation otherwise adopted in accordance with this chapter.

18 VAC 110-10-50. Petition for ~~rule-making~~ rulemaking.

A. As provided in § 2.2-4007 of the Code of Virginia, any person may petition the board to develop a new regulation or amend an existing regulation.

B. A petition shall include but need not be limited to the following:

1. The petitioner's name, mailing address, telephone number, and, if applicable, the organization represented in the petition.
2. The number and title of the regulation to be addressed.
3. A description of the regulatory problem or need to be addressed.
4. A recommended addition, deletion, or amendment to the regulation.

C. The board shall receive, consider and respond to a petition within 180 days and shall have the sole authority to dispose of the petition.

D. Nothing herein shall prohibit the board from receiving information from the public and proceeding on its own motion for ~~rule-making~~ rulemaking.

18 VAC 110-10-60. Notice of Intended Regulatory Action.

A. Except as provided in § 2.2-4012.1 of the Code of Virginia, the board shall issue a notice of intended regulatory action (NOIRA) whenever it considers the adoption, amendment or repeal of a regulation. ~~The notice of intended regulatory action (NOIRA)~~ NOIRA shall state the purpose of the action and a brief statement of the need or problem the proposed action will address.

B. The NOIRA shall indicate whether the board intends to hold a public hearing on the proposed regulation after it is published. If the board does not intend to hold a public hearing, it shall so state ~~the reason~~ in the NOIRA.

C. If prior to the close of the 30-day comment period on the NOIRA, the board receives a request for a public hearing on the proposed regulation from at least 25 persons or if the Governor directs the board to hold a public hearing, such a hearing shall be scheduled.

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18 VAC 110-10-70. Notice of comment period.

A. ~~The board shall issue a notice of comment period (NOCP) whenever it proposes to initiate, amend or repeal a regulation. The notice of comment period (NOCP) NOCP shall indicate that copies of the proposed regulation are available electronically or from the board and may be requested in writing from the contact person specified in the NOCP.~~

B. The NOCP shall indicate that copies of the statement of substance, issues, basis, purpose, and estimated impact of the proposed regulation may also be requested in writing.

C. The NOCP shall make provision for comments pertaining to the proposed regulation by regular mail, ~~Internet~~, facsimile or electronic means. With the exception of comment received at a scheduled public hearing, oral comment ~~may~~ shall not be accepted.

18 VAC 110-10-80. Notice of meeting.

A. At any meeting of the board or advisory committee at which the formation, amendment, repeal, or adoption of a regulation is anticipated, the subject shall be described in a notice of meeting, which has been posted electronically on the ~~Internet~~ Virginia Regulatory Town Hall and transmitted to the Registrar of Regulations for inclusion in the Virginia Register.

B. If the board anticipates action on a regulation for which an exemption to the Administrative Process Act is claimed, the notice of meeting shall indicate that a copy of the proposed regulation ~~is available on a state website or upon request to~~ may be requested from the board at least two days prior to the meeting. A copy of the regulation shall be made available to the public attending such meeting.

18 VAC 110-10-100. Periodic review of regulations.

A. ~~Unless otherwise directed by executive order, the~~ The board shall conduct an informational proceeding at least every two years a periodic review of its regulations consistent with an executive order issued by the Governor and with § 2.2-4007.1 of the Code of Virginia to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance.

B. Such ~~proceeding~~ review may be conducted separately or in conjunction with other ~~informational proceedings~~ meetings or hearings.

C. Notice of the proceeding shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register and shall be sent to the ~~mailing list~~ notification lists identified in 18 VAC 110-10-30.

PART IV.

ADVISORY AD HOC COMMITTEES.

18 VAC 110-10-110. Appointment of committees.

A. The board may appoint an ad hoc ~~advisory~~ committee whose responsibility shall be to assist in the review and development of regulations for the board.

B. The board may appoint an ad hoc ~~advisory~~ committee to provide professional specialization or technical assistance when the board determines that such expertise is necessary to address a specific regulatory issue or need or when groups of individuals register an interest in working with the agency.

18 VAC 110-10-120. Limitation of service.

A. An ~~advisory~~ ad hoc committee that has been appointed by the board may be dissolved by the board when:

1. There is no response to the Notice of Intended Regulatory Action; or
2. The board determines that the promulgation of the regulation is either exempt or excluded from the requirements of the Administrative Process Act.

B. An ~~advisory~~ ad hoc committee shall remain in existence no longer than ~~42~~ 18 months from its initial appointment. ~~1. If unless the board determines that the specific regulatory need continues to exist beyond that time, it shall set a specific term for the committee of not more than six additional months. The board may authorize the ad hoc committee to continue for an additional specified period of time to complete the task for which it was appointed.~~

~~2. At the end of that extended term, the board shall evaluate the continued need and may continue the committee for additional six month terms.~~

VA.R. Doc. No. R07-226; Filed May 23, 2007, 11:16 a.m.

Proposed Regulation

Title of Regulation: **18 VAC 110-50. Regulations Governing Wholesale Distributors, Manufacturers and Warehousemen (amending 18 VAC 110-50-10; adding 18 VAC 110-50-160 through 18 VAC 110-50-190).**

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

Public Hearing Date: June 12, 2007 - 9 a.m.

Public comments may be submitted until 5 p.m. on August 10, 2007.

(See Calendar of Events section for additional information)

Agency Contact: Elizabeth Scott Russell, RPh, Executive Director, Board of Pharmacy, Alcoa Bldg., 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9911, FAX (804) 662-9313, or email scotti.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.

The specific statutory authority for the Board of Pharmacy to regulate the practice of pharmacy including the mandate to establish pedigree requirements is found in § 54.1-3307 of the Code of Virginia.

The specific authority for the board to license wholesale distributors is found in the Drug Control Act, specifically, §§ 54.1-3435 and 54.1-3435.01 of the Code of Virginia.

Purpose: The Board of Pharmacy has proposed a pedigree system 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 by establishment of a pedigree system. "Pedigree" means "a paper document or electronic file recording each distribution of a controlled substance from sale by a pharmaceutical manufacturer through acquisition and sale by any wholesale distributor, as defined in § 54.1-3401 and not exempted pursuant to § 54.1-3401.1, until sale to a pharmacy or other person dispensing or administering the controlled substance. Returns from a pharmacy to the originating wholesale distributor or pharmaceutical manufacturer shall not be subject to the pedigree requirements of this section."

18 VAC 110-50 is being amended to comply with a statutory mandate to "regulate the practice of pharmacy and the manufacturing, dispensing, selling, distributing, processing, compounding, or disposal of drugs and devices" (§ 54.1-3307 A of the Code of Virginia). To protect the supply of drugs distributed in the Commonwealth, the board is charged by statute to establish and implement a pedigree system.

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 1990's, 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 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 drugs that leave the normal distribution channel in order to prevent opportunities for counterfeiting of drugs and ensure the integrity, safety and efficacy of drugs or devices distributed in the Commonwealth.

Substance: The proposed action, as mandated by § 54.1-3307 of the Code of Virginia, sets out the susceptible drugs for which a pedigree must be required to include those drugs that leave the normal distribution channel or do not fall under one of the variations of the normal distribution channel. In the regulation, the types of drug distribution or variations of the normal distribution channel that do not require a pedigree are listed and defined. There are also time frame and notice requirements for amending the list of susceptible drugs.

For those distributions that do have to have an authenticated pedigree, the content requirements are set out; distributions are given one year from the effective date of the regulations to comply with the pedigree requirements. There are also requirements for authentication of a pedigree by any manufacturer or distributor listed on the pedigree and provisions of quarantining any drug for which a pedigree cannot be authenticated. Finally, there are requirements for recordkeeping of transactions and pedigree authentications for a period of not less than three years.

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

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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 which 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 by establishing rules for a pedigree to follow the distribution of any drug that leaves the normal distribution channel or one of the variations of acceptable distribution. With the adoption of new regulations for a pedigree system, 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 may be some increased effort and cost associated with expanded oversight requirements, but there is a broad interpretation of "normal distribution channel" so the number of pedigrees that will be required is limited.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Regulation. Pursuant to Chapter 777 of the 2005 Acts of Assembly and Chapter 632 of the 2006 Acts of Assembly, the Board of Pharmacy proposes to establish a pedigree program for prescription drugs that will have the affect of requiring pedigrees for Schedule II through IV drugs that are distributed through secondary wholesalers.

Result of Analysis. There is insufficient data to accurately compare the magnitude of the costs and benefits of the proposed regulatory change. Analysis of possible costs and benefits can be found below.

Estimated Economic Impact. Currently, Board of Pharmacy (board) regulations do not require that any class of drugs have a written, authenticated record of provenance. To address concerns that consumers are not being adequately protected from counterfeit drugs that might enter normal drug channels, the General Assembly passed legislation in 2005 that mandated that the board implement a pedigree requirement for "distribution of a controlled substance from sale by a pharmaceutical manufacturer through acquisition and sale by any wholesale distributor." An ad hoc committee formed by the board determined that drugs that are distributed through normal distribution channels are unlikely to be adulterated or counterfeit. The General Assembly passed subsequent legislation (in 2006) that limited the scope of any pedigree program to drugs which, at some point before their final use, leave the "normal distribution channel." Normal distribution channels, as defined in this legislation, encompass the "chain of custody for a prescription drug from initial sale by a pharmaceutical manufacturer, through acquisition and sale by

one wholesale distributor as defined in § 54.1-3401, that is not exempted pursuant to § 54.1-3401.1, until sale to a pharmacy or other person dispensing or administering the controlled substance; or a chain of custody for a prescription drug from initial sale by a pharmaceutical manufacturer, through acquisition and sale by one wholesale distributor as defined in § 54.1-3401, that is not exempted pursuant to § 54.1-3401.1, to a chain pharmacy warehouse to its intracompany pharmacies; or a chain of custody for a prescription drug from initial sale by a pharmaceutical manufacturer to a chain pharmacy warehouse to its intracompany pharmacies."

The proposed regulation incorporates this definition and additionally provides that drugs distributed on an emergency basis are exempt from pedigree requirements so long as the distributor of these drugs:

- Maintains documentation from the drug manufacturer attesting to a shortage,
- Purchases the drug distributed only through an authorized distributor,
- Maintains a list of all entities to whom these drugs are sold, and
- Notifies the board of within 24 hours of any emergency distributions.

The proposed regulation requires that non-exempt entities buying and selling drugs in non-emergency situations generate a written pedigree that includes:

- The trade or generic name of the drug,
- The dosage form and strength of the drug,
- The container size for the drug as well as the number of containers and lot numbers of the purchase,
- The name of the manufacturer of the drug, and
- Documentation for every transaction of the drug in question to include:
 - The business name and address of each entity involved in the chain of the drug's physical custody,
 - The telephone number and other contact information needed to authenticate the pedigree,
 - Sales invoice numbers or other unique shipping document numbers that identify each transaction, and
 - The dates of the transactions to include shipping dates when a seller ships the product and receiving dates when a purchaser receives a product.

Effectively, legislative mandate and this proposed regulation will require pedigrees only for drugs that are handled by secondary wholesalers on a nonemergency basis. Secondary

wholesalers purchase overstocked drugs from primary wholesalers and unused drugs from pharmacies and tend to sell these drugs to other secondary wholesalers, pharmacies and government entities like prisons at lower cost than would normally be charged by a primary wholesaler. More specialized secondary wholesalers purchase drugs from primary wholesalers at their regular price and then sell those drugs to doctors' offices for a price that is greater than wholesale but less than retail; secondary wholesalers can engage in this type of arbitrage because many primary wholesalers have traditionally refused to sell directly to doctors' offices. The provenance of drugs that are repeatedly sold and resold in this manner can become clouded and counterfeit drugs can more easily be introduced into a distribution stream that includes such sales and resales.

Counterfeit and adulterated drugs can be harmful, or even deadly, in several ways. Consumers are certainly harmed when they inadvertently take a counterfeit drug that will not have the beneficial effects anticipated when the drug was prescribed; these consumers may even die if the drug they are taking is meant to treat a condition (like diabetes) that can be fatal. Consumers can also be harmed, or even killed, by counterfeit drugs that are, on occasion, contaminated with bacteria or other harmful substances. This proposed regulation, and its originating legislation, will likely benefit the public by reducing the risk that counterfeit or adulterated drugs will be sold in the Commonwealth.

There will also be costs associated with the promulgation of this regulation. Secondary wholesalers will incur costs associated with gathering and maintaining the information required for pedigrees. The Department of Health Professions (DHP) reports that there is no information available that would indicate how much pedigrees will cost to maintain. Secondary distributors who do business in Virginia and Florida (where drug pedigrees are already required) will likely not see an appreciable increase in their costs because they will only be providing to the board pedigree information that they have already gathered and that they are already required to maintain. Secondary distributors that do not also do business in Florida will likely increase the price they charge their customers to offset some or all of the costs associated with this pedigree program. DHP expects that some secondary distributors will choose to either seek primary distributor status (by buying directly from drug manufacturers) or will cease doing business in Virginia altogether. These factors, taken together, will likely mean that end purchasers of drugs will experience an increase in the price they, or their agents, pay for medication.

Businesses and Entities Affected. The proposed regulation will affect secondary wholesalers as well as their customers. The board currently licenses 132 resident and 640 nonresident wholesale distributors. The vast majority of these are secondary distributors.

Localities Particularly Affected. The proposed regulation will affect all localities in the Commonwealth.

Projected Impact on Employment

The proposed regulation will likely have a negative impact on employment in the field of wholesale drug distribution.

Effects on the Use and Value of Private Property. Secondary wholesale drug distributors will incur greater costs on account of the proposed regulation. To the extent that they are unable to recover those costs by passing them on to their customers, secondary wholesale distributors are also likely to see lower profits.

Small Businesses: Costs and Other Effects. Secondary wholesale drug distributors will incur costs associated with gathering and maintaining the drug pedigree information required by the proposed regulation. Most of the wholesale drug distributors licensed by the board are secondary drug wholesale distributors that qualify as small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There are likely no alternative methods that would both meet legislative requirements and further minimize adverse impacts.

Legal Mandate: 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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 on proposed amended regulations for 18 VAC 10-50,

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Regulations Governing the Wholesale Distributors, Manufacturers and Warehousemen.

Summary:

Part IV (18 VAC 110-50-160 et seq.) and applicable definitions in 18 VAC 110-50-10 are being added to comply with Chapter 777 of the 2005 Acts of Assembly and Chapter 632 of the 2006 Acts of Assembly, which mandate the establishment and implementation of a pedigree program for prescription drugs. The regulations also provide for exceptions to the pedigree requirements for emergency medical reasons as defined in regulation.

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:

"Authorized distributor of record" means a wholesale distributor with whom a manufacturer has entered into a written agreement under which such wholesale distributor is either authorized to distribute all of that manufacturer's prescription drug products, or only those products listed in the agreement, for such a period of time or number of shipments as specified in the agreement.

"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.

"DEA" means the United States Drug Enforcement Administration.

"Drop shipment" means the sale and distribution of a prescription drug in which a manufacturer, third-party logistics provider, or the manufacturer's exclusive distributor directly ships the prescription drug to a pharmacy, chain drug warehouse, or other person authorized to dispense or administer the prescription drug, and the pharmacy, chain drug warehouse or other authorized person is invoiced by a wholesale distributor that took title to the prescription drug during the shipping, but did not take physical possession of the prescription drug.

"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.

"Manufacturer's exclusive distributor" means a distributor licensed by the board as a wholesale distributor or registered as a nonresident wholesale distributor who contracts with a manufacturer to provide or coordinate warehousing,

distribution or other services on behalf of a manufacturer for a prescription drug and who takes title to that manufacturer's prescription drug, but who does not have general responsibility to direct the sale or disposition of the prescription drug.

"Third-party logistics provider" means an entity licensed by the board as a wholesale distributor or registered as a nonresident wholesale distributor who contracts with a manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of a manufacturer for a prescription drug, but does not take title to the prescription drug and who only sells, distributes, or otherwise disposes of the prescription drug at the direction of the manufacturer.

"USP-NF" means the United States Pharmacopeia-National Formulary.

PART IV. PEDIGREE REQUIREMENTS.

18 VAC 110-50-160. Susceptible drugs.

A. The list of drugs susceptible to counterfeiting for which a pedigree is required shall be all prescription drugs in Schedules II through VI, except that a pedigree is not required for those prescription drugs that do not leave the normal distribution channel or those that include one or more of the following additional distributions or variations to the normal distribution channel:

1. Distribution by a manufacturer's exclusive distributor;
2. Distribution by a third-party logistics provider;
3. Drop shipments;
4. Distributions to a veterinarian for veterinary use; and

5. Distributions for emergency medical reasons, defined as those in which (i) a state of emergency has been declared by the Governor in accordance with § 54.1-3307.3 of the Code of Virginia, or (ii) there is a documented shortage of a drug, where the failure to acquire and dispense a prescription drug could result in imminent danger to patient health, and the wholesale distributor, in lieu of a pedigree, complies with the following requirements:

- a. Obtains and maintains documentation from the manufacturer attesting to a shortage of the prescription drug and its nonavailability through normal distribution channels;
- b. Purchases the prescription drug only through an authorized distributor of record and maintains the name of such distributor;
- c. Maintains a list of pharmacies or other authorized entities to which the prescription drug was distributed; and

d. Notifies the board within 24 hours of such a distribution.

B. Not less than annually, the board shall evaluate whether the list of susceptible drugs in subsection A of this section should be amended. The board may modify the list under its authority to adopt exempt regulations, pursuant to § 2.2-4006 A 14 of the Administrative Process Act, in accordance with the following process:

1. The board shall conduct a public hearing on any proposed amendments to subsection A of this section. Thirty days prior to conducting such hearing, the board shall give written notice of the date, time, and place of the hearing to all persons requesting to be notified of the hearings and publish proposed amendments to the list in the Virginia Register of Regulations.

2. During the public hearing, interested parties shall be given reasonable opportunity to be heard and present information prior to final adoption of any amendments. Final amendments of the list shall also be published, pursuant to § 2.2-4031 of the Code of Virginia, in the Virginia Register of Regulations.

3. Final amendments to the list of susceptible drugs shall become effective upon filing with the Registrar of Regulations.

18 VAC 110-50-170. Requirements of a pedigree.

A. For distributions of prescription drugs that require a pedigree in accordance with § 54.1-3307 of the Code of Virginia and 18 VAC 110-50-160, the pedigree shall list all distributions starting with the sale by a manufacturer through acquisition and sale by any wholesale distributor until final sale to a pharmacy or other person authorized to administer or dispense the prescription drug.

B. When required by law and regulation to provide a pedigree, a wholesale distributor shall provide an authenticated pedigree for drugs sold or returned to another wholesale distributor before or at the time the drug is shipped to such wholesale distributor.

C. The pedigree shall minimally include the following information on a prescription drug for which a pedigree is required:

1. The trade or generic name of the drug;
2. The dosage form and strength, the container size, number of containers, and lot number;
3. The name of the manufacturer of the finished drug product;
4. Each transaction in which the drug is shipped or received by a manufacturer or wholesale distributor showing the following:

a. The business name and address of each entity involved in the chain of the drug's physical custody;

b. Telephone number and other contact information needed to authenticate the pedigree;

c. Sales invoice number or other unique shipping document number that identify each transaction; and

d. The dates of the transactions to include shipping dates when a seller ships the product and the receiving dates when a purchaser receives the product.

5. A statement of certification that the information contained in the pedigree is true and accurate and the name and signature of the individual certifying the authenticity of the pedigree at the time of shipment of the drug.

D. The requirement for a pedigree shall be effective beginning [one year from the effective date of a final regulation].

18 VAC 110-50-180. Authentication of a pedigree.

A. Upon request of a wholesale distributor who is attempting to authenticate a pedigree for a drug as specified in 18 VAC 110-50-160, any manufacturer or wholesale distributor listed on the pedigree shall provide requested information in a timely manner, to include the following:

1. Dates of receipt or shipment of the drug as well as the name, address, and other contact information of those entities from whom they received the drug or to whom they shipped the drug;
2. Lot number;
3. Sales invoice number or other unique shipping document numbers that identify each transaction; and
4. Name of the person who is providing the requested information.

B. The wholesale distributor shall record the above information and maintain the information in accordance with 18 VAC 110-20-190.

C. If a wholesale distributor that is attempting to authenticate the distribution of a drug back to a manufacturer is unable to authenticate each distribution, the wholesale distributor shall quarantine the drug and report to the board and the FDA within three business days after completing the attempted authentication.

18 VAC 110-50-190. Recordkeeping.

A. Wholesale distributors shall establish and maintain inventories and records of all transactions relating to the receipt and distribution or other disposition of drugs as specified in 18 VAC 110-50-160, to include records of authentication of pedigrees, for a period of not less than three years.

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B. All records shall be made available to the board or its authorized agent upon request. If records are not kept on premises at the address of record, they shall be made available within 48 hours of such request.

VA.R. Doc. No. R05-253; Filed May 23, 2007, 10:47 a.m.

BOARD OF PHYSICAL THERAPY

Fast-Track Regulation

Title of Regulation: **18 VAC 112-10. Public Participation Guidelines (amending 18 VAC 112-10-10 through 18 VAC 112-10-80, 18 VAC 112-10-100, 18 VAC 112-10-110 and 18 VAC 112-10-120).**

Statutory Authority: §§ 2.2-4007.02 (effective July 1, 2007) and 54.1-2400 of the Code of Virginia.

Public Hearing Date: N/A - Public comments may be submitted until 5 p.m. on August 10, 2007.

(See Calendar of Events section for additional information)

Effective Date: August 25, 2007.

Agency Contact: Lisa R. Hahn, Executive Director, Board of Physical Therapy, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9924, FAX (804) 662-9523, or email lisa.hahn@dhp.virginia.gov.

Basis: Section 2.2-4007 D (§ 2.2-4007.02 effective July 1, 2007) of the Administrative Process Act mandates the adoption of public participation guidelines for soliciting the input of interested parties in the formation and development of an agency's regulations.

Section 54.1-2400 of the Code of Virginia provides the general authority to the board to promulgate regulations.

Purpose: The board has updated and clarified its guidelines for public participation in the development and promulgation of initial, amended or repealed regulations, such as inclusion of electronic notification and the Virginia Regulatory Townhall as an option for comment. Changes are recommended by a committee of board and/or department staff, which reviewed each regulation for effectiveness, consistency and clarity. The intent is for amendments to be clarifying rather than substantive. Full participation by the public and regulated entities in the regulatory process is necessary to ensure that regulations fulfill the purpose of protecting the health and safety of the public in a manner that is not overly burdensome to those being regulated.

Rationale for Using Fast-Track Process: The fast-track process is being used to promulgate the amendments because there is general agreement with the changes proposed. The action is not controversial, as is reflected by the fact that there were no public comments on a Notice of Intended Regulatory Action filed by other boards within the Department of Health Professions. Both the Department of Planning and Budget

and the Governor's office have recommended that these amendments be promulgated by a fast-track action.

Substance: The regulation has been reviewed for consistency with law, clarity and ease of compliance. There are no substantive amendments.

Issues: These amendments pose no disadvantages to the public. Clarification of the definition of regulation, additional opportunity for comment, and an extension of service for an ad hoc committee appointed to advise the board on the development of a regulation are all intended to give interested parties more access to the process.

There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Regulation. The Board of Physical Therapy (board) proposes to amend its Public Participation Guidelines. The board proposes to require that notification of all final regulatory actions, as well as the text of the regulations being changed, be posted to the board's website before the 30-day adoption period begins. The board also proposes to extend the time limit under which ad hoc committees function and eliminate language that requires the board review its regulations at least every two years.

Result of Analysis. The benefits likely exceed the costs for these proposed regulatory changes.

Estimated Economic Impact. Current regulation requires the board to notify individuals on its notification lists, either by regular mail or email, whenever a final-stage regulation is about to enter its 30-day adoption period. This current regulatory notification requirement is more stringent than what is required by either the Administrative Process Act or Executive Order 36 (both of these rulemaking documents are silent on this matter). The board proposes to delete this portion of its public participation guidelines and, instead, will post notices of adoption of final regulation, as well as the text of the regulation being changed, on the board's website. The board believes that the changed notification requirements in the proposed regulation will allow staff time to be used more efficiently while still protecting the public's ability to be involved in the final stage of the rulemaking process. Individuals who are following board regulations through the process may be slightly inconvenienced by having to go to the board's website to get information rather than having that information mailed to them. These individuals, and the public generally, will likely benefit slightly from having staff time spent on more important tasks.

Current regulation requires that the board review all of its regulations every two years "unless otherwise directed by executive order." The proposed regulation will require the board to conduct "periodic review of its regulations consistent

with an executive order of the Governor and with § 2.2-4007.1 of the Code of Virginia.” Currently it takes, on average, approximately 18 months for all regulatory requirements for a new or amended regulation to be met. Given this, the public will likely benefit (slightly) from the removal of language that likely sets an unrealistic timeline for the periodic review of regulations.

Current regulation limits ad hoc committees to 12 months' existence before they must be dissolved. The proposed regulation will extend this term limit to 18 months and allow the board to authorize continuance of ad hoc committees past their regulatory time limit if their set task has not been completed. This proposal will likely have no economic impact on the citizens of the Commonwealth.

Businesses and Entities Affected. The proposed regulation will affect all individuals who involve themselves in the administrative rulemaking actions of the board.

Localities Particularly Affected. The proposed regulation will affect all localities in the Commonwealth.

Projected Impact on Employment. The proposed regulation is unlikely to have any affect on employment in the Commonwealth.

Effects on the Use and Value of Private Property. The proposed regulation will likely have no affect on the use or value of private property within the Commonwealth.

Small Businesses: Costs and Other Effects. The proposed regulation will likely have no adverse impact on any small businesses in the Commonwealth.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulation will likely have no adverse impact on any small businesses in the Commonwealth.

Legal mandate. 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation,

including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Physical Therapy concurs with the analysis of the Department of Planning and Budget on proposed amended regulations for 18 VAC 112-10, Public Participation Guidelines.

Summary:

The amendments update and clarify the board's guidelines for public participation in the development and promulgation of initial, amended or repealed regulations by (i) including electronic notification and the Virginia Regulatory Town Hall as an option for public comment, (ii) clarifying certain terms, (iii) requiring the board to post notice of final regulations on its website rather than sending them to its notification lists, and (iv) extending the time limitation on ad hoc committees.

18 VAC 112-10-10. Purpose.

The purpose of this chapter is to provide guidelines for the involvement of the public in the ~~development and promulgation~~ initial formation and development, amendment or repeal of regulations of the Board of Physical Therapy. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act. These rules seek to expand participation by providing for electronic exchange with the public and thereby increasing participation, reducing costs, and improving the speed of communication.

18 VAC 112-10-20. Definitions.

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

"Administrative Process Act" means Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Board" means the Board of Physical Therapy.

"Notification lists" means lists used by the board to notify persons pursuant to these rules. Such lists may include electronic ~~mailing~~ lists maintained through a ~~state website~~ the Virginia Regulatory Town Hall or ~~regular mailing~~ lists maintained by the board.

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

"Regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any

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person, adopted by the board in accordance with the authority conferred on it by applicable laws.

18 VAC 112-10-30. Composition of notification lists.

A. The board shall maintain lists of persons who have requested to be notified of the initial formation and promulgation, development, amendment or repeal of regulations.

B. Any person may request to be placed on a notification list by indicating so electronically or in writing to the board. The board may add to a list any person it believes will serve the purpose of enhancing participation in the regulatory process.

C. The board may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. The board shall periodically request those persons on the notification lists to indicate their desire to either continue to receive documents by regular mail, be notified electronically or be deleted from the lists. Persons who elect to be included on an electronic mailing list may also request that all notices and mailings be sent in hard copy. When either regular or electronic mail is returned as undeliverable or there has been no response to the request from the board, such persons shall be deleted from the list.

18 VAC 112-10-40. Documents to be sent to persons on the notification lists.

A. Persons on the notification lists, as described in 18 VAC 112-10-30, shall be mailed or have electronically transmitted the following documents related to the promulgation of regulations:

1. A notice of intended regulatory action.
2. A notice of the comment period on a proposed regulation and instructions as to how to obtain a copy of the regulation and any supporting documents, either electronically or from the board office.
- ~~3. A notification of the adoption of a final regulation and instructions as to how to obtain a copy of the regulation and any supporting documents, either electronically or from the board office.~~
4. 3. A notice soliciting comment on a final regulation when the regulatory process has been extended.

B. Notification of the adoption of a final regulation and copies of the regulation shall be posted on the board's website prior to the 30-day adoption period.

C. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation otherwise adopted in accordance with this chapter.

18 VAC 112-10-50. Petition for ~~rule-making~~ rulemaking.

A. As provided in § 2.2-4007 of the Code of Virginia, any person may petition the board to develop a new regulation or amend an existing regulation.

B. A petition shall include but need not be limited to the following:

1. The petitioner's name, mailing address, telephone number, and, if applicable, the organization represented in the petition.
2. The number and title of the regulation to be addressed.
3. A description of the regulatory problem or need to be addressed.
4. A recommended addition, deletion, or amendment to the regulation.

C. The board shall receive, consider and respond to a petition within 180 days and shall have the sole authority to dispose of the petition.

D. Nothing herein shall prohibit the board from receiving information from the public and proceeding on its own motion for ~~rule-making~~ rulemaking.

18 VAC 112-10-60. Notice of Intended Regulatory Action.

A. Except as provided in § 2.2-4012.1 of the Code of Virginia, the board shall issue a notice of intended regulatory action (NOIRA) whenever it considers the adoption, amendment or repeal of a regulation. The ~~notice of intended regulatory action (NOIRA)~~ NOIRA shall state the purpose of the action and a brief statement of the need or problem the proposed action will address.

B. The NOIRA shall indicate whether the board intends to hold a public hearing on the proposed regulation after it is published. If the board does not intend to hold a public hearing, it shall so state ~~the reason~~ in the NOIRA.

C. If prior to the close of the 30-day comment period on the NOIRA, the board receives a request for a public hearing on the proposed regulation from at least 25 persons or if the Governor directs the board to hold a public hearing, such a hearing shall be scheduled.

18 VAC 112-10-70. Notice of comment period.

A. The board shall issue a notice of comment period (NOCP) whenever it proposes to initiate, amend or repeal a regulation. The ~~notice of comment period (NOCP)~~ NOCP shall indicate that copies of the proposed regulation are available electronically or from the board and may be requested in writing from the contact person specified in the NOCP.

B. The NOCP shall indicate that copies of the statement of substance, issues, basis, purpose, and estimated impact of the proposed regulation may also be requested in writing.

C. The NOCP shall make provision for comments pertaining to the proposed regulation by regular mail, ~~Internet~~, facsimile or electronic means. With the exception of comment received at a scheduled public hearing, oral comment ~~may~~ shall not be accepted.

18 VAC 112-10-80. Notice of meeting.

A. At any meeting of the board or advisory committee at which the formation, amendment, repeal, or adoption of a regulation is anticipated, the subject shall be described in a notice of meeting, which has been posted electronically on the ~~Internet~~ Virginia Regulatory Town Hall and transmitted to the Registrar of Regulations for inclusion in the Virginia Register.

B. If the board anticipates action on a regulation for which an exemption to the Administrative Process Act is claimed, the notice of meeting shall indicate that a copy of the proposed regulation ~~is available on a state website or upon request to~~ may be requested from the board at least two days prior to the meeting. A copy of the regulation shall be made available to the public attending such meeting.

18 VAC 112-10-100. Periodic review of regulations.

A. ~~Unless otherwise directed by executive order, the~~ The board shall conduct ~~an informational proceeding at least every two years~~ a periodic review of its regulations consistent with an executive order issued by the Governor and with § 2.2-4007.1 of the Code of Virginia to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance.

B. Such ~~proceeding~~ review may be conducted separately or in conjunction with other ~~informational proceedings~~ meetings or hearings.

C. Notice of the proceeding shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register and shall be sent to the ~~mailing list~~ notification lists identified in 18 VAC 112-10-30.

PART IV.

ADVISORY AD HOC COMMITTEES.

18 VAC 112-10-110. Appointment of committees.

A. The board may appoint an ad hoc ~~advisory~~ committee whose responsibility shall be to assist in the review and development of regulations for the board.

B. The board may appoint an ad hoc ~~advisory~~ committee to provide professional specialization or technical assistance when the board determines that such expertise is necessary to address a specific regulatory issue or need or when groups of individuals register an interest in working with the agency.

18 VAC 112-10-120. Limitation of service.

A. An ~~advisory~~ ad hoc committee that has been appointed by the board may be dissolved by the board when:

1. There is no response to the Notice of Intended Regulatory Action; or

2. The board determines that the promulgation of the regulation is either exempt or excluded from the requirements of the Administrative Process Act.

B. An ~~advisory~~ ad hoc committee shall remain in existence no longer than ~~42~~ 18 months from its initial appointment. ~~1. If unless~~ the board determines that the specific regulatory need continues to exist beyond that time, ~~it shall set a specific term for the committee of not more than six additional months.~~ The board may authorize the ad hoc committee to continue for an additional specified period of time to complete the task for which it was appointed.

~~2. At the end of that extended term, the board shall evaluate the continued need and may continue the committee for additional six month terms.~~

VA.R. Doc. No. R07-231; Filed May 23, 2007, 11:11 a.m.

BOARD OF COUNSELING

Fast-Track Regulation

Title of Regulation: **18 VAC 115-10. Public Participation Guidelines (amending 18 VAC 115-10-10 through 18 VAC 115-10-80, 18 VAC 115-10-100, 18 VAC 115-10-110 and 18 VAC 115-10-120).**

Statutory Authority: §§ 2.2-4007.02 (effective July 1, 2007) and 54.1-2400 of the Code of Virginia.

Public Hearing Date: N/A - Public comments may be submitted until 5 p.m. on August 10, 2007.

(See Calendar of Events section for additional information)

Effective Date: August 25, 2007.

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 email evelyn.brown@dhp.virginia.gov.

Basis: Section 2.2-4007 D (§ 2.2-4007.02 effective July 1, 2007) of the Administrative Process Act mandates the adoption of public participation guidelines for soliciting the input of interested parties in the formation and development of an agency's regulations.

Section 54.1-2400 of the Code of Virginia provides the general authority to the board to promulgate regulations.

Purpose: The board has updated and clarified its guidelines for public participation in the development and promulgation of initial, amended or repealed regulations, such as inclusion of electronic notification and the Virginia Regulatory Townhall as an option for comment. Changes are recommended by a committee of board and/or department staff, which reviewed each regulation for effectiveness,

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consistency and clarity. The intent is for amendments to be clarifying rather than substantive. Full participation by the public and regulated entities in the regulatory process is necessary to ensure that regulations fulfill the purpose of protecting the health and safety of the public in a manner that is not overly burdensome to those being regulated.

Rationale for Using Fast-Track Process: The fast-track process is being used to promulgate the amendments because there is general agreement with the changes proposed. The action is not controversial, as is reflected by the fact that there were no public comments on a Notice of Intended Regulatory Action filed by other boards within the Department of Health Professions. Both the Department of Planning and Budget and the Governor's office have recommended that these amendments be promulgated by a fast-track action.

Substance: The regulation has been reviewed for consistency with law, clarity and ease of compliance. There are no substantive amendments.

Issues: These amendments pose no disadvantages to the public. Clarification of the definition of regulation, additional opportunity for comment, and an extension of service for an ad hoc committee appointed to advise the board on the development of a regulation are all intended to give interested parties more access to the process.

There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Regulation. The Board of Counseling (board) proposes to amend its Public Participation Guidelines. The board proposes to require that notification of all final regulatory actions, as well as the text of the regulations being changed, be posted to the board's website before the 30-day adoption period begins. The board also proposes to extend the time limit under which ad hoc committees function and eliminate language that requires the board review its regulations at least every two years.

Result of Analysis. The benefits likely exceed the costs for these proposed regulatory changes.

Estimated Economic Impact. Current regulation requires the board to notify individuals on its notification lists, either by regular mail or email, whenever a final-stage regulation is about to enter its 30-day adoption period. This current regulatory notification requirement is more stringent than what is required by either the Administrative Process Act or Executive Order 36 (both of these rulemaking documents are silent on this matter). The board proposes to delete this portion of its public participation guidelines and, instead, will post notices of adoption of final regulation, as well as the text of the regulation being changed, on the board's website. The board believes that the changed notification requirements in

the proposed regulation will allow staff time to be used more efficiently while still protecting the public's ability to be involved in the final stage of the rulemaking process. Individuals who are following board regulations through the process may be slightly inconvenienced by having to go to the board's website to get information rather than having that information mailed to them. These individuals, and the public generally, will likely benefit slightly from having staff time spent on more important tasks.

Current regulation requires that the board review all of its regulations every two years "unless otherwise directed by executive order." The proposed regulation will require the board to conduct "periodic review of its regulations consistent with an executive order of the Governor and with § 2.2-4007.1 of the Code of Virginia." Currently it takes, on average, approximately 18 months for all regulatory requirements for a new or amended regulation to be met. Given this, the public will likely benefit (slightly) from the removal of language that likely sets an unrealistic timeline for the periodic review of regulations.

Current regulation limits ad hoc committees to 12 months' existence before they must be dissolved. The proposed regulation will extend this term limit to 18 months and allow the board to authorize continuance of ad hoc committees past their regulatory time limit if their set task has not been completed. This proposal will likely have no economic impact on the citizens of the Commonwealth.

Businesses and Entities Affected. The proposed regulation will affect all individuals who involve themselves in the administrative rulemaking actions of the board.

Localities Particularly Affected. The proposed regulation will affect all localities in the Commonwealth.

Projected Impact on Employment. The proposed regulation is unlikely to have any affect on employment in the Commonwealth.

Effects on the Use and Value of Private Property. The proposed regulation will likely have no affect on the use or value of private property within the Commonwealth.

Small Businesses: Costs and Other Effects. The proposed regulation will likely have no adverse impact on any small businesses in the Commonwealth.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulation will likely have no adverse impact on any small businesses in the Commonwealth.

Legal mandate. 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Counseling concurs with the analysis of the Department of Planning and Budget on proposed amended regulations for 18 VAC 115-10, Public Participation Guidelines.

Summary:

The amendments update and clarify the board's guidelines for public participation in the development and promulgation of initial, amended or repealed regulations by (i) including electronic notification and the Virginia Regulatory Town Hall as an option for public comment, (ii) clarifying certain terms, (iii) requiring the board to post notice of final regulations on its website rather than sending them to its notification lists, and (iv) extending the time limitation on ad hoc committees.

18 VAC 115-10-10. Purpose.

The purpose of this chapter is to provide guidelines for the involvement of the public in the ~~development and promulgation~~ initial formation and development, amendment or repeal of regulations of the Board of Counseling. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act. These rules seek to expand participation by providing for electronic exchange with the public and thereby increasing participation, reducing costs, and improving the speed of communication.

18 VAC 115-10-20. Definitions.

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

"Administrative Process Act" means Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Board" means the Board of Counseling.

"Notification lists" means lists used by the board to notify persons pursuant to these rules. Such lists may include electronic ~~mailing~~ lists maintained through a ~~state website~~ the Virginia Regulatory Town Hall or ~~regular mailing~~ lists maintained by the board.

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

"Regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, adopted by the board in accordance with the authority conferred on it by applicable laws.

18 VAC 115-10-30. Composition of notification lists.

A. The board shall maintain lists of persons who have requested to be notified of the initial formation and promulgation, development, amendment or repeal of regulations.

B. Any person may request to be placed on a notification list by indicating so electronically or in writing to the board. The board may add to a list any person it believes will serve the purpose of enhancing participation in the regulatory process.

C. The board may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. The board shall periodically request those persons on the notification lists to indicate their desire to either continue to receive documents by regular mail, be notified electronically or be deleted from the lists. Persons who elect to be included on an electronic mailing list may also request that all notices and mailings be sent in hard copy. When either regular or electronic mail is returned as undeliverable or there has been no response to the request from the board, such persons shall be deleted from the list.

18 VAC 115-10-40. Documents to be sent to persons on the notification lists.

A. Persons on the notification lists, as described in 18 VAC 115-10-30, shall be mailed or have electronically transmitted the following documents related to the promulgation of regulations:

1. A notice of intended regulatory action.
2. A notice of the comment period on a proposed regulation and instructions as to how to obtain a copy of the regulation and any supporting documents, either electronically or from the board office.
- ~~3. A notification of the adoption of a final regulation and instructions as to how to obtain a copy of the regulation and any supporting documents, either electronically or from the board office.~~

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4. 3. A notice soliciting comment on a final regulation when the regulatory process has been extended.

B. Notification of the adoption of a final regulation and copies of the regulation shall be posted on the board's website prior to the 30-day adoption period.

C. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation otherwise adopted in accordance with this chapter.

18 VAC 115-10-50. Petition for ~~rule-making~~ rulemaking.

A. As provided in § 2.2-4007 of the Code of Virginia, any person may petition the board to develop a new regulation or amend an existing regulation.

B. A petition shall include but need not be limited to the following:

1. The petitioner's name, mailing address, telephone number, and, if applicable, the organization represented in the petition.
2. The number and title of the regulation to be addressed.
3. A description of the regulatory problem or need to be addressed.
4. A recommended addition, deletion, or amendment to the regulation.

C. The board shall receive, consider and respond to a petition within 180 days and shall have the sole authority to dispose of the petition.

D. Nothing herein shall prohibit the board from receiving information from the public and proceeding on its own motion for ~~rule-making~~ rulemaking.

18 VAC 115-10-60. Notice of Intended Regulatory Action.

A. Except as provided in § 2.2-4012.1 of the Code of Virginia, the board shall issue a notice of intended regulatory action (NOIRA) whenever it considers the adoption, amendment or repeal of a regulation. ~~The notice of intended regulatory action (NOIRA) NOIRA shall state the purpose of the action and a brief statement of the need or problem the proposed action will address.~~

B. The NOIRA shall indicate whether the board intends to hold a public hearing on the proposed regulation after it is published. If the board does not intend to hold a public hearing, it shall so state ~~the reason~~ in the NOIRA.

C. If prior to the close of the 30-day comment period on the NOIRA, the board receives a request for a public hearing on the proposed regulation from at least 25 persons or if the Governor directs the board to hold a public hearing, such a hearing shall be scheduled.

18 VAC 115-10-70. Notice of comment period.

A. The board shall issue a notice of comment period (NOCP) whenever it proposes to initiate, amend or repeal a regulation. ~~The notice of comment period (NOCP) NOCP shall indicate that copies of the proposed regulation are available electronically or from the board and may be requested in writing from the contact person specified in the NOCP.~~

B. The NOCP shall indicate that copies of the statement of substance, issues, basis, purpose, and estimated impact of the proposed regulation may also be requested in writing.

C. The NOCP shall make provision for comments pertaining to the proposed regulation by regular mail, ~~Internet~~, facsimile or electronic means. With the exception of comment received at a scheduled public hearing, oral comment ~~may~~ shall not be accepted.

18 VAC 115-10-80. Notice of meeting.

A. At any meeting of the board or advisory committee at which the formation, ~~amendment, repeal~~, or adoption of a regulation is anticipated, the subject shall be described in a notice of meeting, which has been posted electronically on the ~~Internet~~ Virginia Regulatory Town Hall and transmitted to the Registrar of Regulations for inclusion in the Virginia Register.

B. If the board anticipates action on a regulation for which an exemption to the Administrative Process Act is claimed, the notice of meeting shall indicate that a copy of the proposed regulation ~~is available on a state website or upon request to~~ may be requested from the board at least two days prior to the meeting. A copy of the regulation shall be made available to the public attending such meeting.

18 VAC 115-10-100. Periodic review of regulations.

A. ~~Unless otherwise directed by executive order, the~~ The board shall conduct an informational proceeding at least every two years a periodic review of its regulations consistent with an executive order issued by the Governor and with § 2.2-4007.1 of the Code of Virginia to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance.

B. Such ~~proceeding~~ review may be conducted separately or in conjunction with other ~~informational proceedings~~ meetings or hearings.

C. Notice of the proceeding shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register and shall be sent to the ~~mailing list~~ notification lists identified in 18 VAC 115-10-30.

PART IV.
ADVISORY AD HOC COMMITTEES.

18 VAC 115-10-110. Appointment of committees.

- A. The board may appoint an ad hoc advisory committee whose responsibility shall be to assist in the review and development of regulations for the board.
- B. The board may appoint an ad hoc advisory committee to provide professional specialization or technical assistance when the board determines that such expertise is necessary to address a specific regulatory issue or need or when groups of individuals register an interest in working with the agency.

18 VAC 115-10-120. Limitation of service.

- A. An advisory ad hoc committee that has been appointed by the board may be dissolved by the board when:
1. There is no response to the Notice of Intended Regulatory Action; or
 2. The board determines that the promulgation of the regulation is either exempt or excluded from the requirements of the Administrative Process Act.

B. An advisory ad hoc committee shall remain in existence no longer than ~~42~~ 18 months from its initial appointment. ~~1. If unless the board determines that the specific regulatory need continues to exist beyond that time, it shall set a specific term for the committee of not more than six additional months. The board may authorize the ad hoc committee to continue for an additional specified period of time to complete the task for which it was appointed.~~

~~2. At the end of that extended term, the board shall evaluate the continued need and may continue the committee for additional six month terms.~~

V.A.R. Doc. No. R07-229; Filed May 23, 2007, 11:14 a.m.

Proposed Regulation

Titles of Regulations: **18 VAC 115-20. Regulations Governing the Practice of Professional Counseling (amending 18 VAC 115-20-10, 18 VAC 115-20-45, 18 VAC 115-20-49, 18 VAC 115-20-51, 18 VAC 115-20-52; repealing 18 VAC 115-20-120).**

18 VAC 115-50. Regulations Governing the Practice of Marriage and Family Therapy (amending 18 VAC 115-50-10, 18 VAC 115-50-40, 18 VAC 115-50-55, 18 VAC 115-50-60).

18 VAC 115-60. Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners (amending 18 VAC 115-60-10, 18 VAC 115-60-50, 18 VAC 115-60-70, 18 VAC 115-60-80).

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

Public Hearing Date: August 9, 2007 - 1 p.m.

Public comments may be submitted until 5 p.m. on August 10, 2007.

(See Calendar of Events section for additional information)

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 email evelyn.brown@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia. Section 54.1-2400 provides the Board of Counseling the authority to promulgate regulations to administer the regulatory system.

The specific authority for the promulgation of regulations for counseling-related professions is found in § 54.1-3505 of the Code of Virginia.

Purpose: The regulatory action is necessary to increase the portability of licenses from other states and to improve the accountability and oversight of persons providing counseling or therapy in a residency. The amended requirements for licensure by endorsement will resolve a long-standing problem of persons who have years of competent, safe practice in other states but who may lack a particular course or a few hours of academic work or residency to meet the education and experience requirements of Virginia. Such barriers to licensure have been a hardship on some applicants and a deterrent to licensure in Virginia for others. Restrictive licensure rules have restricted access to services for consumers. Verification of professional licenses through a state board or jurisdiction and documentation of clinical practice will protect the public health, safety, and welfare of persons and allow easier access to counselors or therapists licensed in other jurisdictions who wish to practice in Virginia.

Currently, regulations specify face-to-face supervision, but allow for individual and group supervision. Proposed regulations will clarify the residency requirements and give more flexibility to supervision. Setting a maximum number of hours of supervision per week will ensure that supervision occurs throughout the period of the 4,000-hour residency to provide more consistent oversight of the services being provided by the unlicensed resident. In addition, clarification of the training needed to qualify as an approved supervisor will ensure more accountability and professionalism in the supervision of a resident, which should result in a higher level of protection for those receiving mental health services. Registration of supervision will ensure a higher level of professionalism and accountability, regardless of whether the services are being provided in an exempt or a nonexempt setting.

Substance: Substantive provisions of the proposed regulations are as follows:

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Licensure by endorsement. The requirements for licensure by endorsement are amended to provide an alternative pathway for those who can demonstrate licensed practice in another jurisdiction. Applicants must either have (i) substantially equivalent educational and experience requirements; or (ii) if an applicant does not have educational and experience credentials consistent with those required by the chapter, he must provide documentation of education and supervised experience that met the requirements of the jurisdiction in which he was initially licensed as verified by an official transcript and a certified copy of the original application materials; and evidence of clinical practice for five of the last six years immediately preceding his licensure application in Virginia. The board will also accept verification from the credentials registry of the American Association of State Counseling Boards or any other board-recognized entity in lieu of transcripts verifying education and documentation verifying supervised experience.

Residency and Supervision. There is proposed change to require registration of all residencies begun after the effective date of the regulations, regardless of whether it occurs in an exempt or nonexempt setting.

Regulations are also amended as follows: The 200 hours of supervision was changed to eliminate the face-to-face requirement for both the residency and the graduate-level internship and clarify whether the supervision must be "individual" and "group" supervision. Within the 200 hours, there must be a maximum of two hours per 40 hours of work experience during the period of the residency.

Amendments will clarify the qualifications of a person who provides supervision to include completion of a three-semester hour course in supervision or at least 20 hours of continuing education from an approved provider. Persons who have provided supervision would have two years from the effective date of the regulations to complete such coursework. Amendments also clarify that the license of a person providing supervision must be active and unrestricted.

Issues: The primary advantage to the public would be the possibility of an increased number of licensed professional counselors, marriage and family therapists or substance abuse treatment professionals available to provide services to consumers in the Commonwealth. By allowing licensure by endorsement of persons who have met the licensing requirements in another state and have practiced safely for five or more years, the board has eliminated some significant barriers to licensure, so both exempt and nonexempt practice settings may see an increase in the supply of counselors and therapists.

In addition, the requirement for registration of supervision during a residency, regardless of the practice setting, will improve the oversight and accountability for person providing services during a period of gaining practical experience. There is an advantage to consumers since the hours and

format for supervision are specified to ensure the service being provided by the resident is safe and effective. There are no disadvantages to consumers of mental health services.

There are no disadvantages to the agency or the Commonwealth. By specifying the professional training required for supervisor, there will be less ambiguity in the regulation, which may encourage compliance.

There are no other matters of interest.

Department of Planning and Budget's Economic Impact Analysis:

The Board of Counseling proposes to amend three chapters of its regulations that govern Licensed Professional Counselors (LPC), Marriage and Family Therapists (MFT), and Licensed Substance Abuse Treatment Practitioners (LSATP). For all three of these chapters, the board proposes to allow individuals that have been licensed as a LPC, MFT or LSATP in another state, and who has been in practice five of the preceding six years, to be licensed by endorsement in the Commonwealth. The board proposes to allow, but not require, licensees, and potential licensees, to bank their credentials with the American Association of State Counseling Boards (AASCB). The board also proposes to eliminate references in these regulations to "face-to-face" supervision, to require that individuals who are completing their 4,000-hour residency receive a minimum of one hour and a maximum of two hours of supervision per 40 hours worked and to require that all individuals who are completing a residency register their supervision with the board. In addition, the board proposes to require that supervisors receive specific training in supervision.

Result of Analysis. The benefits likely exceed the costs for these proposed regulatory changes.

Estimated Economic Impact. Currently, individuals who were initially licensed in other states may only be licensed by endorsement in Virginia if these individuals have "completed education and experience requirements substantially equivalent to those in affect in Virginia at the time of initial licensure." Currently, individuals who apply for licensure by endorsement must submit official transcripts and original application materials (from initial licensure in another state) to prove they have completed all relevant education and experience requirements. Individuals who have not accrued education and experience hours that are "substantially equivalent" to those required for licensure in Virginia are barred from licensure in the Commonwealth even if they have been licensed in another state, and have been in practice, for many years. Additionally, individuals who apply for licensure by endorsement (or for that matter, licensure by examination) must produce official transcripts and other original documentation that may be difficult to compile especially if the applicant has been out of school for many years.

The board proposes to allow greater flexibility by adding a path to licensure that allows individuals to be licensed by endorsement if (i) they have met the requirements to be licensed in another state, (ii) they have no unresolved disciplinary actions pending against their licenses and (iii) they have been in clinical practice five out of the last six years. This change will benefit individuals who are licensed in other states as it will allow greater license portability should they choose to practice in Virginia. Although it appears that relatively few individuals are licensed by endorsement in any given year (see *Businesses and Entities Affected* below), this change will also likely slightly benefit the citizens of Virginia by slightly broadening the pool of counselors from whom they can choose to seek services.

The board also proposes to allow all applicants for licensure to bank all their credentials (hours of education for initial licensure, hours of supervised work experience, continuing education hours, etc.) with AASCB. AASCB could then certify to the board that these individuals meet licensure requirements. This option will likely mostly benefit individuals who are now in the process of completing licensure requirements, or who will complete these requirements at some point in the future, since these individuals can easily bank their credentials as they earn them. Individuals who have been licensed for a number of years, particularly those who are applying for licensure by endorsement, will likely not find this option to be of value. They will still have to gather official transcripts and original application information to either submit to the board or to AASCB. They will likely expend the same amount of effort no matter where their information ends up.

Current regulations require applicants for licensure as LPC's, MFT's and LSATP's to complete, among other things, a 4,000-hour residency. To meet current requirements, 200 of these 4,000 hours must be supervised "face-to-face" and, at a minimum, one out of every 20 hours must be supervised. Current regulations do not require individuals who are completing their residencies in exempt settings like Community Service Boards or state hospitals to register supervision with the board (all other residents must do this).

The board proposes to eliminate references to "face-to-face" supervision and instead frame supervision requirements as either "individual supervision" or "group supervision." The Department of Health Professions (DHP) reports that the term "face-to-face" is not specific enough. Eliminating this term will make these regulations clearer and will also allow supervisors to track residents' progress electronically. This change will benefit both residents and their supervisors by clarifying what the regulations require of them. This change will also allow electronic supervision which may provide a more efficient means of meeting regulatory requirements for both supervisors and residents.

Additionally, the board proposes to require a minimum of one hour and a maximum of two hours of supervision for every 40 residency hours worked. DHP reports that the board wants to guard against residents bunching their hours of supervision at the beginning or end of their residency rather than being supervised fairly evenly throughout. This change, on its face, appears to offer residents some flexibility since there is a range of supervision per 40 hours of work experience that would be acceptable to the board. In reality, residents would have to be supervised at the rate of two hours per 40 hours of work experience for the entirety of their residency in order to get the required 200 hours of supervision during a 4,000-hour residency.¹ This provision may create confusion for residents who are trying to meet board requirements. DHP has agreed to take this issue to the board. The board may choose to change the wording of this provision so that the regulation either offers a viable range for hours of supervision or no range at all.

The board also proposes to begin requiring all residents, even those working in exempt settings, to register supervision with the board. This change will eliminate the possibility that residents in exempt settings would inadvertently choose supervisors who do not meet board criteria. Hours of supervision completed with unqualified supervisors could not be counted toward the board required 200 hours of supervision and, so, residents might inadvertently delay their own licensure if they use unqualified supervisors. DHP believes that most residents in exempt settings already register supervision with the board (see *Businesses and Entities Affected* below). Those who do not already register will incur costs that include a \$50 fee per supervisor registered plus the value of the likely small amount of time spent filling out and filing registration paperwork.

All three chapters of the affected regulations currently require that supervisors have "professional training in supervision" but only one chapter, the one that regulates LSATP's, offers any sort of guidance as to what education qualifies as professional training. LSATP supervisors are currently required to complete a three credit-hour course in supervision.

The board proposes to expand the types of education that will meet the criteria for "professional training in supervision" for LSATP's and to add identical language to the regulations that govern LPC's and MFT's so that all three chapters are consistent on this point. The board proposes to require supervisors in all three fields to complete: (i) a three credit-hour course in supervision, (ii) a 4.0 quarter-hour course in supervision or (iii) at least 20 hours of approved continuing education in supervision. LPC and MFT supervisors, who

¹ 4,000 divided by 40 (hour increments) equals 100 time blocks that would need to be supervised at an allowable rate. At one hour of supervision per time block, residents would only have accrued 100 hours of supervision at the end of their residency. No combination of supervision ratios but two hours of supervision for all 100 time blocks will allow residents to have 200 hours of supervision within the parameter of a 4,000 hour residency.

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until now have not had to meet specific criteria, will have two years from the effective date for these regulatory changes to complete the required education. Since these supervisors must complete 20 hours of continuing education annually in order to renew their licenses, they will likely incur no extra fees on account of this regulatory requirement.

Businesses and Entities Affected. These proposed regulatory changes will affect residents who are working toward licensure as LPC's, MFT's or LSATP's, as well as licensees who act as supervisors for these residents. LPC's, MFT's and LSATP's who are initially licensed in another state, and who wish to also (or instead) be licensed in Virginia will also be affected. In 2006, 17 MFT's, seven LSATP's and 62 LPC's were licensed by endorsement. During the same period, 135 individuals registered supervision with the Board and 133 individuals were granted initial licensure by the board.

Localities Particularly Affected. No locality will be particularly affected by these regulatory changes.

Projected Impact on Employment. The number of LPC's, MFT's and LSATP's practicing in the Commonwealth may increase slightly on account of more flexible licensure by endorsement provisions. The change in supply of counselors will likely be too slight to affect the market price of counseling services.

Effects on the Use and Value of Private Property. Individuals who are initially licensed in another state may see the value of their licenses increase slightly if the new path for licensure by endorsement allows them to be licensed in the Commonwealth and they are able to increase their profits by practicing in Virginia.

Small Businesses: Costs and Other Effects. The board currently licenses 2,884 Licensed Professional Counselors, 838 Marriage and Family Therapists and 177 Licensed Substance Abuse Treatment Practitioners. Neither DHP nor DPB can estimate how many of these licensees practice in private settings that qualify as small businesses. In any case, affected small businesses will likely incur no extra costs on account of these regulatory changes.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Affected small businesses will likely incur no extra costs on account of these regulatory changes.

Legal Mandate. 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Counseling concurs with the analysis of the Department of Planning and Budget on proposed amended regulations for 18 VAC 115-20, Regulations Governing the Practice of Professional Counselors, 18 VAC 115-50, Regulations Governing the Practice of Marriage and Family Therapy, 18 VAC 115-60, Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners.

Summary:

The board is amending existing regulations for supervision and residency to (i) address what constitutes professional training for an approved supervisor, (ii) remove contradictory and burdensome language regarding face-to-face supervision, and (iii) require registration of supervisors regardless of the exemption/nonexempt setting.

Further, the board is amending existing regulations regarding requirements for licensure by endorsement to allow for greater portability of licensure from state to state. The proposed regulations include language that will allow for the issuance of a license by endorsement to any individual who qualifies for such license pursuant to having met the qualifications for licensure in another state and demonstrated competency by practice for at least five of the past six years. The credentials for licensure that are filed with a board-recognized credentials registry, such as that of the American Association of State Counseling Boards, would be acceptable for licensure by endorsement.

18 VAC 115-20-10. Definitions.

A. The following words and terms when used in this chapter shall have the meaning ascribed to them in § 54.1-3500 of the Code of Virginia:

"Appraisal activities"

"Board"

"Counseling"

"Counseling treatment intervention"

"Professional counselor"

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

"Applicant" means any individual who has submitted an official application and paid the application fee for licensure as a professional counselor.

"CACREP" means Council for Accreditation of Counseling and Related Educational Programs.

"Candidate for licensure" means a person who has satisfactorily completed all educational and experience requirements for licensure and has been deemed eligible by the board to sit for its examinations.

"Competency area" means an area in which a person possesses knowledge and skill and the ability to apply them in the clinical setting.

"COAMFTE" means the Commission on Accreditation for Marriage and Family Therapy Education.

~~"CORE" means Council on Rehabilitation Education.~~

"Exempt setting" means an agency or institution in which licensure is not required to engage in the practice of counseling according to the conditions set forth in § 54.1-3501 of the Code of Virginia.

"Group supervision" means the process of clinical supervision of no more than six persons in a group setting provided by a qualified supervisor.

"Internship" means supervised, planned, practical, advanced experience obtained in the clinical setting, observing and applying the principles, methods and techniques learned in training or educational settings.

"Jurisdiction" means a state, territory, district, province or country which has granted a professional certificate or license to practice a profession, use a professional title, or hold oneself out as a practitioner of that profession.

"Nonexempt setting" means a setting which does not meet the conditions of exemption from the requirements of licensure to engage in the practice of counseling as set forth in § 54.1-3501 of the Code of Virginia.

"Regional accrediting agency" means one of the regional accreditation agencies recognized by the United States Secretary of Education responsible for accrediting senior postsecondary institutions.

"Residency" means a post-internship, supervised, clinical experience registered with the board.

"Resident" means an individual who has submitted a supervisory contract and has received board approval to

provide clinical services in professional counseling under supervision.

"Supervision" means the ongoing process performed by a supervisor who monitors the performance of the person supervised and provides regular, documented ~~face-to-face~~ individual or group consultation, guidance and instruction with respect to the clinical skills and competencies of the person supervised.

18 VAC 115-20-45. Prerequisites for licensure by endorsement.

A. Every applicant for licensure by endorsement shall submit in one package the following:

1. A completed application;
2. The application processing fee;
3. Verification of all professional licenses or certificates ever held in any other jurisdiction. In order to qualify for endorsement the applicant shall have no unresolved action against a license or certificate. The board will consider history of disciplinary action on a case-by-case basis;
4. Documentation of having completed education and experience requirements ~~substantially equivalent to those in effect in Virginia at the time of initial licensure as verified by an official transcript and a certified copy of the original application materials~~ as specified in subsection B of this section;
5. Verification of a passing score on a licensure examination in the jurisdiction in which licensure was obtained; and
6. An affidavit of having read and understood the regulations and laws governing the practice of professional counseling in Virginia.

B. Every applicant for licensure by endorsement shall meet one of the following:

1. Educational requirements consistent with those specified in 18 VAC 115-20-49 and 18 VAC 115-20-51 and experience requirements consistent with those specified in 18 VAC 115-20-52; or
2. If an applicant does not have educational and experience credentials consistent with those required by this chapter, he shall provide:
 - a. Documentation of education and supervised experience that met the requirements of the jurisdiction in which he was initially licensed as verified by an official transcript and a certified copy of the original application materials; and
 - b. Evidence of clinical practice for five of the last six years immediately preceding his licensure application in Virginia.

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3. In lieu of transcripts verifying education and documentation verifying supervised experience, the board may accept verification from the credentials registry of the American Association of State Counseling Boards or any other board-recognized entity.

18 VAC 115-20-49. Degree program requirements.

A. Programs that are approved by CACREP ~~or CORE~~ are recognized as meeting the definition of graduate degree programs that prepare individuals to practice counseling and counseling treatment intervention as defined in § 54.1-3500 of the Code of Virginia.

B. The applicant shall have completed a graduate degree from a program that prepares individuals to practice counseling and counseling treatment intervention, as defined in § 54.1-3500 of the Code of Virginia, which is offered by a college or university accredited by a regional accrediting agency and which meets the following criteria:

1. There must be a sequence of academic study with the expressed intent to prepare counselors as documented by the institution;
2. There must be an identifiable counselor training faculty and an identifiable body of students who complete that sequence of academic study; and
3. The academic unit must have clear authority and primary responsibility for the core and specialty areas.

18 VAC 115-20-51. Coursework requirements.

A. The applicant shall have completed 60 semester hours or 90 quarter hours of graduate study in the following core areas with a minimum of three semester hours or ~~4.5~~ 4.0 quarter hours in each of the areas identified in subdivisions 1 through 12 of this subsection:

1. Professional identity, function and ethics;
2. Theories of counseling and psychotherapy;
3. Counseling and psychotherapy techniques;
4. Human growth and development;
5. Group counseling and psychotherapy, theories and techniques;
6. Career counseling and development theories and techniques;
7. Appraisal, evaluation and diagnostic procedures;
8. Abnormal behavior and psychopathology;
9. Multicultural counseling, theories and techniques;
10. Research;
11. Diagnosis and treatment of addictive disorders;
12. Marriage and family systems theory; and

13. Supervised internship of 600 hours to include 240 hours of face-to-face client contact.

B. If 60 graduate hours in counseling were completed prior to April 12, 2000, the board may accept those hours if they meet the regulations in effect at the time the 60 hours were completed.

18 VAC 115-20-52. Residency.

A. Registration.

1. Applicants who render counseling services ~~in a nonexempt setting~~ shall:

- a. With their supervisor, register their supervisory contract on the appropriate forms for board approval before starting to practice under supervision;
- b. Have submitted an official transcript documenting a graduate degree as specified in 18 VAC 115-20-49 to include completion of the internship requirement specified in 18 VAC 115-20-50 or 18 VAC 115-20-51; and
- c. Pay the registration fee.

2. ~~Applicants~~ After [effective date of regulations], applicants who are beginning their residencies in exempt settings ~~may~~ shall register supervision with the board to assure acceptability at the time of application.

B. Residency requirements.

1. The applicant for licensure shall have completed a 4,000-hour supervised residency in counseling practice with various populations, clinical problems and theoretical approaches in the following areas:

- a. Counseling and psychotherapy techniques;
- b. Appraisal, evaluation and diagnostic procedures;
- c. Treatment planning and implementation;
- d. Case management and recordkeeping;
- e. Professional identity and function; and
- f. Professional ethics and standards of practice.

2. The residency shall include a minimum of 200 hours of ~~face-to-face sessions~~ supervision between supervisor and resident occurring at a minimum of one hour and a maximum of two hours per 20 ~~40~~ hours of work experience during the period of the residency. No more than half of these hours may be satisfied with group supervision. One hour of group supervision will be deemed equivalent to one hour of ~~face-to-face~~ individual supervision. ~~Face-to-face supervision~~ Supervision that is not ~~coincident~~ concurrent with a residency will not be accepted, nor will residency hours be accrued in the absence of approved ~~face-to-face~~ supervision.

3. The residency shall include 2,000 hours of face-to-face client contact.

4. A graduate-level internship completed in a program that meets the requirements set forth in 18 VAC 115-20-49 may count for no more than 600 hours of the required 4,000 hours of experience. The internship shall include 20 hours of ~~face-to-face~~ individual on-site supervision, and 20 hours of ~~face-to-face~~ individual or group off-site supervision. In order to count toward the residency, internship hours shall not begin until completion of 30 semester hours toward the graduate degree.

5. A graduate-level degree internship completed in a CACREP- or ~~CORE~~ COAMFTE-approved program ~~in mental health counseling~~ may count for no more than 900 of the required 4,000 hours of experience.

6. In order for any graduate-level internship to be counted toward a residency, either the clinical or faculty supervisor shall be licensed as set forth in subsection C of this section.

7. The board may consider special requests in the event that the regulations create an undue burden in regard to geography or disability which limits the resident's access to qualified supervision.

8. For applicants enrolled in an integrated course of study in an accredited institution leading to a graduate degree beyond the master's level, supervised experience may begin after the completion of 30 graduate semester hours or 45 graduate quarter hours, including an internship, and shall include graduate course work in the core areas as prescribed in 18 VAC 115-20-50 or 18 VAC 115-20-51.

9. Residents may not call themselves professional counselors, directly bill for services rendered, or in any way represent themselves as independent, autonomous practitioners or professional counselors. During the residency, residents shall use their names and the initials of their degree, and the title "Resident in Counseling" in all written communications. Clients shall be informed in writing of the resident's status and the supervisor's name, professional address, and phone number.

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

C. ~~Supervisory requirements~~ qualifications. A person who provides supervision for a resident in professional counseling shall:

~~1. document~~ Document two years of post-licensure clinical experience;

~~2. have~~ Have received professional training in supervision, consisting of three credit hours or 4.0 quarter hours in graduate-level coursework in supervision or at least 20 hours of continuing education in supervision offered by a

provider approved under 18 VAC 115-20-106 (Persons who have provided supervision for a residency prior to [effective date of regulations] shall complete such coursework or continuing education by (two years from the effective date of regulations)); and

~~3. shall be licensed~~ Shall hold an active, unrestricted license as a professional counselor, marriage and family therapist, substance abuse treatment practitioner, school psychologist, clinical psychologist, clinical social worker, or psychiatrist in the jurisdiction where the supervision is being provided. At least ~~one-half~~ 100 hours of the ~~individual face-to-face~~ supervision shall be rendered by a licensed professional counselor.

D. Supervisory responsibilities.

1. Supervision by any individual whose relationship to the resident compromises the objectivity of the supervisor is prohibited.

2. The supervisor of a resident shall assume full responsibility for the clinical activities of that resident specified within the supervisory contract for the duration of the residency.

3. The supervisor shall complete evaluation forms to be given to the resident at the end of each three-month period.

4. The supervisor shall report the total hours of residency and shall evaluate the applicant's competency in the six areas stated in subdivision B 1 of this section.

~~D. E.~~ E. Applicants shall document successful completion of their residency on the Verification of Supervision Form at the time of application. Applicants must receive a satisfactory competency evaluation on each item on the evaluation sheet. Supervised experience obtained prior to April 12, 2000, may be accepted toward licensure if this supervised experience met the board's requirements which were in effect at the time the supervision was rendered.

PART V.

ADVISORY COMMITTEES.

18 VAC 115-20-120. Advisory committees. (Repealed.)

~~A. The board may establish examining and advisory committees to assist it in evaluating candidates for licensure.~~

~~B. The board may establish an advisory committee to evaluate the mental and emotional competence of any licensee or candidate for licensure when such competence is in issue before the board.~~

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PART ~~VI~~ V.
STANDARDS OF PRACTICE; UNPROFESSIONAL
CONDUCT; DISCIPLINARY ACTIONS;
REINSTATEMENT.

18 VAC 115-50-10. Definitions.

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

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

"CACREP" means the Council for Accreditation of Counseling and Related Education Programs.

"COAMFTE" means the Commission on Accreditation for Marriage and Family Therapy Education.

"Internship" means a supervised, planned, practical, advanced experience obtained in the clinical setting observing and applying the principles, methods and techniques learned in training or educational settings.

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

"Residency" means a post-internship, supervised clinical experience registered with the board.

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

"Supervision" means an ongoing process performed by a supervisor who monitors the performance of the person supervised and provides regular, documented, ~~face-to-face~~ individual or group consultation guidance, and instruction with respect to the clinical skills and competencies of the person or persons being supervised.

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

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

1. A completed application;
2. The application processing and initial licensure fee prescribed in 18 VAC 115-50-20; and
3. Documentation of licensure as follows:
 - a. Verification of all professional licenses or certificates ever held in any other jurisdiction. In order to qualify for

endorsement the applicant shall have no unresolved action against a license or certificate. The board will consider history of disciplinary action on a case-by-case basis;

~~a. b.~~ Documentation of a ~~current~~ marriage and family therapy license ~~in good standing~~ obtained by standards ~~substantially equivalent to those outlined in 18 VAC 115-50-50, 18 VAC 115-50-55, 18 VAC 115-50-60 and 18 VAC 115-50-70 as verified by a current official transcript and certified copy of the original application materials~~ specified in subsection B of this section; or

~~b. c.~~ If currently holding an unrestricted license as a professional counselor in Virginia, documentation of successful completion of the requirements set forth in 18 VAC 115-50-50, 18 VAC 115-50-55 and 18 VAC 115-50-60.

B. Every applicant for licensure by endorsement shall meet one of the following:

1. Educational requirements consistent with those specified in 18 VAC 115-50-50 and 18 VAC 115-50-55 and experience requirements consistent with those specified in 18 VAC 115-50-60; or

2. If an applicant does not have educational and experience credentials consistent with those required by this chapter, he shall provide:

a. Documentation of education and supervised experience that met the requirements of the jurisdiction in which he was initially licensed as verified by an official transcript and a certified copy of the original application materials; and

b. Evidence of clinical practice for five of the last six years immediately preceding his licensure application in Virginia.

3. In lieu of transcripts verifying education and documentation verifying supervised experience, the board may accept verification from the credentials registry of the American Association of State Counseling Boards or any other board-recognized entity.

18 VAC 115-50-55. Course work requirements.

A. The applicant shall have completed 60 semester hours or 90 quarter hours of graduate study in the following core areas with a minimum of six semester hours or nine quarter hours completed in each of core areas identified in subdivisions 1 and 2 of this subsection, and three semester hours or ~~4.5~~ 4.0 quarter hours in each of the core areas identified in subdivisions 3 through 6 of this subsection (suggested courses are listed in parentheses after each core area):

1. Marriage and family studies (marital and family development; family systems theory);

2. Marriage and family therapy (systemic therapeutic interventions and application of major theoretical approaches);
3. Human development (theories of counseling; psychotherapy techniques with individuals; human growth and lifespan development; personality theory; psychopathology; human sexuality; multicultural issues);
4. Professional studies (professional identity and function; ethical and legal issues);
5. Research (research methods; quantitative methods; statistics);
6. Assessment and treatment (appraisal, assessment and diagnostic procedures); and
7. Supervised internship of 600 hours to include 240 hours of direct client contact. Three hundred of the internship hours and 120 of the direct client contact hours shall be with couples and families.

B. If the graduate hours in marriage and family therapy were begun prior to January 19, 2000, the board may accept those hours if they meet the requirements which were in effect on July 9, 1997.

18 VAC 115-50-60. Residency.

A. Registration.

1. Applicants who render counseling services ~~in a nonexempt setting~~ shall:
 - a. With their supervisor, register their supervisory contract on the appropriate forms for board approval before starting to practice under supervision;
 - b. Have submitted an official transcript documenting a graduate degree as specified in 18 VAC 115-50-50 to include completion of the internship requirement specified in 18 VAC 115-50-55; and
 - c. Pay the registration fee.
2. ~~Applicants~~ After [effective date of regulations], applicants who are beginning their residencies in exempt settings ~~may~~ shall register supervision with the board to assure acceptability at the time of application.

B. Residency requirements.

1. The applicant shall have completed at least two years of supervised post-graduate degree experience, representing no fewer than 4,000 hours of supervised work experience, to include 200 hours of ~~face-to-face~~ supervision with the supervisor in the practice of marriage and family therapy. Residents shall receive a minimum of one hour and a maximum of two hours of ~~face-to-face~~ supervision for every ~~20~~ 40 hours of supervised work experience. No more than 100 hours of the supervision may be acquired through group supervision, with the group consisting of no more

than six residents. One hour of group supervision will be deemed equivalent to one hour of ~~face-to-face~~ individual supervision.

2. Of the 4,000 hours stipulated, at least 2,000 hours must be acquired in direct client contact of which 1,000 hours shall be with couples or families or both.
3. The residency shall consist of practice in the core areas set forth in 18 VAC 115-50-55.
4. The residency shall begin after the completion of a master's degree in marriage and family therapy or a related discipline as set forth in 18 VAC 115-50-50.
5. A graduate-level internship completed in a program that meets the requirements set forth in 18 VAC 115-50-50 may count for no more than 600 of the required 4,000 hours of experience. The internship shall include 20 hours of ~~face-to-face~~ individual on-site supervision, and 20 hours of ~~face-to-face~~ individual or group off-site supervision. Internship hours shall not begin until completion of 30 semester hours toward the graduate degree.

6. A graduate-level degree internship completed in a COAMFTE-approved program or a CACREP-approved program in marriage and family counseling/therapy may count for no more than 900 of the required 4,000 hours of experience.

~~6. 7.~~ In order for a graduate level internship to be counted toward a residency, either the clinical or faculty supervisor shall be licensed as set forth in subsection C of this section.

~~7. 8.~~ Residents shall not call themselves marriage and family therapists, solicit clients, bill for services rendered or in any way represent themselves as marriage and family therapists. During the residency, they may use their names, the initials of their degree and the title "Resident in Marriage and Family Therapy." Clients shall be informed in writing of the resident's status, along with the name, address and telephone number of the resident's supervisor.

~~8. 9.~~ Residents shall not engage in practice under supervision in any areas for which they do not have appropriate education.

~~9. 10.~~ Residents who do not become candidates for licensure after five years of supervised training shall submit an explanation to the board stating reasons the residency should be allowed to continue.

C. Supervisory ~~requirements~~ qualifications.

~~1. A person who provides supervision for a resident in marriage and family therapy shall: be licensed~~

1. Hold an active, unrestricted license as a marriage and family therapist, professional counselor, clinical psychologist, clinical social worker or psychiatrist in the jurisdiction where the supervision is being provided;:

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~~Supervisors shall document~~ 2. Document two years post-licensure marriage and family therapy experience; and

3. Have received professional training in supervision, consisting of three credit hours or 4.0 quarter hours in graduate-level coursework in supervision or at least 20 hours of continuing education in supervision offered by a provider approved under 18 VAC 115-50-96. Persons who have provided supervision for a residency prior to [effective date of regulations] shall complete such coursework or continuing education by [two years from the effective date of regulations].

D. Supervisory responsibilities.

1. The supervisor shall complete evaluation forms to be given to the resident at the end of each three-month period. The supervisor shall report the total hours of residency and evaluate the applicant's competency to the board.

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

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

18 VAC 115-60-10. Definitions.

A. The following words and terms when used in this chapter shall have the meaning ascribed to them in § 54.1-3500 of the Code of Virginia:

"Board"

"Licensed substance abuse treatment practitioner"

"Substance abuse"

"Substance abuse treatment"

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

"Applicant" means any individual who has submitted an official application and paid the application fee for licensure as a substance abuse treatment practitioner.

"CACREP" means the Council for Accreditation of Counseling and Related Education Programs.

"Candidate for licensure" means a person who has satisfactorily completed all educational and experience requirements for licensure and has been deemed eligible by the board to sit for its examinations.

"COAMFTE" means the Commission on Accreditation for Marriage and Family Therapy Education.

"Competency area" means an area in which a person possesses knowledge and skill and the ability to apply them in the clinical setting.

"Exempt setting" means an agency or institution in which licensure is not required to engage in the practice of substance abuse treatment according to the conditions set forth in § 54.1-3501 of the Code of Virginia.

"Group supervision" means the process of clinical supervision of no more than six persons in a group setting provided by a qualified supervisor.

"Internship" means supervised, planned, practical, advanced experience obtained in the clinical setting, observing and applying the principles, methods and techniques learned in training or educational settings.

"Jurisdiction" means a state, territory, district, province or country which has granted a professional certificate or license to practice a profession, use a professional title, or hold oneself out as a practitioner of that profession.

"Nonexempt setting" means a setting which does not meet the conditions of exemption from the requirements of licensure to engage in the practice of substance abuse treatment as set forth in § 54.1-3501 of the Code of Virginia.

"Regional accrediting agency" means one of the regional accreditation agencies recognized by the United States Secretary of Education responsible for accrediting senior postsecondary institutions.

"Residency" means a post-internship, supervised, clinical experience registered with the board.

"Resident" means an individual who has submitted a supervisory contract and has received board approval to provide clinical services in substance abuse treatment under supervision.

"Supervision" means the ongoing process performed by a supervisor who monitors the performance of the person supervised and provides regular, documented ~~face-to-face~~ individual or group consultation, guidance and instruction with respect to the clinical skills and competencies of the person supervised.

18 VAC 115-60-50. Prerequisites for licensure by endorsement.

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

1. A completed application;
2. The application processing and initial licensure fee;
3. Verification of all professional licenses or certificates ever held in any other jurisdiction. In order to qualify for endorsement, the applicant shall have no unresolved disciplinary action against a license or certificate. The board will consider history of disciplinary action on a case-by-case basis;
4. Further documentation of one of the following:

a. A current substance abuse treatment license in good standing in another jurisdiction obtained by meeting requirements substantially equivalent to those set forth in this chapter; or

b. A mental health license in good standing in a category acceptable to the board which required completion of a master's degree in mental health to include 60 graduate semester hours in mental health; and

(1) Board-recognized national certification in substance abuse treatment;

(2) If the master's degree was in substance abuse treatment, two years of post-licensure experience in providing substance abuse treatment;

(3) If the master's degree was not in substance abuse treatment, five years of post-licensure experience in substance abuse treatment plus 12 credit hours of didactic training in the substance abuse treatment competencies set forth in 18 VAC 115-60-70 C; or

(4) Current substance abuse counselor certification in Virginia in good standing or a Virginia substance abuse treatment specialty licensure designation with two years of post-licensure or certification substance abuse treatment experience; or

c. Documentation of education and supervised experience that met the requirements of the jurisdiction in which he was initially licensed as verified by an official transcript and a certified copy of the original application materials and evidence of clinical practice for five of the last six years immediately preceding his licensure application in Virginia.

5. Verification of a passing score on a licensure examination as established by the jurisdiction in which licensure was obtained;

6. Official transcripts documenting the applicant's completion of the education requirements prescribed in 18 VAC 115-60-60 and 18 VAC 115-60-70; and

7. An affidavit of having read and understood the regulations and laws governing the practice of substance abuse treatment in Virginia.

B. In lieu of transcripts verifying education and documentation verifying supervised experience, the board may accept verification from the credentials registry of the American Association of State Counseling Boards or any other board-recognized entity.

18 VAC 115-60-70. Course work requirements.

A. The applicant shall have completed 60 semester hours or 90 quarter hours of graduate study.

B. The applicant shall have completed a general core curriculum containing a minimum of three semester hours or

4.5 ~~4.0~~ quarter hours in each of the areas identified in this section:

1. Professional identity, function and ethics;

2. Theories of counseling and psychotherapy;

3. Counseling and psychotherapy techniques;

4. Group counseling and psychotherapy, theories and techniques;

5. Appraisal, evaluation and diagnostic procedures;

6. Abnormal behavior and psychopathology;

7. Multicultural counseling, theories and techniques;

8. Research; and

9. Marriage and family systems theory.

C. The applicant shall also have completed 12 graduate semester credit hours or 18 graduate quarter hours in the following substance abuse treatment competencies.

1. Assessment, appraisal, evaluation and diagnosis specific to substance abuse;

2. Treatment planning models, client case management, interventions and treatments to include relapse prevention, referral process, step models and documentation process;

3. Understanding addictions: The biochemical, sociocultural and psychological factors of substance use and abuse;

4. Addictions and special populations including, but not limited to, adolescents, women, ethnic groups and the elderly; and

5. Client and community education.

D. The applicant shall have completed a supervised internship of 600 hours to include 240 hours of direct client contact. At least 450 of the internship hours and 200 of the direct client contact hours shall be in treating substance abuse-specific treatment problems.

E. One course may satisfy study in more than one content area set forth in subsections B and C of this section.

18 VAC 115-60-80. Residency.

A. Registration. Applicants who render substance abuse treatment services ~~in a nonexempt setting~~ shall:

1. With their supervisor, register their supervisory contract on the appropriate forms for board approval before starting to practice under supervision;

2. Have submitted an official transcript documenting a graduate degree as specified in 18 VAC 115-60-60 to include completion of the internship requirement specified in 18 VAC 115-60-70; and

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3. Pay the registration fee.

B. ~~Applicants~~ After [effective date of regulations], applicants who are beginning their residencies in exempt settings ~~may~~ shall register supervision with the board to assure acceptability at the time of application.

C. Residency requirements.

1. The applicant for licensure shall have completed a 4,000 hour supervised residency in substance abuse treatment with various populations, clinical problems and theoretical approaches in the following areas:

- a. Clinical evaluation;
- b. Treatment planning, documentation and implementation;
- c. Referral and service coordination;
- d. Individual and group counseling and case management;
- e. Client family and community education; and
- f. Professional and ethical responsibility.

2. The residency shall include a minimum of 200 hours of ~~face-to-face sessions~~ supervision between supervisor and resident occurring at minimum of one hour and a maximum of two hours per ~~20~~ 40 hours of work experience during the period of the residency. No more than half of these hours may be satisfied with group supervision. One hour of group supervision will be deemed equivalent to one hour of ~~face-to-face~~ individual supervision. ~~Face-to-face supervision~~ Supervision that is not ~~coincident~~ concurrent with a residency will not be accepted, nor will residency hours accrued in the absence of approved ~~face-to-face~~ supervision.

3. The residency shall include at least 2,000 hours of face-to-face client contact with individuals, families or groups of individuals suffering from the effects of substance abuse or dependence.

4. A graduate level degree internship completed in a program that meets the requirements set forth in 18 VAC 115-60-70 may count for no more than 600 hours of the required 4,000 hours of experience. The internship shall include 20 hours of ~~face-to-face~~ individual on-site supervision, and 20 hours of ~~face-to-face~~ individual or group off-site supervision. Internship hours shall not begin until completion of 30 semester hours toward the graduate degree.

5. A graduate-level degree internship completed in a COAMFTE- or CACREP-approved program may count for no more than 900 of the required 4,000 hours of experience.

~~5-~~ 6. In order for a graduate level internship to be counted toward a residency, either the clinical or faculty supervisor shall be licensed as set forth in subsection D of this section.

~~6-~~ 7. The board may consider special requests in the event that the regulations create an undue burden in regard to geography or disability which limits the resident's access to qualified supervision.

~~7-~~ 8. Residents may not call themselves substance abuse treatment practitioners, directly bill for services rendered, or in any way represent themselves as independent, autonomous practitioners or substance abuse treatment practitioners. During the residency, residents shall use their names and the initials of their degree, and the title "Resident in Substance Abuse Treatment" in all written communications. Clients shall be informed in writing of the resident's status, the supervisor's name, professional address, and telephone number.

~~8-~~ 9. Residents shall not engage in practice under supervision in any areas for which they have not had appropriate education.

D. ~~Supervisory requirements~~ qualifications.

1. A person who provides supervision for a resident in substance abuse treatment shall ~~be licensed~~ hold an active, unrestricted license as a professional counselor, marriage and family therapist, substance abuse treatment practitioner, school psychologist, clinical psychologist, clinical social worker, clinical nurse specialist or psychiatrist in the jurisdiction where the supervision is being provided.

2. All supervisors shall document two years post-licensure substance abuse treatment experience, 100 hours of didactic instruction in substance abuse treatment, and training or experience in supervision. Within three years of January 19, 2000, supervisors must document a three-credit-hour course in supervision, a 4.0-quarter-hour course in supervision, or at least 20 hours of continuing education in supervision offered by a provider approved under 18 VAC 115-60-116.

E. Supervisory responsibilities..

~~3-~~ 1. Supervision by any individual whose relationship to the resident compromises the objectivity of the supervisor is prohibited.

~~4-~~ 2. The supervisor of a resident shall assume full responsibility for the clinical activities of that resident specified within the supervisory contract for the duration of the residency.

~~5-~~ 3. The supervisor shall complete evaluation forms to be given to the resident at the end of each three-month period.

~~6.~~ 4. The supervisor shall report the total hours of residency and shall evaluate the applicant's competency in the six areas stated in subdivision C 1 of this section.

~~E.~~ F. Documentation of supervision. Applicants shall document successful completion of their residency on the Verification of Supervision form at the time of application. Applicants must receive a satisfactory competency evaluation on each item on the evaluation sheet. Supervised experience obtained prior to January 19, 2000, may be accepted towards licensure if this supervised experience met the board's requirements which were in effect at the time the supervision was rendered.

VA.R. Doc. No. R06-287; Filed May 23, 2007, 10:45 a.m.

BOARD OF PSYCHOLOGY

Fast-Track Regulation

Title of Regulation: 18 VAC 125-10. Public Participation Guidelines (amending 18 VAC 125-10-10 through 18 VAC 125-10-80, 18 VAC 125-10-100, 18 VAC 125-10-110 and 18 VAC 125-10-120).

Statutory Authority: §§ 2.2-4007.02 (effective July 1, 2007) and 54.1-2400 of the Code of Virginia.

Public Hearing Date: N/A - Public comments may be submitted until 5 p.m. on August 10, 2007.

(See Calendar of Events section for additional information)

Effective Date: August 25, 2007.

Agency Contact: Evelyn B. Brown, Executive Director, Board of Psychology, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9913, FAX (804) 662-9943, or email evelyn.brown@dhp.virginia.gov.

Basis: Section 2.2-4007 D (§ 2.2-4007.02 effective July 1, 2007) of the Administrative Process Act mandates the adoption of public participation guidelines for soliciting the input of interested parties in the formation and development of an agency's regulations.

Section 54.1-2400 of the Code of Virginia provides the general authority to the board to promulgate regulations.

Purpose: The board has updated and clarified its guidelines for public participation in the development and promulgation of initial, amended or repealed regulations, such as inclusion of electronic notification and the Virginia Regulatory Townhall as an option for comment. Changes are recommended by a committee of board and/or department staff, which reviewed each regulation for effectiveness, consistency and clarity. The intent is for amendments to be clarifying rather than substantive. Full participation by the public and regulated entities in the regulatory process is necessary to ensure that regulations fulfill the purpose of

protecting the health and safety of the public in a manner that is not overly burdensome to those being regulated.

Rationale for Using Fast-Track Process: The fast-track process is being used to promulgate the amendments because there is general agreement with the changes proposed. The action is not controversial, as is reflected by the fact that there were no public comments on a Notice of Intended Regulatory Action filed by other boards within the Department of Health Professions. Both the Department of Planning and Budget and the Governor's office have recommended that these amendments be promulgated by a fast-track action.

Substance: The regulation has been reviewed for consistency with law, clarity and ease of compliance. There are no substantive amendments.

Issues: These amendments pose no disadvantages to the public. Clarification of the definition of regulation, additional opportunity for comment, and an extension of service for an ad hoc committee appointed to advise the board on the development of a regulation are all intended to give interested parties more access to the process.

There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Regulation. The Board of Psychology (board) proposes to amend its Public Participation Guidelines. The board proposes to require that notification of all final regulatory actions, as well as the text of the regulations being changed, be posted to the board's website before the 30-day adoption period begins. The board also proposes to extend the time limit under which ad hoc committees function and eliminate language that requires the board review its regulations at least every two years.

Result of Analysis. The benefits likely exceed the costs for these proposed regulatory changes.

Estimated Economic Impact. Current regulation requires the board to notify individuals on its notification lists, either by regular mail or email, whenever a final-stage regulation is about to enter its 30-day adoption period. This current regulatory notification requirement is more stringent than what is required by either the Administrative Process Act or Executive Order 36 (both of these rulemaking documents are silent on this matter). The board proposes to delete this portion of its public participation guidelines and, instead, will post notices of adoption of final regulation, as well as the text of the regulation being changed, on the board's website. The board believes that the changed notification requirements in the proposed regulation will allow staff time to be used more efficiently while still protecting the public's ability to be involved in the final stage of the rulemaking process. Individuals who are following board regulations through the

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process may be slightly inconvenienced by having to go to the board's website to get information rather than having that information mailed to them. These individuals, and the public generally, will likely benefit slightly from having staff time spent on more important tasks.

Current regulation requires that the board review all of its regulations every two years "unless otherwise directed by executive order." The proposed regulation will require the board to conduct "periodic review of its regulations consistent with an executive order of the Governor and with § 2.2-4007.1 of the Code of Virginia." Currently it takes, on average, approximately 18 months for all regulatory requirements for a new or amended regulation to be met. Given this, the public will likely benefit (slightly) from the removal of language that likely sets an unrealistic timeline for the periodic review of regulations.

Current regulation limits ad hoc committees to 12 months' existence before they must be dissolved. The proposed regulation will extend this term limit to 18 months and allow the board to authorize continuance of ad hoc committees past their regulatory time limit if their set task has not been completed. This proposal will likely have no economic impact on the citizens of the Commonwealth.

Businesses and Entities Affected. The proposed regulation will affect all individuals who involve themselves in the administrative rulemaking actions of the board.

Localities Particularly Affected. The proposed regulation will affect all localities in the Commonwealth.

Projected Impact on Employment. The proposed regulation is unlikely to have any affect on employment in the Commonwealth.

Effects on the Use and Value of Private Property. The proposed regulation will likely have no affect on the use or value of private property within the Commonwealth.

Small Businesses: Costs and Other Effects. The proposed regulation will likely have no adverse impact on any small businesses in the Commonwealth.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulation will likely have no adverse impact on any small businesses in the Commonwealth.

Legal mandate. 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Psychology concurs with the analysis of the Department of Planning and Budget on proposed amended regulations for 18 VAC 125-10, Public Participation Guidelines.

Summary:

The amendments update and clarify the board's guidelines for public participation in the development and promulgation of initial, amended or repealed regulations by (i) including electronic notification and the Virginia Regulatory Town Hall as an option for public comment, (ii) clarifying certain terms, (iii) requiring the board to post notice of final regulations on its website rather than sending them to its notification lists, and (iv) extending the time limitation on ad hoc committees.

18 VAC 125-10-10. Purpose.

The purpose of this chapter is to provide guidelines for the involvement of the public in the ~~development and promulgation~~ initial formation and development, amendment or repeal of regulations of the Board of Psychology. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act. These rules seek to expand participation by providing for electronic exchange with the public and thereby increasing participation, reducing costs, and improving the speed of communication.

18 VAC 125-10-20. Definitions.

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

"Administrative Process Act" means Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Board" means the Board of Psychology.

"Notification lists" means lists used by the board to notify persons pursuant to these rules. Such lists may include

electronic ~~mailing~~ lists maintained through ~~a state website the Virginia Regulatory Town Hall~~ or ~~regular mailing~~ lists maintained by the board.

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

"Regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, adopted by the board in accordance with the authority conferred on it by applicable laws.

18 VAC 125-10-30. Composition of notification lists.

A. The board shall maintain lists of persons who have requested to be notified of the initial formation and promulgation, development, amendment or repeal of regulations.

B. Any person may request to be placed on a notification list by indicating so electronically or in writing to the board. The board may add to a list any person it believes will serve the purpose of enhancing participation in the regulatory process.

C. The board may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. The board shall periodically request those persons on the notification lists to indicate their desire to either continue to receive documents by regular mail, be notified electronically or be deleted from the lists. Persons who elect to be included on an electronic mailing list may also request that all notices and mailings be sent in hard copy. When either regular or electronic mail is returned as undeliverable or there has been no response to the request from the board, such persons shall be deleted from the list.

18 VAC 125-10-40. Documents to be sent to persons on the notification lists.

A. Persons on the notification lists, as described in 18 VAC 125-10-30, shall be mailed or have electronically transmitted the following documents related to the promulgation of regulations:

1. A notice of intended regulatory action.
2. A notice of the comment period on a proposed regulation and instructions as to how to obtain a copy of the regulation and any supporting documents, either electronically or from the board office.
- ~~3. A notification of the adoption of a final regulation and instructions as to how to obtain a copy of the regulation and any supporting documents, either electronically or from the board office.~~
4. 3. A notice soliciting comment on a final regulation when the regulatory process has been extended.

B. Notification of the adoption of a final regulation and copies of the regulation shall be posted on the board's website prior to the 30-day adoption period.

C. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation otherwise adopted in accordance with this chapter.

18 VAC 125-10-50. Petition for ~~rule-making~~ rulemaking.

A. As provided in § 2.2-4007 of the Code of Virginia, any person may petition the board to develop a new regulation or amend an existing regulation.

B. A petition shall include but need not be limited to the following:

1. The petitioner's name, mailing address, telephone number, and, if applicable, the organization represented in the petition.
2. The number and title of the regulation to be addressed.
3. A description of the regulatory problem or need to be addressed.
4. A recommended addition, deletion, or amendment to the regulation.

C. The board shall receive, consider and respond to a petition within 180 days and shall have the sole authority to dispose of the petition.

D. Nothing herein shall prohibit the board from receiving information from the public and proceeding on its own motion for ~~rule-making~~ rulemaking.

18 VAC 125-10-60. Notice of Intended Regulatory Action.

A. Except as provided in § 2.2-4012.1 of the Code of Virginia, the board shall issue a notice of intended regulatory action (NOIRA) whenever it considers the adoption, amendment or repeal of a regulation. ~~The notice of intended regulatory action (NOIRA)~~ NOIRA shall state the purpose of the action and a brief statement of the need or problem the proposed action will address.

B. The NOIRA shall indicate whether the board intends to hold a public hearing on the proposed regulation after it is published. If the board does not intend to hold a public hearing, it shall so state ~~the reason~~ in the NOIRA.

C. If prior to the close of the 30-day comment period on the NOIRA, the board receives a request for a public hearing on the proposed regulation from at least 25 persons or if the Governor directs the board to hold a public hearing, such a hearing shall be scheduled.

18 VAC 125-10-70. Notice of comment period.

A. The board shall issue a notice of comment period (NOCP) whenever it proposes to initiate, amend or repeal a regulation. ~~The notice of comment period (NOCP)~~ NOCP shall indicate

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that copies of the proposed regulation are available electronically or from the board and may be requested in writing from the contact person specified in the NOCP.

B. The NOCP shall indicate that copies of the statement of substance, issues, basis, purpose, and estimated impact of the proposed regulation may also be requested in writing.

C. The NOCP shall make provision for comments pertaining to the proposed regulation by regular mail, ~~Internet~~, facsimile or electronic means. With the exception of comment received at a scheduled public hearing, oral comment ~~may~~ shall not be accepted.

18 VAC 125-10-80. Notice of meeting.

A. At any meeting of the board or advisory committee at which the formation, amendment, repeal, or adoption of a regulation is anticipated, the subject shall be described in a notice of meeting, which has been posted electronically on the ~~Internet~~ Virginia Regulatory Town Hall and transmitted to the Registrar of Regulations for inclusion in the Virginia Register.

B. If the board anticipates action on a regulation for which an exemption to the Administrative Process Act is claimed, the notice of meeting shall indicate that a copy of the proposed regulation ~~is available on a state website or upon request to~~ may be requested from the board at least two days prior to the meeting. A copy of the regulation shall be made available to the public attending such meeting.

18 VAC 125-10-100. Periodic review of regulations.

A. ~~Unless otherwise directed by executive order, the~~ The board shall conduct ~~an informational proceeding at least every two years~~ a periodic review of its regulations consistent ~~with an executive order issued by the Governor and with~~ § 2.2-4007.1 of the Code of Virginia to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance.

B. Such ~~proceeding~~ review may be conducted separately or in conjunction with other ~~informational proceedings~~ meetings or hearings.

C. Notice of the proceeding shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register and shall be sent to the ~~mailing list~~ notification lists identified in 18 VAC 125-10-30.

PART IV. ADVISORY AD HOC COMMITTEES.

18 VAC 125-10-110. Appointment of committees.

A. The board may appoint an ad hoc ~~advisory~~ committee whose responsibility shall be to assist in the review and development of regulations for the board.

B. The board may appoint an ad hoc ~~advisory~~ committee to provide professional specialization or technical assistance

when the board determines that such expertise is necessary to address a specific regulatory issue or need or when groups of individuals register an interest in working with the agency.

18 VAC 125-10-120. Limitation of service.

A. An ~~advisory~~ ad hoc committee that has been appointed by the board may be dissolved by the board when:

1. There is no response to the Notice of Intended Regulatory Action; or
2. The board determines that the promulgation of the regulation is either exempt or excluded from the requirements of the Administrative Process Act.

B. An ~~advisory~~ ad hoc committee shall remain in existence no longer than ~~42~~ 18 months from its initial appointment. ~~If unless the board determines that the specific regulatory need continues to exist beyond that time, it shall set a specific term for the committee of not more than six additional months. The board may authorize the ad hoc committee to continue for an additional specified period of time to complete the task for which it was appointed.~~

~~2. At the end of that extended term, the board shall evaluate the continued need and may continue the committee for additional six-month terms.~~

VA.R. Doc. No. R07-227; Filed May 23, 2007, 11:15 a.m.

BOARD OF SOCIAL WORK

Fast-Track Regulation

Title of Regulation: **18 VAC 140-10. Public Participation Guidelines (amending 18 VAC 140-10-10 through 18 VAC 140-10-80, 18 VAC 140-10-100, 18 VAC 140-10-110 and 18 VAC 140-10-120).**

Statutory Authority: §§ 2.2-4007.02 (effective July 1, 2007) and 54.1-2400 of the Code of Virginia.

Public Hearing Date: N/A - Public comments may be submitted until 5 p.m. on August 10, 2007.

(See Calendar of Events section for additional information)

Effective Date: August 25, 2007.

Agency Contact: Evelyn B. Brown, Executive Director, Board of Social Work, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9913, FAX (804) 662-9943, or email evelyn.brown@dhp.virginia.gov.

Basis: Section 2.2-4007 D (§ 2.2-4007.02 effective July 1, 2007) of the Administrative Process Act mandates the adoption of public participation guidelines for soliciting the input of interested parties in the formation and development of an agency's regulations.

Section 54.1-2400 of the Code of Virginia provides the general authority to the board to promulgate regulations.

Purpose: The board has updated and clarified its guidelines for public participation in the development and promulgation of initial, amended or repealed regulations, such as inclusion of electronic notification and the Virginia Regulatory Townhall as an option for comment. Changes are recommended by a committee of board and/or department staff, which reviewed each regulation for effectiveness, consistency and clarity. The intent is for amendments to be clarifying rather than substantive. Full participation by the public and regulated entities in the regulatory process is necessary to ensure that regulations fulfill the purpose of protecting the health and safety of the public in a manner that is not overly burdensome to those being regulated.

Rationale for Using Fast-Track Process: The fast-track process is being used to promulgate the amendments because there is general agreement with the changes proposed. The action is not controversial, as is reflected by the fact that there were no public comments on a Notice of Intended Regulatory Action filed by other boards within the Department of Health Professions. Both the Department of Planning and Budget and the Governor's office have recommended that these amendments be promulgated by a fast-track action.

Substance: The regulation has been reviewed for consistency with law, clarity and ease of compliance. There are no substantive amendments.

Issues: These amendments pose no disadvantages to the public. Clarification of the definition of regulation, additional opportunity for comment, and an extension of service for an ad hoc committee appointed to advise the board on the development of a regulation are all intended to give interested parties more access to the process.

There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Regulation. The Board of Social Work (board) proposes to amend its Public Participation Guidelines. The board proposes to require that notification of all final regulatory actions, as well as the text of the regulations being changed, be posted to the board's website before the 30-day adoption period begins. The board also proposes to extend the time limit under which ad hoc committees function and eliminate language that requires the board review its regulations at least every two years.

Result of Analysis. The benefits likely exceed the costs for these proposed regulatory changes.

Estimated Economic Impact. Current regulation requires the board to notify individuals on its notification lists, either by regular mail or email, whenever a final-stage regulation is about to enter its 30-day adoption period. This current regulatory notification requirement is more stringent than

what is required by either the Administrative Process Act or Executive Order 36 (both of these rulemaking documents are silent on this matter). The board proposes to delete this portion of its public participation guidelines and, instead, will post notices of adoption of final regulation, as well as the text of the regulation being changed, on the board's website. The board believes that the changed notification requirements in the proposed regulation will allow staff time to be used more efficiently while still protecting the public's ability to be involved in the final stage of the rulemaking process. Individuals who are following board regulations through the process may be slightly inconvenienced by having to go to the board's website to get information rather than having that information mailed to them. These individuals, and the public generally, will likely benefit slightly from having staff time spent on more important tasks.

Current regulation requires that the board review all of its regulations every two years "unless otherwise directed by executive order." The proposed regulation will require the board to conduct "periodic review of its regulations consistent with an executive order of the Governor and with § 2.2-4007.1 of the Code of Virginia." Currently it takes, on average, approximately 18 months for all regulatory requirements for a new or amended regulation to be met. Given this, the public will likely benefit (slightly) from the removal of language that likely sets an unrealistic timeline for the periodic review of regulations.

Current regulation limits ad hoc committees to 12 months' existence before they must be dissolved. The proposed regulation will extend this term limit to 18 months and allow the board to authorize continuance of ad hoc committees past their regulatory time limit if their set task has not been completed. This proposal will likely have no economic impact on the citizens of the Commonwealth.

Businesses and Entities Affected. The proposed regulation will affect all individuals who involve themselves in the administrative rulemaking actions of the board.

Localities Particularly Affected. The proposed regulation will affect all localities in the Commonwealth.

Projected Impact on Employment. The proposed regulation is unlikely to have any affect on employment in the Commonwealth.

Effects on the Use and Value of Private Property. The proposed regulation will likely have no affect on the use or value of private property within the Commonwealth.

Small Businesses: Costs and Other Effects. The proposed regulation will likely have no adverse impact on any small businesses in the Commonwealth.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulation will likely have no

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adverse impact on any small businesses in the Commonwealth.

Legal mandate. 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Social Work concurs with the analysis of the Department of Planning and Budget on proposed amended regulations for 18 VAC 140-10, Public Participation Guidelines.

Summary:

The amendments update and clarify the board's guidelines for public participation in the development and promulgation of initial, amended or repealed regulations by (i) including electronic notification and the Virginia Regulatory Town Hall as an option for public comment, (ii) clarifying certain terms, (iii) requiring the board to post notice of final regulations on its website rather than sending them to its notification lists, and (iv) extending the time limitation on ad hoc committees.

18 VAC 140-10-10. Purpose.

The purpose of this chapter is to provide guidelines for the involvement of the public in the ~~development and promulgation~~ initial formation and development, amendment or repeal of regulations of the Board of Social Work. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act. These rules seek to expand participation by providing for electronic

exchange with the public and thereby increasing participation, reducing costs, and improving the speed of communication.

18 VAC 140-10-20. Definitions.

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

"Administrative Process Act" means Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Board" means the Board of Social Work.

"Notification lists" means lists used by the board to notify persons pursuant to these rules. Such lists may include electronic ~~mailing~~ lists maintained through ~~a state website~~ the Virginia Regulatory Town Hall or ~~regular mailing~~ lists maintained by the board.

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

"Regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, adopted by the board in accordance with the authority conferred on it by applicable laws.

18 VAC 140-10-30. Composition of notification lists.

A. The board shall maintain lists of persons who have requested to be notified of the initial formation and promulgation, development, amendment or repeal of regulations.

B. Any person may request to be placed on a notification list by indicating so electronically or in writing to the board. The board may add to a list any person it believes will serve the purpose of enhancing participation in the regulatory process.

C. The board may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. The board shall periodically request those persons on the notification lists to indicate their desire to either continue to receive documents by regular mail, be notified electronically or be deleted from the lists. Persons who elect to be included on an electronic mailing list may also request that all notices and mailings be sent in hard copy. When either regular or electronic mail is returned as undeliverable or there has been no response to the request from the board, such persons shall be deleted from the list.

18 VAC 140-10-40. Documents to be sent to persons on the notification lists.

A. Persons on the notification lists, as described in 18 VAC 140-10-30, shall be mailed or have electronically transmitted the following documents related to the promulgation of regulations:

1. A notice of intended regulatory action.
2. A notice of the comment period on a proposed regulation and instructions as to how to obtain a copy of the regulation and any supporting documents, either electronically or from the board office.
- ~~3. A notification of the adoption of a final regulation and instructions as to how to obtain a copy of the regulation and any supporting documents, either electronically or from the board office.~~
4. 3. A notice soliciting comment on a final regulation when the regulatory process has been extended.

B. Notification of the adoption of a final regulation and copies of the regulation shall be posted on the board's website prior to the 30-day adoption period.

C. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation otherwise adopted in accordance with this chapter.

18 VAC 140-10-50. Petition for ~~rule-making~~ rulemaking.

- A. As provided in § 2.2-4007 of the Code of Virginia, any person may petition the board to develop a new regulation or amend an existing regulation.
- B. A petition shall include but need not be limited to the following:
 1. The petitioner's name, mailing address, telephone number, and, if applicable, the organization represented in the petition.
 2. The number and title of the regulation to be addressed.
 3. A description of the regulatory problem or need to be addressed.
 4. A recommended addition, deletion, or amendment to the regulation.

C. The board shall receive, consider and respond to a petition within 180 days and shall have the sole authority to dispose of the petition.

D. Nothing herein shall prohibit the board from receiving information from the public and proceeding on its own motion for ~~rule-making~~ rulemaking.

18 VAC 140-10-60. Notice of Intended Regulatory Action.

A. Except as provided in § 2.2-4012.1 of the Code of Virginia, the board shall issue a notice of intended regulatory action (NOIRA) whenever it considers the adoption, amendment or repeal of a regulation. ~~The notice of intended regulatory action (NOIRA) NOIRA shall state the purpose of the action and a brief statement of the need or problem the proposed action will address.~~

B. The NOIRA shall indicate whether the board intends to hold a public hearing on the proposed regulation after it is

published. If the board does not intend to hold a public hearing, it shall so state ~~the reason~~ in the NOIRA.

C. If prior to the close of the 30-day comment period on the NOIRA, the board receives a request for a public hearing on the proposed regulation from at least 25 persons or if the Governor directs the board to hold a public hearing, such a hearing shall be scheduled.

18 VAC 140-10-70. Notice of comment period.

A. The board shall issue a notice of comment period (NOCP) whenever it proposes to initiate, amend or repeal a regulation. ~~The notice of comment period (NOCP) NOCP shall indicate that copies of the proposed regulation are available electronically or from the board and may be requested in writing from the contact person specified in the NOCP.~~

B. The NOCP shall indicate that copies of the statement of substance, issues, basis, purpose, and estimated impact of the proposed regulation may also be requested in writing.

C. The NOCP shall make provision for comments pertaining to the proposed regulation by regular mail, ~~Internet,~~ facsimile or electronic means. With the exception of comment received at a scheduled public hearing, oral comment ~~may~~ shall not be accepted.

18 VAC 140-10-80. Notice of meeting.

A. At any meeting of the board or advisory committee at which the formation, amendment, repeal, or adoption of a regulation is anticipated, the subject shall be described in a notice of meeting, which has been posted electronically on the ~~Internet~~ Virginia Regulatory Town Hall and transmitted to the Registrar of Regulations for inclusion in the Virginia Register.

B. If the board anticipates action on a regulation for which an exemption to the Administrative Process Act is claimed, the notice of meeting shall indicate that a copy of the proposed regulation ~~is available on a state website or upon request to~~ may be requested from the board at least two days prior to the meeting. A copy of the regulation shall be made available to the public attending such meeting.

18 VAC 140-10-100. Periodic review of regulations.

A. ~~Unless otherwise directed by executive order, the~~ The board shall conduct an informational proceeding at least every two years a periodic review of its regulations consistent with an executive order issued by the Governor and with § 2.2-4007.1 of the Code of Virginia to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance.

B. Such ~~proceeding~~ review may be conducted separately or in conjunction with other ~~informational proceedings~~ meetings or hearings.

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C. Notice of the proceeding shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register and shall be sent to the ~~mailing list~~ notification lists identified in 18 VAC 140-10-30.

PART IV.
~~ADVISORY AD HOC COMMITTEES.~~

18 VAC 140-10-110. Appointment of committees.

A. The board may appoint an ad hoc ~~advisory~~ committee whose responsibility shall be to assist in the review and development of regulations for the board.

B. The board may appoint an ad hoc ~~advisory~~ committee to provide professional specialization or technical assistance when the board determines that such expertise is necessary to address a specific regulatory issue or need or when groups of individuals register an interest in working with the agency.

18 VAC 140-10-120. Limitation of service.

A. An ~~advisory ad hoc~~ committee that has been appointed by the board may be dissolved by the board when:

1. There is no response to the Notice of Intended Regulatory Action; or
2. The board determines that the promulgation of the regulation is either exempt or excluded from the requirements of the Administrative Process Act.

B. An ~~advisory ad hoc~~ committee shall remain in existence no longer than ~~12~~ 18 months from its initial appointment. ~~1. If unless the board determines that the specific regulatory need continues to exist beyond that time, it shall set a specific term for the committee of not more than six additional months. The board may authorize the ad hoc committee to continue for an additional specified period of time to complete the task for which it was appointed.~~

~~2. At the end of that extended term, the board shall evaluate the continued need and may continue the committee for additional six-month terms.~~

VA.R. Doc. No. R07-235; Filed May 23, 2007, 10:48 a.m.

**BOARD FOR PROFESSIONAL SOIL SCIENTISTS
AND WETLAND PROFESSIONALS**

Final Regulation

REGISTRAR'S NOTICE: The Board for Professional Soil Scientists and Wetland Professionals has claimed 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 or the appropriation act where no agency discretion is involved. The Board for Professional Soil Scientists and Wetland Professionals 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 145-30. Regulations Governing Certified Professional Wetland Delineators (amending 18 VAC 145-30-40).

Statutory Authority: §§ 54.1-201, 54.1-2203 and 54.1-2206.2 of the Code of Virginia.

Effective Date: July 12, 2007.

Agency Contact: Mark N. Courtney, Executive Director, Board for Professional Soil Scientists and Wetland Professionals, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-0795, or email soilscientist@dpor.virginia.gov.

Summary:

The waiver of the requirement for a reference from and supervision by a certified professional wetland delineator is amended to July 13, 2010.

18 VAC 145-30-40. Qualification for examination.

A. In order to qualify for the examination, an applicant shall provide three written references that comply with subsection B of this section and satisfy one of the following criteria:

1. Hold a bachelor's degree from an accredited institution of higher education in a wetland science, biology, biological engineering, civil and environmental engineering, ecology, soil science, geology, hydrology or any similar biological, physical, natural science or environmental engineering curriculum that has been approved by the board; have successfully completed a course of instruction in state and federal wetland delineation methods that has been approved by the board; and have at least four years of experience in wetland delineation, which meets the requirements of subdivision 1 or 2 of 18 VAC 145-30-50, under the supervision of a certified professional wetland delineator, the quality of which demonstrates to the board that the applicant is competent to practice as a certified professional wetland delineator;

2. Have a record of at least six years of experience in wetland delineation, which meets the requirements of subdivision 1 or 2 of 18 VAC 145-30-50, under the supervision of a certified professional wetland delineator, the quality of which demonstrates to the board that the applicant is competent to practice as a certified professional wetland delineator; or

3. Have a record of at least four years of experience in wetland science research or as a teacher of wetlands curriculum in an accredited institution of higher education, which meets the requirements of subdivision 3 of 18 VAC 145-30-50, and the quality of which demonstrates to the board that the applicant is competent to practice as a certified professional wetland delineator.

B. Every applicant shall provide three written references, on a form provided by the board, from wetland professionals with at least one from a certified professional wetland delineator. Individuals who provide references shall not be related to the applicant and shall have known the applicant for at least one year. Individuals who provide references may not also verify experience, including research or teaching experience.

C. Notwithstanding the requirements of subsections A and B of this section, the requirement for a reference from and supervision by a certified professional wetland delineator shall be waived provided a complete application is received by the board on or before ~~June 30, 2006~~ July 13, 2010.

NOTICE: The forms used in administering 18 VAC 145-30, Regulations Governing Certified Professional Wetland Delineators, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Professional Wetland Delineator Certification Application, 3402CERT (rev. 7/04 3/07).

Professional Wetland Delineator Experience Log, 3402EXP (rev. 7/04 3/07).

Professional Wetland Delineator Reference Form, 3402REF (rev. 7/04 3/07).

VA.R. Doc. No. R07-212; Filed May 11, 2007, 3:20 p.m.



TITLE 22. SOCIAL SERVICES

CHILD DAY-CARE COUNCIL

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with (i) § 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, and (ii) § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The Child Day-Care Council 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 15-30. Standards for Licensed Child Day Centers (amending 22 VAC 15-30-10, 22 VAC 15-30-310 and 22 VAC 15-30-580).**

Statutory Authority: §§ 63.2-1734 and 63.2-1735 of the Code of Virginia.

Effective Date: July 11, 2007.

Agency Contact: Karen Cullen, Program Consultant, Department of Social Services, 7 North 8th Street, Richmond, VA 23219, telephone (804) 726-7152, FAX (804) 726-7132 or email karen.cullen@dss.virginia.gov.

Summary:

The amendments conform the regulation to state law regarding (i) the exemption to child day program licensure of a program of recreational activities offered by local governments, staffed by local government employees, and attended by school-age children, pursuant to § 63.2-1715 of the Code of Virginia as amended by Chapter 725 of the 2006 Acts of Assembly; and (ii) the administration of prescription medication to a child in a licensed child day center, pursuant to § 54.1-3408 of the Code of Virginia as amended by Chapter 686 of the 2006 Acts of Assembly.

22 VAC 15-30-10. Definitions.

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

"Adult" means any individual 18 years of age or older.

"Age and stage appropriate" means the curriculum, environment, equipment, and adult-child interactions are suitable for the ages of the children within a group and the individual needs of any child.

"Age groups":

1. "Infant" means children from birth to 16 months.
2. "Toddler" means children from 16 months up to two years.
3. "Preschool" means children from two years up to the age of eligibility to attend public school, five years by September 30.
4. "School age" means children eligible to attend public school, age five or older by September 30 of that same year. Four- or five-year-old children included in a group of school age children may be considered school age during the summer months if the children will be entering kindergarten that year.

"Attendance" means the actual presence of an enrolled child.

"Balanced mixed-age grouping" means a program using a curriculum designed to meet the needs and interests of children in the group and is planned for children who enter

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the program at three through five years of age. The enrollment in the balance mixed-age grouping comprises a relatively even allocation of children in each of three ages (three to six years) and is designed for children and staff to remain together with turnover planned only for the replacement of exiting students with children of ages that maintain the class balance.

"Body fluids" means urine, feces, saliva, blood, nasal discharge, eye discharge, and injury or tissue discharge.

"Camp" means a child day camp that is a child day center for school age children that operates during the summer vacation months only. Four-year-old children who will be five by September 30 of the same year may be included in a camp for school age children.

"Center" means a child day center.

"Child" means any individual under 18 years of age.

"Child day center" means a child day program offered to (i) two or more children under the age of 13 in a facility that is not the residence of the provider or of any of the children in care or (ii) 13 or more children at any location.

Exemptions (§ 63.2-1715 of the Code of Virginia):

1. A child day center that has obtained an exemption pursuant to § 63.2-1716 of the Code of Virginia;
2. A program where, by written policy given to and signed by a parent or guardian, children are free to enter and leave the premises without permission or supervision. A program that would qualify for this exemption except that it assumes responsibility for the supervision, protection and well-being of several children with disabilities who are mainstreamed shall not be subject to licensure;
3. A program of instructional experience in a single focus, such as, but not limited to, computer science, archaeology, sport clinics, or music, if children under the age of six do not attend at all and if no child is allowed to attend for more than 25 days in any three-month period commencing with enrollment. This exemption does not apply if children merely change their enrollment to a different focus area at a site offering a variety of activities and such children's attendance exceeds 25 days in a three-month period;
4. Programs of instructional or recreational activities wherein no child under age six attends for more than six hours weekly with no class or activity period to exceed 1-1/2 hours, and no child six years of age or above attends for more than six hours weekly when school is in session or 12 hours weekly when school is not in session. Competition, performances and exhibitions related to the instructional or recreational activity shall be excluded when determining the hours of program operation;
5. A program that operates no more than a total of 20 program days in the course of a calendar year provided that

programs serving children under age six operate no more than two consecutive weeks without a break of at least a week;

6. Instructional programs offered by public and private schools that satisfy compulsory attendance laws or the Individuals with Disabilities Education Act, as amended (20 USC § 1400 et seq.), and programs of school-sponsored extracurricular activities that are focused on single interests such as, but not limited to, music, sports, drama, civic service, or foreign language;

7. Education and care programs provided by public schools that are not exempt pursuant to subdivision 6 of this definition shall be regulated by the State Board of Education using regulations that incorporate, but may exceed, the regulations for child day centers licensed by the commissioner;

8. Early intervention programs for children eligible under Part C of the Individuals with Disabilities Education Act, as amended (20 USC § 1400 et seq.), wherein no child attends for more than a total of six hours per week;

9. Practice or competition in organized competitive sports leagues;

10. Programs of religious instruction, such as Sunday schools, vacation Bible schools, and Bar Mitzvah or Bat Mitzvah classes, and child-minding services provided to allow parents or guardians who are on site to attend religious worship or instructional services;

11. Child-minding services which are not available for more than three hours per day for any individual child offered on site in commercial or recreational establishments if the parent or guardian (i) is not an on-duty employee, except for part-time employees working less than two hours per day; (ii) can be contacted and can resume responsibility for the child's supervision within 30 minutes; and (iii) is receiving or providing services or participating in activities offered by the establishment;

12. A certified preschool or nursery school program operated by a private school that is accredited by a statewide accrediting organization recognized by the State Board of Education or accredited by the National Association for the Education of Young Children's National Academy of Early Childhood Programs; the Association of Christian Schools International; the American Association of Christian Schools; the National Early Childhood Program Accreditation; the National Accreditation Council for Early Childhood Professional Personnel and Programs; the International Academy for Private Education; the American Montessori Society; the International Accreditation and Certification of Childhood Educators, Programs, and Trainers; or the National Accreditation Commission that complies with the provisions of § 63.2-1717 of the Code of Virginia; ~~or~~

13. A program of recreational activities offered by local governments, staffed by local government employees, and attended by school-age children. Such programs shall be subject to safety and supervisory standards established by local governments; or

14. By policy, a child day center that is required to be programmatically licensed by another state agency for that service.

"Child day program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period.

Note: This does not include programs such as drop-in playgrounds or clubs for children when there is no service arrangement with the child's parent.

"Children with special needs" means children with developmental disabilities, mental retardation, emotional disturbance, sensory or motor impairment, or significant chronic illness who require special health surveillance or specialized programs, interventions, technologies, or facilities.

"Cleaned" means treated in such a way to reduce the amount of filth through the use of water with soap or detergent or the use of an abrasive cleaner on inanimate surfaces.

"Commissioner" means the Commissioner of the Virginia Department of Social Services.

"Communicable disease" means a disease caused by a microorganism (bacterium, virus, fungus, or parasite) that can be transmitted from person to person via an infected body fluid or respiratory spray, with or without an intermediary agent (such as a louse, mosquito) or environmental object (such as a table surface). Some communicable diseases are reportable to the local health authority.

"Department" means the Virginia Department of Social Services.

"Department's representative" means an employee or designee of the Virginia Department of Social Services, acting as the authorized agent of the commissioner.

"Evening care" means care provided after 7 p.m. but not through the night.

"Good character and reputation" means knowledgeable and objective people agree that the individual (i) maintains business, professional, family, and community relationships which are characterized by honesty, fairness, and truthfulness and (ii) demonstrates a concern for the well-being of others to the extent that the individual is considered suitable to be entrusted with the care, guidance, and protection of children. Relatives by blood or marriage and people who are not

knowledgeable of the individual, such as recent acquaintances, shall not be considered objective references.

"Group of children" means the children assigned to a staff member or team of staff members.

"High school program completion or the equivalent" means an individual has earned a high school diploma or General Education Development (G.E.D.) certificate, or has completed a program of home instruction equivalent to high school completion.

"Independent contractor" means an entity that enters into an agreement to provide specialized services or staff for a specified period of time.

"Individual service, education or treatment plan" means a plan identifying the child's strengths, needs, general functioning and plan for providing services to the child. The service plan includes specific goals and objectives for services, accommodations and intervention strategies. The service, education or treatment plan clearly shows documentation and reassessment/evaluation strategies.

"Intervention strategies" means a plan for staff action that outlines methods, techniques, cues, programs, or tasks that enable the child to successfully complete a specific goal.

"Licensee" means any individual, partnership, association, public agency, or corporation to whom the license is issued.

"Minor injury" means a wound or other specific damage to the body such as, but not limited to, abrasions, splinters, bites that do not break the skin, and bruises.

"Overnight care" means care provided after 7 p.m. and through the night.

"Parent" means the biological or adoptive parent or parents or legal guardian or guardians of a child enrolled in or in the process of being admitted to a center.

"Physician" means an individual licensed to practice medicine in any of the 50 states or the District of Columbia.

"Physician's designee" means a physician, licensed nurse practitioner, licensed physician assistant, licensed nurse (R.N. or L.P.N.), or health assistant acting under the supervision of a physician.

"Primitive camp" means a camp where places of abode, water supply system, or permanent toilet and cooking facilities are not usually provided.

"Programmatic experience" means time spent working directly with children in a group that is located away from the child's home. Work time shall be computed on the basis of full-time work experience during the period prescribed or equivalent work time over a longer period. Experience settings may include but not be limited to a child day program, family day home, child day center, boys and girls

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club, field placement, elementary school, or a faith-based organization.

"Resilient surfacing" means:

1. For indoor and outdoor use underneath and surrounding equipment, impact absorbing surfacing materials that comply with minimum safety standards when tested in accordance with the procedures described in the American Society for Testing and Materials' standard F1292-99 as shown in Figures 2 (Compressed Loose Fill Synthetic Materials Depth Chart) and 3 (Use Zones for Equipment) on pages 6-7 of the National Program for Playground Safety's "Selecting Playground Surface Materials: Selecting the Best Surface Material for Your Playground," February 2004.
2. Hard surfaces such as asphalt, concrete, dirt, grass or flooring covered by carpet or gym mats do not qualify as resilient surfacing.

"Sanitized" means treated in such a way to remove bacteria and viruses from inanimate surfaces through using a disinfectant solution (i.e., bleach solution or commercial chemical disinfectant) or physical agent (e.g., heat). The surface of item is sprayed or dipped into the disinfectant solution and allowed to air dry after use of the disinfectant solution.

"Serious injury" means a wound or other specific damage to the body such as, but not limited to, unconsciousness; broken bones; dislocation; deep cut requiring stitches; concussion; foreign object lodged in eye, nose, ear, or other body orifice.

"Shelter-in-place" means the facility or building in which a child day center is located.

"Short-term program" means a child day center that operates less than 12 weeks a year.

"Special needs child day program" means a program exclusively serving children with special needs.

"Specialty camps" means those centers that have an educational or recreational focus on one subject such as dance, drama, music, or sports.

"Sponsor" means an individual, partnership, association, public agency, corporation or other legal entity in whom the ultimate authority and legal responsibility is vested for the administration and operation of a center subject to licensure.

"Staff" means administrative, activity, and service personnel including the licensee when the licensee is an individual who works in the center, and any persons counted in the staff-to-children ratios or any persons working with a child without sight and sound supervision of a staff member.

"Staff positions" are defined as follows:

1. "Aide" means the individual designated to be responsible for helping the program leader in supervising children and

in implementing the activities and services for children. Aides may also be referred to as assistant teachers or child care assistants.

2. "Program leader" means the individual designated to be responsible for the direct supervision of children and for implementation of the activities and services for a group of children. Program leaders may also be referred to as child care supervisors or teachers.

3. "Program director" means the primary, on-site director or coordinator designated to be responsible for developing and implementing the activities and services offered to children, including the supervision, orientation, training, and scheduling of staff who work directly with children, whether or not personally performing these functions.

4. "Administrator" means a manager or coordinator designated to be in charge of the total operation and management of one or more centers. The administrator may be responsible for supervising the program director or, if appropriately qualified, may concurrently serve as the program director. The administrator may perform staff orientation or training or program development functions if the administrator meets the qualifications of 22 VAC 15-30-230 and a written delegation of responsibility specifies the duties of the program director.

"Therapeutic child day program" means a specialized program, including but not limited to therapeutic recreation programs, exclusively serving children with special needs when an individual service, education or treatment plan is developed and implemented with the goal of improving the functional abilities of the children in care.

"Universal precautions" means an approach to infection control. According to the concept of universal precautions, all human blood and certain human body fluids are treated as if known to be infectious for human immunodeficiency virus (HIV), hepatitis B virus (HBV), and other bloodborne pathogens.

"Volunteer" means a person who works at the center and:

1. Is not paid;
2. Is not counted in the staff-to-children ratios; and
3. Is in sight and sound supervision of a staff member when working with a child.

Any unpaid person not meeting this definition shall be considered "staff" and shall meet staff requirements.

22 VAC 15-30-310. Staff training and development.

A. Staff shall receive the following training by the end of their first day of assuming job responsibilities:

1. Job responsibilities and to whom they report;

2. The policies and procedures listed in subsection B of this section and 22 VAC 15-30-490 A that relate to the staff member's responsibilities;
3. The center's playground safety procedures unless the staff member will have no responsibility for playground activities or equipment;
4. Recognizing child abuse and neglect and the legal requirements for reporting suspected child abuse as required by § 63.2-1509 of the Code of Virginia;
5. Confidential treatment of personal information about children in care and their families; and
6. The standards in this chapter that relate to the staff member's responsibilities.

B. By the end of the first day of supervising children, staff shall be provided in writing with the information listed in 22 VAC 15-30-490 A and the following:

1. Procedures for supervising a child who may arrive after scheduled classes or activities including field trips have begun;
2. Procedures to confirm absence of a child when the child is scheduled to arrive from another program or from an agency responsible for transporting the child to the center;
3. Procedures for identifying where attending children are at all times, including procedures to ensure that all children are accounted for before leaving a field trip site and upon return to the center;
4. Procedures for action in case of lost or missing children, ill or injured children, medical emergencies and general emergencies;
5. Policy for any administration of medication; and
6. Procedures for response to natural and man-made disasters.

C. Program directors and staff who work directly with children shall annually attend 10 hours of staff development activities that shall be related to child safety and development and the function of the center. Such training hours shall increase according to the following:

1. June 1, 2006 12 hours
2. June 1, 2007 14 hours
3. June 1, 2008 16 hours
4. Staff development activities to meet this subsection may include up to two hours of training in first aid or cardiopulmonary resuscitation. Staff development activities to meet this subsection may not include rescue breathing and first responder as required by 22 VAC 15-30-590 and training in medication administration and daily health

observation of children as required by subsection D of this section.

5. Exception (a): Staff who drive a vehicle transporting children and do not work with a group of children at the center do not need to meet the annual training requirement.

Exception (b): Parents who participate in cooperative preschool centers shall complete four hours of orientation training per year.

Exception (c): Staff who are employed at a short-term program shall obtain 10 hours of staff training per year.

D. 1. To safely perform medication administration practices listed in 22 VAC 15-30-580, ~~effective June 1, 2007, whenever the center has agreed to administer prescribed or over the counter medications other than topical skin gel, cream, or ointment, the administration must~~ shall be performed by a staff member or independent contractor who has satisfactorily completed a training ~~course developed or program for this purpose approved by the Department of Social Services in consultation with the Department of Health and the Board of Nursing and taught by an R.N., L.P.N., physician, a registered nurse, licensed practical nurse, doctor of medicine or osteopathic medicine, or pharmacist; or~~ administration shall be performed by a staff member or independent contractor who is licensed by the Commonwealth of Virginia to administer medications. ~~Exception: Persons who do not ordinarily administer medications but who supervise children needing emergency medications, such as but not limited to albuterol, glucagon, and epipens, shall be required to complete only the portion of the curriculum designated for that purpose.~~

~~a. The course, which shall include competency guidelines, shall reflect currently accepted safe medication administration practices, including instruction and practice in topics such as, but not limited to, reading and following prescriptions and prescriber's orders; observing relevant laws, policies and regulations; and demonstrating knowledge of safe practices for medication storage and disposal, recording and reporting responsibilities, and side effects and emergency recognition and response. The course shall designate portions required for persons who might be required only to administer emergency medications.~~

~~b. a.~~ The approved training curriculum and materials shall be reviewed by the department at least every three years and revised as necessary.

~~e. b.~~ Staff required to have the training shall be retrained at three-year intervals, with interim refresher training and practice demonstrations annually.

2. The decision to administer medicines at a facility may be limited by center policy to:

- a. Prescribed medications;

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- b. Over-the-counter or nonprescription medications; or
- c. No medications except those required for emergencies or by law.

~~3. Effective until June 1, 2007, any staff member or independent contractor that administers prescription or over the counter medication, with the exception of topical skin gel, cream, or ointment, shall be trained by an R.N., L.P.N., physician, or pharmacist to:~~

- ~~a. Check to be sure that the name of the child on the medication and the child receiving the medication are the same;~~
- ~~b. Read and understand the label or prescription directions in English, including the measured dose, frequency, and other circumstances relative to administration (e.g., taking a medication with meals);~~
- ~~c. Administer the medication according to the prescribed methods and the prescribed dose on the prescription or manufacturer's label;~~
- ~~d. Observe, record, and report to the parent any adverse reactions and side effects from medications; and~~
- ~~e. Document the administration of each dose in accordance with 22 VAC 15-30-580.~~

3. To safely perform medication administration practices listed in 22 VAC 15-30-580, whenever the center has agreed to administer over-the-counter medications other than topical skin gel, cream, or ointment, the administration must be performed by a staff member or independent contractor who has satisfactorily completed a training course developed or approved by the Department of Social Services in consultation with the Department of Health and the Board of Nursing and taught by an R.N., L.P.N., physician, or pharmacist; or performed by a staff member or independent contractor who is licensed by the Commonwealth of Virginia to administer medications.

- a. The course, which shall include competency guidelines, shall reflect currently accepted safe medication administration practices, including instruction and practice in topics such as, but not limited to, reading and following manufacturer's instructions; observing relevant laws, policies and regulations; and demonstrating knowledge of safe practices for medication storage and disposal, recording and reporting responsibilities, and side effects and emergency recognition and response.
- b. The approved training curriculum and materials shall be reviewed by the department at least every three years and revised as necessary.
- c. Staff required to have the training shall be retrained at three-year intervals, with interim refresher training practice demonstrations annually.

4. Any child for whom emergency medications (such as but not limited to albuterol, glucagon, and epipen) have been prescribed shall always be in the care of a ~~provider that has been trained in the administration of emergency medication specific to each such child's condition~~ staff member or independent contractor who meets the requirements in subdivision 1 of this subsection.

5. There shall always be at least one staff member on duty who has obtained within the last three years instruction in performing the daily health observation of children.

6. Daily health observation training shall include:

- a. Components of daily health check for children;
- b. Inclusion and exclusion of the child from the class when the child is exhibiting physical symptoms that indicate possible illness;
- c. Descriptions of how diseases are spread and the procedures or methods for reducing the spread of disease;
- d. Information concerning the Virginia Department of Health Notification of Reportable Diseases pursuant to 12 VAC 5-90-80 and 12 VAC 5-90-90, also available from the local health department and the website of the Virginia Department of Health; and
- e. Staff occupational health and safety practices in accordance with Occupational Safety and Health Administration's (OSHA) Bloodborne Pathogens regulation.

E. Before assuming job responsibilities, staff who work with children in therapeutic child day programs and special needs child day programs shall receive training in:

- 1. Universal precautions procedures;
- 2. Activity adaptations;
- 3. Medication administration;
- 4. Disabilities precautions and health issues; and
- 5. Appropriate intervention strategies.

F. For therapeutic child day programs and special needs child day programs, staff who work directly with children shall annually attend 24 hours of staff development activities. At least eight hours of this training shall be on topics related to the care of children with special needs.

22 VAC 15-30-580. Medication.

A. Prescription and nonprescription medication shall be given to a child:

- 1. According to the center's written medication policies; and
- 2. Only with written authorization from the parent; ~~and~~

~~3. Administered~~ B. Nonprescription medication shall be administered by the a staff member trained in accordance with or independent contractor who meets the requirements in 22 VAC 15-30-310 D 1 or 22 VAC 15-30-310 D 3.

~~B. C.~~ The center's procedures for administering medication shall:

1. Include any general restrictions of the center.
2. ~~Be~~ For nonprescription medication, be consistent with the manufacturer's instructions for age, duration and dosage.
3. Include duration of the parent's authorization for medication, provided that it shall expire or be renewed after 10 work days. Long-term prescription drug use and over-the-counter medication may be allowed with written authorization from the child's physician and parent.
4. ~~Methods~~ Include methods to prevent use of outdated medication.

~~C. D.~~ The medication authorization shall be available to staff during the entire time it is effective.

~~D. E.~~ Medication shall be labeled with the child's name, the name of the medication, the dosage amount, and the time or times to be given.

~~E. Medication~~ F. Nonprescription medication shall be in the original container with the ~~prescription label~~ or direction label attached.

G. The center may administer prescription medication that would normally be administered by a parent or guardian to a child provided:

1. The medication is administered by a staff member or an independent contractor who meets the requirements in 22 VAC 15-30-310 D 1;
2. The center has obtained written authorization from a parent or guardian;
3. The center administers only those drugs that were dispensed from a pharmacy and maintained in the original, labeled container; and
4. The center administers drugs only to the child identified on the prescription label in accordance with the prescriber's instructions pertaining to dosage, frequency, and manner of administration.

~~F. H.~~ When needed, medication shall be refrigerated.

~~G. I.~~ When medication is stored in a refrigerator used for food, the medications shall be stored together in a container or in a clearly defined area away from food.

~~H. J.~~ Medication, except for those prescriptions designated otherwise by written physician's order, including refrigerated medication and staff's personal medication, shall be kept in a

locked place using a safe locking method that prevents access by children.

~~I. K.~~ If a key is used, the key shall not be accessible to the children.

~~J. L.~~ Centers shall keep a record of medication given children, which shall include the following:

1. Child to whom medication was administered;
2. Amount and type of medication administered to the child;
3. The day and time the medication was administered to the child;
4. Staff member administering the medication;
5. Any adverse reactions; and
6. Any medication error.

~~K. M.~~ Staff shall inform parents immediately of any adverse reactions to medication administered and any medication error.

~~L. N.~~ When an authorization for medication expires, the parent shall be notified that the medication needs to be picked up within 14 days or the parent must renew the authorization. Medications that are not picked up by the parent within 14 days will be disposed of by the center by either dissolving the medication down the sink or flushing it down the toilet.

VA.R. Doc. No. R07-216; Filed May 21, 2007, 9:44 a.m.

STATE BOARD OF SOCIAL SERVICES

Final Regulation

Title of Regulation: **22 VAC 40-25. Auxiliary Grants Program: Levels of Care and Rate Setting (amending 22 VAC 40-25-10 through 22 VAC 40-25-70; adding 22 VAC 40-25-45).**

Statutory Authority: §§ 63.2-217 and 63.2-800 of the Code of Virginia and § 416.2001 of the Social Security Act.

Effective Date: August 1, 2007.

Agency Contact: Sandra Coffey, Regional Adult Services Consultant, Virginia Department of Social Services, 1604 Santa Rosa Road, Suite 130, Richmond, VA 23229, telephone (804) 662-9784, FAX (804) 662-7023, email sandra.coffey@dss.virginia.gov.

Summary:

This regulatory action updates terminology and establishes guidelines and expectations relative to (i) requirements to participate in the Auxiliary Grants Program, (ii) minimum services to be provided, and (iii) establishment of reimbursable rates and reporting requirements. Changes provide that (i) only the recipient or representative is

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authorized to cash or deposit the auxiliary grant payment, (ii) providers must submit an annual audit report instead of the current annual cost report, and (iii) providers are prohibited from charging additional fees to recipients. The term "adult care residence" is replaced with "adult living facility."

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 25.

AUXILIARY GRANTS PROGRAM: ~~LEVELS OF CARE~~ AND RATE SETTING.

22 VAC 40-25-10. Definitions.

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

~~"Adult care residence" means any place, establishment, or institution, public or private, operated or maintained 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, and (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage, and (iii) a facility or any 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 Virginia Department of Social Services as a child caring institution under Chapter 10 (§ 63.1-195 et seq.) of Title 63.1 of the Code of Virginia, but including any portion of the facility not so licensed. 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.~~

"Adult foster care (AFC)" means a locally optional program that provides room and board, supervision, and special services to an adult who has a physical or mental health need. Adult foster care may be provided for up to three adults by any one provider who is approved by the local department of social services.

"Applicant" means an adult currently residing or planning to reside in an ~~adult care residence~~ assisted living facility or in adult foster care and who has applied for financial assistance under the Auxiliary Grants Program.

~~"Approved rate" means a rate established by the Department of Social Services' Division of Financial Management for use~~

~~by eligibility workers in local departments in determining Auxiliary Grants Program payments for eligible recipients.~~

"Assisted living" means a level of service provided by an ~~adult care residence~~ 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 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, 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. Maintenance or care means the protection, general supervision and oversight of the physical and mental well-being of an aged, infirm or disabled individual.

"Audit report" is an annual report prepared by the assisted living facility's private auditor. The auditor shall determine that the financial statements of the auditee are presented fairly and in conformity with generally accepted accounting principles.

"Auxiliary Grants Program" means a state and locally funded assistance program to supplement income of a Supplemental Security Income (SSI) recipient or adult who would be eligible for SSI except for excess income, who resides in an ~~adult care residence~~ assisted living facility or in adult foster care with an approved rate.

~~"Case manager" means an employee of a public human services agency having a contract with the Department of Medical Assistance Services to provide case management services and who is qualified to perform case management activities.~~

~~"Cost report" means Adult Care Residences Cost Report.~~

"Department" means the Virginia Department of Social Services.

"Established rate" means the auxiliary grant rate as set forth in the appropriation act or as set forth to meet federal maintenance of effort requirements.

~~"Minimum rate" means the rate used to determine eligible auxiliary grant recipient reimbursement prior to the establishment of the residence's approved rate.~~

~~"Newly licensed adult care residence assisted living facility" means a residence facility that has been licensed for 12 months or less and is submitting a cost report for the first time for the establishment of a rate in excess of the minimum rate.~~

~~"Nonoperating Other operating expense" means expenses incurred by the residence provider for activities other than those that are not directly related to the care of residents.~~

~~"Nonoperating Other operating revenue" means income earned by the residence provider for activities other than those that are not directly related to the care of residents.~~

"Operating costs" means the allowable expenses incurred by ~~an adult care residence~~ a provider for activities directly related to the care of residents.

"Personal needs allowance" means an amount of money reserved for meeting ~~minimal~~ the adult's personal needs when computing the amount of the auxiliary grant.

"Personal representative" means the person representing or standing in the place of the recipient for the conduct of his affairs. This may include a guardian, conservator, attorney-in-fact under durable power of attorney, next-of-kin, descendant, trustee, or other person expressly named by the recipient as his agent.

"Provider" means an assisted living facility that is licensed by the Department of Social Services or an adult foster care provider that is approved by a local department of social services.

"Provider agreement" means a document that the assisted living facility must complete and submit to the department when requesting to be licensed as an assisted living facility provider and approved for admitting auxiliary grant recipients.

~~"Qualified assessor" means an entity contracting with the Department of Medical Assistance Services (DMAS) 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 DMAS to complete the uniform assessment instrument for residents of the adult care residence, or any hospital which has contracted with DMAS to perform nursing facility preadmission screening, individual who is authorized to perform an assessment, reassessment, or change in level of care for an applicant to or resident of an assisted living facility.~~

"Rate" means the approved auxiliary grant rate.

"Recipient" means an adult approved to receive financial assistance under the Auxiliary Grants Program when residing in ~~an adult care residence~~ a licensed assisted living facility or an approved adult foster care provider with an approved rate.

~~"Residence" means an adult care residence.~~

"Residential living" means a level of service provided by an ~~adult care residence~~ 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 independent living facilities that voluntarily become licensed.~~

"Uniform assessment instrument" means the department-designated assessment form. It is used to record assessment information for determining the level of service that is needed.

"Virginia Department of Medical Assistance Services (DMAS)" means the single state agency designated to administer the Medical Assistance Program in Virginia.

22 VAC 40-25-20. Assessment.

A. In order to receive payment from the Auxiliary Grants Program for care in an ~~adult care residence~~ assisted living facility or in adult foster care, applicants shall have been assessed by a ~~case manager or other~~ qualified assessor using the uniform assessment instrument and determined to need residential living ~~care~~ or assisted living care or adult foster care.

~~B. In order to continue receiving payment from the Auxiliary Grants Program, recipients residing in adult care facilities on February 1, 1996, shall have been assessed by a case manager or other qualified assessor no later than 12 months from February 1, 1996, and determined to need residential care or assisted living care in an adult care residence. Provisions shall be made by the department in Auxiliary Grants Program policy for grandfathering in those recipients who do not meet the criteria for residential care.~~

C. B. As a condition of eligibility for the Auxiliary Grants Program, a uniform assessment instrument shall be completed on a recipient prior to admission, at least once every 12 months annually, and whenever there is a significant change

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in the individual's level of care, and a determination is made that the individual needs residential or assisted living care in an ~~adult care residence~~ assisted living facility or adult foster care.

~~D. C. The assisted living facility or adult foster care provider are prohibited from charging a security deposit or any other form of compensation for providing a room and services to the recipient. The collection or receipt of money, gift, donation or other consideration from or on behalf of a recipient for any services provided is prohibited.~~

22 VAC 40-25-30. Basic services.

The rate established ~~by the department for an adult care residence providing residential living care or assisted living care under~~ the Auxiliary Grants Program shall cover the following services:

1. Room and board.
 - a. Provision of a furnished room;
 - b. Housekeeping services based on the needs of the recipient;
 - c. Meals and snacks ~~by licensing regulations, including extra portions of food at mealtime and special diets; provided in accordance with [22 VAC 40-71 22 VAC 40-72] including, but not limited to, food service, nutrition, number and timing of meals, observance of religious dietary practices, special diets, menus for meals and snacks, and emergency food and water. A minimum of three well-balanced meals shall be provided each day. When a diet is prescribed for a resident by his physician, it shall be prepared and served according to the physician's orders. Basic and bedtime snacks shall be made available for all residents desiring them and shall be listed on the daily menu. Unless otherwise ordered in writing by the resident's physician, the daily menu, including snacks, for each resident shall meet the guidelines of the U.S. Department of Agriculture's Food Guide Pyramid, taking into consideration the age, sex and activity of the resident. Second servings shall be provided, if requested, at no additional charge. At least one meal each day shall include a hot main dish.~~
 - d. Clean bed linens and towels as needed by the recipient and at least once a week.
2. Maintenance and care.
 - a. Minimal assistance with personal hygiene including bathing, dressing, oral hygiene, hair grooming and shampooing, care of clothing, shaving, care of toenails and fingernails, arranging for haircuts as needed, and care of needs associated with menstruation or occasional bladder or bowel incontinence;
 - b. Medication administration as required by licensing regulations including insulin injections;

c. Provision of generic personal toiletries including soap and toilet paper;

d. Minimal assistance with the following:

- (1) Care of personal possessions;
- (2) Care of funds if requested by the recipient and residence provider policy allows this practice, and are in compliance with [22 VAC 40-71-440 through 22 VAC 40-71-460, Standards and Regulations for Licensed Assisted Living Facilities 22 VAC 40-72-440 through 22 VAC 40-72-460, Standards for Licensed Assisted Living Facilities];
- (3) Use of the telephone;
- (4) Arranging transportation;
- (5) Obtaining necessary personal items and clothing;
- (6) Making and keeping appointments; and
- (7) Correspondence- ;

e. Securing health care and transportation when needed for medical treatment;

f. Providing social and recreational activities ~~as required by licensing regulations; and~~

g. General supervision for safety.

22 VAC-25-40. Personal needs allowance.

A. The personal needs allowance is included in the monthly auxiliary grant payment to the resident and must be used by the auxiliary grant recipient for personal items. These funds shall not be commingled with the funds of the provider. The personal needs allowance for the recipient shall not be charged by the residence provider for any item or service not requested by the resident recipient. The residence provider shall not require a resident an auxiliary grants recipient or his personal representative to request any item or service as a condition of admission or continued stay. The residence provider must inform the resident recipient or his personal representative requesting an item or service for which a charge will be made that there will be a charge for the item or service and what the charge will be of a charge for any requested item or service not covered under the auxiliary grant and the amount of the charge. The personal needs allowance is expected to cover the cost of the following categories of items and services:

1. Clothing;
2. Personal toiletries not included in those to be provided by the ~~adult care residence provider~~ or if the recipient requests a specific type or brand of toiletries;
3. Personal ~~comfort~~ items including tobacco products, sodas, and snacks beyond those required ~~by licensing regulations in subdivision 1 c of 22 VAC 40-25-30;~~

4. ~~Barber and beauty shop~~ Hair care services;
5. Over-the-counter medication, medical copayments and deductibles, insurance premiums;
6. Other needs such as postage stamps, dry cleaning, laundry, direct bank charges, personal transportation, and long distance telephone calls;
7. Personal telephone, television, or radio;
8. Social events and entertainment offered outside the scope of the activities program;
9. Other items agreed upon by both parties except those listed in subsection B of this ~~regulation~~ section.

B. The personal needs allowance shall not be encumbered by the following:

1. Recreational activities required by licensing regulations (including any transportation costs of those activities);
2. Administration of accounts (bookkeeping, account statements);
3. Debts owed the ~~residence~~ provider for basic services as outlined by regulations;
4. ~~Charges for laundry by the adult care residence which exceed~~ Provider laundry charges in excess of \$10 per month.

22 VAC 40-25-45. Conditions of participation in the Auxiliary Grants Program.

A. Provider agreement for assisted living facilities.

1. As a condition of participation in the Auxiliary Grants Program, the assisted living facility provider is required to complete and submit to the department a signed provider agreement as stipulated below. The agreement is to be submitted with the application to be a licensed assisted living facility.
2. The assisted living facility provider shall agree to the following conditions in the provider agreement to participate in the Auxiliary Grants Program:
 - a. Provide services in accordance with all laws, regulations, policies, and procedures that govern the provision of services in the facility;
 - b. Submit an annual financial audit by June 30 of each year;
 - c. Care for auxiliary grant recipients in accordance with the requirements herein at the current established rate;
 - d. Refrain from charging the recipient, his family, or his authorized personal representative a security deposit or any other form of compensation as a condition of admission or continued stay in the facility;

- e. Accept the auxiliary grant payment as payment in full for services rendered, except as permitted herein;
- f. Account for the resident's personal needs allowance separate and apart from other facility funds;
- g. Provide the local department of social services a 60-day written notice when a recipient is to be discharged from the facility;
- h. Provide a 60-day written notice to the department in the event of the facility's closure or ownership change; and
- i. Return to the local department of social services all auxiliary grant funds received after the death or discharge date of an auxiliary grant recipient in the facility.

B. As a condition of participation in the Auxiliary Grants Program, the adult foster care provider shall be approved by a local department of social services and comply with the requirements set forth in 22 VAC 40-770.

22 VAC 40-25-50. Establishment of Established rate.

A. ~~Submission of a cost an audit report to the department's Division of Financial Management, Bureau of Cost Accounting department is required to establish a rate in excess of the minimum rate for an assisted living facility to accept residents who receive an auxiliary grant.~~

B. ~~The rate shall be calculated based on operating cost data reported on the cost report. Total operating costs shall be reduced by any nonoperating revenue, less nonoperating expenses. If nonoperating expenses exceed nonoperating revenue, no adjustment is made. These costs are then adjusted in accordance with department policy to recognize operation changes, growth, and inflation. Based on the greater of actual filled bed days or 85% of bed capacity, a monthly rate per resident shall be calculated.~~

C. ~~The established rate shall be the lesser of the calculated rate or the maximum authorized monthly rate established by state regulations as set forth in the Appropriations Act.~~

D. ~~Rates~~ B. The rate shall be valid for 12 months unless the residence assisted living facility is required to submit a new cost audit report as a result of (i) significant operational changes as defined by department policy, or (ii) the residence assisted living facility changes ownership, or (iii) the residence assisted living facility changes location, or (iv) the adult foster care provider is no longer approved by the local department of social services.

E. ~~Newly licensed adult care residences shall operate for a minimum of 90 days prior to submission of a cost report for the purpose of establishing a rate. During the first 90 days of operation, the adult care residence's rate shall be the minimum rate. When cost reports are submitted no later than 60 days after the end of the first 90 days of operation, the effective date of the rate shall be made retroactive to the~~

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~~residence's date of licensure. When cost reports are submitted more than 150 days after licensure, the effective date of the rate shall be no later than the first day of the second month following receipt of the cost report by the department's Division of Financial Management.~~

~~C. The auxiliary grant rate for recipients authorized to reside in an assisted living facility or in adult foster care is the established rate as set forth in the appropriation act, plus the personal needs allowance minus the recipient's countable income. The effective date is the date of the individual's approval by the local department of social services for an auxiliary grant.~~

~~F. Adult care residences~~ D. Assisted living facilities that have been in licensed operation in excess of 12 months shall establish an initial approved rate by submitting a cost report for the preceding calendar year submit an annual audited financial report by June 30 for the preceding calendar year. In lieu of an audited financial report, facilities that are licensed for 19 or fewer beds may submit an audited report that includes only the following: validation that resident funds are held separately from any other funds of the facility; number of resident beds occupied during the reporting period; operating revenue and expenses; and average monthly cost per resident. The ~~cost audit~~ report shall be reviewed by the department's ~~Division of Financial Management and the approved rate established~~ department. The approved rate shall be the ~~lesser of the calculated rate or the maximum authorized established rate established by state regulations~~ as set forth in the ~~Appropriations~~ appropriation act. The approved rate shall become effective ~~no later than the first day of the second month following the month the cost report is received by the department's Division of Financial Management or as set forth by changes in the federal maintenance of effort formula.~~ The approved rate will be retroactive to the first month of the calendar year. If a provider fails to submit an annual audit report for a new calendar year, the provider will not be authorized to accept new auxiliary grant recipients.

~~G. After the initial approved rate is established, cost reports shall be submitted annually to the department's Division of Financial Management. If a provider that has previously established a rate fails to submit a cost report, the rate for residential living care shall become the minimum rate at the end of the twelfth month from the date the last rate was set.~~

22 VAC 40-25-60. Reimbursement.

Any moneys in excess of the provider's established rate contributed toward the cost of care pending public pay eligibility determination shall be reimbursed to the recipient or contributing party by the ~~adult care residence~~ assisted living facility or adult foster care provider once eligibility for public pay is established and that payment received. The auxiliary grants payment shall be made payable to the recipient, who will then reimburse the provider for care. If the recipient is not capable of managing his finances, his personal

representative is responsible for reimbursing the provider. In the event an assisted living facility is closed or sold, the facility shall provide verification that all recipient funds, including auxiliary grants funds, have been transferred and shall obtain a signed receipt from the new owner or new facility. In the event of a recipient's death or discharge, the provider shall give to the resident's personal representative a final accounting of the recipient's funds within 30 calendar days of the event. All auxiliary grants funds received after the death or discharge date shall be returned to the department as soon as practicable. Providers who do not comply with the requirements of this regulation may be subject to adverse action.

22 VAC 40-25-70. Audits.

A. All financial information reported by an ~~adult care residence~~ assisted living facility on the ~~cost report~~ annual audit report shall be reconcilable to the residence's general ledger system or similar records. The audit shall account separately for the personal needs allowance of auxiliary grant recipients. All ~~cost~~ reports are subject to audit by the department of ~~Social Services~~. Financial information ~~which~~ that is not reconcilable to the ~~residence's~~ provider's general ledger or similar records could result in retroactive adjustment of the rate and establishment of a liability to the provider. Records shall be retained for three years after the end of the reporting period or until audited by the department, whichever is first.

B. All records maintained by an adult foster care provider, as required by 22 VAC 40-770, shall be made available to the department or the approving local department of social services upon request. All records are subject to audit by the department. Financial information that is not reconcilable to the provider's records could result in retroactive adjustment of the rate and establishment of a liability to the provider. Records shall be retained for three years after the end of the reporting period or until audited by the department, whichever is first.

VA.R. Doc. No. R03-210; Filed May 21, 2007, 9:47 a.m.

Final Regulation

Titles of Regulations: 22 VAC 40-20. Food Stamp Program - Income Conversion Method (repealing 22 VAC 40-20-10).

22 VAC 40-540. Allowance of Telephone Costs in the Food Stamp Program (repealing 22 VAC 40-540-10).

22 VAC 40-600. Food Stamp Program Administrative Disqualification Hearings (repealing 22 VAC 40-600-10 through 22 VAC 40-600-240).

22 VAC 40-601. Food Stamp Program (adding 22 VAC 40-601-10 through 22 VAC 40-601-40).

Statutory Authority: § 63.2-217 of the Code of Virginia.

Effective Date: August 1, 2007.

Agency Contact: Celestine Jackson, Program Consultant, Division of Benefit Programs, Department of Social Services, 7 North Eighth Street, Richmond, VA 23219, telephone (804) 726-7376, Fax (804) 726-7356, email celestine.jackson@dss.virginia.gov.

Summary:

This is a joint action to repeal three regulations, 22 VAC 40-20, 22 VAC 40-540, and 22 VAC 40-600, that affect different aspects of the Food Stamp Program and incorporate them into a single regulation to streamline the regulatory structure for the program. The new regulation, 22 VAC 40-601, will serve as a comprehensive regulation for the Food Stamp Program. The regulation addresses eligibility determination through the conversion of weekly or biweekly income to monthly amounts and use of a standard amount for the basic cost for telephone service. The regulation also includes an administrative hearing process to determine intentional program violations.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

22 VAC 40-601-10. Definitions.

The following words and terms when used in these guidelines will have the following meaning unless the context clearly indicates otherwise:

"Access device" means any card, plate, code, account number, or other means of access that can be used alone or in conjunction with another access device, to obtain payments, allotments, benefits, money, goods, or other things of value, or that can be used to initiate a transfer of funds under the Food Stamp Act of 1977, as amended.

"Administrative disqualification hearing" or "ADH" means an impartial review by a hearing officer of a household member's actions involving an alleged intentional program violation for the purpose of rendering a decision of guilty or not guilty of committing an intentional program violation (IPV).

"Authorization to participate" or "ATP" means a document authorizing a household to receive a food stamp allotment in a specific amount for a specific entitlement period from an authorized food coupon issuance agent.

"Hearing officer" means an impartial representative of the state who receives requests for administrative disqualification hearings or fair hearings. The hearing officer has the authority to conduct and control hearings and to render decisions.

"Intentional program violations" or "IPV" means any action by an individual who intentionally made a false or misleading statement to the local department, either orally or in writing, to obtain benefits to which the household is not entitled; concealed information or withheld facts to obtain benefits to

which the household is not entitled; or committed any act that constitutes a violation of the Food Stamp Act, Food Stamp regulations, or any state statutes relating to the use, presentation, transfer, acquisition, receipt, or possession of food stamp coupons, authorization to participate cards, access devices, or food stamp benefits.

"Local department" means the local department of social services of any county or city in this Commonwealth.

22 VAC 40-601-20. Income conversion.

Whenever income is anticipated for every pay period in a month and it is received on a weekly or biweekly basis, the eligibility worker shall convert the income to a monthly amount by multiplying weekly amounts by 4.3 and biweekly amounts by 2.15.

22 VAC 40-601-30. Telephone standard.

A standard telephone allowance, as determined by the Department of Social Services annually, shall be used for households that incur a telephone cost in calculating their eligibility and benefit levels instead of actual telephone costs.

22 VAC 40-601-40. Administrative disqualification hearing.

A. The local department is responsible for investigating any case of alleged intentional program violation and ensuring that appropriate cases are acted upon either through referral for an administrative disqualification hearing or for prosecution by a court of appropriate jurisdiction.

B. In order for a local department to request an ADH, there must be clear and convincing evidence that demonstrates a household member committed or intended to commit an IPV.

C. The local department shall ensure that evidence against the household member alleged to have committed an IPV is reviewed by either an eligibility supervisor or the local department director to certify that the evidence warrants referral for an ADH.

D. Before submitting the referral for an ADH to the state hearing manager, the local department shall send a notice to the person suspected of an IPV that the member may waive the right to a hearing. The person must sign a waiver request and return it to the local department within 10 days from the date the notice was sent to the household member in order to avoid the submission of the ADH referral.

E. If the local department receives a signed waiver, there will not be a hearing but the person will be disqualified for the length of time prescribed by federal policy.

F. The hearing officer will schedule a date for the ADH and provide written notice to the household member suspected of an IPV by certified mail - return receipt requested or first class mail. The notice must be mailed at least 30 days in advance of the date the ADH scheduled. If the notice is sent

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using first class mail and is returned as undeliverable, the hearing may still be held. The hearing officer must compare the household's address on the local department referral with other documents associated with the case. A revised notice must be provided to the household member if an error is discovered in the address used for the original notice of the hearing.

G. The requirement to notify the individual about the ADH will be met if there is proof of receipt of the advance notice of the ADH or if there is proof that the person refused to accept the notice.

H. The time and place of the ADH shall be arranged so that the hearing is acceptable to the person suspected of an IPV.

I. The person or representative may request a postponement of the ADH if the request for postponement is made at least 10 days in advance of the date of the scheduled hearing.

J. The ADH may be held even if the person or representative subsequently cannot be located or fails to appear without good cause.

K. If the hearing officer finds that a household member committed an IPV but the hearing officer later determines there was good cause for not appearing, including that the notice was sent to an incorrect address, the previous decision will no longer be valid. A new ADH shall be conducted.

L. A pending ADH shall not affect the household or an individual's right to be certified and participate in the Food Stamp Program.

M. The hearing officer shall:

1. Identify those present for the record.
2. Advise the person or representative that he may refuse to answer questions during the hearing.
3. Explain the purpose of the ADH, the procedure, how and by whom a decision will be reached and communicated, and the option of either the local department or the household to request an administrative review of the hearing officer's decision. The hearing officer shall also explain that only the household may seek a change to the hearing officer's decision through a court of appropriate jurisdiction.
4. Consider all relevant issues. Even if the person or representative is not present, the hearing officer must carefully consider the evidence and determine if any IPV was committed based on clear and convincing evidence.
5. Request, receive and make part of the record all evidence determined necessary to render a decision.
6. Regulate the conduct and course of the hearing consistent with the process to ensure an orderly hearing.

N. The person alleged to have committed an IPV and the representative shall be given adequate opportunity to:

1. Examine all documents and records to be used at the ADH at a reasonable time prior to the ADH as well as during the ADH.
2. Present the case or have it presented by legal counsel or another person.
3. Bring witnesses.
4. Advance arguments without undue interference.
5. Question or refute any testimony or evidence, including the opportunity to confront and cross-examine witnesses.
6. Submit evidence to establish all pertinent fact and circumstances in the case.

O. The hearing officer is responsible for rendering a decision based on clear and convincing evidence from the hearing record that can be substantiated by supporting evidence and applicable regulations.

P. The hearing officer shall prepare a written report of the substance of the findings, conclusions, decisions, and appropriate recommendations.

Q. The hearing officer shall notify the person of the decision in writing and of the household's right to seek an administrative review or court appeal of the decision.

R. If the hearing officer finds that the individual did commit an IPV, the written decision shall advise that household that disqualification shall occur.

S. The determination of IPV by the hearing officer cannot be reversed by a subsequent fair hearing decision.

T. Upon receipt of the notice of a decision from the hearing officer that the household member is guilty of an IPV, the local department shall inform the household of the reason for the disqualification and the date the disqualification will take effect.

VA.R. Doc. No. R06-138; Filed May 23, 2007, 8:44 a.m.

Final Regulation

Title of Regulation: 22 VAC 40-880. Child Support Enforcement Program (amending 22 VAC 40-880-200, 22 VAC 40-880-250, 22 VAC 40-880-270, 22 VAC 40-880-350 and 22 VAC 40-880-620).

Statutory Authority: § 63.2-217 of the Code of Virginia.

Effective Date: August 1, 2007.

Agency Contact: Cynthia Holdren, Program Manager, Division of Child Support Enforcement, Department of Social Services, 7 N. 8th St., 1st Floor, Richmond, VA 23219, telephone (804) 726-7474, FAX (804) 726-7482 or email cynthia.holdren@dss.virginia.gov.

Summary:

The amendments update outdated code cites and references to noncustodial and custodial parents; outline DCSE requirements for consideration of self-employment tax paid in the computation of a support obligation; conform state regulations to state law; allow the department to negotiate for payment in full from the noncustodial parent before seized property is returned to the noncustodial parent; and give authority to the department to not issue refund checks for less than \$1.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

22 VAC 40-880-200. Determining the amount of the child support obligation.

A. The administrative child support order shall include information and provisions as set forth in ~~§ 63.1-252.1~~ § 63.2-1916 of the Code of Virginia.

B. Verification of financial information and use of financial statements.

1. The department shall use financial statements obtained from the legally responsible parents to determine the amount of the child support obligation and shall verify financial information used to determine child support obligations.

2. The legally responsible parents shall complete financial statements upon demand by the department. Such responsible parties shall certify under penalty of perjury the correctness of the statement.

3. If the custodial parent is a recipient of public assistance, the department shall use the information obtained through the TANF or AFDC/FC eligibility process to meet the financial statement and financial information verification requirements.

4. The department shall define the type of financial information which shall be required based on ~~§ 63.1-274.5~~ § 63.2-1919 of the Code of Virginia which is incorporated by reference. The department has the authority to request verification of financial information for the purpose of establishing or modifying a child support obligation. The department will not provide credit for self-employment tax paid if the most recent federal tax return and the Schedule H attachment are not provided by the party upon request.

5. When both parents are noncustodial, each parent must provide financial information. In this situation, the person with whom the child resides shall not be required to complete a financial statement.

C. The department shall determine the amount to be paid monthly toward past due support when the obligation is administratively ordered and when a court ordered obligation for support does not specify the amount to be paid toward the

past due support. The monthly payment for past due support will be \$65 or 25% of the current obligation, whichever is greater, and shall not exceed the amount allowed under the federal Consumer Credit Protection Act.

22 VAC 40-880-250. Periodic reviews of the child support obligation.

~~A. The amount of the child support obligation is based on the financial situation of both parents. The department, another state's child support agency or either parent may initiate a review of the amount of the child support obligation.~~

~~B. The department shall initiate a review of each child support obligation and adjust the order as required by federal regulations.~~

~~C.~~ A. Either parent may request a review of the child support obligation once every three years. Additional requests may be made earlier by providing documentation of a special circumstance that has occurred that potentially affects the child support obligation. Such changes shall be limited to the following:

1. An additional child needs to be covered by the order;
2. A child needs to be removed when another child remains covered by the order;
3. A provision for health care coverage needs to be added; ~~or~~
4. A provision ordering the parents to share the costs of all unreimbursed medical/dental expenses exceeding \$250 per child per year covered by the order needs to be added; or
- ~~4.~~ 5. A change of at least 25% can be documented by the requesting party in the following circumstances:
 - a. Income of either party;
 - b. Amount of medical insurance; or
 - c. Cost of dependent care; ~~or,~~
 - ~~d. Extraordinary medical expenses.~~

~~D.~~ B. The department shall adjust an administrative obligation when the results of the review indicate a change of at least 10% in the monthly obligation but not less than \$25.

~~E. The department shall modify the obligation for future child support payments only.~~

~~F. The department may initiate a review of a court ordered obligation pursuant to §§ 20-108.2 and 63.1-252.2 of the Code of Virginia.~~

22 VAC 40-880-270. Withholding of income.

A. The department shall issue an income withholding order against all income except income exempted under federal and state law.

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~~B. The amount of money withheld from disposable earnings may not exceed the amount allowed under the federal Consumer Credit Protection Act. That amount is 50, 55, 60 or 65%, depending on the number of weeks of delinquency, and if the NCP is responsible for other dependents. (See § 34-29 of the Code of Virginia.)~~

~~C. B. The department ~~must legally~~ shall serve the income withholding order on the employer. Upon service of the order on the employer by certified mail, or by electronic means, including facsimile transmission, a copy of the order shall be provided to the employee by the employer.~~

~~D. The department shall modify the income withholding order only if there is a change in the amount of the current support or past due support.~~

~~E. C. The department shall release the income withholding order only if one of the following occurs:~~

- ~~1. The current support order terminates, and any past due support is paid in full;~~
- ~~2. Only past due support is owed and it is paid in full;~~
- ~~3. The whereabouts of the child or child and ~~caretaker~~ custodial parent become unknown;~~
- ~~4. Bankruptcy laws require release; or~~
- ~~5. A nonpublic assistance ~~applicant/recipient~~ custodial parent or former public assistance custodial parent no longer wants the services of the department and no debt is owed to the Commonwealth.~~

22 VAC 40-880-350. Distraint, seizure, and sale.

A. The department may use distraint, including booting of vehicle, seizure and sale against the real or personal property of a noncustodial parent when:

1. There are arrears of at least \$1,000 for a case with a current support obligation and at least \$500 for an arrears-only case;
2. Conventional enforcement remedies have failed or are not appropriate; and
3. A lien has been filed pursuant to ~~§ 63.1-254~~ § 63.2-1927 of the Code of Virginia.

B. Assets targeted for distraint, including booting of vehicle, seizure and sale are:

1. Solely owned by the noncustodial parent.
2. Co-owned by the noncustodial parent and current spouse.
3. Owned by a business in which the noncustodial parent is the sole proprietor. Assets owned by business partnerships or corporations which are co-owned with someone other than a noncustodial parent's current spouse do not qualify for booting of vehicle, or seizure and sale.

C. The Director of the Division of Child Support Enforcement or his designee shall give final approval for the use of distraint, seizure and sale. This includes immobilizing a vehicle using vehicle boots.

D. When initiating booting, or seizure and sale of vehicle, the department shall check with the Department of Motor Vehicles for vehicles registered in the noncustodial parent's name, the address on the vehicle registration, and the name of any lien holder on the vehicle.

E. Once a lien has been filed pursuant to ~~§ 63.1-254~~ § 63.2-1927 of the Code of Virginia, the department shall send a notice of intent to the noncustodial parent before initiating distraint, including booting of vehicle, seizure and sale action. If there is reason to believe that the noncustodial parent will leave town or hide the asset, the asset can be seized without sending the notice and with proper documentation.

~~F. The department shall negotiate a settlement~~ If the noncustodial parent contacts the department in response to the intent notice, the department shall request payment of arrears in full. The department shall negotiate a settlement if the noncustodial parent cannot pay the arrears in full. At The least acceptable settlement is 5.0% of the arrearage owed or \$500, whichever is greater, with additional monthly payments towards the arrears that will satisfy the arrearage within 10 years. The department may initiate distraint, including booting of vehicle, seizure and sale without further notice to the noncustodial parent if the noncustodial parent defaults on the payments as agreed.

G. The department shall send a fieri facias request to each county or city where a lien is filed and a levy is being executed if the noncustodial parent does not contact the department in response to the intent notice.

H. The department shall set a target date for seizure or booting and have the sheriff levy the property or boot the vehicle.

I. Once property has been seized or booted by the sheriff, the department must (i) reach a payment agreement with the noncustodial parent of 5.0% of the arrearage owed or \$500, whichever is greater, with additional monthly payments towards the arrears that will satisfy the arrearage within 10 years and release the vehicle to the owner; (ii) proceed with the sale of the vehicle pursuant to ~~§ 63.1-261~~ § 63.2-1933 of the Code of Virginia; or (iii) at the end of 90 days from the issuance of the writ of fieri facias, release the vehicle to the owner.

J. The department shall send a cancellation notice to the sheriff if a decision is made to terminate the seizure action before the asset is actually seized.

K. If the department sells an asset and it is a motor vehicle, the department shall notify the Department of Motor Vehicles to issue clear title to the new owner of the vehicle.

22 VAC 40-880-620. Disbursement of payments.

A. ~~An absent parent~~ A noncustodial parent may have multiple child support obligations.

1. Each case shall receive full payment of the current obligation when possible.

2. If the ~~absent parent's~~ noncustodial parent's disposable earnings do not cover the full payment for each current support order, the department shall prorate the amount withheld among all orders.

B. Current support obligations shall be satisfied before satisfying past due support.

C. The method by which child support and medical support payments are disbursed is governed by 45 CFR 302.51 and 302.52 which are incorporated by reference.

D. No refund shall be made of any overpayment of support under \$1 except upon written request by the payor.

VA.R. Doc. No. R05-169; Filed May 23, 2007, 8:44 a.m.



FORMS

TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF MINES, MINERALS AND ENERGY

EDITOR'S NOTICE: The following forms have been filed by the Department of Mines, Minerals and Energy. The forms are available for public inspection at the Department of Mines, Minerals and Energy, 202 North Ninth Street, Richmond, Virginia 23219, at the department's Big Stone Gap office, 3405 Mountain Empire Road, Big Stone Gap, VA 24219, or the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219. Copies of the forms may be obtained from David Spears, Department of Mines, Minerals and Energy, 202 North Ninth Street, Richmond, Virginia 23219, telephone (804) 692-3200.

Title of Regulation: **4 VAC 25-130. Coal Surface Mining Reclamation Regulations.**

FORMS

Anniversary Notification, DMLR-PT-028 (eff. 9/99).

Change Order Justification, DMLR-AML-065 (eff. 8/99).

Ground Water Monitoring Report, DMLR-PT-101 (rev. 11/99).

Application for Exemption Determination (Extraction of Coal Incidental to the Extraction Of Other Minerals), DMLR-211 (rev. 4/96).

Applicant Violator System (AVS) Ownership Control Information, DMLR-AML-003 (rev. 1/95).

Consent for Right of Entry-Exploratory, DMLR-AML-122 (rev. 3/98).

Consent for Right of Entry-Construction, DMLR-AML-123 (rev. 3/98).

Consent for Right of Entry-Construction Lien Waiver, DMLR-AML-174 (rev. 3/91).

License for Performance-Acid Mine Drainage Investigations and Monitoring (Abandoned Mine Land Program), DMLR-AML-175c (11/96).

License for Performance-Acid Mine Drainage Reclamation and Construction (Abandoned Mine Land Program), DMLR-AML-176c, (rev. 12/96).

Consent for Right of Entry-Ingress/Egress, DMLR-AML-177 (rev. 3/98).

Affidavit of Payment of Claims and Certification of Materials, DMLR-AML-314 (rev. 4/07).

Application for Recertification: DMLR Endorsement/Blaster's Certification, DMLR-BCME-03 (rev. 5/05).

Application for DMLR Endorsement: Blaster's Certification (Coal Surface Mining Operation), DMLR-BCME-04 (rev. 5/05).

Geology and Hydrology Information Part A through E, DMLR-CP-186 (rev. 3/86).

Sediment and Pond Design Data Sheet, DMLR-CP-187 (rev. 12/85).

Notice of Temporary Cessation, DMLR-ENF-220 (rev. 2/96).

Application for Small Operator's Assistance, DMLR-OA-106 (rev. 12/85).

Lands Unsuitable Petition, DMLR-OA-131 (rev. 12/85).

Application for Permit for Coal Exploration and Reclamation Operations (which Remove More Than 250 Tons) and NPDES, DMLR-PS-062 (rev. 12/85).

Chapter 19-Statement for Third Party-Certificate of Deposit, DMLR-PS-093 (rev. 12/85).

Cognovit Note, Part I and II, DMLR-PS-095 (rev. 12/85).

Application-Coal Surface Mining Reclamation Fund, DMLR-PS-162 (rev. 7/89).

Application for Release of Bond-Estimated Cost, DMLR-PS-212 (rev. 3/88).

Application for Release of Bond-Reclamation Fund, DMLR-PS-213 (rev. 3/88).

Example-Waiver (300 Feet from Dwelling), DMLR-PT-223 (rev. 2/96).

Analysis, Premining vs Postmining Productivity Comparison (Hayland/Pasture Land Use), DMLR-PT-012 (eff. 8/03).

Surety Bond, DMLR-PT-013 (rev. 9/04).

Surety Bond-Federal Lands, DMLR-PT-013A (rev. 10/95).

Surety Bond Rider, DMLR-PT-013B (rev. 9/04).

Map Legend, DMLR-PT-017 (rev. 2/05).

Certificate of Deposit Example, DMLR-PT-026 (rev. 9/04).

Form Letter From Banks Issuing a CD for Mining on Federal Lands, DMLR-PT-026A (rev. 8/03).

Operator's Seeding Report, DMLR-PT-011 (rev. 3/06).

Request for Relinquishment, DMLR-PT-027 (rev. 4/96).

Water Supply Inventory List, DMLR-PT-030 (rev. 4/96).

Application for Permit for Coal Surface Mining and Reclamation Operations and National Pollutant Discharge Elimination Systems (NPDES), DMLR-PT-034 (rev. 2/99).

Application for Permit: Coal Surface Mining and Reclamation Operations, DMLR-PT-034D (rev. 8/98).

- Coal Exploration Notice, DMLR-PT-051 (rev. 11/98).
- Well Construction Data Sheet, DMLR-WCD-034D (rev. 5/04).
- Sediment Basin Design Data Sheet, DMLR-PT-086 (rev. 10/95).
- Impoundment Construction and Annual Certification, DMLR-PT-092 (rev. 10/95).
- Road Construction Certification, DMLR-PT-098 (rev. 10/95).
- Ground Water Monitoring Report, DMLR-PT-101 (rev. 2/95).
- Rainfall Monitoring Report, DMLR-PT-102 (rev. 8/98).
- Pre-Blast Survey, DMLR-PT-104 (rev. 10/95).
- Excess Spoil Fills and Refuse Embankments Construction Certification, DMLR-PT-105 (rev. 4/96).
- Stage-Area Storage Computations, DMLR-PT-111 (rev. 10/95).
- NPDES Discharge Monitoring Report, DMLR-PT-119 (rev. 2/95).
- Water Monitoring Report-Electronic File/Printout Certification, DMLR-PT-119C (rev. 5/95; included in DMLR-PT-119).
- Coal Surface Mining Reclamation Fund Application, DMLR-PT-162 (rev. 4/96).
- Conditions-Coal Surface Mining Reclamation Fund, DMLR-PT-167 (rev. 10/95).
- Coal Surface Mining Reclamation Fund Tax Reporting Form, DMLR-PT-178 (rev. 10/95).
- Surface Water Monitoring Report, DMLR-PT-210 (rev. 8/98).
- Application For Performance Bond Release, DMLR-PT-212 (rev. 4/96).
- Public Notice: Application for Transfer, Assignment, or Sale of Permit Rights under Chapter 19 of Title 45.1 of the Code of Virginia, DMLR-PT-219 (8/96).
- Public Notice: Application for Bond Reduction Under Chapter 19 of Title 45.1 of the Code of Virginia-Cost Estimate, Phase I, DMLR-PT-225 (rev. 4/96).
- Public Notice: Application for Bond Reduction Under Chapter 19 of Title 45.1 of the Code of Virginia-Cost Estimate, Phase II, DMLR-PT-226 (rev. 4/96).
- Public Notice: Application for Bond Reduction Under Chapter 19 of Title 45.1 of the Code of Virginia-Cost Estimate, Phase III, DMLR-PT-227 (rev. 4/96).
- Public Notice: Application for Bond Reduction Under Chapter 19 of Title 45.1 of the Code of Virginia-Pool Bonding, Incremental Bond Reduction, DMLR-PT-228 (rev. 4/96).
- Public Notice: Application for Bond Reduction Under Chapter 19 of Title 45.1 of the Code of Virginia-Pool Bonding, Entire Permit Bond Reduction, DMLR-PT-229 (rev. 9/95).
- Public Notice: Application for Bond Reduction Under Chapter 19 of Title 45.1 of the Code of Virginia-Pool Bonding, Entire Permit Bond Release, DMLR-PT-230 (rev. 4/96).
- Verification of Public Display of Application, DMLR-PT-236 (8/01).
- Affidavit (Permit Application Information: Ownership and Control Information and Violation History Information), DMLR-PT-240 (rev. 12/98).
- Stream Channel Diversion(s) Certification, DMLR-PT-233 (rev. 2/96).
- Quarterly Acid-Base Monitoring Report, DMLR-PT-239 (rev. 6/95).
- Affidavit (No Legal Change in a Company's Identity), DMLR-PT-250 (rev. 12/98).
- Blasting Plan Data, DMLR-PT-103 (rev. 4/96).
- Affidavit (Reclamation Fee Payment), DMLR-PT-244 (rev. 2/96).
- Application-National Pollutant Discharge Elimination System (NPDES) Permit-Short Form C, DMLR-PT-128 (rev. 5/96).
- National Pollutant Discharge Elimination System (NPDES) Short Form C-Instructions, DMLR-PT-128A (rev. 5/96).
- Impoundment Inspection Report, DMLR-PT-251 (rev. 12/93).
- Water Sample Tag, DMLR-TS-107 (rev. 3/83).
- Surface Water Baseline Data Summary, DMLR-TS-114 (rev. 4/82).
- Diversion Design Computation Sheet, DMLR-TS-120 (rev. 12/85).
- Sediment Channel Design Data Sheet, DMLR-TS-127 (rev. 12/85).
- Virginia Stream Survey, DMLR-TS-217 (rev. 1/87).
- Line Transect-Forest Land Count, DMLR-PT-224 (rev. 2/96).
- Applicant Violator System (AVS) Ownership & Control Information, DMLR-AML-003 (rev. 4/97).
- Application for Permit Renewal Coal Surface Mining and Reclamation Operations, DMLR-PT-034R (eff. 6/97).

Forms

Application for Coal Exploration Permit and National Pollutant Discharge Elimination System Permit, DMLR-PT-062 (formerly DMLR-PS-062) (rev. 6/97).

Conditions-Coal Surface Mining Reclamation Fund, DMLR-PT-167 (rev. 10/95).

Vibration Observations, DMLR-ENF-032V (eff. 9/97).

Application for Small Operator Assistance, DMLR-PT-106 (formerly CP-106) (rev. 9/97).

Application-National Pollutant Discharge Elimination System Application Instructions, DMLR-PT-128 (rev. 9/97).

Blasting Plan Data, DMLR-PT-103 (rev. 10/97).

Request for Relinquishment, DMLR-PT-027 (rev. 1/98).

Written Findings, DMLR-PT-237 (rev. 1/98).

Irrevocable Standby Letter of Credit, DMLR-PT-255 (rev. 9/04).

Confirmation of Irrevocable Standby Letter of Credit, DMLR-PT-255A (eff. 8/03).

DMLR-AML-312, Affidavit (eff. 7/98).



COMMONWEALTH OF VIRGINIA
DEPARTMENT OF MINES, MINERALS AND ENERGY
DIVISION OF MINED LAND RECLAMATION
P. O. DRAWER 900; BIG STONE GAP, VA 24219
TELEPHONE: (276) 523-8206
REGISTRY OF REGULATIONS
07 MAY 14 AM 11:34

**AFFIDAVIT OF PAYMENT OF CLAIMS
AND
CERTIFICATION OF MATERIALS**

By: _____ Contract No. _____
Contractor

Address: _____

This day _____ personally appeared before me,
_____, a Notary Public in and for the City (County) of
_____, _____ and, being by me first duly
sworn/affirmed, states that all materials meet or exceed the specifications of the Contract and that all
subcontractors and suppliers of labor and materials have been paid all sums due them for work performed
or materials furnished in the performance of the Contract between the Commonwealth of Virginia,
Department of Mines, Minerals and Energy, Division of Mined Land Reclamation, Owner, and
_____, Contractor, dated _____, 20 __, for the
construction of _____ project or
arrangements have been made by the Contractor satisfactory to such subcontractors and suppliers with
respect of payment of such sums as may be due them by the Contractor.

By: _____
Signature

Typed Name & Title of Person Signing

Subscribed and sworn/affirmed to before me this ____ day of _____, 20 __.
My commission expires on the ____ day of _____, 20 __.

Notary Public (affix seal)

DMLR-AML-314
4/07

GENERAL NOTICES/ERRATA

STATE CORPORATION COMMISSION

Bureau of Insurance

May 7, 2007

Administrative Letter 2007-4

TO: All Entities with Authority to License and Appoint Agents in the Commonwealth of Virginia and Other Interested Parties

RE: Change in Vendor Providing Insurance License Examinations

Please distribute to the appropriate personnel within your company, and notify your appointed agents of the following changes:

Effective June 1, 2007, insurance license examinations for the Virginia State Corporation Commission's Bureau of Insurance will be administered by Promissor, Inc. (Promissor's website is www.promissor.com). The last examinations to be handled by Thomson Prometric on behalf of the Bureau will be administered on May 31, 2007.

Promissor will operate testing centers in the following Virginia cities: Bristol, Chesapeake, Leesburg, Lynchburg, Newport News, Richmond, Roanoke, and Vienna. Promissor will also make available testing centers in Johnson City, TN; Salisbury, MD; and Washington, DC.

The Virginia Insurance Licensing Candidate Handbook (Virginia Handbook) will be available for download from the Promissor website beginning May 11, 2007. The new Examination Content Outlines will be included in the on-line version of the Virginia Handbook. Printed copies of the handbook will not be available until early summer.

Candidates may register for examinations administered by Promissor beginning May 15, 2007 online at www.promissor.com or via telephone at (888) 204-6272. Please note that candidates will not be able to access scheduling services for examinations administered by Promissor by internet or telephone prior to May 15. Attempts to use the Promissor scheduling services before the effective date will result in an automated response advising that such services will not be activated until May 15.

The examination fee will be \$58 for each insurance examination. Additional information will be posted on both the Promissor website and the Bureau of Insurance website (<http://www.scc.virginia.gov/division/boi>) as it becomes available.

Any questions regarding the change in testing vendors may be directed to the Bureau of Insurance via email at bureauofinsurance@scc.virginia.gov or you may direct them to: J. Preston Winn, Supervisor, Agents Licensing Section,

Bureau of Insurance, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9631, FAX (804) 371-9290.

/s/ Alfred W. Gross
Commissioner of Insurance

May 7, 2007

Administrative Letter 2007-5

TO: All Entities with Authority to Appoint Agents in Virginia and Other Interested Parties

RE: Administrative Changes and Changes in Laws Governing Agent Licensing

Please distribute to the appropriate personnel within your company, and notify agents of the changes.

The purpose of this Administrative Letter is to advise insurers and insurance agents regarding a change in the agent appointment fee and a change in Chapter 18 of Title 38.2 of the Code of Virginia, both of which are effective as of July 1, 2007.

Agent Appointment Fees

The State Corporation Commission has determined that the agent appointment fee should be reduced to \$12. In 2002 the statutory maximum for the appointment fee was raised to \$25 in order to address possible future increases to cover increased processing costs; however, such costs have not yet increased as anticipated; therefore, the Commission determined that the appointment fee shall be reduced from \$14 to \$12, effective July 1, 2007.

The 2006-2007 appointment renewal invoices for the fiscal year ending June 30, 2007 and the appointment billing for the quarter ending June 30, 2007 will be billed on or about July 2, 2007 at the current \$14 amount.

The appointment fees billed to insurers and payable on November 10, 2007 for the quarter ending September 30, 2007 (and for each quarter thereafter) will be billed at the reduced \$12 amount.

Sections 38.2-1833 and 1834 of the Code of Virginia can be reviewed on the General Assembly Legislative Information System website at

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC3802000001800000000000>

Automatic Agent License Termination

Section 38.2-1825 B of the Code of Virginia provides as follows:

An agent's license shall automatically terminate after a period of 183 calendar days during which no appointment of such agent under such license was in

effect. The Commission may, upon a showing of good cause and upon payment of any prescribed fee, waive or extend this requirement. As used herein, the term "good cause" shall not include negligence, clerical error, or administrative oversight by the licensee or the appointing insurer.

The Bureau of Insurance recommended to the 2007 Session of the Virginia General Assembly that it repeal this subsection. The General Assembly enacted, and Governor Kaine signed, House Bill 3016, which repeals § 38.2-1825 B and reenacts the remainder of § 38.2-1825 of the Code of Virginia, effective July 1, 2007. Section 38.2-1825 can be reviewed on the General Assembly Legislative Information System website at <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+38.2-1825>. The change to § 38.2-1825 does not affect the requirements contained in other licensing and appointment statutes as prescribed in Chapter 18 of Title 38.2 of the Code of Virginia.

This Administrative Letter is available on the Bureau of Insurance website at <http://www.scc.virginia.gov/division/boi/webpages/boiadministrativetrans.htm>.

Questions relating to this Administrative Letter should be directed to: J. Preston Winn, Supervisor, Agents Licensing Section, Bureau of Insurance, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9631, FAX (804) 371-9290.

/s/ Alfred W. Gross
Commissioner of Insurance

DEPARTMENT OF ENVIRONMENTAL QUALITY

Total Maximum Daily Load (TMDL) - Mossy Creek, Long Glade Run and Naked Creek in Augusta County

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the development of a total maximum daily load (TMDL) implementation plan for Mossy Creek, Long Glade Run and Naked Creek in Augusta County. Mossy Creek and Long Glade Run were originally listed as impaired in the 1996 303d Report, while Naked Creek was listed in 1998. All streams were listed for violations of the water quality standard for bacteria and Mossy was additionally listed by the plaintiffs in Virginia's consent decree for the general aquatic life (benthic) standard. TMDLs for bacteria were developed to address the bacterial impairments in all streams. A TMDL for sediment in Mossy Creek were developed to address the benthic impairments. These TMDLs were approved by EPA on July 14, 2004, and May 21, 2002, and are available on DEQ's website at http://gisweb.deq.virginia.gov/tmdlapp/tmdl_report_search.cfm.

Section 62.1-44.19:7 C of the Code of Virginia requires the development of an implementation plan (IP) for approved TMDLs. The IP should provide measurable goals and the date of expected achievement of water quality objectives. The IP should also include the corrective actions needed and their associated costs, benefits, and environmental impacts.

Public participation is critical to the implementation planning process. DEQ and DCR will hold the first public meeting on June 20, 2007, at 7 p.m. to inform the public of the IP development and to solicit participation. The meeting will be held at North River Elementary School, 3395 Scenic Highway (Rt. 42), Mt. Solon, Virginia 22843. Following this first informational meeting, DCR and DEQ will hold meetings for interested stakeholders to join working groups, which will direct the process and provide input to the agencies.

The public comment period for this first public meeting will end on July 20, 2007. Questions or information requests should be addressed to Neshia Mizel, DCR, (540) 332-9238 or Tara Sieber, DEQ, (540) 574-7870. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Tara Sieber, Department of Environmental Quality, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7870, FAX (540) 574-7878, or email tlsieber@deq.virginia.gov.

Total Maximum Daily Load (TMDL) - Neabsco Creek

Announcement of a water quality study to develop a total maximum daily load (TMDL) for a bacteria impairment in the free-flowing portion of Neabsco Creek.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) and the Virginia Department of Conservation and Recreation (DCR) announce a Technical Advisory Committee (TAC) Meeting for the Neabsco Creek TMDL study.

Technical advisory committee meeting: Tuesday, June 19, 2007, 10 a.m. - Noon, Department of Environmental Quality, Northern Regional Office, Conference Rooms 2 and 3, 13901 Crown Court, Woodbridge, Virginia 22193.

Meeting description: The purpose of the TAC will be to provide technical input and insight for the project, and to assist with stakeholder and public participation during the TMDL study.

Description of study: Virginia agencies are working to identify sources of bacteria pollution in an 8.42 mile segment of free-flowing Neabsco Creek. The impaired stream segment is located completely in Prince William County.

General Notices/Errata

Stream Name	Locality	Impairment	Length (miles)	Upstream Limit	Downstream Limit
Neabsco Creek	Prince William County	Bacteria	8.42	Confluence with an unnamed tributary to Neabsco Creek near Dale City and approximately 0.4 rivermile downstream from Route 784 (on the tributary)	Start of the tidal waters of Neabsco Bay (just downstream from the Route 1 Bridge Crossing)

During the study, DEQ will develop a total maximum daily load, or a TMDL, for the impaired stream segment. A TMDL is the total amount of a pollutant a water body can receive and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL allocated amount.

How to comment: The public comment period on the materials presented at the TAC meeting, including draft allocation scenarios, will extend from June 19, 2007, to July 19, 2007. DEQ accepts written comments by email, 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. Please send all comments to the contact listed below.

Contact for additional information: Katie Conaway, Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3804, or email mkconaway@deq.virginia.gov.

Total Maximum Daily Load (TMDL) - Rappahannock River

Announcement of a water quality study to develop a total maximum daily load (TMDL) for the bacteria impairment in the tidal freshwater Rappahannock River.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) and the Virginia Department of Conservation and Recreation (DCR) announce the first public meeting to introduce the Tidal Freshwater Rappahannock River TMDL study.

Public meeting: Wednesday, June 20, 2007, 7 p.m. to 9 p.m., Jepson Science Center, Room 100, Fredericksburg Campus of Mary Washington University.

Meeting description: This is the first public meeting to introduce this project to the public. The purpose of this meeting is to gather information and discuss the study with community members.

Description of study: Virginia agencies are working to identify sources of bacteria pollution in a 3.8 square mile segment of the tidal freshwater Rappahannock River. The

impaired river segment is located in portions of Caroline, King George, Spotsylvania, and Stafford counties, and the city of Fredericksburg. Below is a description of the impaired portion of the Rappahannock River that will be addressed in this TMDL study.

Stream Name	Locality	Impairment	Area (mi ²)	Upstream Limit	Downstream Limit
Rappahannock River	Fredericksburg Caroline King George Spotsylvania Stafford	Bacteria	3.8	Fall Line at the Route 1 Bridge on Fredericksburg	Confluence with Mill Creek below the Route 301 Bridge

During the study, DEQ will develop a total maximum daily load, or a TMDL, for the impaired river segment. A TMDL is the total amount of a pollutant a water body can receive and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL allocated amount.

How to comment: The public comment period on the materials presented at the public meeting will extend from June 20, 2007, to July 20, 2007. DEQ accepts written comments by email, 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. Please send all comments to the contact listed below.

Contact for additional information: Katie Conaway, Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3804, or email mkconaway@deq.virginia.gov.

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 May 17, 2007. 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 Twenty-Five (07)

Virginia's Twelfth Online Lottery Game; "Millionaire Raffle" (effective 4/15/07 nunc pro tunc)

Director's Order Number Twenty-Six (07)

Virginia's Instant Game Lottery 773; "\$100 Million Cash" (effective 1/18/07 nunc pro tunc)

**DEPARTMENT OF MEDICAL ASSISTANCE
SERVICES****The Virginia State Plan for Medical Assistance**

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Methods and Standards for Establishing Payment Rates-Other Types of Care. The changes contained in this public notice are occurring in response to language in the 2007 Appropriation Act, Item 302 PPP. The Appropriation Act directs DMAS to amend the State Plan for Medical Assistance to provide coverage of substance abuse treatment services for children and adults, effective July 1, 2007. As part of the implementation of substance abuse treatment services, the agency has developed a reimbursement methodology for providers of these services. Rates are structured differently from those offered under mental health services in accordance with guidance the agency received from the Centers for Medicare and Medicaid Services (CMS).

Specifically, rate methodologies for substance abuse service providers are based upon the agency fee schedule and existing fees applied to current providers, as follows:

Outpatient psychotherapy services for assessment and evaluation or treatment of substance abuse furnished by physicians shall be reimbursed using the methodology in 12 VAC 30-80-190. For nonphysicians, they shall be reimbursed at the same levels specified in 12 VAC 30-50-140 and 12 VAC 30-50-150.

Rates for other substance abuse services and case management services shall be based on the agency fee schedule for 15 minute units of service. The Medicaid and commercial rates for similar services as well as the cost for providing services shall be considered when establishing the fee schedules so that payments shall be consistent with economy, efficiency and quality of care. For each level of professional necessary to provide services described in 12 VAC 30-50-228 and 12 VAC 30-50-461, separate rates shall be established for licensed professionals, qualified substance abuse professionals (QSAP) and paraprofessionals. The same rates shall be paid to public and private providers.

The agency anticipates that the implementation of this new coverage will result in increased state costs of \$5.2 to \$9.0 million per year in the first three years. DMAS bases this estimate on a participation rate of 100% of the substance abuse services population from the implementation date of the program, though actual enrollment will be less. DMAS anticipates that some individuals in this population eligible for substance abuse services will continue to receive mental health services in lieu of accessing substance abuse treatment services.

This change is being made pursuant to the department's authority under Title XIX of the Social Security Act. This notice is intended to satisfy the requirements of 42 CFR § 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review from Catherine Hancock, Policy and Research Division, Department of Medical Assistance Services, 600 Broad Street, Suite 1300, Richmond, VA 23219, and this notice is available for public review on the Regulatory Town Hall (www.townhall.com). Comments or inquiries may be submitted, in writing, within 30 days of this notice publication to Ms. Hancock and such comments are available for review at the same address.

DEPARTMENT OF MINES, MINERALS AND ENERGY**Notice of Periodic Review of Regulation**

Pursuant to Executive Order 36 (2006), the Department of Mines, Minerals and Energy (DMME) is conducting a periodic review and invites public comment on the following regulation:

4 VAC 25-40, Safety and Health Regulations for Mineral Mining.

The department will consider whether this existing regulation is essential to protecting the health, safety and welfare of the public. The department welcomes specific comments on the performance and effectiveness of this regulation and also requests suggestions to improve the content and organization of the regulation to make it more understandable and useful.

The comment period for this review begins on June 11, 2007, and ends at 5 p.m. on July 2, 2007. Comments may be submitted to David B. Spears, Regulatory Coordinator, Virginia Department of Mines Minerals and Energy, 202 North Ninth Street, Richmond, Virginia 23219-3402 or email david.spears@dmme.virginia.gov.

Regulations may be viewed online at the Virginia Regulatory Town Hall site located at <http://www.townhall.state.va.us>, or copies will be sent upon request.

VIRGINIA CODE COMMISSION**Elimination of the Calendar of Events Section**

Effective July 1, 2007, the Calendar of Events section will no longer be published in the Virginia Register of Regulations. Chapter 300 of the 2007 Acts of Assembly amended the Administrative Process Act by eliminating the requirement that all state agency meeting notices be published in the Virginia Register. In lieu of publication in the Virginia Register, the Virginia Freedom of Information Act was amended to require that agencies post meeting notices on the agency's website and on the Commonwealth Calendar maintained by the Virginia Information Technologies

General Notices/Errata

Agency. To access the Commonwealth Calendar, please visit the Commonwealth of Virginia's homepage at www.virginia.gov and click on the calendar on the right side of the screen.

Notice to State Agencies

Mailing Address: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219.

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

BOARD OF NURSING

Title of Regulation: 18 VAC 90-60. Regulations Governing the Registration of Medication Aides.

Publication: 23:19 VA.R. 3007-3012 May 28, 2007.

Correction to Final Regulation:

Page 3012, in 18 VAC 90-60-120 2 m, strike "this section" and insert "18 VAC 90-60-110"

VA.R. Doc. No. R05-241

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.virginia.gov 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 website's Legislative Information System (<http://leg1.state.va.us/lis.htm>) and select "Meetings."

VIRGINIA CODE COMMISSION

Effective July 1, 2007, the Calendar of Events section will no longer be published in the *Virginia Register of Regulations*. Chapter 300 of the 2007 Acts of Assembly amended the Administrative Process Act by eliminating the requirement that all state agency meeting notices be published in the *Virginia Register*. In lieu of publication in the *Virginia Register*, the Virginia Freedom of Information Act was amended to require that agencies post meeting notices on the agency's website and on the Commonwealth Calendar maintained by the Virginia Information Technologies Agency. To access the Commonwealth Calendar, please visit Commonwealth of Virginia's homepage at www.virginia.gov and click on the calendar on the right side of the screen.

EXECUTIVE

BOARD OF ACCOUNTANCY

June 27, 2007 - 10 a.m. -- Open Meeting

Richmond Marriott West, 4240 Dominion Boulevard, Franklin Room, Glen Allen, Virginia.♿ (Interpreter for the deaf provided upon request)

A general business meeting to include consideration of regulatory issues as may be presented on the agenda. A portion of the board's business may be discussed in closed session. Public comment will be heard at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Executive Director, Board of Accountancy, 3600 West Broad St., Suite 378, Richmond,

VA 23230-4923, telephone (804) 367-8505, FAX (804) 367-2174, (804) 367-9753/TTY☎, email boa@boa.virginia.gov.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Virginia Horse Industry Board

June 20, 2007 - 10 a.m. -- Open Meeting

Department of Forestry, 900 Natural Resources Drive, 2nd Floor, Meeting Room, Charlottesville, Virginia.♿

A meeting to (i) review the minutes from the last meeting and the budget to date, and (ii) discuss and plan marketing and promotional projects for the coming fiscal year. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Andrea Heid at least five days before the meeting date so that suitable arrangements can be made.

Contact: Andrea Heid, Equine Marketing Specialist/Program Manager, Department of Agriculture and Consumer Services, Oliver Hill Bldg., 102 Governor St., Room 318, 3rd Floor, Richmond, VA 23219, telephone (804) 786-5842, FAX (804) 371-7786, email andrea.heid@vdacs.virginia.gov.

Virginia Marine Products Board

† July 11, 2007 - 6 p.m. -- Open Meeting

Ann's Family Dining, Route 17, Glens, Virginia.♿


A meeting to (i) read and approve minutes of the previous board meeting; and (ii) hear reports on finance, trade shows, industry tours, and cooperative program with the Virginia Department of Agriculture and Consumer Services. The board will entertain public comment at the

Calendar of Events

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 Shirley Estes at least five days before the meeting date so that suitable arrangements can be made.

Contact: Shirley Estes, Executive Director, Virginia Marine Products Board, 554 Denbigh Blvd., Suite B, Newport News, VA 23608, telephone (757) 874-3474, FAX (757) 886-0671, email shirley.estes@vdacs.virginia.gov.


Virginia Peanut Board

† **July 17, 2007 - 10 a.m.** -- Open Meeting
Tidewater Agriculture Research and Extension Center, 6321 Holland Road, Suffolk, Virginia. 


A meeting to (i) hear and approve minutes of the last meeting held on Thursday, March 29, 2007; (ii) review the board's financial statement; and (iii) hear the chairman's report, including information on the board's program area accomplishments and expenses. 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 Thomas R. Cotton at least five days before the meeting date so that suitable arrangements can be made.

Contact: Thomas R. (Dell) Cotton, Jr., Program Director, Department of Agriculture and Consumer Services, 1001 Campbell Ave., P.O. Box 59, Franklin, VA 23851-0059, telephone (757) 569-0249, FAX (757) 562-0744.


Virginia Plant Pollination Advisory Board

† **June 22, 2007 - 12:30 p.m.** -- Open Meeting
Oliver Hill Building, 102 Governor Street, 220 Board Room, Richmond, Virginia. 

An annual meeting of the board to (i) discuss research, education, methods of improvement in apicultural practices, and promotion projects to assure Virginia agriculture of a reliable supply of pollinators. 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 Keith R. Tignor at least five days before the meeting date so that suitable arrangements can be made.

Contact: Keith R. Tignor, Board Secretary, Department of Agriculture and Consumer Services, 102 Governor St., Lower Level Floor, Richmond, VA 23219, telephone (804) 786-3515, FAX (804) 371-7793, (800) 828-1120/TTY , email keith.tignor@vdacs.virginia.gov.


Virginia Small Grains Board

† **July 18, 2007 - 8 a.m.** -- Open Meeting
Sheraton Richmond West Hotel, 6624 West Broad Street, Richmond, Virginia. 

A meeting to (i) review FY 2006-07 project reports and receive and approve the 2007-08 project proposals; (ii) hear and approve minutes from the last board meeting and a current financial statement; and (iii) take action on any other new business that comes before the group. 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 Philip T. Hickman at least five days before the meeting date so that suitable arrangements can be made.

Contact: Philip T. Hickman, Program Director, Department of Agriculture and Consumer Services, 102 Governor St., 3rd Floor, Room 316, Richmond, VA 23219, telephone (804) 371-6157, FAX (804) 371-7786, email phil.hickman@vdacs.virginia.gov.


Virginia Wine Board

June 13, 2007 - 11 a.m. -- Open Meeting
Department of Forestry, 900 Natural Resources Drive, Charlottesville, Virginia. 

A meeting to (i) approve the minutes of the last meeting held on March 20, 2007; (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, Secretary, Department of Agriculture and Consumer Services, 900 Natural Resources Dr., Suite 300, Charlottesville, VA 22903, telephone (434) 984-0573, FAX (434) 984-4156, email david.robishaw@vdacs.virginia.gov.

STATE AIR POLLUTION CONTROL BOARD

June 18, 2007 - 9 a.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street, First Floor Conference Room, Richmond, Virginia. 

The board is suspending the effective date of certain provisions of its regulation entitled: Regulation for Emissions Trading, specifically the provisions concerning nonattainment area requirements (9 VAC 5-140-1061, 9 VAC 5-140-1062, 9 VAC 5-140-2061, 9 VAC 5-140-

2062, 9 VAC 5-140-3061, and 9 VAC 5-140-3062) and seeking comment on the changes made to these provisions from publication of the proposed regulation to publication of the final regulation. (See the full notice in the Regulations section of this Register.)

Contact: Mary E. Major, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, email memajor@deq.virginia.gov.

ALCOHOLIC BEVERAGE CONTROL BOARD

June 18, 2007 - 9 a.m. -- Open Meeting

July 2, 2007 - 9 a.m. -- Open Meeting

July 16, 2007 - 9 a.m. -- Open Meeting

August 6, 2007 - 9 a.m. -- Open Meeting


August 20, 2007 - 9 a.m. -- Open Meeting

† September 5, 2007 - 9 a.m. -- Open Meeting

† September 10, 2007 - 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 as necessary.

Contact: W. Curtis Coleburn, III, Secretary to the Board, Alcoholic Beverage Control Board, 2901 Hermitage Rd., Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, (804) 213-4687/TTY , email curtis.coleburn@abc.virginia.gov.

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS


† June 14, 2007 - 9 a.m. -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. 

An informal fact-finding conference.

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 email apelscidla@dpor.virginia.gov.

June 14, 2007 - 9 a.m. -- Open Meeting


Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. 

A regular meeting to discuss 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 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 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or email apelscidla@dpor.virginia.gov.


July 26, 2007 - 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. 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 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or email apelscidla@dpor.virginia.gov.


August 9, 2007 - 9 a.m. -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, Richmond, Virginia. 

A meeting of the Professional Engineers Section to conduct 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 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 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or email apelscidla@dpor.virginia.gov.


August 14, 2007 - 9 a.m. -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, 5th Floor, Virginia. 

A meeting of the Landscape Architects Section to conduct 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 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.


Calendar of Events

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 email apelscidla@dpor.virginia.gov.

August 16, 2007 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 5th Floor, Richmond, Virginia. 

A meeting of the Land Surveyors Section to conduct 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 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 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or email apelscidla@dpor.virginia.gov.

August 21, 2007 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 5th Floor, Richmond, Virginia. 


A meeting of the Interior Designers Section to conduct 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 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 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or email apelscidla@dpor.virginia.gov.

ART AND ARCHITECTURAL REVIEW BOARD

July 6, 2007 - 10 a.m. -- Open Meeting

August 3, 2007 - 10 a.m. -- Open Meeting


† September 7, 2007 - 10 a.m. -- Open Meeting
Science Museum of Virginia, 2500 West Broad Street, Forum Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A monthly meeting to review projects submitted by state agencies. Art and Architectural Review Board submittal forms and submittal instructions can be downloaded by visiting the DGS Forms Center at www.dgs.virginia.gov. 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: Brian H. Ohlinger, Chairman, Art and Architectural Review Board, 700 W. Grace St., Suite 2200, Richmond, VA 23284, telephone (804) 827-9647, FAX (804) 827-1288 or email bjohlinger@vcu.edu.

VIRGINIA COMMISSION FOR THE ARTS

June 14, 2007 - 8 a.m. -- Open Meeting
Museum of the Shenandoah Valley, Winchester, Virginia.  (Interpreter for the deaf provided upon request)


June 15, 2007 - 8 a.m. -- Open Meeting
Shenandoah University, Board Room, Winchester, Virginia.  (Interpreter for the deaf provided upon request)

A quarterly meeting of the commissioners to review and approve the recommendations of the 07-08 grant panels.


Contact: Peggy Baggett, Executive Director, Virginia Commission for the Arts, 223 Governor St., Richmond, VA 23219, telephone (804) 225-3132, FAX (804) 225-4327, (804) 225-3132/TTY , email peggy.baggett@arts.virginia.gov.

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

NOTE: CHANGE IN MEETING DATE


† August 22, 2007 - 9 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. 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, Virginia Board for Asbestos, Lead, and Home Inspectors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, (804) 367-9753/TTY , email alhi@dpor.virginia.gov.

OFFICE OF THE ATTORNEY GENERAL

Regulatory Reform Task Force

† June 19, 2007 - 2 p.m. -- Open Meeting
General Assembly Building, House Room D, Richmond, Virginia. 

A meeting of the Full Task Force on Government and Regulatory Reform the Attorney General has formed.

Recommendations from the Agriculture, Small Business, and Health Care Working Groups will be discussed.

Contact: Nicole Riley, Special Assistant for Legislative Affairs, Office of the Attorney General, 900 E. Main St., Richmond, VA, telephone (804) 786-2071, FAX (804) 371-0200, email regreform@oag.state.va.us.

AUCTIONEERS BOARD

July 12, 2007 - 10 a.m. -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, 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. 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: Marian H. Brooks, Regulatory Board Administrator, Auctioneers Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-0795, (804) 367-9753/TTY ☎, email auctioneers@dpor.virginia.gov.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

† July 12, 2007 - 9:30 a.m. -- Open Meeting

Department of Health Professions, Alcoa Building, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ☎

A Special Conference Committee will convene an informal conference to inquire into allegations that may have violated certain laws and regulations governing the practice of audiology and speech language pathology. The committee will meet in open and closed sessions pursuant to the Code of Virginia. Public comment will not be received.

Contact: Lisa R. Hahn, Executive Director, Board of Audiology and Speech-Language Pathology, Alcoa Building, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9111, FAX (804) 662-9523, (804) 662-7197/TTY ☎, email lisa.hahn@dhp.virginia.gov.

† July 12, 2007 - 9 a.m. -- Public Hearing

Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ☎

August 10, 2007 - 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 Audiology and Speech-Language Pathology intends to amend regulations entitled **18 VAC 30-20, Regulations Governing the Practice of Audiology and Speech-Language Pathology**. The purpose of the proposed action is to establish criteria for provisional licensure in audiology.

Statutory Authority: § 54.1-2400 and Chapter 26 (§ 54.1-2600 et seq.) of the Code of Virginia.

Public comments may be submitted until August 10, 2007, to Lisa R. Hahn, Executive Director, Board of Audiology and Speech-Language Pathology, Alcoa Building, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9111, FAX (804) 662-9523, (804) 662-7197/TTY ☎, email lisa.hahn@dhp.virginia.gov.

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.

† August 10, 2007 - 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 Audiology and Speech-Language Pathology intends to amend regulations entitled **18 VAC 30-10, Public Participation Guidelines**. The purpose of the proposed action is to clarify and update certain provisions of the regulation pursuant to recommendations from a periodic review.

Statutory Authority: §§ 2.2-4007.02 and 54.1-2400 of the Code of Virginia.

Contact: Lisa R. Hahn, Executive Director, Board of Audiology and Speech-Language Pathology, Alcoa Building, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9111, FAX (804) 662-9523, (804) 662-7197/TTY ☎, email lisa.hahn@dhp.virginia.gov.

† September 6, 2007 - 9:30 a.m. -- Open Meeting

Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ☎

A meeting to discuss general business matters 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. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at 662-9924 at least 10 days prior to the meeting so suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Calendar of Events

Contact: Lisa R. Hahn, Executive Director, Board of Audiology and Speech-Language Pathology, Alcoa Building, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9111, FAX (804) 662-9523, (804) 662-7197/TTY ☎, email lisa.hahn@dhp.virginia.gov.

VIRGINIA AVIATION BOARD

† **June 19, 2007 - 6 p.m.** -- Open Meeting

† **June 20, 2007 - 9 a.m.** -- Open Meeting

Wyndham Richmond Airport, 4700 South Laburnum Avenue, Richmond, 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 prior to the meeting if assistance is needed.

Contact: Carolyn Toth, Executive Assistant, Virginia Aviation Board, 5702 Gulfstream Rd., Richmond, VA 23250, telephone (804) 236-3626, FAX (804) 236-3635, email carolyn.toth@doav.virginia.gov.

BOARD FOR BARBERS AND COSMETOLOGY

NOTE: CHANGE IN MEETING DATE

† **July 30, 2007 - 9 a.m.** -- Open Meeting

August 6, 2007 - 9 a.m. -- Canceled

Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. ♿

A meeting to discuss general business matters 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. 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: 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 ☎, email barbercosmo@dpor.virginia.gov.

BOARD FOR BRANCH PILOTS

July 26, 2007 - 8:30 a.m. -- Open Meeting

Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia. ♿

A meeting of the Examination Administrators 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. 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 Branch Pilots, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, email branchpilots@dpor.virginia.gov.

July 27, 2007 - 9:30 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. All meetings are subject to cancellation. 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 Branch Pilots, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, email branchpilots@dpor.virginia.gov.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

June 18, 2007 - 10 a.m. -- Open Meeting

Location to be announced.

A regular business meeting to review 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, email david.dowling@dcr.virginia.gov.

August 14, 2007 - 10 a.m. -- Open Meeting

James Monroe Building, 101 North 14th Street, 17th Floor Conference Room, Richmond, Virginia.

A regular meeting of the Northern Area Review Committee to review 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, email david.dowling@dcr.virginia.gov.

August 14, 2007 - 2 p.m. -- Open Meeting


James Monroe Building, 101 North 14th Street, 17th Floor Conference Room, Richmond, Virginia.

A regular meeting of the Southern Area Review Committee to review 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, email david.dowling@dcr.virginia.gov.

STATE BOARD FOR COMMUNITY COLLEGES


July 18, 2007 - 1:30 p.m. -- Open Meeting

James Monroe Building, 101 North 14th Street, 15th Floor, Room 315, Godwin-Hamel Board Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


The Budget and Finance Committee and the Academic, Student Affairs and Workforce Development Committee will meet at 1:30 p.m. The Audit Committee will meet at 3 p.m. and the Facilities Committee will meet with the Personnel Committee at 3:30 p.m.

Contact: Jeffrey J. Kraus, Assistant Vice Chancellor for Public Relations, State Board for Community Colleges, 101 N. 14th St., 15th Floor, Richmond, VA 23219, telephone (804) 819-4961, FAX (804) 819-4768, (804) 371-8504/TTY 

July 19, 2007 - 9 a.m. -- Open Meeting

James Monroe Building, 101 North 14th Street, 15th Floor, Room 315, Godwin-Hamel Board Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A meeting of the full board. Public comment may be received upon written notification at least five working days prior to the meeting.

Contact: D. Susan Hayden, Director of Public Affairs, State Board for Community Colleges, 101 N. 14th St., 15th Floor, Richmond, VA 23219, telephone (804) 819-4961, FAX (804) 819-4768, (804) 371-8504/TTY 

COMPENSATION BOARD

June 20, 2007 - 11 a.m. -- Open Meeting

† July 18, 2007 - Noon -- Open Meeting

Compensation Board, 102 Governor Street, Lower Level, Room LL22, Richmond, Virginia. 

A monthly board meeting.

Contact: Cindy Waddell, Compensation Board, P.O. Box 710, Richmond, VA 23218, telephone (804) 225-3308, FAX (804) 371-0235, email cindy.waddell@scb.virginia.gov.

DEPARTMENT OF CONSERVATION AND RECREATION

† June 11, 2007 - 12 p.m. -- Open Meeting

Noel C. Taylor Municipal Building, 215 Church Avenue, S.W., City Council's Conference Room, Room 451, Roanoke, Virginia.

A meeting of the Subcommittee on the Natural Area Preserve System to discuss the DCR natural preserve system and other 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, email david.dowling@dcr.virginia.gov.

June 14, 2007 - 9 a.m. -- Open Meeting

The Science Museum of Virginia, 2500 West Broad Street, RF & P Room, Richmond, Virginia.

A meeting of the Virginia Stormwater Management Program Regulations Technical Advisory Committee to assist the department in considering revisions to the Virginia Soil and Water Conservation Board's Virginia Stormwater Management Program (VSMP) Permit Regulations.

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, email david.dowling@dcr.virginia.gov.

† June 19, 2007 - 9 a.m. -- Open Meeting

The Science Museum of Virginia, 2500 West Broad Street, Discovery Room, Richmond, Virginia.

A Technical Advisory Committee meeting to assist the department in considering revisions to the Virginia Soil and Water Conservation Board's General Permit for Discharges of Stormwater from Municipal Separate Storm Sewer Systems.

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.

June 21, 2007 - Noon -- Open Meeting

July 19, 2007 - Noon -- Open Meeting

August 16, 2007 - Noon -- Open Meeting

Richmond City Hall, 900 East Broad Street, 5th Floor, Planning Commission Conference Room, Richmond, Virginia.

A regular meeting of the Falls of the James Scenic River Advisory Committee to discuss river issues.

Calendar of Events

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, email david.dowling@dcr.virginia.gov.

† **June 21, 2007 - 4 p.m.** -- Open Meeting
Horsepasture Ruritan Club Building, 16197 A.L. Philpott Highway, Martinsville, Virginia.

A meeting to discuss the Mayo River State Park Feasibility Study that was mandated in House Joint Resolution 709, passed by the 2007 General Assembly, and to answer any questions the public may have. DCR is charged with studying the feasibility of establishing a state park along the South Mayo and North Mayo Rivers in Henry County and evaluating the rivers for possible Scenic River designation.

Contact: John R. Davy, Division Director, Planning and Recreation Resources, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-1119, FAX (804) 786-6141, email john.davy@dcr.virginia.gov.

Virginia Land Conservation Foundation

June 13, 2007 - 10 a.m. -- Open Meeting
Science Museum of Virginia, 2500 West Broad Street, Richmond, Virginia.

A regular business meeting.

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, email david.dowling@dcr.virginia.gov.

Virginia Soil and Water Conservation Board


July 19, 2007 - 9:30 a.m. -- Open Meeting
Location to be announced.

A regular board meeting.


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, email david.dowling@dcr.virginia.gov.

BOARD FOR CONTRACTORS


June 12, 2007 - 9 a.m. -- Canceled
† **June 13, 2007 - 9 a.m.** -- Open Meeting
† **June 14, 2007 - 9 a.m.** -- Open Meeting
June 19, 2007 - 9 a.m. -- Open Meeting
June 21, 2007 - 9 a.m. -- Open Meeting
June 26, 2007 - 9 a.m. -- Open Meeting

July 10, 2007 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. 


An informal fact-finding conference.

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 , email contractors@dpor.virginia.gov.


July 24, 2007 - 9 a.m. -- Open Meeting

† **September 11, 2007 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulations, 3600 West Broad Street, 4th Floor, Richmond, Virginia. 


A 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 discussed in closed session. 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: 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 , email contractors@dpor.virginia.gov.


August 28, 2007 - 1 p.m. -- Canceled

† **September 10, 2007 - 4 p.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. 


A quarterly meeting of the Board for Contractors Committee. The meeting starts at the conclusion of the Board for Contractors regular meeting.

Contact: Kevin Hoeft, Regulatory Boards Administrator, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-9753/TTY , email contractors@dpor.virginia.gov.


BOARD OF CORRECTIONAL EDUCATION

June 22, 2007 - 10 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, 7th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to discuss general business.


Contact: Patty Ennis, Board Clerk, Board of Correctional Education, 101 N. 14th St., 7th Floor, Richmond, VA 23219, telephone (804) 225-3314, FAX (804) 786-7642, (804) 371-8647/TTY , email patricia.ennis@dce.virginia.gov.

BOARD OF CORRECTIONS

July 17, 2007 - 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 23225, telephone (804) 674-3124, FAX (804) 674-3236, email barbara.woodhouse@vadoc.virginia.gov.

July 17, 2007 - 11 a.m. -- Open Meeting
 Department of Corrections, 6900 Atmore Drive, 3rd Floor Board Room, 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, email barbara.woodhouse@vadoc.virginia.gov.

July 18, 2007 - 9:30 a.m. -- Open Meeting
 Department of Corrections, 6900 Atmore Drive, 3rd Floor, Room 3054, 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, email barbara.woodhouse@vadoc.virginia.gov.

July 18, 2007 - 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 presentation to and 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, email barbara.woodhouse@vadoc.virginia.gov.

BOARD OF COUNSELING

† August 9, 2007 - 1 p.m. -- Public Hearing
 Department of Health Professions, 6603 West Broad Street, Board Room, 5th Floor, Richmond, Virginia.

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

18 VAC 115-20, Regulations Governing the Practice of Professional Counseling.

18 VAC 115-50, Regulations Governing the Practice of Marriage and Family Therapists.

18 VAC 115-60. Regulations Governing the Licensure of Substance Abuse Professionals.

The purpose of the proposed action is to update and provide for consistency of regulations relating to supervision, residency, and endorsement requirements for the three professions licensed by this board.

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

Public comments may be submitted until August 10, 2007, to Evelyn B. Brown, Executive Director, Board of Counseling, 6603 West Broad Street, 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.


† August 10, 2007 - 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 Counseling intends to amend regulations entitled **18 VAC 115-10, Public Participation Guidelines**. The purpose of the proposed action is to clarify and update the public participation guidelines.

Statutory Authority: §§ 2.2-4007.02 and 54.1-2400 of the Code of Virginia.

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 email evelyn.brown@dhp.virginia.gov.

CRIMINAL JUSTICE SERVICES BOARD

June 14, 2007 - 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, 8th Street Office Bldg., 805 E. Broad St., 10th Floor, Richmond, VA 23219, telephone (804) 225-4086, FAX (804) 786-0588, email leon.baker@dcjs.virginia.gov.

Calendar of Events

September 13, 2007 - 9 a.m. -- Public Hearing
General Assembly Building, 9th and Broad Streets, House
Room D, Richmond, Virginia. ☎

July 27, 2007 - 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 Criminal Justice Services Board
intends to amend regulations entitled **6 VAC 20-80, Rules
Relating to Certification of Criminal Justice
Instructors**. The purpose of the proposed action is to
enhance the effectiveness of criminal justice instructors.

Statutory Authority: § 9.1-10 of the Code of Virginia.

Contact: Judith Kirkendall, Regulatory Coordinator,
Department of Criminal Justice Services, 202 N. 9th St., 10th
Floor, Richmond, VA 23219, telephone (804) 786-8003,
FAX (804) 786-0410 or email
judith.kirkendall@dcjs.virginia.gov.

BOARD OF DENTISTRY

June 22, 2007 - 9 a.m. -- Open Meeting

August 17, 2007 - 9 a.m. -- Open Meeting

Department of Health Professions, 6603 West Broad Street,
5th Floor, Richmond, Virginia. ☎

Informal conferences of Special Conference Committee B.
There will not be a public comment period.

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) 662-7246, (804) 662-7197/TTY ☎, email
sandra.reen@dhp.virginia.gov.

† **June 29, 2007 - 9 a.m.** -- Open Meeting

Department of Health Professions, 6603 West Broad Street,
5th Floor, Richmond, Virginia. ☎

A meeting of the Credentials Committee to hold informal
conferences. There will not be a public comment period.

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) 662-7246, (804) 662-7197/TTY ☎, email
sandra.reen@dhp.virginia.gov.

June 29, 2007 - 9 a.m. -- Open Meeting

August 3, 2007 - 9 a.m. -- Open Meeting

Department of Health Professions, 6603 West Broad Street,
5th Floor, Richmond, Virginia. ☎

Informal conferences of Special Conference Committee C.
There will not be a public comment period.

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) 662-7246, (804) 662-7197/TTY ☎, email
sandra.reen@dhp.virginia.gov.

† **June 29, 2007 - 10 a.m.** -- Open Meeting

† **September 6, 2007 - 9 a.m.** -- Open Meeting

Department of Health Professions, 6603 West Broad Street,
5th Floor, Richmond, Virginia. ☎

A formal hearing. There will not be a public comment
period.

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) 662-7246, (804) 662-7197/TTY ☎, email
sandra.reen@dhp.virginia.gov.

July 13, 2007 - 9 a.m. -- Open Meeting

Department of Health Professions, 6603 West Broad Street,
5th Floor, Richmond, Virginia. ☎

A meeting of the Special Conference Committee A to hold
informal conferences. There will not be a public comment
period.

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) 662-7246, (804) 662-7197/TTY ☎, email
sandra.reen@dhp.virginia.gov.

† **August 3, 2007 - 8:30 a.m.** -- Public Hearing

Department of Health Professions, 6603 West Broad Street,
5th Floor, Board Room 3, Richmond, Virginia. ☎

Notice is hereby given in accordance with § 2.2-4007 of the
Code of Virginia that the Board of Dentistry intends to
amend regulations entitled **18 VAC 60-20, Regulations
Governing the Practice of Dentistry and Dental
Hygiene**. The purpose of the proposed action is to expand
the time limit for practice of a dental hygienist on an order
from a dentist from seven to 10 months.

Public comments may be submitted until August 10, 2007, to
Sandra Reen, Executive Director, Board of Dentistry, Alcoa
Bldg., 6603 West Broad Street, 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 EDUCATION

† **August 10, 2007** - 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 Dentistry intends to amend regulations entitled **18 VAC 60-10, Public Participation Guidelines**. The purpose of the proposed action is to clarify and update the board's public participation guidelines.

Statutory Authority: §§ 2.2-4007.02 and 54.1-2400 of the Code of Virginia.

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) 662-7246, (804) 662-7197/TTY ☎, email sandra.reen@dhp.virginia.gov.

DESIGN BUILD/CONSTRUCTION MANAGEMENT REVIEW BOARD

June 21, 2007 - 11 a.m. -- Open Meeting
July 19, 2007 - 11 a.m. -- Open Meeting
August 16, 2007 - 11 a.m. -- Open Meeting
 Department of General Services, 202 North Ninth Street, Room 412, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A monthly meeting to review requests submitted by localities to use the design build or construction management type contracts. Contact the Division of Engineering and Buildings to confirm this meeting. Board rules and regulations can be obtained on-line at www.dgs.virginia.gov under DGS Forms, Form #DGS-30-904.

Contact: Kristy H. Martin, Administrative Assistant, Division of Engineering and Buildings, Department of General Services, 202 N. Ninth St., Richmond, VA 23219, telephone (804) 786-3263, FAX (804) 371-7934, (804) 786-6152/TTY ☎ email rhonda.bishton@dgs.virginia.gov.

VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP

June 14, 2007 - 9 a.m. -- Open Meeting
 Marriott Waterside, 235 East Main Street, Norfolk, Virginia.

A meeting of the Board of Directors to discuss issues pertaining to the Virginia Economic Development Partnership.

Contact: Kimberly M. Ellett, Senior Executive Assistant, Virginia Economic Development Partnership, P.O. Box 798, Richmond, VA 23218, telephone (804) 545-5610, FAX (804) 545-5611, email kelleth@yesvirginia.org.

June 28, 2007 - 9 a.m. -- Open Meeting
July 25, 2007 - 9 a.m. -- Open Meeting
 James Monroe Building, 101 North 14th Street, 22nd Floor, Jefferson Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular business meeting of the board. Public comment will be received. The agenda and the supporting materials will be posted on the Friday prior to the meeting on http://www.doe.virginia.gov/VDOE/VA_Board/bd-sched.html.

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, email margaret.roberts@doe.virginia.gov.

July 18, 2007 - 9 a.m. -- Open Meeting
July 19, 2007 - 9 a.m. -- Open Meeting
July 20, 2007 - 9 a.m. -- Open Meeting
 Comfort Inn Conference Center, 3200 West Broad Street, Richmond, Virginia.

A meeting of the State Special Education Advisory Committee. For more information on times and agendas go to <http://www.doe.virginia.gov/VDOE/Instruction/Sped/sseac.html> or call the Department of Education Special Education and Student Services office at 804-225-3252 or (TTY) 800-422-1098.

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, email margaret.roberts@doe.virginia.gov.

STATE BOARDS OF EDUCATION; JUVENILE JUSTICE; MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES; AND SOCIAL SERVICES

July 9, 2007 - 6:30 p.m. -- Public Hearing
 First Campbell Square Building, 210 1st Street, Roanoke, Virginia. ♿

July 10, 2007 - 6:30 p.m. -- Public Hearing
 Tuckahoe Area Library, 1901 Starling Drive, Richmond, Virginia. ♿

July 11, 2007 - 6:30 p.m. -- Public Hearing
 Department of Social Services, Virginia Beach Regional Office, Pembroke IV, 291 Independence Boulevard, 3rd Floor, Virginia Beach, Virginia. ♿

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Boards of Education;

Calendar of Events

Juvenile Justice; Mental Health, Mental Retardation and Substance Abuse Services; and Social Services intends to repeal regulations entitled **22 VAC 42-10, Standards for Interdepartmental Regulation of Children's Residential Facilities**; and adopt regulations entitled **22 VAC 42-11, Standards for Interdepartmental Regulation of Children's Residential Facilities**. The purpose of the proposed action is to repeal the existing regulation 22 VAC 42-10, and promulgate a new regulation, 22 VAC 42-11. These standards will protect vulnerable children who are separated from their families and reside in children's residential facilities, and assure that an acceptable level of care and education are provided. The new regulation will (i) comply with federal regulation, (ii) ensure that services provided to residents are appropriate for their needs, (iii) bring the requirements in line with the current industry practices, (iv) clarify frequently misinterpreted standards, and (v) delete unnecessary requirements.

Statutory Authority: §§ 16.1-309.9, 22.1-321, 22.1-323, 22.1-323.2, 37.2-407, 37.2-408, 63.2-203, 63.2-217, 63.2-1701, 63.2-1703, 63.2-1737, 66-10 and 66-24 of the Code of Virginia.

Public comments may be submitted until July 27, 2007.

Contact: Charlene Vincent, Coordinator, Office of Interdepartmental Regulation, Department of Social Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7097, FAX (804) 726-7095 or email charlene.vincent@dss.virginia.gov.

SECRETARY OF EDUCATION

June 20, 2007 - 10 a.m. -- Open Meeting

July 18, 2007 - 10 a.m. -- Open Meeting

August 15, 2007 - 10 a.m. -- Open Meeting

Capital One West Creek Campus, 1500 Capital One Drive, Richmond, Virginia.

A meeting of the Start Strong Pre-K Task Force.

Contact: Kendall Tyree, Special Assistant to the Secretary of Education, 1111 E. Broad St., Richmond, VA 23219, telephone (804) 692-2550, email kendall.tyree@governor.virginia.gov.

† July 26, 2007 - 12 p.m. -- Open Meeting

Patrick Henry Building, 1111 East Broad Street, Richmond, Virginia.

A meeting of the Governor's P-16 Council.

Contact: Kendall Tyree, Special Assistant to the Secretary of Education, 1111 E. Broad St., Richmond, VA 23219, telephone (804) 692-2550, email kendall.tyree@governor.virginia.gov.

DEPARTMENT OF EMPLOYMENT DISPUTE RESOLUTION

† June 14, 2007 - 10 a.m. -- Open Meeting

Oliver W. Hill Building, 102 Governor Street, Richmond, Virginia.

A quarterly meeting of the Interagency Advisory Council on ADR.

Contact: Claudia T. Farr, Director, EDR, Department of Employment Dispute Resolution, 830 E. Main St., Richmond, VA 23219, telephone (804) 786-7994, email vadra@edr.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

June 14, 2007 - 11 a.m. -- Open Meeting

Hampton Roads Planning District, 723 Woodlake Drive, Chesapeake, Virginia. ♿

A regular meeting of the Virginia Recycling Markets Development Council.

Contact: Thomas J. Smith, PE, Prince William County Public Works, Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA, telephone (703) 792-6252, email tsmith@pwcgov.org.

† June 19, 2007 - 10 a.m. -- Open Meeting

Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, Virginia. ♿

A meeting of the advisory committee assisting in the development of a TMDL for bacteria impairments in the free-flowing portion of Neabsco Creek in Prince William County. The public notice appears in the Virginia Register of Regulations on June 11, 2007.

Contact: Katie Conaway, Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3804, email mkconaway@deq.virginia.gov.

† June 20, 2007 - 7 p.m. -- Open Meeting

Jepson Science Center, Fredericksburg Campus, Mary Washington University, Room 100, Fredericksburg, Virginia. ♿

The first public meeting on the development of a bacteria TMDL for the tidal freshwater Rappahannock River. The public notice appears in the Virginia Register of Regulations on June 11, 2007. The public comment period begins on June 20, 2007, and ends on July 20, 2007.

Contact: Katie Conaway, Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3804, email mkconaway@deq.virginia.gov.

† **June 20, 2007 - 7 p.m.** -- Open Meeting
North River Elementary School, 3395 Scenic Highway (Rt. 42), Mt. Solon, Virginia. ☎

The first public meeting on the development of a TMDL implementation plan for Mossy Creek, Long Glade Run and Naked Creek in Augusta County. The public notice appears in the Virginia Register of Regulations on June 11, 2007. The public comment period begins on June 20, 2007, and ends on July 20, 2007.

Contact: Tara Sieber, Department of Environmental Quality, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7870, FAX (804) 698-4346, email tlsieber@deq.virginia.gov.

† **July 17, 2007 - 9 a.m.** -- Open Meeting
Department of Environmental Quality, 629 East Main Street, 1st Floor Conference Room, Richmond, Virginia. ☎

A regular meeting of the Ground Water Protection Steering Committee.

Contact: Mary Ann Massie, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4042, email mamassie@deq.virginia.gov.

July 19, 2007 - 3 p.m. -- Open Meeting
Tappahannock USDA Service Center, 772 Richmond Beach Road, Meeting Room, Tappahannock, Virginia. ☎

A meeting on the advisory committee assisting in the development of a bacteria TMDL for Hoskins Creek and its tributaries in Essex County. The public notice appears in the Virginia Register of Regulations on April 30, 2007.

Contact: Chris French, Department of Environmental Quality, 4949-A Cox Rd., Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804) 527-5106, email rcfrench@deq.virginia.gov.

VIRGINIA FIRE SERVICES BOARD

August 16, 2007 - 10 a.m. -- Open Meeting
Convention Center, Hampton, Virginia. ☎

An Executive Committee meeting.

Contact: Brook Pittinger, Virginia Fire Services Board, 1005 Technology Park Dr., Glen Allen, VA 23059-4500, telephone (804) 371-0220, email brook.pittinger@vdfp.virginia.gov.

August 17, 2007 - 10 a.m. -- Open Meeting
Convention Center, Hampton, Virginia. ☎

Meetings of the following committees:

- 10 a.m. - Education and Training
- 2 p.m. - Fire Prevention and Control
- 3 p.m. - Administration, Policy and Finance

Contact: Brook Pittinger, Department of Fire Services, 1005 Technology Park Dr., Glen Allen, VA 23059, telephone (804) 371-0220, email brook.pittinger@vdfp.virginia.gov.

August 18, 2007 - 10 a.m. -- Open Meeting
Department of Forestry, 900 Natural Resources Drive, Charlottesville, Virginia. ☎

A full board meeting.

Contact: Brook Pittinger, Virginia Fire Services Board, 1005 Technology Park Dr., Glen Allen, VA 23059, telephone (804) 371-0220, email brook.pittinger@vdfp.virginia.gov.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

June 28, 2007 - 9 a.m. -- Open Meeting

July 31, 2007 - 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 review and discuss discipline cases.

Contact: Elizabeth Young, Executive Director, Board of Funeral Directors and Embalmers, Alcoa Building, 6603 West Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9907, FAX (804) 662-9523, (804) 662-7197/TTY ☎, email elizabeth.young@dhp.virginia.gov.

CHARITABLE GAMING BOARD

† **September 11, 2007 - 10 a.m.** -- Open Meeting
Science Museum of Virginia, 2500 West Broad Street, RF and P Forum Room, Richmond, Virginia.

A regular meeting.

Contact: Harry M. Durham, Interim Director, Charitable Gaming Board, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 786-2444, FAX (804) 786-1079, email harry.durham@dcg.virginia.gov.

BOARD FOR GEOLOGY

July 11, 2007 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A general business meeting to include 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. 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.

Calendar of Events

Contact: David E. Dick, Executive Director, Board for Geology, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, (804) 367-9753/TTY ☎, email geology@dpor.virginia.gov.

GOVERNOR'S HEALTHCARE REFORM COMMISSION

June 12, 2007 - 1 p.m. -- Open Meeting
James Madison University, 1301 Carrier Drive, Festival Conference and Student Center, Harrisonburg, Virginia.

A regular meeting. In person registration to speak will begin at 5:30 p.m. For directions call 703-993-1000 or visit www.gmu.edu/fairfax.

Contact: Heidi Dix, Assistant Secretary of Health and Human Resources, Office of Governor, 1111 E. Broad St., Richmond, VA 23219, telephone (804) 786-7765, email heidi.dix@governor.virginia.gov

June 12, 2007 - 5:30 p.m. -- Public Hearing
James Madison University, 1301 Carrier Drive, Festival Conference and Student Center, Harrisonburg, Virginia. ♿

The public is welcome to attend and make comments (three minutes max) on the Health Reform Commission. In person registration to speak will begin at 5:30 p.m. For directions call 540-568-2593 or visit www.jmu.edu/festival.

Contact: Heidi Dix, Assistant Secretary of Health and Human Resources, Office of Governor, 1111 E. Broad St., Richmond, VA 23219, telephone (804) 786-7765, email heidi.dix@governor.virginia.gov.

STATE BOARD OF HEALTH

June 12, 2007 - 7 p.m. -- Public Hearing
Virginia Beach Health Department, 4452 Corporation Lane, Large Conference Room, Virginia Beach, Virginia.

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 5-421, Food Regulations**. The purpose of the proposed action is to conform the existing regulations to the 2003 supplement of the 2001 federal Food and Drug Administration Food Code.

Statutory Authority: §§ 35.1-11 and 35.1-14 of the Code of Virginia.

Public comments may be submitted until June 15, 2007.

Contact: Gary Hagy, Director, Food and General Environmental Services, Department of Health, 109 Governor St., 5th Floor, Richmond, VA 23219, telephone (804) 864-7455, FAX (804) 864-7475 or email gary.hagy@vdh.virginia.gov.

DEPARTMENT OF HEALTH

June 12, 2007 - 9 a.m. -- Open Meeting
Department of Health, 109 Governor Street, 5th Floor Conference Room, Richmond, Virginia.

A meeting of the Authorized Onsite Soil Evaluator Regulations Advisory Committee to make recommendations to the commissioner regarding AOSE/PE policies and programs. The meeting will also be scheduled in remote locations via video conference.

Contact: Dwayne Roadcap, Program Manager, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-7462, FAX (804) 864-7476, email dwayne.roadcap@vdh.virginia.gov.

August 10, 2007 - 10 a.m. -- Open Meeting
Children's Hospital, 2924 Brook Road, Richmond, Virginia. ♿

A meeting of the Virginia Early Hearing Detection and Intervention Program Advisory Committee to assist the Department of Health in the implementation of the Virginia Early Hearing Detection and Intervention Program.

Contact: Pat Dewey, M.Ed, Program Manager, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-7713, email pat.dewey@vdh.virginia.gov.

State Emergency Medical Services Advisory Board

August 16, 2007 - 1 p.m. -- Open Meeting
Richmond Marriott West, 4240 Dominion Boulevard, Glen Allen, Virginia. ♿

A meeting of the Financial Assistance Review Committee (FARC). FARC is responsible for recommending to the Commissioner of Health monetary awards as stipulated in the Code of Virginia. The quarterly meeting is to discuss upcoming grant cycle and initiatives, problems with past grants and Rescue Squad Assistance Fund (RSAF) finances.

Contact: Amanda Davis, Grants Administrator, Department of Health, 109 Governor St., Suite UB-55, Richmond, VA 23219, telephone (804) 864-7600, FAX (804) 864-7580, toll-free (800) 523-6019, email amanda.davis@vdh.virginia.gov.

August 17, 2007 - 9 a.m. -- Open Meeting
Richmond Marriott West, 4240 Dominion Boulevard, Glen Allen, Virginia. ♿

A quarterly meeting of the Communications Committee to review and recommend policies on EMS communications and coordinate the development and implementation of communications and associated technology that support EMS operations at the local, regional and state level.

Contact: Ken Crumpler, Communications Coordinator, Department of Health, 109 Governor St., Suite UB-55, Richmond, VA 23219, telephone (804) 864-7600, FAX (804) 864-7580, toll-free (800) 523-6019, email ken.crumpler@vdh.virginia.gov.

August 17, 2007 - 1 p.m. -- Open Meeting
Richmond Marriott West, 4240 Dominion Boulevard, Glen Allen, Virginia. ♿

A quarterly meeting to provide advice and counsel regarding methods and procedures for planning, developing and maintaining a statewide emergency medical services (EMS) system to OEMS and the State Board of Health.

Contact: Gary R. Brown, Director, Department of Health, 109 Governor St., Suite UB-55, Richmond, VA 23219, telephone (804) 864-7600, FAX (804) 864-7580, toll-free (800) 523-6019, email gary.brown@vdh.virginia.gov.

Sewage Handling and Disposal Appeals Review Board

June 27, 2007 - 10 a.m. -- Open Meeting
August 8, 2007 - 10 a.m. -- Open Meeting
James Madison Building, 109 Governor Street, Main Floor Conference Room, Richmond, Virginia.

A meeting to hear all administrative appeals of denials of onsite sewage disposal system permits and appeals of refusals of indemnification requests filed pursuant to § 32.1-164.1:01 and render its decision on any such appeal, which decision shall be the final administrative decision.

Contact: Donna Tiller, Executive Secretary, Department of Health, 109 Governor St. Richmond, VA 23219, telephone (804) 864-7470, FAX (804) 864-7476, email donna.tiller@vdh.virginia.gov.

BOARD OF HEALTH PROFESSIONS

† **August 10, 2007** - 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 Health Professions intends to amend regulations entitled **18 VAC 75-10, Public Participation Guidelines**. The purpose of the proposed action is to clarify and update the regulations for public participation in the regulatory process.

Statutory Authority: §§ 2.2-4007.02 and 54.1-2400 of the Code of Virginia.

Contact: Elizabeth A. Carter, Ph.D., Executive Director, Board of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9910, FAX (804) 662-9943, or email elizabeth.carter@dhp.virginia.gov.

DEPARTMENT OF HEALTH PROFESSIONS

† **July 25, 2007 - 11 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia. ♿

A meeting of the Prescription Monitoring Program Advisory Committee to review practitioners notification education plan.

Contact: Ralph A. Orr, PMP, Program Manager, Department of Health Professions, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9129, FAX (804) 662-9240, (804) 662-7197/TTY ♿, email ralph.orr@dhp.virginia.gov.

† **August 10, 2007** - 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 Health Professions intends to amend regulations entitled **18 VAC 76-10, Public Participation Guidelines**. The purpose of the proposed action is to follow recommendations of a periodic review of regulations to update and clarify public participation guideline regulations.

Statutory Authority: §§ 2.2-4007.02 and 54.1-2505 of the Code of Virginia.

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 FOR HEARING AID SPECIALISTS


July 11, 2007 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, 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 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: 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 ♿, email hearingaidspec@dpor.virginia.gov.

Calendar of Events

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA


July 10, 2007 - 11:30 a.m. -- Open Meeting
Norfolk State University, Norfolk, Virginia. 

† September 11, 2007 - 11:30 a.m. -- Open Meeting
James Monroe Building, 101 North Street, Richmond, Virginia.


Council meeting times are approximate and subject to change. Committee meetings will begin in the morning. Agenda materials will be available on the website approximately one week prior to the meeting at www.schev.edu. A public comment period will be allocated on the meeting agenda. To be scheduled, those interested in making public comment should contact the person listed below no later than 5 p.m. three business days prior to the meeting date. At the time of the request, the speaker's name, address and topic must be provided. Each speaker will be given up to three minutes to address SCHEV. Speakers are asked to submit a written copy of their remarks at the time of comment.

Contact: Lee Ann Rung, State Council of Higher Education for Virginia, James Monroe Bldg., 101 N. 14th St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2602, FAX (804) 371-7911, email leeannrung@schev.edu.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

June 25, 2007 - 10 a.m. -- Open Meeting
The Jackson Center, 501 North 2nd Street, 1st Floor Boardroom, Richmond, Virginia. 

A regular business meeting.


Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7000, FAX (804) 371-7090, (804) 371-7089/TTY , email steve.calhoun@dhcd.virginia.gov.

† July 24, 2007 - 10 a.m. -- Public Hearing
Greater Richmond Convention Center, 403 North 3rd Street, Lecture Room, Room B-10, Richmond, Virginia.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled **13 VAC 5-63, Virginia Uniform Statewide Building Code (USBC)**. The purpose of the proposed action is to update regulations to the 2006 ICC model codes.

Statutory Authority: § 36-98 of the Code of Virginia.

Public comments may be submitted until August 11, 2007.


Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7000, FAX (804) 371-7090, (804) 371-7089/TTY , email steve.calhoun@dhcd.virginia.gov.

† July 24, 2007 - 10 a.m. -- Public Hearing
Greater Richmond Convention Center, 403 North 3rd Street, Lecture Room, Room B-10, Richmond, Virginia.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled **13 VAC 5-51, Virginia Statewide Fire Prevention Code**. The purpose of the proposed action is to update regulations to the 2006 ICC model codes.


Statutory Authority: § 27-97 of the Code of Virginia.

Public comments may be submitted until August 11, 2007.

Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7000, FAX (804) 371-7090, (804) 371-7089/TTY , email steve.calhoun@dhcd.virginia.gov.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

State Building Code Technical Review Board

June 15, 2007 - 10 a.m. -- Open Meeting
Department of Housing and Community Development, The Jackson Center, 501 North 2nd Street, Richmond, Virginia. 
(Interpreter for the deaf provided upon request)

A meeting to hear appeals concerning the application of the department's building and fire regulations and consider recommendations for future repeal or amendments to the regulations to be forwarded to the Board of Housing and Community Development.

Contact: Vernon W. Hodge, Secretary, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7150.

VIRGINIA COUNCIL ON HUMAN RESOURCES

July 19, 2007 - 9:30 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, PDS #4, Richmond, Virginia.

A quarterly meeting.

Contact: Barbara Tanner, Executive Assistant, Department of Human Resource Management, James Monroe Bldg., 101 N. 14th St., 13th Floor, Richmond, VA 23219, telephone

(804) 225-2237, FAX (804) 371-7401, email
barbara.tanner@dhrm.virginia.gov.


STATE BOARD OF JUVENILE JUSTICE


June 13, 2007 - 10 a.m. -- Open Meeting
Northwestern Regional Juvenile Detention Center, 145 Fort
Collier Road, Winchester, Virginia.


The Secure Services Committee and Nonsecure Services Committee meet at 9 a.m. to receive certification audit reports of several residential and nonresidential programs. The full board meets at 10 a.m. to take action on the certification reports and hear other such business as comes before the board. The board will receive public comment at each of its regular meetings. In order to allow the board sufficient time for its other business, the total time allotted to public comment will be limited to 30 minutes at the beginning of the meeting with additional time allotted at the end of the meeting for individuals who have not had a chance to be heard. Speakers will be limited to 10 minutes each with shorter time frames provided at the Chairman's discretion to accommodate large numbers of speakers. Those wishing to speak to the board are strongly encouraged to contact Deborah Hayes at 804-371-0704 three or more business days prior to the meeting. Persons not registered prior to the day of the board meeting will speak after those who have preregistered. Normally, speakers will be scheduled in the order that their requests are received. Where issues involving a variety of views are presented before the board, the board reserves the right to allocate the time available so as to insure that the board hears from different points of view on any particular issue. Groups wishing to address a single subject are urged to designate a spokesperson. Speakers are urged to confine their comments to topics relevant to the board's purview. In order to make the limited time available most effective, speakers are urged to provide multiple written copies of their comments or other material amplifying their views. Please provide at least 15 written copies if you are able to do so.

Contact: Deborah C. Hayes, Administrative Assistant, Department of Juvenile Justice, 700 Centre, 700 E. Franklin St., 4th Floor, Richmond, VA 23219, telephone (804) 371-0704, FAX (804) 371-0725.

STATE BOARDS OF EDUCATION; JUVENILE JUSTICE; MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES; AND SOCIAL SERVICES

July 9, 2007 - 6:30 p.m. -- Public Hearing
First Campbell Square Building, 210 1st Street, Roanoke, Virginia. 

July 10, 2007 - 6:30 p.m. -- Public Hearing
Tuckahoe Area Library, 1901 Starling Drive, Richmond, Virginia. 

July 11, 2007 - 6:30 p.m. -- Public Hearing
Department of Social Services, Virginia Beach Regional Office, Pembroke IV, 291 Independence Boulevard, 3rd Floor, Virginia Beach, Virginia. 

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Boards of Education; Juvenile Justice; Mental Health, Mental Retardation and Substance Abuse Services; and Social Services intends to repeal regulations entitled **22 VAC 42-10, Standards for Interdepartmental Regulation of Children's Residential Facilities;** and adopt regulations entitled **22 VAC 42-11, Standards for Interdepartmental Regulation of Children's Residential Facilities.** The purpose of the proposed action is to repeal the existing regulation 22 VAC 42-10, and promulgate a new regulation, 22 VAC 42-11. These standards will protect vulnerable children who are separated from their families and reside in children's residential facilities, and assure that an acceptable level of care and education are provided. The new regulation will (i) comply with federal regulation, (ii) ensure that services provided to residents are appropriate for their needs, (iii) bring the requirements in line with the current industry practices, (iv) clarify frequently misinterpreted standards, and (v) delete unnecessary requirements.

Statutory Authority: §§ 16.1-309.9, 22.1-321, 22.1-323, 22.1-323.2, 37.2-407, 37.2-408, 63.2-203, 63.2-217, 63.2-1701, 63.2-1703, 63.2-1737, 66-10 and 66-24 of the Code of Virginia.

Public comments may be submitted until July 27, 2007.

Contact: Charlene Vincent, Coordinator, Office of Interdepartmental Regulation, Department of Social Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7097, FAX (804) 726-7095 or email charlene.vincent@dss.virginia.gov.

Calendar of Events

DEPARTMENT OF LABOR AND INDUSTRY

Virginia Apprenticeship Council

NOTE: CHANGE IN MEETING TIME AND LOCATION

June 21, 2007 - 2:30 p.m. -- Open Meeting
Williamsburg Hospitality House, 415 Richmond Road,
Williamsburg, Virginia.

A general business meeting of the Virginia Apprenticeship Council.

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 ☎, email bgd@doli.virginia.gov.

Safety and Health Codes Board

June 26, 2007 - 10 a.m. -- Open Meeting
State Corporation Commission, 1300 East Main Street,
Courtroom A, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to conduct general business.

Contact: Regina P. Cobb, Agency Management Analyst Senior, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-0610, FAX (804) 786-8418, (804) 786-2376/TTY ☎, email rlc@doli.virginia.gov.

STATE LIBRARY BOARD

June 11, 2007 - 10:30 a.m. -- Open Meeting
The Library of Virginia, 800 East Broad Street, Richmond, Virginia. ♿

A meeting to discuss matters pertaining to the Library of Virginia and the Library Board.

Contact: Jean H. Taylor, Executive Secretary Senior, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-8000, telephone (804) 692-3525, FAX (804) 692-3594, (804) 692-3976/TTY ☎, email jtaylor@lva.lib.va.us.

COMMISSION ON LOCAL GOVERNMENT

† **July 16, 2007 - 10 a.m.** -- Open Meeting
Department of Housing and Community Development, 501 North Second Street Richmond, Virginia. ♿

A regular business meeting.

Contact: Susan Williams, Commission on Local Government, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 786-6508, FAX (804) 371-7090, email susan.williams@dhcd.virginia.gov.

BOARD OF LONG-TERM CARE ADMINISTRATORS

July 10, 2007 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Richmond, Virginia. ♿

A meeting to discuss board matters.

Contact: Lisa Russell Hahn, Executive Director, Board of Long-Term Care Administrators, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9930, FAX (804) 662-9943, (804) 662-7197/TTY ☎, email lisa.hahn@dhp.virginia.gov.

LONGWOOD UNIVERSITY

June 14, 2007 - 8:30 a.m. -- Open Meeting
Kingsmill Resort, 1010 Kingsmill Road, Williamsburg, Virginia. ♿

A meeting to conduct regular business of the Board of Visitors.

Contact: Jeanne S. Hayden, Longwood University, Office of the President, 201 High St., Farmville, VA 23909, telephone (434) 395-2004.

June 15, 2007 - 8:30 a.m. -- Open Meeting
Kingsmill Resort, 1010 Kingsmill Road, Williamsburg, Virginia. ♿

A retreat for the Board of Visitors.

Contact: Jeanne S. Hayden, Longwood University, Office of the President, 201 High St., Farmville, VA 23909, telephone (434) 395-2004.

VIRGINIA MANUFACTURED HOUSING BOARD

† **July 25, 2007 - 1 p.m.** -- Open Meeting
Wyndham Hotel, 5700 Atlantic Avenue, Virginia Beach, Virginia.

A regular business meeting. The board meeting will be held in conjunction with the annual convention of the Virginia Manufactured and Modular Housing Association.

Contact: Curtis McIver, State Building Code Administrator, Virginia Manufactured Housing Board, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7161, FAX (804) 371-7092, (804) 371-7089/TTY ☎, email curtis.mciver@dhcd.virginia.gov.

MARINE RESOURCES COMMISSION

June 26, 2007 - 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 Ave., 3rd Floor, Newport News, VA 23607, telephone (757) 247-2215, FAX (757) 247-8101, toll-free (800) 541-4646, (757) 247-2292/TTY ☎, email jane.mccroskey@mrc.virginia.gov.

BOARD OF MEDICAL ASSISTANCE SERVICES

† **June 12, 2007 - 10 a.m.** -- Open Meeting
 † **September 11, 2007 - 10 a.m.** -- Open Meeting
 Department of Medical Assistance Services, 600 East Broad Street, 13th Floor Conference Room, Richmond, Virginia. ♿

A routine quarterly meeting.

Contact: Mamie White, 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 ☎, email mamie.white@dmas.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

June 15, 2007 - 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 30-10, State Plan Under Title XIX of the Social Security Act Medical Assistance Program; General Provisions.**

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

12 VAC 30-120, Waivered Services (Program of All-Inclusive Care for the Elderly (PACE))

The purpose of the proposed action is to implement a new community-based capitated program of all inclusive care for elderly (PACE) Medicaid recipients.

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

Contact: William Butler, Project Manager, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8886, FAX (804) 786-1680 or email william.butler@dmas.virginia.gov.

June 20, 2007 - 1 p.m. -- Open Meeting
 Department of Medical Assistance Services, 600 East Broad Street, 13th Floor, Board Room, Richmond, Virginia. ♿

A meeting of the Medicaid Transportation Advisory Committee to discuss Medicaid transportation issues.

Contact: Bob Knox, Transportation Supervisor, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8854, FAX (804)

786-6035, (800) 343-0634/TTY ☎, email robert.knox@dmas.virginia.gov.

August 2, 2007 - 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 Committee to discuss issues related to this committee.

Contact: Rachel Cain, Pharmacist, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-0428, (800) 343-0634/TTY ☎, email rachel.cain@dmas.virginia.gov.

† **August 10, 2007** - 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 30-70, Methods and Standards for Establishing Payment Rates; Inpatient Hospital Care.** The purpose of the proposed action is to clarify the definition of Medicaid utilization so the regulations and providers' cost reports are the same.

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

Contact: William Lessard, Director, Provider Reimbursement, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-4593, FAX (804) 786-1680 or email william.lessard@dmas.virginia.gov.

† **August 10, 2007** - 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 30-70, Methods and Standards for Establishing Payment Rates; Inpatient Hospital Services.**

12 VAC 30-80, Methods and Standards for Establishing Payment Rates; Other Types of Care.

12 VAC 30-90; Methods and Standards for Establishing Payment Rates for Long-Term Care.

The purpose of the proposed action is to implement provider reimbursement increases mandated by the 2006 Acts of the General Assembly.

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

Contact: Carla Russell, Provider Reimbursement, Department of Medical Assistance Services, 600 E. Broad St.,

Calendar of Events

Suite 1300, Richmond, VA 23219, telephone (804) 225-4586, FAX (804) 786-1680 or email carla.russell@dmas.virginia.gov.

† **August 10, 2007** - 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 30-80, Methods and Standards for Establishing Payment Rates; Other Types of Care**. The purpose of the proposed action is to change school division reimbursement to cost basis.

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

Contact: Lois Gray, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680 or email lois.gray@dmas.virginia.gov.

BOARD OF MEDICINE

† **June 21, 2007 - 8:30 a.m.** -- Public Hearing
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ☎

† **August 10, 2007** - 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 85-20, Regulations Governing the Practice of Medicine, Osteopathic Medicine, 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 Technologists-Limited.

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

The purpose of the proposed action is to set out the fees and renewal requirements for a person holding a restricted volunteer license.

Statutory Authority: Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code of Virginia.

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 ☎, email william.harp@dhp.virginia.gov.

† **June 21, 2007 - 8:30 a.m.** -- Public Hearing
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ☎

† **August 10, 2007** - 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 85-20, Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry and Chiropractic**. The purpose of the proposed action is to require a practitioner who makes claims in an advertisement to the public to maintain documentation in support of those claims.

Statutory Authority: Chapters 24 (§ 54.1-2400 et seq.) of Title 54.1 of the Code of Virginia.

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.

† **June 21, 2007 - 1:30 p.m.** -- Open Meeting

† **June 22, 2007 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ☎

Formal hearings to inquire into allegations that a certain practitioner may have violated certain laws and regulations governing the practice of medicine and other healing arts. The board may review cases with staff for case disposition, including consideration of consent orders for settlement of matter pending before the board. The board will meet in open and closed sessions pursuant to § 2.2-3711 A 7, 15 and/or 28. Public comment will not be received.

Contact: Renee S. Dixon, Discipline Case Manager, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-7009, FAX (804) 662-9517, (804) 662-7197/TTY ☎, email renee.dixon@dhp.virginia.gov.

June 21, 2007 - 1:30 p.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia. ☎

A meeting of the Credentials Committee to consider applicants for licensure and other matters of the board.

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 ☎, email william.harp@dhp.virginia.gov.

June 21, 2007 - 7:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia. ♿

A meeting of the Nominating Committee to develop a slate of officers to serve July 2007 to July 2008.

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 ☎, email william.harp@dhp.virginia.gov.

June 21, 2007 - 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 full board 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, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, email william.harp@dhp.virginia.gov.

July 11, 2007 - 9:15 a.m. -- Open Meeting
Williamsburg Marriott, 50 Kingsmill Road, Williamsburg, Virginia. ♿

July 19, 2007 - 9:30 a.m. -- Open Meeting
Holiday Inn, 3315 Ordway Drive, Roanoke, Virginia. ♿

July 25, 2007 - 8:45 a.m. -- Open Meeting

† **August 8, 2007 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ♿

July 31, 2007 - 9:15 a.m. -- Open Meeting
Holiday Inn Select, 2801 Plank Road, Fredericksburg, Virginia.

August 23, 2007 - 9 a.m. -- Open Meeting
Wytheville Meeting Center, 333 Community Boulevard, Wytheville, Virginia. ♿

A special conference committee will convene informal conferences to inquire into allegations that certain practitioners of medicine or 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 sessions 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 ☎, email renee.dixon@dhp.virginia.gov.

August 10, 2007 - 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 Executive Committee 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 ☎, email william.harp@dhp.virginia.gov.

† **August 10, 2007** - 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 85-10, Public Participation Guidelines**. The purpose of the proposed action is to clarify and update regulations as recommended by periodic review.

Statutory Authority: §§ 2.2-4007.02 and 54.1-2505 of the Code of Virginia.

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 ☎, email william.harp@dhp.virginia.gov.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES


June 20, 2007 - 10 a.m. -- Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The Virginia Mental Health Planning Council serves as the primary, ongoing forum for articulating and building consensus among consumers, families and other advocates,


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state agencies, and mental health providers and planners around needed values, priorities, and goals that will ensure a system of services and supports of the highest quality for children and adults. Agenda topics will include, but not be limited to, reviewing Federal Block Grant Application, making recommendations to the Director of Mental Health, the Commissioner and the State Board of the Department of Mental Health, Mental Retardation and Substance Abuse Services, and the Governor of the Commonwealth of Virginia and monitoring and evaluating the implementation of the state's Mental Health Plan.


Contact: Jo-Amrah S. McElroy, Mental Health Planner, Department of Mental Health, Mental Retardation and Substance Abuse Services, Office of Mental Health, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-2316, FAX (804) 371-2316.


† **July 2, 2007 - 10 a.m.** -- Public Hearing
Jefferson Building, 1220 Bank St., 8th Floor Conference Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A public hearing to receive comments on the Virginia Community Mental Health Services Performance Partnership Block Grant Application for federal fiscal year 2008. Copies of the application are available for review at the Office of Mental Health Services, 10th floor, Jefferson Building and at each community services board office. Comment may be made at the hearing or in writing by no later than July 2, 2007 to the Office of the Commissioner, Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS), P.O. Box 1797 Richmond, VA 23218. Any person wishing to make a presentation at the hearing should contact Jo-Amrah S. McElroy, M.Ed. Copies of oral presentations should be filed at the time of the hearing.

Contact: JoAmrah S. McElroy, M.Ed., Office of Mental Health, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218, telephone (804) 786-2316, FAX (804) 371-0091, (804) 371-8977/TTY 

July 9, 2007 - 6:30 p.m. -- Public Hearing
First Campbell Square Building, 210 1st Street, Roanoke, Virginia. 

July 10, 2007 - 6:30 p.m. -- Public Hearing
Tuckahoe Area Library, 1901 Starling Drive, Richmond, Virginia. 

July 11, 2007 - 6:30 p.m. -- Public Hearing
Department of Social Services, Virginia Beach Regional Office, Pembroke IV, 291 Independence Boulevard, 3rd Floor, Virginia Beach, Virginia. 


Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Boards of Education; Juvenile Justice; Mental Health, Mental Retardation and Substance Abuse Services; and Social Services intends to repeal regulations entitled **22 VAC 42-10, Standards for Interdepartmental Regulation of Children's Residential Facilities**; and adopt regulations entitled **22 VAC 42-11, Standards for Interdepartmental Regulation of Children's Residential Facilities**. The purpose of the proposed action is to repeal the existing regulation 22 VAC 42-10, and promulgate a new regulation, 22 VAC 42-11. These standards will protect vulnerable children who are separated from their families and reside in children's residential facilities, and assure that an acceptable level of care and education are provided. The new regulation will (i) comply with federal regulation, (ii) ensure that services provided to residents are appropriate for their needs, (iii) bring the requirements in line with the current industry practices, (iv) clarify frequently misinterpreted standards, and (v) delete unnecessary requirements.

Statutory Authority: §§ 16.1-309.9, 22.1-321, 22.1-323, 22.1-323.2, 37.2-407, 37.2-408, 63.2-203, 63.2-217, 63.2-1701, 63.2-1703, 63.2-1737, 66-10 and 66-24 of the Code of Virginia.

Public comments may be submitted until July 27, 2007.

Contact: Charlene Vincent, Coordinator, Office of Interdepartmental Regulation, Department of Social Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7097, FAX (804) 726-7095 or email charlene.vincent@dss.virginia.gov.


Virginia Interagency Coordinating Council

June 13, 2007 - 9:30 a.m. -- Open Meeting
Hanover Area Department of Social Services, 12304 South Washington Highway, Ashland, Virginia.  (Interpreter for the deaf provided upon request)


A quarterly meeting to advise and assist the Department of Mental Health, Mental Retardation and Substance Abuse Services as lead agency for Part C (of IDEA), early intervention for infants and toddlers with disabilities and their families. Discussion focuses on issues related to implementation of the Part C program.

Contact: LaKeishia White, Child and Family Services Office Services Specialist, Department of Mental Health, Mental Retardation and Substance Abuse Services, Child and Family Services, 9th Floor, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-3710, FAX (804) 371-7959.

DEPARTMENT OF MINES, MINERALS AND ENERGY

† **June 28, 2007 - 9 a.m.** -- Open Meeting
Oxbow Center, 16620 East Riverside Drive, St. Paul, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the Division of Mined Land Reclamation Permit Enhancement Work Group to discuss potential enhancement to the DMLR permitting process. Public comments will be received as the last item of the meeting. Special accommodations for the disabled will be made available at the public meeting on request. Contact the Department of Mines, Minerals and Energy Division of Mined Land Reclamation at least seven days prior to the meeting date.


Contact: Les Vincent, Technical Services Manager, Department of Mines, Minerals and Energy, Division of Mined Land Reclamation, 3405 Mountain Empire Rd., Big Stone Gap, VA 24219, telephone (276) 523-8156, FAX (276) 523-8163, (800) 828-1120/TTY , email les.vincent@dmme.virginia.gov.

DEPARTMENT OF MOTOR VEHICLES

Motorcycle Advisory Council

June 13, 2007 - 8:30 a.m. -- Open Meeting
Sheraton Park South Hotel, 9901 Midlothian Turnpike, Richmond, Virginia.


A regular bimonthly meeting. The meeting is held in conjunction with the Annual Conference on Transportation Safety.

Contact: Audrey Odum, Legislative Services Manager, Department of Motor Vehicles, P.O. Box 27412, Richmond, VA 23269-0001, telephone (804) 367-8140, FAX (804) 367-6631, toll-free (800) 272-9268, (800) 272-9268/TTY , email audrey.odum@dmv.virginia.gov.

Transportation Safety Board


† **June 12, 2007 - 9 a.m.** -- Open Meeting
DMV, 2300 West Broad Street, Richmond, Virginia. 

A full board meeting to review and make recommendations on FY08 Federal Grants.

Contact: Audrey Odum, Management Analyst, Department of Motor Vehicles, P.O. Box 27412, Richmond, VA 23269-0001, telephone (804) 367-8140, FAX (804) 367-6631, toll-free (800) 272-9268, (800) 272-9268/TTY , email audrey.odum@dmv.virginia.gov.

VIRGINIA MUSEUM OF FINE ARTS


NOTE: CHANGE IN MEETING DATE
† **July 25, 2007 - 3 p.m.** -- Open Meeting

Virginia Museum of Fine Arts, 200 North Boulevard, Pauley Center Dining Room, Richmond, Virginia. 

A meeting of the Marketing and Branding Committee for staff to update the trustees. 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, email suzanne.broyles@vmfa.museum.


FOUNDATION FOR VIRGINIA'S NATURAL RESOURCES

July 11, 2007 - 10 a.m. -- Open Meeting
Department of Forestry, 900 Natural Resources Drive, Charlottesville, Virginia.  (Interpreter for the deaf provided upon request)


A business meeting of the Board of Trustees.

Contact: Brenda Taylor, Administrative Staff Specialist, Foundation for Virginia's Natural Resources, 900 Natural Resources Dr., Charlottesville, VA 22903, telephone (434) 977-6555, FAX (434) 977-7749, email brenda.taylor@dof.virginia.gov.

BOARD OF NURSING

June 12, 2007 - 9 a.m. -- Open Meeting
June 14, 2007 - 9 a.m. -- Open Meeting
June 19, 2007 - 9 a.m. -- Open Meeting
June 21, 2007 - 9 a.m. -- Open Meeting
June 26, 2007 - 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 , email nursebd@dhp.virginia.gov.

July 16, 2007 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia. 

A panel will conduct informal conferences with licensees and/or certificate holders. A formal hearing may also be held. Public comment will not be received.

Contact: Jay P. Douglas, RN, MSM, CSAS, Executive Director, Board of Nursing, 6603 W. Broad St., 5th Floor,

Calendar of Events

Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY

July 18, 2007 - 9 a.m. -- Open Meeting

July 19, 2007 - 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 of Nursing will conduct formal hearings with licensees and/or certificate holders. Public comment will not be received.

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) 662-9949, FAX (804) 662-9512, (804) 662-7197/TTY ☎, email jay.douglas@dhp.virginia.gov.

† **August 10, 2007** - 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 Nursing intends to amend regulations entitled **18 VAC 90-10, Public Participation Guidelines**. The purpose of the proposed action is to clarify and update regulations for public participation in the regulatory process.

Statutory Authority: §§ 2.2-4007.02 and 54.1-2505 of the Code of Virginia.

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) 662-9949, FAX (804) 662-9512, (804) 662-7197/TTY ☎, email jay.douglas@dhp.virginia.gov.

JOINT BOARDS OF NURSING AND MEDICINE

June 20, 2007 - 9 a.m. -- Open Meeting

Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ☎

A regular meeting.

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 ☎, email jay.douglas@dhp.virginia.gov.

July 13, 2007 - 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 Boards of Nursing and Medicine intend to amend regulations entitled **18 VAC 90-30,**

Regulations Governing the Licensure of Nurse Practitioners. The purpose of the proposed action is to clarify that one must hold an active license as a registered nurse to be licensed as a nurse practitioner.

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

Public comments may be submitted until July 13, 2007, to 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 ☎, email nursebd@dhp.virginia.gov.

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.

† **July 17, 2007 -- 11:30 a.m.** - Public Hearing

Department of Health Professions, 6603 West Broad Street, Board Room 2, 5th Floor, Richmond, Virginia.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Boards of Nursing and Medicine intend to amend regulations entitled **18 VAC 90-30, Regulations Governing the Licensure of Nurse Practitioners.** The purpose of the proposed action is to provide for practice of certified nurse midwives in collaboration and consultation with a licensed physician.

Statutory Authority: §§ 54.1-2400 and 54.1-2957 of the Code of Virginia.

Public comments may be submitted until August 10, 2007, to 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 ☎, email nursebd@dhp.virginia.gov.

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.

OLD DOMINION UNIVERSITY

June 15, 2007 - 1:30 p.m. -- Open Meeting


Webb University Center, Old Dominion University, Norfolk, Virginia. ☎

A regular meeting of the Board of Visitors 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, email dmeeks@odu.edu.

BOARD FOR OPTICIANS

August 17, 2007 - 9:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, 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. Public comment will be heard at the beginning of the meeting. Person 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: 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 , email opticians@dpor.virginia.gov.

BOARD OF OPTOMETRY


† **August 10, 2007** - 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 Optometry intends to amend regulations entitled **18 VAC 105-10, Public Participation Guidelines**. The purpose of the proposed action is to update and clarify the board's public participation guidelines.

Statutory Authority: §§ 2.2-4007.02 and 54.1-2400 of the Code of Virginia.

Contact: Elizabeth A. Carter, Ph.D., Executive Director, Board of Optometry, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9910, FAX (804) 662-7098, (804) 662-7197/TTY , email elizabeth.carter@dhp.virginia.gov.

VIRGINIA OUTDOORS FOUNDATION


† **September 5, 2007 - 1 p.m.** -- Open Meeting
† **September 6, 2007 - 9 a.m.** -- Open Meeting
Department of Forestry Headquarters, 2nd Floor Board Room, 900 Natural Resources Drive, Charlottesville, Virginia. 

A quarterly meeting of the Board of Trustees to discuss policy and easement consideration. Public comment will be received.


Contact: Trisha Cleary, Executive Assistant, Department of Conservation and Recreation, 101 N. 14th Street, 17th Floor

Richmond, VA 23219, telephone (804) 225-2147, FAX (804) 371-4810, email tcleary@vofonline.org.


VIRGINIA BOARD FOR PEOPLE WITH DISABILITIES

July 17, 2007 - 10 a.m. -- Open Meeting
202 North 9th Street, 9th Floor, Richmond, Virginia. 
(Interpreter for the deaf provided upon request)


A meeting to conduct new grantee orientation.


Contact: Lynne Talley, Grants Administrative Manager, Virginia Board for People with Disabilities, 202 N. 9th St., 9th Floor, Richmond, VA, telephone (804) 786-9375, FAX (804) 786-1118, toll-free (800) 846-4464, (804) 786-0016/TTY , email lynne.talley@vbpd.virginia.gov.

BOARD OF PHARMACY

† **June 12, 2007 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. 


A meeting to consider such 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 , email scottirussell@dhp.virginia.gov.

† **June 12, 2007 - 9 a.m.** -- Public Hearing
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia. 

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 110-50, Regulations Governing Wholesale Distributors, Manufacturers and Warehousemen**. The purpose of the proposed action is to amend requirements of wholesale distribution of drugs to include a pedigree for those that leave the normal channels of distribution.

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


Public comments may be submitted until August 10, 2007, to 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 , email scottirussell@dhp.virginia.gov.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St.,


Calendar of Events

Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or email elaine.yeatts@dhp.virginia.gov.

June 20, 2007 - 9 a.m. -- Open Meeting

Department of Health Professions, 6603 West Broad Street, 5th Floor, Room 4, Richmond, Virginia. 


A meeting of the Special Conference Committee to discuss disciplinary matters. This is a public meeting; however, public comment will not be received.

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 , email scotti.russell@dhp.virginia.gov.

† **August 10, 2007** - 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 Pharmacy intends to amend regulations entitled **18 VAC 110-10, Public Participation Guidelines**. The purpose of the proposed action is to clarify and update regulations pursuant to a periodic review.

Statutory Authority: §§ 2.2-4007.02 and 54.1-2400 of the Code of Virginia.


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 , email scotti.russell@dhp.virginia.gov.

BOARD OF PHYSICAL THERAPY


† **August 10, 2007** - 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 Physical Therapy intends to amend regulations entitled **18 VAC 112-10, Public Participation Guidelines**. The purpose of the proposed action is to clarify and update certain provisions of the regulation pursuant to the recommendations from a periodic review.


Statutory Authority: §§ 2.2-4007.02 and 54.1-2400 of the Code of Virginia.

Contact: Lisa R. Hahn, Executive Director, Board of Physical Therapy, Alcoa Bldg., 6603 W. Broad St., 5th Floor Richmond, VA 23230-1712, telephone (804) 662-9924, FAX (804) 662-9523, (804) 662-7197/TTY , email lisa.hahn@dhp.virginia.gov.

August 17, 2007 - 9 a.m. -- Canceled


Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. 

A general business meeting including consideration of regulatory issues as may be presented on the agenda. A portion of the board's business may be discussed in closed session. Public comment will be heard at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.


Contact: Lisa R. Hahn, Executive Director, Board of Physical Therapy, Alcoa Bldg., 6603 W. Broad St., 5th Floor Richmond, VA 23230-1712, telephone (804) 662-9924, FAX (804) 662-9523, (804) 662-7197/TTY , email lisa.hahn@dhp.virginia.gov.

POLYGRAPH EXAMINERS ADVISORY BOARD

July 10, 2007 - 11 a.m. -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, 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. Public comment will be heard at the beginning of the meeting. Person 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) 367-0674, (804) 367-9753/TTY , email kevin.hoeft@dpor.virginia.gov.

BOARD OF PSYCHOLOGY

July 10, 2007 - 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 (804) 662-9943, (804) 662-7197/TTY , email evelyn.brown@dhp.virginia.gov.

† **August 10, 2007** - 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 Psychology intends to amend regulations entitled **18 VAC 125-10, Public Participation Guidelines**. The purpose of the proposed action is to update and clarify regulations for public participation in the promulgation of regulations.

Statutory Authority: §§ 2.2-4007.02 and 54.1-2400 of the Code of Virginia.

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 ☎, email evelyn.brown@dhp.virginia.gov.

VIRGINIA PUBLIC GUARDIANSHIP AND CONSERVATOR ADVISORY BOARD

June 28, 2007 - 10 a.m. -- Open Meeting
Virginia Department for the Aging, 1610 Forest Avenue, Suite 100, Richmond, Virginia. 📍

A meeting of the Executive Committee.

Contact: Faye D. Cates, MSSW, Human Services Program Coordinator, Department for the Aging, 1610 Forest Ave., Suite 100, Richmond VA 23229, telephone (804) 662-9310, FAX (804) 662-9354, toll-free (800) 552-3402, (804) 662-9333/TTY ☎, email faye.cates@vda.virginia.gov.

REAL ESTATE APPRAISER BOARD

August 21, 2007 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Conference Room, Richmond, Virginia. 📍

A meeting to discuss board business.

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 ☎, email reappraisers@dpor.virginia.gov.

REAL ESTATE BOARD

† **June 14, 2007 - 9 a.m.** -- Open Meeting
† **June 27, 2007 - 9:30 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 ☎, email reboard@dpor.virginia.gov.

July 18, 2007 - 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 ☎, email reboard@dpor.virginia.gov.

July 19, 2007 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia.

A meeting to discuss board business.

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 ☎, email reboard@dpor.virginia.gov.

DEPARTMENT OF REHABILITATIVE SERVICES

Statewide Independent Living Council

† **June 20, 2007 - 8 a.m.** -- Open Meeting
Holiday Inn Express, 3325 South Main Street, Harrisonburg, Virginia. 📍 (Interpreter for the deaf provided upon request)

A business meeting. Public comment will be received will be received at 9:15 a.m. on June 21, 2007.

Contact: Lisa Grubb, Executive Director, Department of Rehabilitative Services, 32 Abbey Court Fishersville, VA 22939, telephone (540) 949-7452, FAX (540) 949-7453, toll-free (800) 552-5019, (800) 464-9950/TTY ☎, email va.silc.lisa@comcast.net.


† **June 21, 2007 - 9 a.m.** -- Open Meeting
Holiday Inn Express, 3325 South Main Street, Harrisonburg, Virginia. 📍 (Interpreter for the deaf provided upon request)

A committee meeting. Public comment will be received at 9:15 a.m. on Thursday, June 21, 2007.


Contact: Lisa Grubb, Executive Director, Department of Rehabilitative Services, 32 Abbey Court Fishersville, VA 22939, telephone (540) 949-7452, FAX (540) 949-7453, toll-free (800) 552-5019, (800) 464-9950/TTY ☎, email va.silc.lisa@comcast.net.

Calendar of Events

Virginia Brain Injury Council

July 27, 2007 - 1 p.m. -- Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Conference Rooms, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A quarterly meeting. Materials will be provided in alternate format upon request. Public comment will be received at approximately 1:15 p.m.

Contact: Kristie Chamberlain, Policy and Planning Director, Department of Rehabilitative Services, 8004 Franklin Farms Dr., P.O. Box K-300, Richmond, VA 23229, telephone (804) 662-7154, FAX (804) 662-7663, toll-free (800) 552-5019, (800) 464-9950/TTY , email Kristie.chamberlain@dss.virginia.gov.


VIRGINIA RESEARCH AND TECHNOLOGY ADVISORY COMMISSION

June 13, 2007 - 1 p.m. -- Open Meeting
Virginia Biotechnology Research Park, Richmond, Virginia.

A quarterly meeting. Public comment will be received at approximately 4 p.m.

Contact: Nancy Vorona, VP Research Investment, Center for Innovative Technology, 2214 Rock Hill Rd., Suite 600, Herndon, VA 20170, telephone (703) 689-3043, FAX (703) 464-1720, email nvorona@cit.org.


VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

† June 20, 2007 - Noon -- Open Meeting
Department of Business Assistance, 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, email scott.parsons@dba.virginia.gov.


STATE BOARD OF SOCIAL SERVICES

† June 20, 2007 - 9 a.m. -- Open Meeting
† June 21, 2007 - 9 a.m. -- Open Meeting
Albemarle County Offices, 1600 5th Street, Charlottesville, Virginia. 


A business 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 , email patricia.rengnerth@dss.virginia.gov.


† June 20, 2007 - 4 p.m. -- Open Meeting
Albemarle County Offices, 1600 5th Street, Charlottesville, Virginia. 


A planning/work session of the Poverty Committee.

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 , email patricia.rengnerth@dss.virginia.gov.

STATE BOARDS OF EDUCATION; JUVENILE JUSTICE; MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES; AND SOCIAL SERVICES

July 9, 2007 - 6:30 p.m. -- Public Hearing
First Campbell Square Building, 210 1st Street, Roanoke, Virginia. 

July 10, 2007 - 6:30 p.m. -- Public Hearing
Tuckahoe Area Library, 1901 Starling Drive, Richmond, Virginia. 

July 11, 2007 - 6:30 p.m. -- Public Hearing
Department of Social Services, Virginia Beach Regional Office, Pembroke IV, 291 Independence Boulevard, 3rd Floor, Virginia Beach, Virginia. 

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Boards of Education; Juvenile Justice; Mental Health, Mental Retardation and Substance Abuse Services; and Social Services intends to repeal regulations entitled **22 VAC 42-10, Standards for Interdepartmental Regulation of Children's Residential Facilities**; and adopt regulations entitled **22 VAC 42-11, Standards for Interdepartmental Regulation of Children's Residential Facilities**. The purpose of the proposed action is to repeal the existing regulation 22 VAC 42-10, and promulgate a new regulation, 22 VAC 42-11. These standards will protect vulnerable children who are separated from their families and reside in children's residential facilities, and assure that an acceptable level of care and education are provided. The new regulation will (i) comply with federal regulation, (ii) ensure that services provided to residents are appropriate for their needs, (iii) bring the requirements in line with the current industry practices, (iv) clarify frequently misinterpreted standards, and (v) delete unnecessary requirements.

Statutory Authority: §§ 16.1-309.9, 22.1-321, 22.1-323, 22.1-323.2, 37.2-407, 37.2-408, 63.2-203, 63.2-217, 63.2-1701, 63.2-1703, 63.2-1737, 66-10 and 66-24 of the Code of Virginia.


Public comments may be submitted until July 27, 2007.

Contact: Charlene Vincent, Coordinator, Office of Interdepartmental Regulation, Department of Social Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7097, FAX (804) 726-7095 or email charlene.vincent@dss.virginia.gov.

BOARD OF SOCIAL WORK


July 12, 2007 - 2 p.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 

A meeting of the Regulatory Committee to review current regulations regarding supervision and standards of practice.

Contact: Evelyn B. Brown, Executive Director, Board of Social Work, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9914, FAX (804) 662-7250, (804) 662-7197/TTY , email evelyn.brown@dhp.virginia.gov.

July 13, 2007 - 9:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 


A regular business meeting.

Contact: Evelyn B. Brown, Executive Director, Board of Social Work, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9914, FAX (804) 662-7250, (804) 662-7197/TTY , email evelyn.brown@dhp.virginia.gov.


† **August 10, 2007** - 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 Social Work intends to amend regulations entitled **18 VAC 140-10, Public Participation Guidelines**. The purpose of the proposed action is to update and clarify the board's public participation guidelines.


Statutory Authority: §§ 2.2-4007.02 and 54.1-2400 of the Code of Virginia.

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 , email evelyn.brown@dhp.virginia.gov.

BOARD FOR SOIL SCIENTISTS AND WETLAND PROFESSIONALS


July 17, 2007 - 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: 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 , email soilscientist@dpor.virginia.gov.

DEPARTMENT OF TAXATION

State Land Evaluation Advisory Council

† **August 13, 2007 - 11 a.m.** -- Open Meeting
† **September 10, 2007 - 11 a.m.** -- Open Meeting
2220 West Broad Street, Richmond, Virginia. 

A meeting to adopt suggested ranges of value for agricultural, horticultural, forest and open-space land use and the use-value assessment program.

Contact: H. Keith Mawyer, Property Tax Manager, Department of Taxation, 2220 W. Broad St., Richmond, VA 23220, telephone (804) 367-8020, email keith.mawyer@tax.virginia.gov.


BOARD OF TOWING AND RECOVERY OPERATORS


† **June 19, 2007 - 10 a.m.** -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Suite 701, Richmond, Virginia. 

A meeting of the Regulatory and Licensing Affairs Committee to discuss and reformulate committee working paper on initial draft regulations.

Contact: Benjamin Foster, Executive Director, Board of Towing and Recovery Operators, P.O. Box 2741, Richmond, VA 23269, telephone (804) 367-0226, FAX (804) 367-6631, email benjamin.foster@dmv.virginia.gov.

COMMONWEALTH TRANSPORTATION BOARD


June 20, 2007 - 2 p.m. -- Open Meeting
VDOT Fredericksburg District, 87 Deacon Road, Auditorium, Fredericksburg, Virginia. 


July 18, 2007 - 2 p.m. -- Open Meeting
VDOT Central Office, 1221 East Broad Street, Auditorium, Richmond, Virginia. 

A work session of the Commonwealth Transportation Board and transportation staff.

Calendar of Events

Contact: Carol A. Mathis, Administrative Staff Assistant, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-2701, email carol.mathis@vdot.virginia.gov.


June 21, 2007 - 9 a.m. -- Open Meeting
VDOT Fredericksburg District, 87 Deacon Road, Auditorium, Fredericksburg, Virginia. 

July 19, 2007 - 9 a.m. -- Open Meeting
VDOT Central Office, 1221 East Broad Street, Auditorium, Richmond, Virginia. 

A regularly scheduled meeting to transact CTB 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, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-2701, email carol.mathis@vdot.virginia.gov.

DEPARTMENT OF TRANSPORTATION

† **June 19, 2007 - 9 a.m.** -- Open Meeting
† **July 30, 2007 - 8:30 a.m.** -- Open Meeting
Patrick Henry Building, 3rd Floor, 1111 East Broad Street, Richmond, Virginia. 

A meeting of the Transportation Accountability Commission on outcome measures.

Contact: Tracey Williams, Department of Transportation, Transportation and Mobility Planning Division, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 371-8304, FAX (804) 225-4785, email tracey.williams@vdot.virginia.gov.

TREASURY BOARD

June 20, 2007 - 9 a.m. -- Open Meeting
July 18, 2007 - 9 a.m. -- Open Meeting
August 15, 2007 - 9 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, 3rd Floor, Richmond, Virginia.


A regular meeting.

Contact: Kathi B. Scearce, Secretary to the Board, Treasury Board, James Monroe Bldg., 101 N. 14th St., 3rd Floor,

Richmond, VA 23219, telephone (804) 371-6011, email kathi.scearce@trs.virginia.gov.

DEPARTMENT OF VETERANS SERVICES


Board of Veterans Services

July 16, 2007 - 9:30 a.m. -- Open Meeting
National Guard Armory, 5901 Beulah Road, Sandston, Virginia. 


A board retreat. Contact Rhonda Earman to preregister for public comment.


Contact: Rhonda Earman, Special Assistant to the Commissioner, Department of Veterans Services, 900 E. Main St., Richmond, VA 23219, telephone (804) 786-0286, email rhonda.earman@dvs.virginia.gov.

BOARD OF VETERINARY MEDICINE


† **June 13, 2007 - 1 p.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. 

A meeting of the Ad Hoc Committee on Equine Dentistry to discuss promulgating regulations to implement HB2363.


Contact: Elizabeth Young, Executive Director, Board of Veterinary Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor Richmond, VA 23230-1712, telephone (804) 662-9915, FAX (804) 662-7098, (804) 662-7197/TTY , email elizabeth.young@dhp.virginia.gov.

† **June 14, 2007 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad St., 5th Floor, Conference Room 4, Richmond, Virginia. 

A meeting to discuss disciplinary matters and to conduct formal and informal hearings. These are public meetings, but public comment will not be received.

Contact: Elizabeth Young, Executive Director, Board of Veterinary Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9915, FAX (804) 662-7098, (804) 662-7197/TTY , email elizabeth.young@dhp.virginia.gov.

COUNCIL ON VIRGINIA'S FUTURE

† **June 14, 2007 - 10 a.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia. 

A full council meeting.

Contact: Gilbert M. An (Gigi), Executive Assistant to the Director, Council on Virginia's Future, 1001 E. Broad St., Suite 430, Richmond, VA 23219, telephone (804) 371-2346, FAX (804) 371-2347, email gma2n@virginia.edu.


VIRGINIA WASTE MANAGEMENT BOARD

June 11, 2007 - 9:30 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia. 


A regular board meeting.

Contact: Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4378, FAX (804) 698-4346, email cmberndt@deq.virginia.gov.


BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

† June 14, 2007 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Room 453, Richmond, Virginia. 

An informal hearing for licensing (LRD).

Contact: David E. Dick, Assistant Director, Board for Waste Management Facility Operators, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, FAX (804) 367-2475, (804) 367-9753/TTY , email wastemgt@dpor.virginia.gov.


STATE WATER CONTROL BOARD

June 27, 2007 - 9:30 a.m. -- Open Meeting
June 28, 2007 - 9:30 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia. 

A regular meeting.


Contact: Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4378, FAX (804) 698-4346, email cmberndt@deq.virginia.gov.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

June 20, 2007 - 8:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Board 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: David E. Dick, Executive 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 , email waterwasteoper@dpor.virginia.gov.

INDEPENDENT


SPECIAL ADVISORY COMMISSION ON MANDATED HEALTH INSURANCE BENEFITS

† July 18, 2007 - 10 a.m. -- Public Hearing
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. 

A public hearing of the Special Advisory Commission on Mandated Health Insurance Benefits on three bills introduced during the 2007 General Assembly session. The hearing is on the following bills: HB 2156 (mandates coverage for second opinions at the National Cancer Institute Comprehensive Cancer Centers for primary malignant brain tumors), HB 2426 (repeals current mandated offer of coverage for dose-intensive chemotherapy/autologous bone marrow and stem cell transplants for breast cancer), and SB 991 (repeals the mandated offer of coverage for dose-intensive chemotherapy/autologous bone marrow transplants for breast cancer).

Contact: Ann Colley, Principal Insurance Analyst, Life and Health Division, Research Section, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9813, FAX (804) 371-9944, toll-free 1-877-310-6560, or (804) 371-9206/TTY 

VIRGINIA OFFICE FOR PROTECTION AND ADVOCACY

July 24, 2007 - 9 a.m. -- Open Meeting
Virginia Office for Protection and Advocacy, Byrd Building, 1910 Byrd Avenue, Suite 5, VOPA Conference Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the Board of Directors. Public comment will be received beginning at 9 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 email at lisa.shehi@vopa.virginia.gov no later than July 10, 2007. Ms. Shehi will take your name and phone number and you will be telephoned during the public comment period. For more information on participating in this conference call or to provide public comment via telephone. If interpreter services or accommodations are required, please contact Ms. Shehi no later than July 10, 2007.

Contact: Lisa Shehi, Administrative Assistant, Virginia Office for Protection and Advocacy, 1910 Byrd Ave., Suite 5,

Calendar of Events

Richmond, VA 23230, telephone (804) 225-2042, FAX (804) 662-7413, toll-free (800) 552-3962, (804) 225-2042/TTY ☎, email lisa.shehi@vopa.virginia.gov.

Disability Advisory Council

June 20, 2007 - 10 a.m. -- Open Meeting

† **September 5, 2007 - 10 a.m.** -- Open Meeting

1910 Byrd Avenue, Suite 5, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting. Public comment is welcome and will be received shortly after 10 a.m. Public comment will also be accepted by telephone. If you wish to provide public comments via telephone call Tracy Manley, Administrative Assistant at 1-800-552-3962 (Voice/TTY) or via email at tracy.manley@vopa.virginia.gov no later than June 6, 2007. Ms. Manley will take your name and phone number and you will be telephoned during the public comment period. For further information, directions to the meeting, or interpreter services or other accommodations, please contact Ms. Manley no later than June 6, 2007.

Contact: Tracy Manley, Administrative Assistant, Virginia Office for Protection and Advocacy, 1910 Byrd Ave., Richmond, VA 23230, telephone (804) 225-2042, FAX (804) 662-7431, toll-free (800) 552-3962, (804) 225-2042/TTY ☎, email tracy.manley@vopa.virginia.gov.

† **June 28, 2007 - 10:30 a.m.** -- Open Meeting

Independence Center of Northern Virginia, 3100 Clarendon Boulevard, Arlington, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting of the Public Awareness and Goals Committee. Public comment by telephone is welcomed by the Public Awareness and Goals Committee and will be received at the beginning of the meeting. For information on participating in this conference call or if you wish to provide public comment via telephone, you must call Lisa Shehi, Executive Assistant at 1-800-552-3962 (Voice/TTY) or email her at lisa.shehi@vopa.virginia.gov no later than Thursday, June 14, 2007. For further information, please contact Ms. Shehi. If interpreter services or other accommodations are required, please contact Ms. Shehi no later than Thursday, June 14, 2007. Directions to the meeting site may be found at <http://www.ecnv.org/Contact/driving.html>.

Contact: Lisa Shehi, Executive Assistant, Virginia Office for Protection and Advocacy, 1910 Byrd Ave., Suite 5, Richmond, Virginia, telephone (804) 225-2042, FAX (804) 662-7431, toll-free (800) 552-3962, (804) 225-2042/TTY ☎, email lisa.shehi@vopa.virginia.gov.

† **July 23, 2007 - 4 p.m.** -- Open Meeting

VOPA Office, 1910 Byrd Avenue, Suite 5, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting of the Public Policy Committee. Public comment is welcomed by the Public Policy Committee and will be received beginning at 4 p.m. on Monday, July 23, 2007. Public comment will also be accepted by telephone. If you wish to provide public comment via telephone, you must call Lisa Shehi, Executive Assistant at 1-800-552-3962 (Voice/TTY) or via email at lisa.shehi@vopa.virginia.gov no later than Monday, July 9, 2007. Ms. Shehi will take your name and phone number and you will be telephoned during the public comment period. Directions to the meeting site are below. For further information, please contact Ms. Shehi. If interpreter services or other accommodations are required, please contact Ms. Shehi no later than Monday, July 9, 2007.

Contact: Lisa Shehi, Executive Assistant, Virginia Office for Protection and Advocacy, 1910 Byrd Ave., Suite 5, Richmond, VA 23235, telephone (804) 225-2042, FAX (804) 662-7431, toll-free (800) 552-3962, (804) 225-2042/TTY ☎, email lisa.shehi@vopa.virginia.gov.

† **July 23, 2007 - 4 p.m.** -- Open Meeting

VOPA Office, 1910 Byrd Avenue, Suite 5, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting of the Internal Policy Committee. Public comment is welcomed by the Internal Policy Committee and will be received beginning at 4 p.m. on Monday, July 23, 2007. 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 email at lisa.shehi@vopa.virginia.gov no later than Monday, July 9, 2007. Ms. Shehi will take your name and phone number and you will be telephoned during the public comment period. Directions to the meeting site are below. For further information, please contact Ms. Shehi. If interpreter services or other accommodations are required, please contact Ms. Shehi, no later than Monday, July 9, 2007.

Contact: Lisa Shehi, Executive Assistant, Virginia Office for Protection and Advocacy, 1910 Byrd Ave., Suite 5, Richmond, VA 23230, telephone (804) 225-2042, FAX (804) 662-7431, toll-free (800) 552-3962, (804) 225-2042/TTY ☎, email lisa.shehi@vopa.virginia.gov.

VIRGINIA RETIREMENT SYSTEM

June 19, 2007 - Noon -- Open Meeting

Location to be determined. ♿

A meeting of the Optional Retirement Plan for Higher Education Advisory Committee. No public comment will be received at the meeting.

Contact: Patty Atkins-Smith, Legislative Liaison and Policy Analyst, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 344-3123, FAX (804)

786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, email psmith@varetire.org.

June 20, 2007 - 1:30 p.m. -- Open Meeting

July 18, 2007 - 1:30 p.m. -- Open Meeting

Virginia Retirement System Headquarters, 1200 East Main Street, Richmond, Virginia. ♿

A meeting of the Benefits and Actuarial Committee. No public comment will be received at the meeting.

Contact: LaShaunda King, Executive Assistant, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 344-3119, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, email lking@varetire.org.

NOTE: CHANGE IN MEETING DATE AND TIME

† **June 21, 2007 - 11 a.m.** -- Open Meeting

July 19, 2007 - 1 p.m. -- Open Meeting

Virginia Retirement System Headquarters, 1200 East Main Street, Richmond, Virginia. ♿

The regular meeting of the Board of Trustees will be held at the Virginia Retirement System, 1200 East Main Street, Richmond, VA 23219. No public comment will be received at the meeting.

Contact: LaShaunda King, Executive Assistant, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 344-3119, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, email lking@varetire.org.

June 20, 2007 - 3 p.m. -- Open Meeting

Virginia Retirement System Headquarters, 1200 East Main Street, Richmond, Virginia. ♿

A meeting of the Audit and Compliance Committee. No public comment will be received at the meeting.

Contact: LaShaunda King, Executive Assistant, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 344-3119, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, email lking@varetire.org.

August 15, 2007 - 10 a.m. -- Open Meeting

Virginia Retirement System Investment Department, 1111 East Main Street, 3rd Floor Conference Room, Richmond, Virginia. ♿

A regular meeting of the Investment Advisory Committee. No public comment will be received at the meeting.

Contact: Linda Ritchey, Executive Assistant, Virginia Retirement System, 1111 E. Main St., Richmond, VA 23219, telephone (804) 697-6673, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, email lritchey@varetire.org.

LEGISLATIVE

HOUSE APPROPRIATIONS COMMITTEE

June 18, 2007 - 9:30 a.m. - Open Meeting

General Assembly Building, 9th and Broad Streets, 9th Floor, Richmond, Virginia. ♿

A regular meeting.

Contact: Barbara L. Teague, House Committee Operations, 910 Capitol St., Richmond, VA 23219, telephone (804) 698-1540.

COMPREHENSIVE SERVICES FOR AT-RISK YOUTH AND FAMILIES

June 19, 2007 - 10 a.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 Sarah Stanton, 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: Hobie Lehman, Senate Committee Operations, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 698-7410.

VIRGINIA CODE COMMISSION

June 20, 2007 - 10 a.m. -- Open Meeting

General Assembly Building, 910 Capitol Street, 6th Floor, Speaker's Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to (i) appoint members to the Administrative Law Advisory Council; (ii) establish a workplan; (iii) review pertinent legislation resulting from the 2007 General Assembly session; (iv) consider a 6.0% price increase request from Thomson West for the Virginia Administrative Code printed sets; and (v) continue with the revision of Title 3.1, Agriculture. Public comment will be received.

Contact: Jane Chaffin, Registrar of Regulations, General Assembly Bldg., 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 692-0625, email jchaffin@leg.state.va.us.

July 25, 2007 - 10 a.m. -- Open Meeting

August 15, 2007 - 10 a.m. -- Open Meeting


General Assembly Building, 910 Capitol Street, 6th Floor, Speaker's Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

Calendar of Events

A regular meeting.


Contact: Jane Chaffin, Registrar of Regulations, General Assembly Bldg., 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 692-0625, email jchaffin@leg.state.va.us.

VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

† **July 12, 2007 - 10 a.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, 6th Floor, Speaker's Conference Room, Richmond, Virginia. 

The third meeting of the Electronic Meetings Subcommittee in 2007.


Contact: Maria J.K. Everett, Executive Director, Virginia Freedom of Information Advisory Council, General Assembly Bldg., 910 Capitol Street, 2nd Floor, Richmond, VA 23219, telephone (804) 225-3056, FAX (804) 371-8705, toll-free (866) 448-4100, email foiacouncil@leg.state.va.us.

† **July 12, 2007 - 10 a.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, 6th Floor, Speaker's Conference Room, Richmond, Virginia. 

The second meeting of the Personal Identifying Information Subcommittee in 2007.

Contact: Maria J.K. Everett, Executive Director, Virginia Freedom of Information Advisory Council, General Assembly Bldg., 910 Capitol Street, 2nd Floor, Richmond, VA 23219, telephone (804) 225-3056, FAX (804) 371-8705, toll-free (866) 448-4100, email foiacouncil@leg.state.va.us.


HOUSE HEALTH, WELFARE AND INSTITUTIONS COMMITTEE

† **June 18, 2007 - 1 p.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. 

A regular meeting.

Contact: Lori L. Maynard, House Committee Operations, 910 Capitol St., Richmond, VA 23219, telephone (804) 698-1540.


JOINT SUBCOMMITTEE STUDYING OPEN SPACE AND FARMLAND PRESERVATION

June 19, 2007 - 1:30 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 Mark Vucci, Division of Legislative Services, (804) 786-3591.

Contact: Barbara Teague, House Committee Operations, 910 Capitol St., Richmond, VA 23219, telephone (804) 698-1540.


JOINT SUBCOMMITTEE STUDYING THE COMMONWEALTH'S PROGRAM FOR PRISONER REENTRY TO SOCIETY

June 28, 2007 - 1 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, please contact Sarah Stanton, 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: Hobie Lehman, Senate Committee Operations, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 698-7410.

JOINT COMMISSION ON TECHNOLOGY AND SCIENCE

June 19, 2007 - 1 p.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, 6th Floor, Speaker's Conference Room, Richmond, Virginia. 


A meeting of the Nanotechnology Authority Advisory Committee.

Contact: Patrick Cushing, Staff Attorney, Joint Commission on Technology and Science, General Assembly Bldg., 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

June 20, 2007 - 1 p.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia. 

A meeting of the Open Education Resources Advisory Committee.

Contact: Patrick Cushing, Staff Attorney, Joint Commission on Technology and Science, General Assembly Bldg., 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

June 20, 2007 - 1 p.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. 

A meeting of the Open Education Resources Advisory Committee.

Contact: Patrick Cushing, Staff Attorney, Joint Commission on Technology and Science, General Assembly Bldg., 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

CHRONOLOGICAL LIST

OPEN MEETINGS

June 11

† Conservation and Recreation, Department of
Library Board, State
Waste Management Board, Virginia

June 12

Contractors, Board for
Governor's Healthcare Reform Commission
Health, Department of
† Medical Assistance Services, Board of
† Motor Vehicles, Department of
- Transportation Safety Board
Nursing, Board of
† Pharmacy, Board of

June 13

Agriculture and Consumer Services, Department of
- Virginia Wine Board
Conservation and Recreation, Department of
- Virginia Land Conservation Foundation
† Contractors, Board for
Juvenile Justice, State Board of
Mental Health, Mental Retardation and Substance Abuse
Services, Department of
- Virginia Interagency Coordinating Council
Motor Vehicles, Department of
- Motorcycle Advisory Council
Research and Technology Advisory Commission, Virginia
† Veterinary Medicine, Board of

June 14

† Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for
Arts, Virginia Commission for the
Conservation and Recreation, Department of
† Contractors, Board for
Criminal Justice Services Board
Economic Development Partnership, Virginia
† Employment Dispute Regulation, Department of
Environmental Quality, Department of
Longwood University
Nursing, Board of
† Real Estate Board
† Veterinary Medicine, Board of
† Virginia's Future, Council on
† Waste Management Facility Operators, Board for

June 15

Arts, Virginia Commission for the
Housing and Community Development, Department of
- State Building Code Technical Review Board
Longwood University
Old Dominion University

June 18

Air Pollution Control Board, State

Alcoholic Beverage Control Board
Appropriations, House
Chesapeake Bay Local Assistance Board
† Health, Welfare and Institutions, House Committee on

June 19

† Attorney General, Office of the
- Regulatory Reform Task Force
At-Risk Youth and Families, Comprehensive Services for
† Aviation Board, Virginia
† Conservation and Recreation, Department of
Contractors, Board for
† Environmental Quality, Department of
Nursing, Board of
Open Space and Farmland Preservation, Joint
Subcommittee Studying
Retirement System, Virginia
Technology and Science, Joint Commission on
† Towing and Recovery Operators, Board of
† Transportation, Department of

June 20

Agriculture and Consumer Services, Department of
- Virginia Horse Industry Board
† Aviation Board, Virginia
Code Commission, Virginia
Compensation Board
Education, Secretary of
- Start Strong Pre-K Council
† Environmental Quality, Department of
Medical Assistance Services, Department of
Mental Health, Mental Retardation and Substance Abuse
Services, Department of
Nursing and Medicine, Joint Board of
Pharmacy, Board of
† Protection and Advocacy, Virginia Office for
† Rehabilitative Services, Department of
- Statewide Independent Living Council
Retirement System, Virginia
† Small Business Financing Authority, Virginia
† Social Services, State Board of
† Technology and Science, Joint Commission on
Transportation Board, Commonwealth
Treasury Board
Waterworks and Wastewater Works Operators, Board for

June 21

† Conservation and Recreation, Department of
Contractors, Board for
Design-Build/Construction Management Review Board
Labor and Industry, Department of
- Virginia Apprenticeship Council
† Medicine, Board of
Nursing, Board of
† Rehabilitative Services, Department of
- Statewide Independent Living Council
Retirement System, Virginia
† Social Services, State Board of

Calendar of Events

Transportation Board, Commonwealth

June 22

† Agriculture and Consumer Services, Department of
- Virginia Plant Pollination Advisory Board

Correctional Education, Board of

Dentistry, Board of

† Medicine, Board of

June 25

Housing and Community Development, Board of

June 26

Contractors, Board for

Labor and Industry, Department of

- Safety and Health Codes Board

Marine Resources Commission

Nursing, Board of

June 27

Accountancy, Board of

Health, Department of

- Sewage Handling and Disposal Appeals Review Board

† Real Estate Board

Water Control Board, State

June 28

Education, Board of

Funeral Directors and Embalmers, Board of

† Mines, Minerals and Energy, Department of

Prisoner Reentry to Society, Joint Subcommittee to Study
the Commonwealth's Program for

† Protection and Advocacy, Virginia Office for

Public Guardianship and Conservator Advisory Board,
Virginia

Water Control Board, State

June 29

† Dentistry, Board of

July 2

Alcoholic Beverage Control Board

July 6

Art and Architectural Review Board

July 10

Contractors, Board for

Higher Education for Virginia, State Council of

Long-Term Care Administrators, Board of

Polygraph Examiners Advisory Board

Psychology, Board of

July 11

† Agriculture and Consumer Services, Department of
- Virginia Marine Products Board

Geology, Board for

Hearing Aid Specialists, Board for

Medicine, Board of

Natural Resources, Foundation for Virginia's

July 12

Auctioneers Board

† Audiology and Speech-Language Pathology, Board of

† Freedom of Information Advisory Council, Virginia

Social Work, Board of

July 13

Dentistry, Board of

Social Work, Board of

July 16

Alcoholic Beverage Control Board

† Local Government, Commission on

Nursing, Board of

Veterans Services, Department of

- Board of Veterans Services

July 17

† Agriculture and Consumer Services, Department of
- Virginia Peanut Board

Corrections, Board of

† Environmental Quality, Department of

People with Disabilities, Virginia Board for

Soil Scientists and Wetland Professionals, Board for
Professional

July 18

† Agriculture and Consumer Services, Department of
- Virginia Small Grains Board

Community Colleges, State Board for

† Compensation Board

Corrections, Board of

Education, Board of

Education, Secretary of

- Start Strong Pre-K Council

† Mandated Health Insurance Benefits, Special Advisory
Commission to

Nursing, Board of

Real Estate Board

Retirement System, Virginia

Transportation Board, Commonwealth

Treasury Board

July 19

Community Colleges, State Board for

Conservation and Recreation, Department of

- Virginia Soil and Water Conservation Board

Design-Build/Construction Management Review Board

Education, Board of

Environmental Quality, Department of

Human Resources, Virginia Council on

Medicine, Board of

Nursing, Board of

Real Estate Board

Retirement System, Virginia

Transportation Board, Commonwealth

July 20

Education, Board of

July 23

† Protection and Advocacy, Virginia Office for

July 24

Contractors, Board for

Protection and Advocacy, Virginia Office for

July 25

Code Commission, Virginia

Education, Board of
 † Health Professions, Department of
 † Manufactured Housing Board, Virginia
 Medicine, Board of
 † Museum of Fine Arts, Virginia

July 26

Architects, Professional Engineers, Land Surveyors,
 Certified Interior Designers and Landscape Architects,
 Board for
 Branch Pilots, Board for
 † Education, Secretary of

July 27

Branch Pilots, Board for
 Rehabilitative Services, Department of
 - Virginia Brain Injury Council

July 30

† Barbers and Cosmetology, Board for
 † Transportation, Department of

July 31

Funeral Directors and Embalmers, Board of
 Medicine, Board of

August 2

Medical Assistance Services, Department of

August 3

Art and Architectural Review Board
 Dentistry, Board of

August 6

Alcoholic Beverage Control Board
 Barbers and Cosmetology, Board for

August 8

Health, Department of
 † Medicine, Board of

August 9

Architects, Professional Engineers, Land Surveyors,
 Certified Interior Designers and Landscape Architects,
 Board for

August 10

Health, Department of
 Medicine, Board of

August 13

† Taxation, Department of

August 14

Architects, Professional Engineers, Land Surveyors,
 Certified Interior Designers and Landscape Architects,
 Board for
 Chesapeake Bay Local Assistance Board

August 15

Asbestos, Lead, and Home Inspectors, Virginia Board for
 Code Commission, Virginia
 Education, Secretary of
 - Start Strong Pre-k Council
 Treasury Board
 Retirement System, Virginia

August 16

Architects, Professional Engineers, Land Surveyors,
 Certified Interior Designers and Landscape Architects,
 Board for

Conservation and Recreation, Department of
 Design-Build/Construction Management Review Board
 Fire Services Board, Virginia

Health, Department of
 - State EMS Advisory Board

August 17

Dentistry, Board of
 Fire Services Board, Virginia
 Health, Department of
 - State EMS Advisory Board
 Opticians, Board for

August 18

Fire Services Board, Virginia

August 20

Alcoholic Beverage Control Board

August 21

Architects, Professional Engineers, Land Surveyors,
 Certified Interior Designers and Landscape Architects,
 Board for
 Real Estate Board Appraiser Board

August 22

† Asbestos, Lead, and Home Inspectors, Virginia Board for

August 23

Medicine, Board of

August 28

Contractors, Board for

September 5

Alcoholic Beverage Control Board
 † Outdoors Foundation, Virginia
 † Protection and Advocacy, Virginia Office for

September 6

† Audiology and Speech-Language Pathology, Board of
 † Dentistry, Board of
 † Outdoors Foundation, Virginia

September 7

† Art and Architectural Review Board

September 10

† Alcoholic Beverage Control Board
 † Contractors, Board for
 † Taxation, Department of

September 11

† Contractors, Board for
 † Gaming Board, Charitable
 † Higher Education for Virginia, State Council of
 † Medical Assistance Services, Board of

PUBLIC HEARINGS

June 12

Governor's Healthcare Reform Commission
 Health, State Board of
 † Pharmacy, Board of

Calendar of Events

June 21

† Medicine, Board of

July 2

† Mental Health, Mental Retardation and Substance Abuse Services, Department of

July 9

Education; Juvenile Justice; Mental Health, Mental Retardation and Substance Abuse Services; and Social Services, State Boards of

July 10

Education; Juvenile Justice; Mental Health, Mental Retardation and Substance Abuse Services; and Social Services, State Boards of

July 11

Education; Juvenile Justice; Mental Health, Mental Retardation and Substance Abuse Services; and Social Services, State Boards of

July 12

† Audiology and Speech-Language Pathology, Board of

July 17

† Nursing and Medicine, Joint Boards of

July 24

† Housing and Community Development, Board of

August 3

† Dentistry, Board of

August 9

† Counseling, Board of

September 13

Criminal Justice Services Board