



# Virginia Register of Regulations

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# THE VIRGINIA REGISTER INFORMATION PAGE

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**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 on 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**; **Jane M. Roush**.

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

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# PUBLICATION SCHEDULE AND DEADLINES

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

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## September 2008 through June 2009

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
<b>FINAL INDEX Volume 24</b>		<b>October 2008</b>
25:1	August 27, 2008	September 15, 2008
25:2	September 10, 2008	September 29, 2008
25:3	September 24, 2008	October 13, 2008
25:4	October 8, 2008	October 27, 2008
25:5	October 22, 2008	November 10, 2008
25:6	November 5, 2008	November 24, 2008
25:7	November 18, 2008 ( <b>Tuesday</b> )	December 8, 2008
<b>INDEX 1 Volume 25</b>		<b>January 2009</b>
25:8	December 3, 2008	December 22, 2008
25:9	December 16, 2008 ( <b>Tuesday</b> )	January 5, 2009
25:10	December 30, 2008 ( <b>Tuesday</b> )	January 19, 2009
25:11	January 14, 2009	February 2, 2009
25:12	January 28, 2009	February 16, 2009
25:13	February 11, 2009	March 2, 2009
25:14	February 25, 2009	March 16, 2009
<b>INDEX 2 Volume 25</b>		<b>April 2009</b>
25:15	March 11, 2009	March 30, 2009
25:16	March 25, 2009	April 13, 2009
25:17	April 8, 2009	April 27, 2009
25:18	April 22, 2009	May 11, 2009
25:19	May 6, 2009	May 25, 2009
25:20	May 20, 2009	June 8, 2009
<b>INDEX 3 Volume 25</b>		<b>July 2009</b>
25:21	June 3, 2009	June 22, 2009

\*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 Spring 2008 VAC Supplement includes final regulations published through *Virginia Register* Volume 24, Issue 7, dated December 10, 2007, and fast-track regulations published through *Virginia Register* Volume 24 Issue 10, dated January 21, 2008). 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
<b>Title 1. Administration</b>			
1 VAC 30-45-10 through 1 VAC 30-45-860	Added	24:25 VA.R. 3449-3506	10/1/08
1 VAC 30-46-10 through 1 VAC 30-46-210	Added	24:25 VA.R. 3506-3523	10/1/08
1 VAC 75-10-10 through 1 VAC 75-10-40	Repealed	24:25 VA.R. 3523	9/17/08
1 VAC 75-11-10 through 1 VAC 75-11-110	Added	24:25 VA.R. 3523-3526	9/17/08
<b>Title 2. Agriculture</b>			
2 VAC 5-30-10	Amended	24:17 VA.R. 2318	6/12/08
2 VAC 5-30-20	Amended	24:17 VA.R. 2318	6/12/08
2 VAC 5-50-20	Amended	24:17 VA.R. 2320	6/12/08
2 VAC 5-50-70	Amended	24:17 VA.R. 2320	6/12/08
2 VAC 5-50-100	Amended	24:17 VA.R. 2320	6/12/08
2 VAC 5-50-110	Amended	24:17 VA.R. 2321	6/12/08
2 VAC 5-90-30	Amended	24:17 VA.R. 2322	6/12/08
2 VAC 5-100-10 through 2 VAC 5-100-40	Repealed	24:26 VA.R. 3707	10/18/08
2 VAC 5-150-10	Amended	24:17 VA.R. 2323	6/12/08
2 VAC 5-180-20	Amended	24:17 VA.R. 2326	6/12/08
2 VAC 5-180-30	Amended	24:17 VA.R. 2327	6/12/08
2 VAC 5-180-50	Amended	24:17 VA.R. 2327	6/12/08
2 VAC 5-180-60	Amended	24:17 VA.R. 2327	6/12/08
2 VAC 5-180-80	Amended	24:17 VA.R. 2327	6/12/08
2 VAC 5-180-120	Amended	24:17 VA.R. 2328	6/12/08
2 VAC 5-206-10 through 2 VAC 5-206-50	Added	24:25 VA.R. 3527-3531	10/3/08
2 VAC 5-210-30	Amended	24:9 VA.R. 1096	12/11/07
2 VAC 5-210-41	Amended	24:9 VA.R. 1097	12/11/07
2 VAC 5-390-180	Amended	24:15 VA.R. 2023	3/11/08
2 VAC 5-400-5	Added	24:17 VA.R. 2330	6/12/08
2 VAC 5-420-30	Amended	24:20 VA.R. 2838	5/21/08
2 VAC 5-420-80	Amended	24:20 VA.R. 2840	5/21/08
2 VAC 5-501-80	Amended	24:17 VA.R. 2332	6/12/08
2 VAC 5-501-100	Amended	24:17 VA.R. 2336	6/12/08
2 VAC 5-510-10	Amended	24:17 VA.R. 2340	6/12/08
2 VAC 5-510-50	Amended	24:17 VA.R. 2341	6/12/08
2 VAC 5-510-60	Repealed	24:17 VA.R. 2341	6/12/08
2 VAC 5-510-70	Repealed	24:17 VA.R. 2341	6/12/08
2 VAC 5-510-80	Repealed	24:17 VA.R. 2342	6/12/08
2 VAC 5-510-90	Amended	24:17 VA.R. 2342	6/12/08
2 VAC 5-510-100	Repealed	24:17 VA.R. 2344	6/12/08
2 VAC 5-510-110	Amended	24:17 VA.R. 2344	6/12/08
2 VAC 5-510-120	Repealed	24:17 VA.R. 2345	6/12/08

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
2 VAC 5-510-130	Amended	24:17 VA.R. 2345	6/12/08
2 VAC 5-510-140	Repealed	24:17 VA.R. 2347	6/12/08
2 VAC 5-510-150	Amended	24:17 VA.R. 2347	6/12/08
2 VAC 5-510-160	Repealed	24:17 VA.R. 2348	6/12/08
2 VAC 5-510-170	Amended	24:17 VA.R. 2348	6/12/08
2 VAC 5-510-180	Repealed	24:17 VA.R. 2348	6/12/08
2 VAC 5-510-190	Amended	24:17 VA.R. 2348	6/12/08
2 VAC 5-510-200	Repealed	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-210	Amended	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-220	Repealed	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-230	Repealed	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-240	Amended	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-250	Repealed	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-260	Amended	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-270	Repealed	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-290	Amended	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-300	Repealed	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-310	Amended	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-320	Repealed	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-330	Amended	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-340	Repealed	24:17 VA.R. 2351	6/12/08
2 VAC 5-510-350	Amended	24:17 VA.R. 2351	6/12/08
2 VAC 5-510-360	Repealed	24:17 VA.R. 2351	6/12/08
2 VAC 5-510-390	Amended	24:17 VA.R. 2351	6/12/08
2 VAC 5-510-400	Repealed	24:17 VA.R. 2352	6/12/08
2 VAC 5-510-410	Amended	24:17 VA.R. 2352	6/12/08
2 VAC 5-510-420	Amended	24:17 VA.R. 2352	6/12/08
2 VAC 5-510-500	Amended	24:17 VA.R. 2352	6/12/08
2 VAC 5-510-510	Amended	24:17 VA.R. 2353	6/12/08
2 VAC 5-531-50	Amended	24:16 VA.R. 2235	5/29/08
2 VAC 5-531-140	Amended	24:16 VA.R. 2241	5/29/08
2 VAC 15-20-81	Amended	24:16 VA.R. 2242	4/14/08
2 VAC 20-10-80	Amended	24:24 VA.R. 3331	9/18/08
2 VAC 20-10-100	Amended	24:24 VA.R. 3331	9/18/08
2 VAC 20-10-110	Amended	24:24 VA.R. 3331	9/18/08
2 VAC 20-20-70	Amended	24:17 VA.R. 2355	6/12/08
2 VAC 20-20-130	Amended	24:17 VA.R. 2355	6/12/08
2 VAC 20-20-210	Amended	24:17 VA.R. 2355	6/12/08
2 VAC 20-40-50	Amended	24:17 VA.R. 2357	6/12/08
<b>Title 3. Alcoholic Beverages</b>			
3 VAC 5-50-140 emer	Amended	24:11 VA.R. 1344	1/9/08-1/8/09
3 VAC 5-50-145 emer	Added	24:11 VA.R. 1345	1/9/08-1/8/09
3 VAC 5-70-220	Amended	24:14 VA.R. 1891	5/1/08
3 VAC 5-70-225 emer	Added	24:10 VA.R. 1257	1/2/08-1/1/09
<b>Title 4. Conservation and Natural Resources</b>			
4 VAC 5-50-10 through 4VAC5-50-170	Repealed	24:17 VA.R. 2357	5/28/08
4 VAC 15-20-50	Amended	24:10 VA.R. 1258	1/1/08
4 VAC 15-20-130	Amended	24:10 VA.R. 1259	1/1/08
4 VAC 15-20-200	Amended	24:10 VA.R. 1261	1/1/08
4 VAC 15-20-210	Amended	24:10 VA.R. 1261	1/1/08
4 VAC 15-30-5	Amended	24:10 VA.R. 1262	1/1/08

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 15-30-40	Amended	24:10 VA.R. 1262	1/1/08
4 VAC 15-40-30	Amended	24:23 VA.R. 3108	7/1/08
4 VAC 15-40-70	Amended	24:23 VA.R. 3108	7/1/08
4 VAC 15-40-190	Amended	24:23 VA.R. 3109	7/1/08
4 VAC 15-40-210	Amended	24:23 VA.R. 3109	7/1/08
4 VAC 15-40-220	Amended	24:23 VA.R. 3109	7/1/08
4 VAC 15-50-20	Amended	24:23 VA.R. 3109	7/1/08
4 VAC 15-50-25	Amended	24:23 VA.R. 3109	7/1/08
4 VAC 15-50-71	Amended	24:24 VA.R. 3332	7/8/08
4 VAC 15-50-81	Amended	24:23 VA.R. 3109	7/1/08
4 VAC 15-50-91	Amended	24:23 VA.R. 3110	7/1/08
4 VAC 15-70-50	Amended	24:23 VA.R. 3111	7/1/08
4 VAC 15-70-70	Added	24:23 VA.R. 3111	7/1/08
4 VAC 15-90-22	Amended	24:23 VA.R. 3111	7/1/08
4 VAC 15-90-70	Amended	24:23 VA.R. 3112	7/1/08
4 VAC 15-90-80	Amended	24:23 VA.R. 3112	7/1/08
4 VAC 15-90-80	Amended	24:24 VA.R. 3332	7/8/08
4 VAC 15-90-90	Amended	24:23 VA.R. 3113	7/1/08
4 VAC 15-90-91	Amended	24:23 VA.R. 3114	7/1/08
4 VAC 15-110-10	Amended	24:23 VA.R. 3117	7/1/08
4 VAC 15-110-75	Amended	24:23 VA.R. 3118	7/1/08
4 VAC 15-240-11	Added	24:23 VA.R. 3118	7/1/08
4 VAC 15-240-20	Amended	24:23 VA.R. 3118	7/1/08
4 VAC 15-240-31	Amended	24:23 VA.R. 3118	7/1/08
4 VAC 15-240-40	Amended	24:23 VA.R. 3118	7/1/08
4 VAC 15-240-50	Amended	24:23 VA.R. 3119	7/1/08
4 VAC 15-240-51	Added	24:23 VA.R. 3119	7/1/08
4 VAC 15-260-140	Amended	24:24 VA.R. 3333	7/8/08
4 VAC 15-270-50	Repealed	24:24 VA.R. 3334	7/8/08
4 VAC 15-320-25	Amended	24:10 VA.R. 1265	1/1/08
4 VAC 15-330-30	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-100	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-120	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-160	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-171	Amended	24:10 VA.R. 1273	1/1/08
4 VAC 15-330-200	Amended	24:10 VA.R. 1273	1/1/08
4 VAC 15-340-10	Amended	24:10 VA.R. 1273	1/1/08
4 VAC 15-340-30	Amended	24:10 VA.R. 1274	1/1/08
4 VAC 15-350-20	Amended	24:10 VA.R. 1275	1/1/08
4 VAC 15-350-30	Amended	24:10 VA.R. 1275	1/1/08
4 VAC 15-350-60	Amended	24:10 VA.R. 1275	1/1/08
4 VAC 15-350-70	Amended	24:10 VA.R. 1275	1/1/08
4 VAC 15-360-10	Amended	24:10 VA.R. 1276	1/1/08
4 VAC 15-410-10 through 4 VAC 15-410-160	Added	24:23 VA.R. 3119-3125	7/1/08
4 VAC 20-40-10 through 4 VAC 20-40-40	Repealed	24:19 VA.R. 2749	4/30/08
4 VAC 20-90-10	Repealed	24:19 VA.R. 2749	4/30/08
4 VAC 20-90-20	Repealed	24:19 VA.R. 2749	4/30/08
4 VAC 20-90-30	Repealed	24:19 VA.R. 2749	4/30/08
4 VAC 20-140-10	Amended	24:21 VA.R. 2917	3/17/09
4 VAC 20-140-20	Amended	24:21 VA.R. 2917	3/17/09

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-140-25	Added	24:21 VA.R. 2917	3/17/09
4 VAC 20-150-30	Amended	24:10 VA.R. 1277	1/1/08
4 VAC 20-252-55	Amended	24:10 VA.R. 1278	1/1/08
4 VAC 20-252-120	Amended	24:10 VA.R. 1278	1/1/08
4 VAC 20-252-150	Amended	24:10 VA.R. 1279	1/1/08
4 VAC 20-252-160	Amended	24:10 VA.R. 1279	1/1/08
4 VAC 20-252-230	Amended	24:10 VA.R. 1281	1/1/08
4 VAC 20-270-10 emer	Amended	24:19 VA.R. 2751	5/1/08-5/31/08
4 VAC 20-270-10	Amended	24:21 VA.R. 2918	6/1/08
4 VAC 20-270-30	Amended	24:19 VA.R. 2750	4/30/08
4 VAC 20-270-40	Amended	24:19 VA.R. 2750	4/30/08
4 VAC 20-270-50	Amended	24:19 VA.R. 2750	4/30/08
4 VAC 20-270-50 emer	Amended	24:19 VA.R. 2751	5/1/08-5/31/08
4 VAC 20-270-50	Amended	24:21 VA.R. 2918	6/1/08
4 VAC 20-270-55	Amended	24:15 VA.R. 2023	3/1/08
4 VAC 20-270-55	Amended	24:19 VA.R. 2751	4/30/08
4 VAC 20-270-56	Amended	24:19 VA.R. 2751	4/30/08
4 VAC 20-270-58	Added	24:19 VA.R. 2751	4/30/08
4 VAC 20-320-50	Amended	24:12 VA.R. 1456	2/1/08
4 VAC 20-450-30	Amended	24:21 VA.R. 2918	6/1/08
4 VAC 20-530-20	Amended	24:12 VA.R. 1456	2/1/08
4 VAC 20-530-31	Amended	24:13 VA.R. 1735	2/5/08
4 VAC 20-530-32	Repealed	24:12 VA.R. 1457	2/1/08
4 VAC 20-610-20	Amended	24:8 VA.R. 959	12/1/07
4 VAC 20-610-25	Added	24:8 VA.R. 959	12/1/07
4 VAC 20-610-30	Amended	24:8 VA.R. 960	12/1/07
4 VAC 20-610-30	Amended	24:15 VA.R. 2024	3/1/08
4 VAC 20-610-50	Amended	24:8 VA.R. 961	12/1/07
4 VAC 20-610-60	Amended	24:8 VA.R. 961	12/1/07
4 VAC 20-620-30	Amended	24:10 VA.R. 1281	12/27/07
4 VAC 20-620-40 emer	Amended	24:8 VA.R. 962	11/28/07-12/27/07
4 VAC 20-620-40	Amended	24:10 VA.R. 1282	12/27/07
4 VAC 20-620-50	Amended	24:15 VA.R. 2025	3/1/08
4 VAC 20-620-70	Amended	24:15 VA.R. 2026	3/1/08
4 VAC 20-670-20	Amended	24:19 VA.R. 2752	4/30/08
4 VAC 20-670-25	Amended	24:19 VA.R. 2752	4/30/08
4 VAC 20-670-30	Amended	24:19 VA.R. 2752	4/30/08
4 VAC 20-670-40	Amended	24:19 VA.R. 2753	4/30/08
4 VAC 20-700-10 emer	Amended	24:19 VA.R. 2753	5/1/08-5/31/08
4 VAC 20-700-15 emer	Added	24:19 VA.R. 2753	5/1/08-5/31/08
4 VAC 20-700-15	Added	24:21 VA.R. 2918	6/1/08
4 VAC 20-700-20	Amended	24:15 VA.R. 2026	3/1/08
4 VAC 20-700-20 emer	Amended	24:19 VA.R. 2754	5/1/08-5/31/08
4 VAC 20-700-20	Amended	24:21 VA.R. 2919	6/1/08
4 VAC 20-720-40	Amended	24:12 VA.R. 1457	2/1/08
4 VAC 20-720-50	Amended	24:12 VA.R. 1458	2/1/08
4 VAC 20-720-60	Amended	24:12 VA.R. 1458	2/1/08
4 VAC 20-720-80	Amended	24:12 VA.R. 1458	2/1/08
4 VAC 20-750-10	Amended	24:15 VA.R. 2026	3/1/08
4 VAC 20-750-10	Repealed	24:19 VA.R. 2754	4/30/08
4 VAC 20-750-30	Amended	24:15 VA.R. 2026	3/1/08

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-750-30	Repealed	24:19 VA.R. 2754	4/30/08
4 VAC 20-750-40	Repealed	24:19 VA.R. 2754	4/30/08
4 VAC 20-750-50	Repealed	24:19 VA.R. 2754	4/30/08
4 VAC 20-751-15	Added	24:15 VA.R. 2027	3/1/08
4 VAC 20-751-20	Amended	24:15 VA.R. 2027	3/1/08
4 VAC 20-752-20	Amended	24:19 VA.R. 2754	4/30/08
4 VAC 20-752-30	Amended	24:16 VA.R. 2246	4/1/08
4 VAC 20-752-30	Amended	24:19 VA.R. 2755	4/30/08
4 VAC 20-880-10 emer	Amended	24:19 VA.R. 2755	5/1/08-5/31/08
4 VAC 20-880-10	Amended	24:21 VA.R. 2919	6/1/08
4 VAC 20-880-20 emer	Amended	24:19 VA.R. 2755	5/1/08-5/31/08
4 VAC 20-880-20	Amended	24:19 VA.R. 2756	4/30/08
4 VAC 20-880-30 emer	Amended	24:19 VA.R. 2757	5/1/08-5/31/08
4 VAC 20-880-30	Amended	24:19 VA.R. 2757	4/30/08
4 VAC 20-880-30	Amended	24:21 VA.R. 2919	6/1/08
4 VAC 20-910-45	Amended	24:25 VA.R. 3537	8/1/08
4 VAC 20-950-47	Amended	24:15 VA.R. 2028	3/1/08
4 VAC 20-950-48	Amended	24:15 VA.R. 2028	3/1/08
4 VAC 20-950-48.1	Amended	24:15 VA.R. 2029	3/1/08
4 VAC 20-960-45	Amended	24:8 VA.R. 964	1/1/08
4 VAC 20-960-47	Amended	24:8 VA.R. 964	1/1/08
4 VAC 20-1040-20	Amended	24:8 VA.R. 964	1/1/08
4 VAC 20-1040-35	Added	24:12 VA.R. 1459	2/1/08
4 VAC 20-1090-10 emer	Amended	24:19 VA.R. 2757	5/1/08-5/31/08
4 VAC 20-1090-30	Amended	24:8 VA.R. 965	12/1/07
4 VAC 20-1090-30 emer	Amended	24:19 VA.R. 2757	5/1/08-5/31/08
4 VAC 20-1090-30	Amended	24:19 VA.R. 2760	4/30/08
4 VAC 20-1090-30	Amended	24:21 VA.R. 2920	6/1/08
4 VAC 20-1130-10 through 4 VAC 20-1130-70	Added	24:8 VA.R. 968-970	12/1/07
4 VAC 20-1140-10	Added	24:19 VA.R. 2763	4/30/08
4 VAC 20-1140-20	Added	24:19 VA.R. 2763	4/30/08
4 VAC 20-1140-30	Added	24:19 VA.R. 2763	4/30/08
4 VAC 20-1150-10	Added	24:25 VA.R. 3538	8/1/08
4 VAC 20-1150-20	Added	24:25 VA.R. 3538	8/1/08
4 VAC 25-130 (Forms)	Amended	24:11 VA.R. 1424	--
4 VAC 25-150-90	Amended	24:17 VA.R. 2359	6/12/08
4 VAC 50-20-20 through 4 VAC 50-20-90	Amended	24:25 VA.R. 3539-3554	9/26/08
4 VAC 50-20-51	Added	24:25 VA.R. 3544	9/26/08
4 VAC 50-20-52	Added	24:25 VA.R. 3545	9/26/08
4 VAC 50-20-54	Added	24:25 VA.R. 3545	9/26/08
4 VAC 50-20-58	Added	24:25 VA.R. 3546	9/26/08
4 VAC 50-20-59	Added	24:25 VA.R. 3546	9/26/08
4 VAC 50-20-100 through 4 VAC 50-20-140	Repealed	24:25 VA.R. 3554-3558	9/26/08
4 VAC 50-20-105	Added	24:25 VA.R. 3554	9/26/08
4 VAC 50-20-125	Added	24:25 VA.R. 3557	9/26/08
4 VAC 50-20-150 through 4 VAC 50-20-240	Amended	24:25 VA.R. 3558-3563	9/26/08
4 VAC 50-20-155	Added	24:25 VA.R. 3558	9/26/08
4 VAC 50-20-165	Added	24:25 VA.R. 3559	9/26/08
4 VAC 50-20-175	Added	24:25 VA.R. 3560	9/26/08
4 VAC 50-20-177	Added	24:25 VA.R. 3561	9/26/08

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 50-20-250	Repealed	24:25 VA.R. 3564	9/26/08
4 VAC 50-20-260 through 4 VAC 50-20-320	Amended	24:25 VA.R. 3564-3565	9/26/08
4 VAC 50-20-330 through 4 VAC 50-20-400	Added	24:25 VA.R. 3565-3567	9/26/08
4 VAC 50-60-10	Amended	24:20 VA.R. 2842	7/9/08
4 VAC 50-60-1200	Amended	24:20 VA.R. 2852	7/9/08
4 VAC 50-60-1210	Amended	24:20 VA.R. 2853	7/9/08
4 VAC 50-60-1220	Amended	24:20 VA.R. 2854	7/9/08
4 VAC 50-60-1230	Amended	24:20 VA.R. 2854	7/9/08
4 VAC 50-60-1240	Amended	24:20 VA.R. 2856	7/9/08
<b>Title 5. Corporations</b>			
5 VAC 5-20-20	Amended	24:11 VA.R. 1347	2/15/08
5 VAC 5-20-140	Amended	24:11 VA.R. 1347	2/15/08
5 VAC 5-20-150	Amended	24:11 VA.R. 1348	2/15/08
5 VAC 5-20-170	Amended	24:11 VA.R. 1348	2/15/08
5 VAC 5-20-240	Amended	24:11 VA.R. 1349	2/15/08
<b>Title 6. Criminal Justice and Corrections</b>			
6 VAC 15-31-320	Amended	24:25 VA.R. 3568	9/18/08
6 VAC 15-61-10 through 6 VAC 15-61-300	Repealed	24:8 VA.R. 970	1/24/08
6 VAC 15-62-10 through 6 VAC 15-62-120	Added	24:8 VA.R. 970-979	1/24/08
6 VAC 15-62-110	Amended	24:13 VA.R. 1736	3/3/08
6 VAC 15-62 (Forms)	Amended	24:12 VA.R. 1523	--
6 VAC 20-80-10 through 6 VAC 20-80-90	Amended	24:23 VA.R. 3127-3132	9/1/08
6 VAC 20-80-100	Repealed	24:23 VA.R. 3132	9/1/08
6 VAC 20-80-110	Repealed	24:23 VA.R. 3132	9/1/08
6 VAC 20-171-10 emer	Amended	24:23 VA.R. 3134	7/1/08 - 6/30/09
6 VAC 20-171-50 emer	Amended	24:23 VA.R. 3137	7/1/08 - 6/30/09
6 VAC 20-171-120 emer	Amended	24:23 VA.R. 3138	7/1/08 - 6/30/09
6 VAC 20-171-230 emer	Amended	24:23 VA.R. 3139	7/1/08 - 6/30/09
6 VAC 20-171-320 emer	Amended	24:23 VA.R. 3141	7/1/08 - 6/30/09
6 VAC 20-171-350 emer	Amended	24:23 VA.R. 3142	7/1/08 - 6/30/09
6 VAC 20-171-360 emer	Amended	24:23 VA.R. 3145	7/1/08 - 6/30/09
6 VAC 20-250-10 through 6 VAC 20-250-380	Added	24:23 VA.R. 3146-3161	8/20/08
6 VAC 35-10-10 through 6 VAC 35-10-150	Repealed	24:25 VA.R. 3573	9/17/08
6 VAC 35-11-10 through 6 VAC 35-11-110	Added	24:25 VA.R. 3574-3576	9/17/08
6 VAC 35-51-10 through 6 VAC 35-51-1100	Added	24:25 VA.R. 3577-3610	9/17/08
6 VAC 40-20-30	Amended	24:26 VA.R. 3718	10/16/08
6 VAC 40-20-120	Amended	24:26 VA.R. 3718	10/16/08
6 VAC 40-20-130	Amended	24:26 VA.R. 3718	10/16/08
6 VAC 40-20-160	Amended	24:26 VA.R. 3718	10/16/08
6 VAC 40-50-10 through 6 VAC 40-50-80	Added	24:9 VA.R. 1103-1104	2/6/08
<b>Title 7. Economic Development</b>			
7 VAC 10-20-10 through 7 VAC 10-20-350	Repealed	24:26 VA.R. 3719	9/1/08
7 VAC 10-21-10 through 7 VAC 10-21-610	Added	24:26 VA.R. 3719-3729	9/1/08
<b>Title 8. Education</b>			
8 VAC 20-650-30	Amended	24:21 VA.R. 2936	9/15/08
<b>Title 9. Environment</b>			
9 VAC 10-20-120	Amended	24:22 VA.R. 3040	8/6/08
9 VAC 20-60-18	Amended	24:9 VA.R. 1106	2/6/08
9 VAC 25-32 (Forms)	Amended	24:13 VA.R. 1738	--
9 VAC 25-120-10	Amended	24:9 VA.R. 1107	2/6/08
9 VAC 25-120-20	Amended	24:9 VA.R. 1107	2/6/08

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-120-50	Amended	24:9 VA.R. 1108	2/6/08
9 VAC 25-120-60	Amended	24:9 VA.R. 1108	2/6/08
9 VAC 25-120-70	Amended	24:9 VA.R. 1108	2/6/08
9 VAC 25-120-80	Amended	24:9 VA.R. 1109	2/6/08
9 VAC 25-120-80	Amended	24:18 VA.R. 2502	6/11/08
9 VAC 25-193-40	Amended	24:18 VA.R. 2517	6/11/08
9 VAC 25-193-70	Amended	24:18 VA.R. 2517	6/11/08
9 VAC 25-196-20	Amended	24:9 VA.R. 1124	2/6/08
9 VAC 25-196-40	Amended	24:9 VA.R. 1124	2/6/08
9 VAC 25-196-60	Amended	24:9 VA.R. 1124	2/6/08
9 VAC 25-196-70	Amended	24:9 VA.R. 1125	2/6/08
9 VAC 25-196-70	Amended	24:18 VA.R. 2532	6/11/08
9 VAC 25-210-10	Amended	24:9 VA.R. 1132	2/6/08
9 VAC 25-210-60	Amended	24:9 VA.R. 1136	2/6/08
9 VAC 25-210-116	Amended	24:9 VA.R. 1140	2/6/08
9 VAC 25-210-130	Amended	24:9 VA.R. 1142	2/6/08
9 VAC 25-260-30	Amended	24:13 VA.R. 1741	*
9 VAC 25-260-30	Amending	24:26 VA.R. 3747	8/12/08
9 VAC 25-660-10	Amended	24:9 VA.R. 1144	2/6/08
9 VAC 25-660-60	Amended	24:9 VA.R. 1145	2/6/08
9 VAC 25-660-70	Amended	24:9 VA.R. 1147	2/6/08
9 VAC 25-660-80	Amended	24:9 VA.R. 1148	2/6/08
9 VAC 25-660-100	Amended	24:9 VA.R. 1148	2/6/08
9 VAC 25-670-10	Amended	24:9 VA.R. 1156	2/6/08
9 VAC 25-670-70	Amended	24:9 VA.R. 1157	2/6/08
9 VAC 25-670-80	Amended	24:9 VA.R. 1158	2/6/08
9 VAC 25-670-100	Amended	24:9 VA.R. 1159	2/6/08
9 VAC 25-680-10	Amended	24:9 VA.R. 1170	2/6/08
9 VAC 25-680-60	Amended	24:9 VA.R. 1172	2/6/08
9 VAC 25-680-70	Amended	24:9 VA.R. 1174	2/6/08
9 VAC 25-680-80	Amended	24:9 VA.R. 1175	2/6/08
9 VAC 25-680-100	Amended	24:9 VA.R. 1176	2/6/08
9 VAC 25-690-10	Amended	24:9 VA.R. 1188	2/6/08
9 VAC 25-690-70	Amended	24:9 VA.R. 1190	2/6/08
9 VAC 25-690-80	Amended	24:9 VA.R. 1191	2/6/08
9 VAC 25-690-100	Amended	24:9 VA.R. 1191	2/6/08
9 VAC 25-720-50	Amended	24:18 VA.R. 2540	6/11/08
9 VAC 25-720-120	Amended	24:21 VA.R. 2940	8/7/08
9 VAC 25-720-130	Amended	24:18 VA.R. 2548	6/11/08
9 VAC 25-740-10 through 9 VAC 25-740-210	Added	24:26 VA.R. 3748-3773	10/1/08
9 VAC 25-820-10	Amended	24:21 VA.R. 2942	8/7/08
9 VAC 25-820-20	Amended	24:21 VA.R. 2944	8/7/08
9 VAC 25-820-70	Amended	24:21 VA.R. 2944	8/7/08
<b>Title 10. Finance and Financial Institutions</b>			
10 VAC 5-20-30	Amended	24:22 VA.R. 3043	6/23/08
10 VAC 5-40-5	Added	24:22 VA.R. 3045	7/1/08
10 VAC 5-40-60	Added	24:22 VA.R. 3045	7/1/08
10 VAC 5-160-10	Amended	24:26 VA.R. 3775	8/10/08

\* Effective upon filing notice of U.S. EPA approval with Registrar of Regulations

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
10 VAC 5-160-70	Added	24:26 VA.R. 3776	8/10/08
10 VAC 5-160-80	Added	24:26 VA.R. 3776	8/10/08
<b>Title 11. Gaming</b>			
11 VAC 10-130-60	Amended	24:16 VA.R. 2247	4/14/08
11 VAC 10-180-10	Amended	24:16 VA.R. 2247	4/14/08
11 VAC 10-180-20	Repealed	24:16 VA.R. 2248	4/14/08
11 VAC 10-180-25	Added	24:16 VA.R. 2250	4/14/08
11 VAC 10-180-35	Added	24:16 VA.R. 2250	4/14/08
11 VAC 10-180-60	Amended	24:16 VA.R. 2251	4/14/08
11 VAC 10-180-70	Amended	24:16 VA.R. 2256	4/14/08
11 VAC 10-180-75	Added	24:16 VA.R. 2256	4/14/08
11 VAC 10-180-80	Amended	24:16 VA.R. 2257	4/14/08
11 VAC 10-180-85	Amended	24:16 VA.R. 2258	4/14/08
11 VAC 10-180-110	Amended	24:16 VA.R. 2259	4/14/08
<b>Title 12. Health</b>			
12 VAC 5-90-370	Added	24:19 VA.R. 2777	7/1/08
12 VAC 5-195-10 through 12 VAC 5-195-670	Added	24:19 VA.R. 2778-2802	5/26/08
12 VAC 5-220-10	Amended	24:11 VA.R. 1350	3/5/08
12 VAC 5-220-110	Amended	24:11 VA.R. 1353	3/5/08
12 VAC 5-220-130	Amended	24:11 VA.R. 1354	3/5/08
12 VAC 5-220-200	Amended	24:11 VA.R. 1354	3/5/08
12 VAC 5-371-150	Amended	24:11 VA.R. 1357	3/5/08
12 VAC 5-381-10 through 12VAC5-381-40	Amended	24:11 VA.R. 1358-1361	3/5/08
12 VAC 5-381-60 through 12VAC5-381-100	Amended	24:11 VA.R. 1361-1362	3/5/08
12 VAC 5-381-120	Amended	24:11 VA.R. 1362	3/5/08
12 VAC 5-381-140	Amended	24:11 VA.R. 1362	3/5/08
12 VAC 5-381-150	Amended	24:11 VA.R. 1362	3/5/08
12 VAC 5-381-240	Amended	24:11 VA.R. 1363	3/5/08
12 VAC 5-381-280	Amended	24:11 VA.R. 1363	3/5/08
12 VAC 5-391-10	Amended	24:11 VA.R. 1364	3/5/08
12 VAC 5-391-30 through 12 VAC 5-391-100	Amended	24:11 VA.R. 1366-1368	3/5/08
12 VAC 5-391-120	Amended	24:11 VA.R. 1368	3/5/08
12 VAC 5-391-130	Amended	24:11 VA.R. 1368	3/5/08
12 VAC 5-391-150	Amended	24:11 VA.R. 1369	3/5/08
12 VAC 5-391-160	Amended	24:11 VA.R. 1369	3/5/08
12 VAC 5-391-250	Amended	24:11 VA.R. 1370	3/5/08
12 VAC 5-391-280	Amended	24:11 VA.R. 1370	3/5/08
12 VAC 5-410-230	Amended	24:11 VA.R. 1371	3/5/08
12 VAC 5-481-10	Amended	24:18 VA.R. 2566	6/12/08
12 VAC 5-481-20	Amended	24:18 VA.R. 2592	6/12/08
12 VAC 5-481-30	Amended	24:18 VA.R. 2592	6/12/08
12 VAC 5-481-90	Amended	24:18 VA.R. 2592	6/12/08
12 VAC 5-481-100	Amended	24:18 VA.R. 2593	6/12/08
12 VAC 5-481-110	Amended	24:18 VA.R. 2593	6/12/08
12 VAC 5-481-130	Amended	24:18 VA.R. 2594	6/12/08
12 VAC 5-481-150	Amended	24:18 VA.R. 2594	6/12/08
12 VAC 5-481-200	Repealed	24:18 VA.R. 2594	6/12/08
12 VAC 5-481-230 through 12 VAC 5-481-270	Amended	24:18 VA.R. 2594-2595	6/12/08
12 VAC 5-481-340	Amended	24:18 VA.R. 2595	6/12/08
12 VAC 5-481-370 through 12 VAC 5-481-450	Amended	24:18 VA.R. 2597-2607	6/12/08
12 VAC 5-481-451	Added	24:25 VA.R. 3612	10/3/08

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-481-460	Repealed	24:18 VA.R. 2607	6/12/08
12 VAC 5-481-470	Amended	24:18 VA.R. 2608	6/12/08
12 VAC 5-481-480	Amended	24:18 VA.R. 2610	6/12/08
12 VAC 5-481-500	Amended	24:18 VA.R. 2619	6/12/08
12 VAC 5-481-510	Amended	24:18 VA.R. 2620	6/12/08
12 VAC 5-481-530 through 12 VAC 5-481-590	Amended	24:18 VA.R. 2622-2626	6/12/08
12 VAC 5-481-571	Added	24:18 VA.R. 2624	6/12/08
12 VAC 5-481-630 through 12 VAC 5-481-760	Amended	24:18 VA.R. 2626-2629	6/12/08
12 VAC 5-481-780	Amended	24:18 VA.R. 2629	6/12/08
12 VAC 5-481-790	Amended	24:18 VA.R. 2629	6/12/08
12 VAC 5-481-800	Repealed	24:18 VA.R. 2629	6/12/08
12 VAC 5-481-810 through 12 VAC 5-481-910	Amended	24:18 VA.R. 2630-2631	6/12/08
12 VAC 5-481-930 through 12 VAC 5-481-1050	Amended	24:18 VA.R. 2632-2633	6/12/08
12 VAC 5-481-971	Added	24:18 VA.R. 2632	6/12/08
12 VAC 5-481-1070	Amended	24:18 VA.R. 2633	6/12/08
12 VAC 5-481-1090	Amended	24:18 VA.R. 2633	6/12/08
12 VAC 5-481-1100	Amended	24:18 VA.R. 2633	6/12/08
12 VAC 5-481-1110	Amended	24:18 VA.R. 2633	6/12/08
12 VAC 5-481-1130	Amended	24:18 VA.R. 2634	6/12/08
12 VAC 5-481-1151	Added	24:18 VA.R. 2634	6/12/08
12 VAC 5-481-1160	Repealed	24:18 VA.R. 2635	6/12/08
12 VAC 5-481-1161	Added	24:18 VA.R. 2635	6/12/08
12 VAC 5-481-1190	Amended	24:18 VA.R. 2637	6/12/08
12 VAC 5-481-1200	Amended	24:18 VA.R. 2638	6/12/08
12 VAC 5-481-1220 through 12 VAC 5-481-1250	Amended	24:18 VA.R. 2639-2640	6/12/08
12 VAC 5-481-1270	Amended	24:18 VA.R. 2640	6/12/08
12 VAC 5-481-1300	Amended	24:18 VA.R. 2640	6/12/08
12 VAC 5-481-1310	Amended	24:18 VA.R. 2641	6/12/08
12 VAC 5-481-1320	Amended	24:18 VA.R. 2641	6/12/08
12 VAC 5-481-1350	Amended	24:18 VA.R. 2644	6/12/08
12 VAC 5-481-1380	Amended	24:18 VA.R. 2644	6/12/08
12 VAC 5-481-1420	Amended	24:18 VA.R. 2644	6/12/08
12 VAC 5-481-1440	Amended	24:18 VA.R. 2644	6/12/08
12 VAC 5-481-1490	Amended	24:18 VA.R. 2645	6/12/08
12 VAC 5-481-1520	Amended	24:18 VA.R. 2645	6/12/08
12 VAC 5-481-1540	Repealed	24:18 VA.R. 2645	6/12/08
12 VAC 5-481-1550	Repealed	24:18 VA.R. 2646	6/12/08
12 VAC 5-481-1560	Amended	24:18 VA.R. 2646	6/12/08
12 VAC 5-481-1570	Amended	24:18 VA.R. 2647	6/12/08
12 VAC 5-481-1670 through 12 VAC 5-481-2040	Amended	24:18 VA.R. 2647-2650	6/12/08
12 VAC 5-481-2001	Added	24:18 VA.R. 2649	6/12/08
12 VAC 5-481-2050	Repealed	24:18 VA.R. 2650	6/12/08
12 VAC 5-481-2060	Amended	24:18 VA.R. 2651	6/12/08
12 VAC 5-481-2070	Amended	24:18 VA.R. 2651	6/12/08
12 VAC 5-481-2080	Amended	24:18 VA.R. 2651	6/12/08
12 VAC 5-481-2100	Amended	24:18 VA.R. 2651	6/12/08
12 VAC 5-481-2230	Amended	24:18 VA.R. 2652	6/12/08
12 VAC 5-481-2240	Amended	24:18 VA.R. 2653	6/12/08
12 VAC 5-481-2260	Amended	24:18 VA.R. 2653	6/12/08
12 VAC 5-481-2270	Amended	24:18 VA.R. 2653	6/12/08

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-481-2280	Amended	24:18 VA.R. 2654	6/12/08
12 VAC 5-481-2330	Amended	24:18 VA.R. 2654	6/12/08
12 VAC 5-481-2420	Amended	24:18 VA.R. 2654	6/12/08
12 VAC 5-481-2430	Amended	24:18 VA.R. 2655	6/12/08
12 VAC 5-481-2470	Amended	24:18 VA.R. 2655	6/12/08
12 VAC 5-481-2490	Amended	24:18 VA.R. 2655	6/12/08
12 VAC 5-481-2510	Amended	24:18 VA.R. 2656	6/12/08
12 VAC 5-481-2530	Amended	24:18 VA.R. 2656	6/12/08
12 VAC 5-481-2540	Amended	24:18 VA.R. 2656	6/12/08
12 VAC 5-481-2550	Amended	24:18 VA.R. 2657	6/12/08
12 VAC 5-481-2571	Added	24:18 VA.R. 2657	6/12/08
12 VAC 5-481-2572	Added	24:18 VA.R. 2659	6/12/08
12 VAC 5-481-2573	Added	24:18 VA.R. 2660	6/12/08
12 VAC 5-481-2660 through 12 VAC 5-481-2950	Amended	24:18 VA.R. 2660-2661	6/12/08
12 VAC 5-481-2970	Amended	24:18 VA.R. 2661	6/12/08
12 VAC 5-481-2980	Amended	24:18 VA.R. 2662	6/12/08
12 VAC 5-481-3000 through 12 VAC 5-481-3040	Amended	24:18 VA.R. 2663-2665	6/12/08
12 VAC 5-481-3070 through 12 VAC 5-481-3140	Amended	24:18 VA.R. 2667-2670	6/12/08
12 VAC 5-481-3050	Repealed	24:18 VA.R. 2665	6/12/08
12 VAC 5-481-3051	Added	24:18 VA.R. 2666	6/12/08
12 VAC 5-481-3091	Added	24:18 VA.R. 2668	6/12/08
12 VAC 5-481-3151	Added	24:18 VA.R. 2670	6/12/08
12 VAC 5-481-3160	Amended	24:18 VA.R. 2671	6/12/08
12 VAC 5-481-3200 through 12 VAC 5-481-3270	Amended	24:18 VA.R. 2671-2675	6/12/08
12 VAC 5-481-3241	Added	24:18 VA.R. 2673	6/12/08
12 VAC 5-481-3261	Added	24:18 VA.R. 2674	6/12/08
12 VAC 5-481-3290	Amended	24:18 VA.R. 2675	6/12/08
12 VAC 5-481-3300	Amended	24:18 VA.R. 2675	6/12/08
12 VAC 5-481-3340	Amended	24:18 VA.R. 2675	6/12/08
12 VAC 5-481-3350	Amended	24:18 VA.R. 2675	6/12/08
12 VAC 5-481-3400	Amended	24:18 VA.R. 2676	6/12/08
12 VAC 5-481-3430	Amended	24:18 VA.R. 2677	6/12/08
12 VAC 5-481-3440	Amended	24:18 VA.R. 2683	6/12/08
12 VAC 5-481-3480	Amended	24:18 VA.R. 2684	6/12/08
12 VAC 5-481-3490	Amended	24:18 VA.R. 2684	6/12/08
12 VAC 5-481-3510	Amended	24:18 VA.R. 2684	6/12/08
12 VAC 5-481-3520	Amended	24:18 VA.R. 2685	6/12/08
12 VAC 5-481-3530	Amended	24:18 VA.R. 2685	6/12/08
12 VAC 5-481-3560	Amended	24:18 VA.R. 2686	6/12/08
12 VAC 5-481-3580	Amended	24:18 VA.R. 2687	6/12/08
12 VAC 5-481-3600	Amended	24:18 VA.R. 2687	6/12/08
12 VAC 5-481-3610	Amended	24:18 VA.R. 2688	6/12/08
12 VAC 5-481-3650	Amended	24:18 VA.R. 2688	6/12/08
12 VAC 5-481-3670 through 12 VAC 5-481-3780	Repealed	24:18 VA.R. 2689-2715	6/12/08
12 VAC 30-50-130 emer	Amended	24:23 VA.R. 3165	7/2/08 - 7/1/09
12 VAC 30-70-221	Amended	24:21 VA.R. 2959	7/23/08
12 VAC 30-70-311	Amended	24:26 VA.R. 3778	10/15/08
12 VAC 30-70-321	Amended	24:26 VA.R. 3778	10/15/08
12 VAC 30-80-30	Erratum	24:17 VA.R. 2473	--
12 VAC 30-80-30	Amended	24:21 VA.R. 2962	7/23/08
12 VAC 30-80-40 emer	Amended	24:25 VA.R. 3617	8/4/08-8/3/09

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 30-80-75	Added	24:21 VA.R. 2965	7/23/08
12 VAC 30-90-41	Amended	24:26 VA.R. 3778	10/15/08
12 VAC 30-100-170	Amended	24:25 VA.R. 3622	10/2/08
12 VAC 30-120-70 emer	Amended	24:23 VA.R. 3168	7/1/08 - 6/30/09
12 VAC 30-120-90 emer	Amended	24:23 VA.R. 3169	7/1/08 - 6/30/09
12 VAC 30-120-100	Amended	24:26 VA.R. 3781	10/15/08
12 VAC 30-120-140 emer	Amended	24:23 VA.R. 3171	7/1/08 - 6/30/09
12 VAC 30-120-211 emer	Amended	24:23 VA.R. 3174	7/1/08 - 6/30/09
12 VAC 30-120-213 emer	Amended	24:23 VA.R. 3177	7/1/08 - 6/30/09
12 VAC 30-120-225 emer	Amended	24:23 VA.R. 3178	7/1/08 - 6/30/09
12 VAC 30-120-229 emer	Amended	24:23 VA.R. 3181	7/1/08 - 6/30/09
12 VAC 30-120-237 emer	Amended	24:23 VA.R. 3182	7/1/08 - 6/30/09
12 VAC 30-120-247 emer	Amended	24:23 VA.R. 3184	7/1/08 - 6/30/09
12 VAC 30-120-700 emer	Amended	24:23 VA.R. 3185	7/1/08 - 6/30/09
12 VAC 30-120-710 emer	Amended	24:23 VA.R. 3189	7/1/08 - 6/30/09
12 VAC 30-120-754 emer	Amended	24:23 VA.R. 3190	7/1/08 - 6/30/09
12 VAC 30-120-758 emer	Amended	24:23 VA.R. 3191	7/1/08 - 6/30/09
12 VAC 30-120-762 emer	Amended	24:23 VA.R. 3192	7/1/08 - 6/30/09
12 VAC 30-120-770 emer	Amended	24:23 VA.R. 3193	7/1/08 - 6/30/09
12 VAC 30-120-900 emer	Amended	24:23 VA.R. 3195	7/1/08 - 6/30/09
12 VAC 30-120-910 emer	Amended	24:23 VA.R. 3197	7/1/08 - 6/30/09
12 VAC 30-120-920 emer	Amended	24:23 VA.R. 3198	7/1/08 - 6/30/09
12 VAC 30-120-970 emer	Amended	24:23 VA.R. 3200	7/1/08 - 6/30/09
12 VAC 30-120-1500 emer	Amended	24:23 VA.R. 3202	7/1/08 - 6/30/09
12 VAC 30-120-1550 emer	Amended	24:23 VA.R. 3204	7/1/08 - 6/30/09
12 VAC 30-120-2000 emer	Added	24:23 VA.R. 3206	7/1/08 - 6/30/09
12 VAC 30-120-2010 emer	Added	24:23 VA.R. 3207	7/1/08 - 6/30/09
12 VAC 30-135-10	Amended	24:26 VA.R. 3783	10/16/08
12 VAC 30-135-20	Amended	24:26 VA.R. 3783	10/16/08
12 VAC 30-135-30	Amended	24:26 VA.R. 3783	10/16/08
12 VAC 30-135-40	Amended	24:26 VA.R. 3783	10/16/08
12 VAC 30-135-70	Amended	24:26 VA.R. 3784	10/16/08
12 VAC 35-105-115	Added	24:11 VA.R. 1372	3/5/08
<b>Title 13. Housing</b>			
13 VAC 5-21-10	Amended	24:14 VA.R. 1894	5/1/08
13 VAC 5-21-20	Amended	24:14 VA.R. 1894	5/1/08
13 VAC 5-21-31	Amended	24:14 VA.R. 1895	5/1/08
13 VAC 5-21-41	Amended	24:14 VA.R. 1895	5/1/08
13 VAC 5-21-45	Amended	24:14 VA.R. 1895	5/1/08
13 VAC 5-21-51	Amended	24:14 VA.R. 1895	5/1/08
13 VAC 5-21-61	Amended	24:14 VA.R. 1896	5/1/08
13 VAC 5-31-20 through 13 VAC 5-31-50	Amended	24:14 VA.R. 1897-1898	5/1/08
13 VAC 5-31-70 through 13 VAC 5-31-170	Repealed	24:14 VA.R. 1898-1903	5/1/08
13 VAC 5-31-75	Added	24:14 VA.R. 1898	5/1/08
13 VAC 5-31-85	Added	24:14 VA.R. 1900	5/1/08
13 VAC 5-31-200	Amended	24:14 VA.R. 1904	5/1/08
13 VAC 5-31-210	Amended	24:14 VA.R. 1904	5/1/08
13 VAC 5-31-215 through 13 VAC 5-31-270	Added	24:14 VA.R. 1904-1905	5/1/08
13 VAC 5-51-21 through 13 VAC 5-51-51	Amended	24:14 VA.R. 1907-1910	5/1/08
13 VAC 5-51-81	Amended	24:14 VA.R. 1910	5/1/08

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
13 VAC 5-51-81	Amended	24:25 VA.R. 3622	10/1/08
13 VAC 5-51-85	Amended	24:14 VA.R. 1921	5/1/08
13 VAC 5-51-91	Amended	24:14 VA.R. 1924	5/1/08
13 VAC 5-51-130 through 13 VAC 5-51-135	Amended	24:14 VA.R. 1925-1928	5/1/08
13 VAC 5-51-143	Added	24:14 VA.R. 1928	5/1/08
13 VAC 5-51-145	Amended	24:14 VA.R. 1932	5/1/08
13 VAC 5-51-150	Amended	24:14 VA.R. 1932	5/1/08
13 VAC 5-51-152	Repealed	24:14 VA.R. 1937	5/1/08
13 VAC 5-51-154	Amended	24:14 VA.R. 1937	5/1/08
13 VAC 5-51-155	Amended	24:14 VA.R. 1939	5/1/08
13 VAC 5-63-10 through 13 VAC 5-63-50	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-70	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-80	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-100 through 13 VAC 5-63-130	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-150	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-160	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-190 through 13 VAC 5-63-260	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-225	Repealed	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-265	Repealed	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-267	Added	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-270	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-280	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-300 through 13 VAC 5-63-360	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-335	Added	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-400	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-430	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-432	Repealed	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-434 through 13 VAC 5-63-450	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-470 through 13 VAC 5-63-500	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-520	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-525	Added	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-550	Repealed	24:14 VA.R. 1941	5/1/08
13 VAC 5-91-20	Amended	24:14 VA.R. 1943	5/1/08
13 VAC 5-91-100	Amended	24:14 VA.R. 1943	5/1/08
13 VAC 5-91-110	Repealed	24:14 VA.R. 1944	5/1/08
13 VAC 5-91-115	Added	24:14 VA.R. 1944	5/1/08
13 VAC 5-91-120	Amended	24:14 VA.R. 1944	5/1/08
13 VAC 5-91-160	Amended	24:14 VA.R. 1945	5/1/08
13 VAC 5-91-270	Amended	24:14 VA.R. 1945	5/1/08
13 VAC 5-95-10	Amended	24:14 VA.R. 1947	5/1/08
13 VAC 5-95-30	Amended	24:14 VA.R. 1948	5/1/08
13 VAC 5-112-340	Amended	24:8 VA.R. 979	1/23/08
13 VAC 5-200-10	Amended	24:26 VA.R. 3784	10/1/08
13 VAC 5-200-40 through 13 VAC 5-200-80	Amended	24:26 VA.R. 3784-3785	10/1/08
13 VAC 5-200-100	Amended	24:26 VA.R. 3785	10/1/08
13 VAC 10-180-10	Amended	24:11 VA.R. 1373	2/4/08
13 VAC 10-180-50	Amended	24:11 VA.R. 1374	2/4/08
13 VAC 10-180-60	Amended	24:11 VA.R. 1376	2/4/08
13 VAC 10-180-60	Amended	24:11 VA.R. 1387	2/4/08
13 VAC 10-180-100	Amended	24:11 VA.R. 1397	2/4/08

### Title 14. Insurance

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
14 VAC 5-30-30	Amended	24:15 VA.R. 2153	4/1/08
14 VAC 5-200-185	Amended	24:15 VA.R. 2155	4/1/08
14 VAC 5-211-50	Amended	24:22 VA.R. 3063	7/1/08
14 VAC 5-211-90	Amended	24:22 VA.R. 3063	7/1/08
14 VAC 5-211-100	Amended	24:22 VA.R. 3063	7/1/08
14 VAC 5-215 (Forms)	Amended	24:17 VA.R. 2452	--
14 VAC 5-270-10 through 14 VAC 5-270-150	Amended	24:12 VA.R. 1460-1470	1/1/10
14 VAC 5-270-144	Added	24:12 VA.R. 1467	1/1/10
14 VAC 5-270-146	Added	24:12 VA.R. 1468	1/1/10
14 VAC 5-270-148	Added	24:12 VA.R. 1469	1/1/10
14 VAC 5-270-170	Amended	24:12 VA.R. 1470	1/1/10
14 VAC 5-270-174	Added	24:12 VA.R. 1470	1/1/10
14 VAC 5-270-180	Amended	24:12 VA.R. 1470	1/1/10
14 VAC 5-395-40	Amended	24:26 VA.R. 3811	8/29/08
<b>Title 15. Judicial</b>			
15 VAC 5-80-50	Amended	24:23 VA.R. 3211	7/1/08
<b>Title 16. Labor and Employment</b>			
16 VAC 15-21-30	Amended	24:23 VA.R. 3213	8/21/08
16 VAC 15-30-40	Amended	24:25 VA.R. 3632	9/18/08
16 VAC 15-30-190	Amended	24:23 VA.R. 3214	8/21/08
16 VAC 20-20-20	Amended	24:22 VA.R. 3065	8/7/08
16 VAC 20-20-40	Amended	24:22 VA.R. 3066	8/7/08
16 VAC 20-20-50	Amended	24:22 VA.R. 3068	8/7/08
16 VAC 20-20-60	Amended	24:22 VA.R. 3069	8/7/08
16 VAC 20-20-80	Amended	24:22 VA.R. 3070	8/7/08
16 VAC 20-20-110	Amended	24:22 VA.R. 3070	8/7/08
16 VAC 25-10-10 through 16 VAC 25-10-120	Repealed	24:26 VA.R. 3811	10/1/08
16 VAC 25-11-10 through 16 VAC 25-11-110	Added	24:26 VA.R. 3811-3814	10/1/08
16 VAC 25-90-1910.6	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.68	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.94	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.103	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.107	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.110	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.111	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.132	Added	24:16 VA.R. 2263	6/1/08
16 VAC 25-90-1910.144	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.243	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.251	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.253	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.261	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-100-1915.152	Added	24:16 VA.R. 2263	6/1/08
16 VAC 25-120-1917.96	Added	24:16 VA.R. 2263	6/1/08
16 VAC 25-130-1918.106	Added	24:16 VA.R. 2263	6/1/08
16 VAC 25-175-1926.95	Added	24:16 VA.R. 2263	6/1/08
<b>Title 18. Professional and Occupational Licensing</b>			
18 VAC 15-20-451	Amended	24:17 VA.R. 2455	8/1/08
18 VAC 30-20 (Forms)	Amended	24:26 VA.R. 3814	--
18 VAC 30-20-80	Amended	24:10 VA.R. 1284	2/20/08
18 VAC 30-20-170	Amended	24:10 VA.R. 1284	2/20/08

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 30-20-171	Amended	24:10 VA.R. 1285	2/20/08
18 VAC 45-10-10 through 18 VAC 45- 10-90	Repealed	24:26 VA.R. 3815	10/2/08
18 VAC 45-11-10 through 18 VAC 45-11-110	Added	24:26 VA.R. 3815-3818	10/2/08
18 VAC 60-20-30	Amended	24:20 VA.R. 2874	7/24/08
18 VAC 60-20-81	Added	24:14 VA.R. 1949	4/16/08
18 VAC 60-20-108	Amended	24:14 VA.R. 1950	4/16/08
18 VAC 60-20-190	Amended	24:14 VA.R. 1951	4/16/08
18 VAC 60-20-220	Amended	24:10 VA.R. 1287	3/10/08
18 VAC 60-20-220	Amended	24:14 VA.R. 1951	4/16/08
18 VAC 65-20 (Forms)	Amended	24:26 VA.R. 3818	--
18 VAC 65-20-10	Amended	24:24 VA.R. 3358	9/3/08
18 VAC 65-20-15	Amended	24:24 VA.R. 3358	9/3/08
18 VAC 65-20-60	Amended	24:24 VA.R. 3358	9/3/08
18 VAC 65-20-120	Amended	24:24 VA.R. 3358	9/3/08
18 VAC 65-20-130	Amended	24:24 VA.R. 3359	9/3/08
18 VAC 65-20-151	Amended	24:22 VA.R. 3070	8/6/08
18 VAC 65-20-153	Amended	24:24 VA.R. 3359	9/3/08
18 VAC 65-20-170	Amended	24:24 VA.R. 3359	9/3/08
18 VAC 65-20-171	Added	24:24 VA.R. 3359	9/3/08
18 VAC 65-20-240	Amended	24:24 VA.R. 3360	9/3/08
18 VAC 65-20-350	Amended	24:24 VA.R. 3360	9/3/08
18 VAC 65-20-420	Amended	24:24 VA.R. 3360	9/3/08
18 VAC 65-20-440	Amended	24:24 VA.R. 3360	9/3/08
18 VAC 65-20-500	Amended	24:24 VA.R. 3360	9/3/08
18 VAC 65-20-510	Amended	24:24 VA.R. 3361	9/3/08
18 VAC 65-20-590	Amended	24:24 VA.R. 3361	9/3/08
18 VAC 65-20-700	Amended	24:24 VA.R. 3361	9/3/08
18 VAC 65-40 (Forms)	Amended	24:26 VA.R. 3818	--
18 VAC 75-20 (Forms)	Amended	24:25 VA.R. 3632	--
18 VAC 76-20 (Forms)	Amended	24:26 VA.R. 3819	--
18 VAC 76-30-10 through 18 VAC 76-30-120	Repealed	24:25 VA.R. 3632	9/17/08
18 VAC 76-31-10 through 18 VAC 76-31-110	Added	24:25 VA.R. 3633-3635	9/17/08
18 VAC 76-40 (Forms)	Amended	24:26 VA.R. 3820	--
18 VAC 85-10-10 through 18 VAC 85-10-110	Repealed	24:26 VA.R. 3820	10/1/08
18 VAC 85-11-10 through 18 VAC 85-11-110	Added	24:26 VA.R. 3820	10/1/08
18 VAC 85-20 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-20-22	Amended	24:11 VA.R. 1404	3/5/08
18 VAC 85-20-22	Amended	24:14 VA.R. 1952	4/16/08
18 VAC 85-20-225	Amended	24:24 VA.R. 3367	9/3/08
18 VAC 85-20-226	Added	24:11 VA.R. 1404	3/5/08
18 VAC 85-20-400	Amended	24:20 VA.R. 2876	7/24/08
18 VAC 85-40 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-40-35	Amended	24:11 VA.R. 1404	3/5/08
18 VAC 85-40-55	Amended	24:24 VA.R. 3368	9/3/08
18 VAC 85-40-67	Added	24:11 VA.R. 1405	3/5/08
18 VAC 85-50 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-50-35	Amended	24:11 VA.R. 1405	3/5/08
18 VAC 85-50-59	Amended	24:24 VA.R. 3368	9/3/08
18 VAC 85-50-61	Added	24:11 VA.R. 1405	3/5/08
18 VAC 85-80 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-80-26	Amended	24:11 VA.R. 1406	3/5/08

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 85-80-65	Amended	24:24 VA.R. 3368	9/3/08
18 VAC 85-80-73	Added	24:11 VA.R. 1406	3/5/08
18 VAC 85-101 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-101-25	Amended	24:11 VA.R. 1406	3/5/08
18 VAC 85-101-25	Amended	24:20 VA.R. 2879	7/24/08
18 VAC 85-101-40	Amended	24:20 VA.R. 2879	7/24/08
18 VAC 85-101-50	Amended	24:20 VA.R. 2879	7/24/08
18 VAC 85-101-55	Added	24:20 VA.R. 2880	7/24/08
18 VAC 85-101-60	Amended	24:20 VA.R. 2880	7/24/08
18 VAC 85-101-70	Repealed	24:20 VA.R. 2881	7/24/08
18 VAC 85-101-145	Amended	24:24 VA.R. 3368	9/3/08
18 VAC 85-101-150	Amended	24:20 VA.R. 2881	7/24/08
18 VAC 85-101-153	Added	24:11 VA.R. 1407	3/5/08
18 VAC 85-110 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-110-35	Amended	24:11 VA.R. 1407	3/5/08
18 VAC 85-110-145	Amended	24:24 VA.R. 3369	9/3/08
18 VAC 85-110-161	Added	24:11 VA.R. 1407	3/5/08
18 VAC 85-120 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-120-10	Amended	24:20 VA.R. 2884	7/24/08
18 VAC 85-120-50	Amended	24:20 VA.R. 2884	7/24/08
18 VAC 85-120-70	Amended	24:20 VA.R. 2885	7/24/08
18 VAC 85-120-85	Amended	24:24 VA.R. 3369	9/3/08
18 VAC 85-120-90	Amended	24:20 VA.R. 2885	7/24/08
18 VAC 85-120-95	Added	24:20 VA.R. 2885	7/24/08
18 VAC 85-120-150	Amended	24:20 VA.R. 2885	7/24/08
18 VAC 85-130 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-130-30	Amended	24:14 VA.R. 1952	4/16/08
18 VAC 90-10-10 through 18 VAC 90-10-120	Repealed	24:25 VA.R. 3635	9/17/08
18 VAC 90-11-10 through 18 VAC 90-11-110	Added	24:25 VA.R. 3636-3639	9/17/08
18 VAC 90-20-10	Amended	24:13 VA.R. 1842	4/2/08
18 VAC 90-20-35	Amended	24:13 VA.R. 1843	4/2/08
18 VAC 90-20-40 through 18 VAC 90-20-60	Amended	24:13 VA.R. 1843-1845	4/2/08
18 VAC 90-20-65	Repealed	24:13 VA.R. 1844	4/2/08
18 VAC 90-20-70	Amended	24:13 VA.R. 1844	4/2/08
18 VAC 90-20-90	Amended	24:13 VA.R. 1845	4/2/08
18 VAC 90-20-95	Amended	24:13 VA.R. 1846	4/2/08
18 VAC 90-20-96	Added	24:13 VA.R. 1846	4/2/08
18 VAC 90-20-110 through 18 VAC 90-20-140	Amended	24:13 VA.R. 1846-1848	4/2/08
18 VAC 90-20-151	Added	24:13 VA.R. 1848	4/2/08
18 VAC 90-20-160	Amended	24:13 VA.R. 1849	4/2/08
18 VAC 90-20-190	Amended	24:13 VA.R. 1849	4/2/08
18 VAC 90-20-200	Amended	24:13 VA.R. 1850	4/2/08
18 VAC 90-20-220	Amended	24:13 VA.R. 1850	4/2/08
18 VAC 90-20-230	Amended	24:13 VA.R. 1851	4/2/08
18 VAC 90-20-271	Amended	24:21 VA.R. 2969	7/23/08
18 VAC 90-20-275	Amended	24:13 VA.R. 1851	4/2/08
18 VAC 90-20-280	Amended	24:13 VA.R. 1851	4/2/08
18 VAC 90-20-300	Amended	24:13 VA.R. 1851	4/2/08
18 VAC 90-20-370	Amended	24:13 VA.R. 1852	4/2/08
18 VAC 90-20-390	Amended	24:13 VA.R. 1852	4/2/08

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 90-20-410	Amended	24:13 VA.R. 1853	4/2/08
18 VAC 90-30-10	Amended	24:10 VA.R. 1288	2/20/08
18 VAC 90-30-80	Erratum	24:18 VA.R. 2731-2732	--
18 VAC 90-30-80	Amended	24:24 VA.R. 3369	9/3/08
18 VAC 90-30-120	Amended	24:10 VA.R. 1288	2/20/08
18 VAC 90-30-121	Added	24:10 VA.R. 1289	2/20/08
18 VAC 90-30-160	Amended	24:24 VA.R. 3370	9/3/08
18 VAC 90-60-110	Amended	24:23 VA.R. 3216	9/4/08
18 VAC 95-20 (Forms)	Amended	24:26 VA.R. 3827	--
18 VAC 95-20-80	Amended	24:16 VA.R. 2264	5/14/08
18 VAC 95-20-175	Amended	24:20 VA.R. 2887	7/24/08
18 VAC 95-20-220	Amended	24:20 VA.R. 2888	7/24/08
18 VAC 95-20-230	Amended	24:20 VA.R. 2888	7/24/08
18 VAC 95-30 (Forms)	Amended	24:26 VA.R. 3827	--
18 VAC 95-30-40	Amended	24:16 VA.R. 2264	5/14/08
18 VAC 95-30-95	Amended	24:23 VA.R. 3219	9/4/08
18 VAC 95-30-150	Amended	24:23 VA.R. 3220	9/4/08
18 VAC 95-30-180	Amended	24:23 VA.R. 3220	9/4/08
18 VAC 105-10-10 through 18 VAC 105-10-120	Repealed	24:26 VA.R. 3828	10/1/08
18 VAC 105-11-10 through 18 VAC 105-11-110	Added	24:26 VA.R. 3828-3831	10/1/08
18 VAC 105-20 (Forms)	Amended	24:25 VA.R. 3639	--
18 VAC 105-20-75	Amended	24:22 VA.R. 3071	8/6/08
18 VAC 110-20 (Forms)	Amended	24:25 VA.R. 3640	--
18 VAC 110-20-10	Amended	24:8 VA.R. 983	1/23/08
18 VAC 110-20-75	Amended	24:22 VA.R. 3071	8/6/08
18 VAC 110-20-321	Added	24:8 VA.R. 986	1/23/08
18 VAC 110-20-411 through 18 VAC 110-20-416	Repealed	24:8 VA.R. 986-987	1/23/08
18 VAC 110-20-530	Amended	24:16 VA.R. 2265	5/14/08
18 VAC 110-30 (Forms)	Amended	24:25 VA.R. 3640	--
18 VAC 110-30-15	Amended	24:10 VA.R. 1290	2/20/08
18 VAC 110-50 (Forms)	Amended	24:25 VA.R. 3640	--
18 VAC 110-50-10	Amended	24:10 VA.R. 1290	2/20/08
18 VAC 110-50-160	Added	24:10 VA.R. 1291	2/20/08
18 VAC 110-50-170	Added	24:10 VA.R. 1291	2/20/08
18 VAC 110-50-180	Added	24:10 VA.R. 1292	2/20/08
18 VAC 110-50-190	Added	24:10 VA.R. 1292	2/20/08
18 VAC 112-20 (Forms)	Amended	24:26 VA.R. 3831	--
18 VAC 115-10-10 through 18 VAC 115-10-120	Repealed	24:26 VA.R. 3832	10/1/08
18 VAC 115-11-10 through 18 VAC 115-11-110	Added	24:26 VA.R. 3832-3835	10/1/08
18 VAC 115-20-10	Amended	24:24 VA.R. 3387	9/3/08
18 VAC 115-20-45	Amended	24:24 VA.R. 3387	9/3/08
18 VAC 115-20-49	Amended	24:24 VA.R. 3388	9/3/08
18 VAC 115-20-51	Amended	24:24 VA.R. 3388	9/3/08
18 VAC 115-20-52	Amended	24:24 VA.R. 3388	9/3/08
18 VAC 115-20-120	Repealed	24:24 VA.R. 3390	9/3/08
18 VAC 115-30-150	Amended	24:14 VA.R. 1953	4/16/08
18 VAC 115-30-160	Amended	24:14 VA.R. 1953	4/16/08
18 VAC 115-50-10	Amended	24:24 VA.R. 3390	9/3/08
18 VAC 115-50-40	Amended	24:24 VA.R. 3390	9/3/08
18 VAC 115-50-55	Amended	24:24 VA.R. 3391	9/3/08
18 VAC 115-50-60	Amended	24:24 VA.R. 3391	9/3/08

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 115-60-10	Amended	24:24 VA.R. 3392	9/3/08
18 VAC 115-60-50	Amended	24:24 VA.R. 3393	9/3/08
18 VAC 115-60-70	Amended	24:24 VA.R. 3393	9/3/08
18 VAC 115-60-80	Amended	24:24 VA.R. 3394	9/3/08
18 VAC 120-10-100 through 18 VAC 120-10-180	Repealed	24:26 VA.R. 3835	10/2/08
18 VAC 120-11-10 through 18 VAC 120-11-110	Added	24:26 VA.R. 3836-3838	10/2/08
18 VAC 125-20-170	Amended	24:12 VA.R. 1471	3/19/08
18 VAC 125-30-120	Amended	24:12 VA.R. 1471	3/19/08
18 VAC 130-20-10	Amended	24:23 VA.R. 3225	9/1/08
18 VAC 130-20-70	Amended	24:23 VA.R. 3229	9/1/08
18 VAC 130-20-180	Amended	24:23 VA.R. 3229	9/1/08
18 VAC 130-20-200	Amended	24:23 VA.R. 3231	9/1/08
18 VAC 130-20-230	Amended	24:23 VA.R. 3231	9/1/08
18 VAC 135-20-10	Amended	24:11 VA.R. 1408	4/1/08
18 VAC 135-20-30	Amended	24:11 VA.R. 1409	4/1/08
18 VAC 135-20-60	Amended	24:11 VA.R. 1410	4/1/08
18 VAC 135-20-100	Amended	24:11 VA.R. 1410	4/1/08
18 VAC 135-20-101	Added	24:11 VA.R. 1412	4/1/08
18 VAC 135-20-105	Amended	24:11 VA.R. 1413	4/1/08
18 VAC 135-20-160	Amended	24:11 VA.R. 1413	4/1/08
18 VAC 135-20-170	Amended	24:11 VA.R. 1414	4/1/08
18 VAC 135-20-180	Amended	24:11 VA.R. 1414	4/1/08
18 VAC 135-20-190	Amended	24:11 VA.R. 1416	4/1/08
18 VAC 135-20-210	Amended	24:11 VA.R. 1417	4/1/08
18 VAC 135-20-220	Amended	24:11 VA.R. 1417	4/1/08
18 VAC 135-20-280	Amended	24:11 VA.R. 1417	4/1/08
18 VAC 135-20-300	Amended	24:11 VA.R. 1418	4/1/08
18 VAC 135-20-345	Added	24:11 VA.R. 1418	4/1/08
18 VAC 135-20-360	Amended	24:11 VA.R. 1419	4/1/08
18 VAC 135-20-370	Amended	24:11 VA.R. 1419	4/1/08
18 VAC 135-20-390	Amended	24:11 VA.R. 1420	4/1/08
18 VAC 135-60-60	Amended	24:9 VA.R. 1230	3/1/08
18 VAC 140-10-10 through 18 VAC 140-10-120	Repealed	24:25 VA.R. 3641	9/17/08
18 VAC 140-11-10 through 18 VAC 140-11-110	Added	24:25 VA.R. 3641-3644	9/17/08
18 VAC 140-20-50	Amended	24:23 VA.R. 3234	9/4/08
18 VAC 140-20-70	Amended	24:23 VA.R. 3235	9/4/08
18 VAC 140-20-105	Amended	24:20 VA.R. 2890	7/24/08
18 VAC 150-20 (Forms)	Amended	24:26 VA.R. 3838	--
18 VAC 150-20-135	Amended	24:21 VA.R. 2969	7/23/08
<b>Title 19. Public Safety</b>			
19 VAC 30-10-10 through 19 VAC 30-10-40	Repealed	24:26 VA.R. 3839	10/1/08
19 VAC 30-11-10 through 19 VAC 30-11-110	Added	24:26 VA.R. 3839-3842	10/1/08
19 VAC 30-20-115	Added	24:11 VA.R. 1421	3/6/08
19 VAC 30-70-6	Amended	24:8 VA.R. 988	3/1/08
19 VAC 30-70-7	Amended	24:8 VA.R. 988	3/1/08
19 VAC 30-70-9	Amended	24:8 VA.R. 989	3/1/08
19 VAC 30-70-10	Amended	24:8 VA.R. 991	3/1/08
19 VAC 30-70-40	Amended	24:8 VA.R. 994	3/1/08
19 VAC 30-70-50	Amended	24:8 VA.R. 995	3/1/08
19 VAC 30-70-60	Amended	24:8 VA.R. 997	3/1/08

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
19 VAC 30-70-80	Amended	24:8 VA.R. 998	3/1/08
19 VAC 30-70-90	Amended	24:8 VA.R. 1001	3/1/08
19 VAC 30-70-110 through 19 VAC 30-70-660	Amended	24:8 VA.R. 1001-1070	3/1/08
19 VAC 30-190-10 through 19 VAC 30-190-140	Added	24:11 VA.R. 1421-1423	3/6/08
<b>Title 20. Public Utilities and Telecommunications</b>			
20 VAC 5-315-10	Amended	24:26 VA.R. 3845	8/25/08
20 VAC 5-315-20	Amended	24:26 VA.R. 3845	8/25/08
20 VAC 5-315-40	Amended	24:26 VA.R. 3846	8/25/08
20 VAC 5-315-50	Amended	24:26 VA.R. 3847	8/25/08
<b>Title 21. Securities and Retail Franchising</b>			
21 VAC 5-20-280	Amended	24:21 VA.R. 2971	7/1/08
21 VAC 5-80-10	Amended	24:21 VA.R. 2976	7/1/08
21 VAC 5-80-200	Amended	24:21 VA.R. 2977	7/1/08
21 VAC 5-110-10	Amended	24:21 VA.R. 2983	7/1/08
21 VAC 5-110-20	Amended	24:21 VA.R. 2984	7/1/08
21 VAC 5-110-30	Amended	24:21 VA.R. 2984	7/1/08
21 VAC 5-110-40	Amended	24:21 VA.R. 2984	7/1/08
21 VAC 5-110-50	Amended	24:21 VA.R. 2985	7/1/08
21 VAC 5-110-55	Added	24:21 VA.R. 2985	7/1/08
21 VAC 5-110-60	Amended	24:21 VA.R. 2986	7/1/08
21 VAC 5-110-65	Amended	24:21 VA.R. 2987	7/1/08
21 VAC 5-110-70	Amended	24:21 VA.R. 2988	7/1/08
21 VAC 5-110-75	Amended	24:21 VA.R. 2988	7/1/08
21 VAC 5-110-80	Amended	24:21 VA.R. 2989	7/1/08
21 VAC 5-110-90	Repealed	24:21 VA.R. 2992	7/1/08
21 VAC 5-110-95	Added	24:21 VA.R. 2992	7/1/08
<b>Title 22. Social Services</b>			
22 VAC 5-30-10 through 22 VAC 5-30-60	Added	24:25 VA.R. 3665-3669	1/1/09
22 VAC 15-30-310	Amended	24:10 VA.R. 1295	3/6/08
22 VAC 30-10-10	Amended	24:22 VA.R. 3076	8/8/08
22 VAC 30-10-20	Amended	24:22 VA.R. 3077	8/8/08
22 VAC 30-10-40	Amended	24:22 VA.R. 3077	8/8/08
22 VAC 30-10-50	Amended	24:22 VA.R. 3077	8/8/08
22 VAC 40-470-10	Amended	24:9 VA.R. 1231	2/6/08
22 VAC 40-685-30	Amended	24:9 VA.R. 1231	2/6/08
22 VAC 40-690-20	Amended	24:24 VA.R. 3420	10/1/08
22 VAC 40-690-30	Amended	24:24 VA.R. 3420	10/1/08
22 VAC 40-690-40	Amended	24:24 VA.R. 3421	10/1/08
22 VAC 40-690-55	Amended	24:24 VA.R. 3421	10/1/08
22 VAC 40-690-65	Amended	24:24 VA.R. 3421	10/1/08
22 VAC 40-705-10 emer	Amended	24:14 VA.R. 1987	3/1/08-2/28/09
22 VAC 40-705-30 emer	Amended	24:14 VA.R. 1990	3/1/08-2/28/09
<b>Title 23. Taxation</b>			
23 VAC 10-10-10 through 23 VAC 10-10-80	Amended	24:12 VA.R. 1520-1521	4/19/08
23 VAC 10-10-80	Amended	24:12 VA.R. 1521	4/19/08
23 VAC 10-10-90	Repealed	24:12 VA.R. 1522	4/19/08
23 VAC 10-20-155	Added	24:26 VA.R. 3848	10/1/08
23 VAC 10-210-20	Repealed	24:26 VA.R. 3849	10/1/08
23 VAC 10-210-693	Amended	24:23 VA.R. 3240	10/6/08
23 VAC 10-500-10 through 23 VAC 10-500-820	Added	24:23 VA.R. 3253-3289	10/6/08
<b>Title 24. Transportation and Motor Vehicles</b>			

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## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
24 VAC 30-72-10 through 24 VAC 30-72-170	Added	24:17 VA.R. 2458-2466	7/1/08
24 VAC 30-72-30	Erratum	24:18 VA.R. 2732	--
24 VAC 30-155-10	Amended	24:23 VA.R. 3290	7/1/08
24 VAC 30-155-40	Amended	24:23 VA.R. 3291	7/1/08
24 VAC 30-155-50	Amended	24:23 VA.R. 3292	7/1/08
24 VAC 30-155-60	Amended	24:23 VA.R. 3294	7/1/08
24 VAC 30-155-70	Amended	24:23 VA.R. 3303	7/1/08
24 VAC 30-155-80	Amended	24:23 VA.R. 3303	7/1/08

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# PETITIONS FOR RULEMAKING

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### REAL ESTATE APPRAISER BOARD

#### Agency Decision

Title of Regulation: **18VAC130-20. Real Estate Appraiser Board Licensing Regulations.**

Statutory Authority: §54.1-2013 of the Code of Virginia.

Name of Petitioner: George W. Dodd.

Nature of Petitioner's Request: Amend the Real Estate Appraiser regulations to require providers of electronic portals to cease doing business in Virginia until such time as they provide the board with proof that ensures the integrity and unadulterated transmission of appraisal reports from the appraiser to the client.

Agency Decision: Request denied.

Statement of Reasons for Decision: The board voted to deny the petition since the board was advised by legal counsel that the board does not have the authority to require providers of electronic portals to cease doing business in Virginia until such time as they provide the board with sufficient evidence and documentation that ensures the integrity and unadulterated transmission of appraisal reports from the appraiser to the client and/or end user of the appraisal report.

Agency Contact: Christine Martine, Executive Director, Real Estate Appraiser Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2039, FAX (804) 527-4298, or email [reappraisers@dpor.virginia.gov](mailto:reappraisers@dpor.virginia.gov).

VA.R. Doc. No. R08-10; Filed August 22, 2008, 3:04 p.m.

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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 12. HEALTH

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medical Assistance Services intends to consider amending the following regulations: **12VAC30-40, Eligibility Conditions and Requirements**. The purpose of the proposed action is to change the way life estates are evaluated in the Medicaid eligibility determination process per the requirement of the 2008 Appropriation Act. Upon implementation of this change, life estates will be evaluated as a resource for those Medicaid groups that have a resource requirement.

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: Public comments may be submitted until 5 p.m. on October 15, 2008.

Agency Contact: Cindy Olson, Project Manager, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4282, FAX (804) 786-1680, or email [cindy.olson@dmas.virginia.gov](mailto:cindy.olson@dmas.virginia.gov).

VA.R. Doc. No. R09-1326; Filed August 27, 2008, 11:36 a.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medical Assistance Services intends to consider amending the following regulations: **12VAC30-80, Methods and Standards for Establishing Payment Rates; Other Types of Care**. The purpose of the proposed action is to recalibrate physician fees in accordance with a 2008 General Assembly mandate.

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: Public comments may be submitted until 5 p.m. on October 15, 2008.

Agency Contact: Carla Russell, Project Manager, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4586, FAX (804) 786-1680, or email [carla.russell@dmas.virginia.gov](mailto:carla.russell@dmas.virginia.gov).

VA.R. Doc. No. R09-1331; Filed August 27, 2008, 11:35 a.m.

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# REGULATIONS

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

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## 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.

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## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### MARINE RESOURCES COMMISSION

#### Emergency Regulation

Title of Regulation: **4VAC20-720. Pertaining to Restrictions on Oyster Harvest(amending 4VAC20-720-106).**

Statutory Authority: §§28.2-201 and 28.2-210 of the Code of Virginia.

Effective Dates: September 1, 2008, through September 30, 2008.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resource Commission, 2600 Washington Ave. 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

#### Summary:

*The amendments establish summer harvest hours and other restrictions necessary when working on public or private oyster grounds in order to protect the public's health.*

#### **4VAC20-720-106. Public health and warm water harvest restrictions.**

A. It shall be unlawful for any person to have any cat, dog, or other animal on board a vessel during the harvest of oysters.

B. From May 1 through September 30, any vessel used for the harvest of oysters for human consumption from either public or private grounds shall have shading over the area that serves as storage for the oysters (except as described in subsection C of this section), and all oysters in the vessel shall be offloaded every day.

C. From May 1 through September 30, any vessel used for the harvest of oysters for human consumption that are placed in an aquaculture container completely covered by a lid or top, shall not be required to have shading over that container.

D. From ~~May 1 June 15~~ through ~~September 30 August 31~~, it shall be unlawful for any person, or person aboard a vessel, to leave the dock or shore prior to one hour before sunrise to harvest or attempt to harvest oysters from ~~public or private~~ grounds.

E. From May 1 through June 14, it shall be unlawful to harvest oysters for human consumption from public or private grounds after 11 a.m., and oysters harvested before 11 a.m. shall be refrigerated by 11 a.m. that same day.

~~E. F.~~ From ~~May 1 June 15~~ through ~~September 30 August 31~~, it shall be unlawful to harvest oysters for human consumption from public or private grounds after 10 a.m., and oysters harvested before 10 a.m. shall be refrigerated by 10 a.m. that same day, ~~except as described below.~~

G. From September 1 through September 30, it shall be unlawful to harvest oysters for human consumption from public or private grounds after 12 p.m., and oysters harvested before 12 p.m. shall be refrigerated by 12 p.m. that same day.

~~1. This~~ H. Subsections E, F, and G of this section shall not apply to the harvest of seed oysters or the customary husbandry processes associated with aquaculture of oysters.

~~2. I.~~ Oysters may be harvested after ~~10 a.m.~~ the designated end time in subsections E, F, and G provided there is a Virginia Department of Health, Division of Shellfish Sanitation-approved refrigeration system or ice storage area for the oysters on board the harvest vessel that is in use for cooling oysters at all times ~~after 10 a.m.~~ or the total time expended on harvesting those oysters does not exceed two hours from start of harvest to refrigeration of those oysters and there is verifiable documentation, such as a log book or GPS trip log that corresponds to that harvest event.

~~3. The total time expended on harvesting those oysters does not exceed two hours from start of harvest to refrigeration of those oysters, and there is verifiable documentation, such as a log book or GPS trip log that corresponds to that harvesting event.~~

VA.R. Doc. No. R09-1601; Filed August 27, 2008, 2:56 p.m.



## TITLE 12. HEALTH

### STATE BOARD OF HEALTH

#### Final Regulation

REGISTRAR'S NOTICE: The State Board of Health is claiming an exemption from the Administrative Process Act in accordance with §2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The State Board of Health will receive, consider

and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation: 12VAC5-220. Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations (amending 12VAC5-220-160).**

**Statutory Authority:** §32.1-102.2 of the Code of Virginia.

**Effective Date:** October 15, 2008.

**Agency Contact:** Carrie Eddy, Policy Analyst, Department of Health, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-2157, or email carrie.eddy@vdh.virginia.gov.

**Summary:**

*The amendment conforms the regulation with Chapter 292 of the 2008 Acts of Assembly by adding a new criteria for the State Health Commissioner to consider when determining a public need for a medical care facility or service project that requires a certificate of public need. The new criteria addresses whether a proposed project (i) increases citizen accessibility, (ii) demonstrates community support, and (iii) introduces institutional competition into a health planning region.*

**Part IV**

**Determination of Public Need (Required Considerations)**

**12VAC5-220-160. Required considerations.**

In determining whether a public need exists for a proposed project, the following factors shall be taken into account when applicable:

1. The recommendation and the reasons therefor of the appropriate regional health planning agency.
2. The relationship of the project to the applicable health plans of the regional health planning agency and the Board of Health.
3. The relationship of the project to the long-range development plan, if any, of the person applying for a certificate.
4. The need that the population served or to be served by the project has for the project, including, but not limited to, the needs of rural populations in areas having distinct and unique geographic, socioeconomic, cultural, transportation, and other barriers to access to care.
5. The extent to which the project will be accessible to all residents of the area proposed to be served and the effects on accessibility of any proposed relocation of an existing service or facility.
6. The area, population, topography, highway facilities and availability of the services to be provided by the project in the particular part of the health planning region in which

the project is proposed, in particular, the distinct and unique geographic, socioeconomic, cultural, transportation, and other barriers to access to care.

7. Less costly or more effective alternate methods of reasonably meeting identified health service needs.
8. The immediate and long-term financial feasibility of the project.
9. The relationship of the project to the existing health care system of the area in which the project is proposed; however, for projects proposed in rural areas, the relationship of the project to the existing health care services in the specific rural locality shall be considered.
10. The availability of resources for the project.
11. The organizational relationship of the project to necessary ancillary and support services.
12. The relationship of the project to the clinical needs of health professional training programs in the area in which the project is proposed.
13. The special needs and circumstances of an applicant for a certificate, such as a medical school, hospital, multidisciplinary clinic, specialty center or regional health service provider, if a substantial portion of the applicant's services or resources or both is provided to individuals not residing in the health planning region in which the project is to be located.
14. The need and the availability in the health planning region for osteopathic and allopathic services and facilities and the impact on existing and proposed institutional training programs for doctors of osteopathy and medicine at the student, internship, and residency training levels.
15. The special needs and circumstances of health maintenance organizations. When considering the special needs and circumstances of health maintenance organizations, the commissioner may grant a certificate for a project if the commissioner finds that the project is needed by the enrolled or reasonably anticipated new members of the health maintenance organizations or the beds or services to be provided are not available from providers which are not health maintenance organizations or from other health maintenance organizations in a reasonable and cost effective manner.
16. The special needs and circumstances for biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages.
17. The costs and benefits of the construction associated with the proposed project.
18. The probable impact of the project on the costs of and charges for providing health services by the applicant for a

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certificate and on the costs and charges to the public for providing health services by other persons in the area.

19. Improvements or innovations in the financing and delivery of health services which foster competition and serve to promote quality assurance and cost effectiveness.

20. In the case of health services or facilities proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities in the area similar to those proposed, including, in the case of rural localities, any distinct and unique geographic, socioeconomic, cultural, transportation, and other barriers to access to care.

21. In the case of proposed health services or facilities, the extent to which a proposed service or facility will increase citizen accessibility, demonstrate documented community support, and introduce institutional competition into a health planning region.

VA.R. Doc. No. R09-1367; Filed August 27, 2008, 10:24 a.m.

## Final Regulation

**REGISTRAR'S NOTICE:** The State Board of Health is claiming an exemption from the Administrative Process Act in accordance with §2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The State Board of Health will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 12VAC5-220. Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations (amending 12VAC5-220-110, 12VAC5-220-200).

**Statutory Authority:** §§32.1-12 and 32.1-102.2 of the Code of Virginia.

**Effective Date:** October 15, 2008.

**Agency Contact:** Carrie Eddy, Policy Analyst, Department of Health, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-2157, or email carrie.eddy@vdh.virginia.gov.

### Summary:

*The amendments increase the capital expenditure threshold for projects requiring a certificate of public need (COPN) as required by §32.1-102.1 of the Code of Virginia. Section 32.1-202.1 requires annual revision of this amount to reflect inflation. Using the Consumer Price Index recently published by the U.S. Department of Labor, the amendments increase this amount from \$15 million to \$15,615,000.*

## 12VAC5-220-110. Requirements for registration of certain capital expenditures.

At least 30 days before any person contracts to make or is otherwise legally obligated to make a capital expenditure by or on behalf of a medical care facility that is \$5 million or more but is less than ~~\$15 million~~ \$15,615,000 and has not been previously authorized by the commissioner, the owner of any medical care facility as defined in this chapter shall register in writing such expenditure with the commissioner. The format for registration shall include information concerning the purpose of such expenditure and projected impact that the expenditure will have upon the charges for services. For purposes of registration, the owner shall include any person making the affected capital expenditure. See definition of "project."

## 12VAC5-220-200. One hundred ninety-day review cycle.

The department shall review the following groups of completed applications in accordance with the following 190-day scheduled review cycles and the following descriptions of projects within each group, except as provided for in 12VAC5-220-220.

BATCH GROUP	GENERAL DESCRIPTION	REVIEW CYCLE	
		Begins	Ends
A	General Hospitals/Obstetrical Services/Neonatal Special Care Services	Feb. 10 Aug. 10	Aug. 18 Feb. 16
B	Open Heart Surgery/Cardiac Catheterization/Ambulatory Surgery Centers/Operating Room Additions/Transplant Services	Mar. 10 Sep. 10	Sep. 16 Mar. 19
C	Psychiatric Facilities/Substance Abuse Treatment/Mental Retardation Facilities	Apr. 10 Oct. 10	Oct. 17 Apr. 18
D/F	Diagnostic Imaging Facilities/Services Selected Therapeutic Facilities/Services	May 10 Nov. 10	Nov. 16 May 19
E	Medical Rehabilitation Beds/Services	June 10 Dec. 10	Dec. 17 Jun. 18
D/F	Selected Therapeutic Facilities/Services Diagnostic Imaging Facilities/Services	July 10 Jan. 10	Jan. 16 Jul. 18

G	Nursing Home Beds at Retirement Communities/Bed Relocations/Miscellaneous Expenditures by Nursing Homes	Jan. 10	Jul. 18
		Mar. 10	Sep. 16
		May 10	Nov. 16
		July 10	Jan. 16
		Sep. 10	Mar. 19
		Nov. 10	May 19

Batch Group A includes:

1. The establishment of a general hospital.
2. An increase in the total number of general acute care beds in an existing or authorized general hospital.
3. The relocation at the same site of 10 general hospital beds or 10% of the general hospital beds of a medical care facility, whichever is less, from one existing physical facility to another in any two-year period if such relocation involves a capital expenditure of ~~\$15 million~~ \$15,615,000 or more (see 12VAC5-220-280).
4. The introduction into an existing medical care facility of any new neonatal special care or obstetrical services that the facility has not provided in the previous 12 months.
5. Any capital expenditure of ~~\$15 million~~ \$15,615,000 or more, not defined as a project category included in Batch Groups B through G, by or in behalf of a general hospital.

Batch Group B includes:

1. The establishment of a specialized center, clinic, or portion of a physician's office developed for the provision of outpatient or ambulatory surgery or cardiac catheterization services.
2. An increase in the total number of operating rooms in an existing medical care facility or establishment of operating rooms in a new facility.
3. The introduction into an existing medical care facility of any new cardiac catheterization, open heart surgery, or organ or tissue transplant services that the facility has not provided in the previous 12 months.
4. The addition by an existing medical care facility of any medical equipment for the provision of cardiac catheterization.
5. Any capital expenditure of ~~\$15 million~~ \$15,615,000 or more, not defined as a project category in Batch Group A or Batch Groups C through G, by or in behalf of a specialized center, clinic, or portion of a physician's office developed for the provision of outpatient or ambulatory surgery or cardiac catheterization services.
6. Any capital expenditure of ~~\$15 million~~ \$15,615,000 or more, not defined as a project category in Batch Group A or Batch Groups C through G, by or in behalf of a medical care facility, that is primarily related to the provision of

surgery, cardiac catheterization, open heart surgery, or organ or tissue transplant services.

Batch Group C includes:

1. The establishment of a mental hospital, psychiatric hospital, intermediate care facility established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts, or mental retardation facility.
2. An increase in the total number of beds in an existing or authorized mental hospital, psychiatric hospital, intermediate care facility established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts, or mental retardation facility.
3. An increase in the total number of mental hospital, psychiatric hospital, substance abuse treatment and rehabilitation, or mental retardation beds in an existing or authorized medical care facility which is not a dedicated mental hospital, psychiatric hospital, intermediate care facility established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts, or mental retardation facility.
4. The relocation at the same site of 10 mental hospital, psychiatric hospital, substance abuse treatment and rehabilitation, or mental retardation beds or 10% of the mental hospital, psychiatric hospital, substance abuse treatment and rehabilitation, or mental retardation beds of a medical care facility, whichever is less, from one existing physical facility to another in any two-year period if such relocation involves a capital expenditure of ~~\$15 million~~ \$15,615,000 or more (see 12VAC5-220-280).
5. The introduction into an existing medical care facility of any new psychiatric or substance abuse treatment service that the facility has not provided in the previous 12 months.
6. Any capital expenditure of ~~\$15 million~~ \$15,615,000 or more, not defined as a project category in Batch Groups A and B or Batch Groups D/F through G, by or in behalf of a mental hospital, psychiatric hospital, intermediate care facility established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts, or mental retardation facilities.
7. Any capital expenditure of ~~\$15 million~~ \$15,615,000 or more, not defined as a project category in Batch Groups A through B or Batch Groups D/F through G, by or in behalf of a medical care facility, which is primarily related to the provision of mental health, psychiatric, substance abuse treatment or rehabilitation, or mental retardation services.

Batch Group D/F includes:

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1. The establishment of a specialized center, clinic, or that portion of a physician's office developed for the provision of computed tomographic (CT) scanning, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, or nuclear medicine imaging, except for the purpose of nuclear cardiac imaging.
2. The introduction into an existing medical care facility of any new computed tomography (CT), magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, or nuclear medicine imaging services, except for the purpose of nuclear cardiac imaging that the facility has not provided in the previous 12 months.
3. The addition by an existing medical care facility of any equipment for the provision of computed tomography (CT), magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning.
4. Any capital expenditure of ~~\$15 million~~ \$15,615,000 or more, not defined as a project category in Batch Groups A B, C, E, and G, by or in behalf of a specialized center, clinic, or that portion of a physician's office developed for the provision of computed tomographic (CT) scanning, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, or nuclear medicine imaging, except that portion of a physician's office dedicated to providing nuclear cardiac imaging.
5. Any capital expenditure of ~~\$15 million~~ \$15,615,000 or more, not defined as a project category in Batch Groups A B, C, E, and G, by or in behalf of a medical care facility, which is primarily related to the provision of computed tomographic (CT) scanning, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, or nuclear medicine imaging, except for the purpose of nuclear cardiac imaging.

## Batch Group E includes:

1. The establishment of a medical rehabilitation hospital.
2. An increase in the total number of beds in an existing or authorized medical rehabilitation hospital.
3. An increase in the total number of medical rehabilitation beds in an existing or authorized medical care facility that is not a dedicated medical rehabilitation hospital.
4. The relocation at the same site of 10 medical rehabilitation beds or 10% of the medical rehabilitation beds of a medical care facility, whichever is less, from one existing physical facility to another in any two-year period, if such relocation involves a capital expenditure of ~~\$45 million~~ \$15,615,000 or more (see 12VAC220-280).

5. The introduction into an existing medical care facility of any new medical rehabilitation service that the facility has not provided in the previous 12 months.
6. Any capital expenditure of ~~\$15 million~~ \$15,615,000 or more, not defined as a project category in Batch Groups A B, C, D/F, and G, by or in behalf of a medical rehabilitation hospital.
7. Any capital expenditure of ~~\$15 million~~ \$15,615,000 or more, not defined as a project category in Batch Groups A B, C, D/F, and G, by or in behalf of a medical care facility, that is primarily related to the provision of medical rehabilitation services.

## Batch Group D/F includes:

1. The establishment of a specialized center, clinic, or that portion of a physician's office developed for the provision of gamma knife surgery, lithotripsy, or radiation therapy.
2. Introduction into an existing medical care facility of any new gamma knife surgery, lithotripsy, or radiation therapy services that the facility has not provided in the previous 12 months.
3. The addition by an existing medical care facility of any medical equipment for the provision of gamma knife surgery, lithotripsy, or radiation therapy.
4. Any capital expenditure of ~~\$15 million~~ \$15,615,000 or more, not defined as a project in Batch Groups A B, C, E, and G, by or in behalf of a specialized center, clinic, or that portion of a physician's office developed for the provision of gamma knife surgery, lithotripsy, or radiation therapy.
5. Any capital expenditure of ~~\$15 million~~ \$15,615,000 or more, not defined as a project in Batch Groups A B, C, E, and G, by or in behalf of a medical care facility, which is primarily related to the provision of gamma knife surgery, lithotripsy, or radiation therapy.

## Batch Group G includes:

1. The establishment of a nursing home, intermediate care facility, or extended care facility of a continuing care retirement community by a continuing care provider registered with the State Corporation Commission pursuant to Chapter 49 (§38.2-4900 et seq.) of Title 38.2 of the Code of Virginia.
2. The establishment of a nursing home, intermediate care facility, or extended care facility that does not involve an increase in the number of nursing home facility beds within a planning district.
3. An increase in the total number of beds in an existing or authorized nursing home, intermediate care facility, or extended care facility of a continuing care retirement community by a continuing care provider registered with

the State Corporation Commission pursuant to Chapter 49 (§38.2-4900 et seq.) of Title 38.2 of the Code of Virginia.

4. An increase in the total number of beds in an existing or authorized nursing home, intermediate care facility, or extended care facility that does not involve an increase in the number of nursing home facility beds within a planning district.

5. The relocation at the same site of 10 nursing home, intermediate care facility, or extended care facility beds or 10% of the nursing home, intermediate care facility, or extended care facility beds of a medical care facility, whichever is less, from one physical facility to another in any two-year period, if such relocation involves a capital expenditure of ~~\$15 million~~ \$15,615,000 or more (see 12VAC5-220-280).

6. Any capital expenditure of ~~\$15 million~~ \$15,615,000 or more, not defined as a project category in Batch Groups A through D/F, by or in behalf of a nursing home, intermediate care facility, or extended care facility, which does not increase the total number of beds of the facility.

7. Any capital expenditure of ~~\$15 million~~ \$15,615,000 or more, not defined as a project category in Batch Groups A through D/F, by or in behalf of a medical care facility, that is primarily related to the provision of nursing home, intermediate care, or extended care services, and does not increase the number of beds of the facility.

VA.R. Doc. No. R09-1548; Filed August 27, 2008, 10:25 a.m.

**DEPARTMENT OF MEDICAL ASSISTANCE SERVICES**

**Proposed Regulation**

**Titles of Regulations:** **12VAC30-10. State Plan Under Title XIX of the Social Security Act Medical Assistance Program; General Provisions (amending 12VAC30-10-560).**

**12VAC30-20. Administration of Medical Assistance Services (adding 12VAC30-20-141; repealing 12VAC30-20-140).**

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

**Public Hearing Information:** No public hearings are scheduled.

**Public Comments:** Public comments may be submitted until November 14, 2008.

**Agency Contact:** Kathy Colley, Fiscal Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-3839, FAX (804) 786-1680, or email [kathy.colley@dmass.virginia.gov](mailto:kathy.colley@dmass.virginia.gov).

**Basis:** Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the director of the department 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.

The Medicaid Estate Recovery program was mandated by the federal Omnibus Budget Reconciliation Act of 1993, as codified at 42 USC §1396p(b)(1)(B) of the Social Security Act (42 USC §1396p), which requires the Commonwealth to seek adjustment or recovery from certain beneficiaries' estates. Section 32.1-326.1 of the Code of Virginia directs DMAS to comply with the federal requirements and operate a Medicaid estate recovery program.

**Purpose:** Several aspects of the regulations regarding Medicaid estate recovery are in need of updating and clarification. This action clarifies ambiguous language and augments the language of the estate recovery regulations to add greater detail to enhance understanding about the Medicaid estate recovery process. This proposed action is expected to have a significant and positive impact on the health, safety, and welfare of the citizens of the Commonwealth by aiding the fiscal integrity of the Medicaid program, and recovering Medicaid benefits correctly and incorrectly paid under the estate recoveries provisions in §1917(b) of the Social Security Act. This regulatory action further provides clarification on mandatory and optional recovery when a Medicaid beneficiary receives services that are specified as collectible services under the Commonwealth's State Plan for estate recovery.

**Substance:** DMAS intends to update the language of the estate recovery regulations to more closely reflect current agency practice based upon language provided by the federal Medicaid agency, the Centers for Medicare and Medicaid Services. Specifically the agency intends to delete the definitions for "estate" and "applicable medical assistance payments" located in 12VAC30-10-560 and move these two definitions into new 12VAC30-20-141.

The agency also intends to repeal 12VAC30-20-140 (Estate Recoveries) in order to repromulgate this section in a restructured and revised format in 12VAC30-20-141. The agency intends to revise several of the definitions included in the section and to add two new definitions, for "cost effective" and "homestead of modest value." The revision also includes the exemption from Medicaid estate recovery for American Indian/Alaska Native income, resources and property as defined in the State Medicaid Manual, and assets or resources that were disregarded due to an authorized State Long-Term Care Insurance Partnership policy.

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Issues: The advantages of these changes to the public are that they clarify what is required by the Centers for Medicare and Medicaid Services relating to Medicaid estate recovery. The proposed update does not change how DMAS is currently handling Medicaid estate recovery, but better articulates the provisions and understanding of the regulations. DMAS has not identified any disadvantages to the public or the Commonwealth regarding these proposed changes.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The proposed changes will clarify and update the regulations to more closely reflect the estate recovery practices currently followed in accordance with the Centers for Medicare and Medicaid guidance document titled "State Medicaid Manual."

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. The proposed changes will clarify and update the regulations to more closely reflect the estate recovery practices currently followed in accordance with the Centers for Medicare and Medicaid guidance document titled "State Medicaid Manual." These changes include reorganizing the regulations and adding clarifying definitions and language.

According to Department of Medical Assistance Services, none of the proposed changes will change the estate recovery practices currently followed in practice, but the changes are expected to increase the clarity of the regulations. Consequently, no significant economic effect is expected other than avoiding the potential confusions and communication costs that may have otherwise occurred from less clear language.

Businesses and Entities Affected. Approximately, 10 estate recovery cases per year are estimated.

Localities Particularly Affected. The proposed regulations apply throughout the Commonwealth.

Projected Impact on Employment. No significant effect on employment is expected.

Effects on the Use and Value of Private Property. No significant effect on the use and value of private property is expected.

Small Businesses: Costs and Other Effects. The proposed regulations are not expected to create any significant costs or other effects on small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulations are not expected to create any significant adverse impact on small businesses.

Real Estate Development Costs. No significant effect on real estate development costs is expected.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 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, §2.2-4007.04 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 Medical Assistance Services concurs with the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning Estate Recovery (12VAC 30-10-560, 12VAC 30-20-140, and 12VAC 30-20-141).

Summary:

*The proposed amendments update and clarify the current regulations regarding Medicaid estate recovery carried out by the Department of Medical Assistance Services. This regulatory action more closely reflects current agency practice based upon language provided by the federal Medicaid agency, the Centers for Medicare and Medicaid Services, in its guidance document publication titled "State Medicaid Manual." This change repeals 12VAC30-20-140 (Estate Recoveries) in order to repromulgate this section in a restructured and revised format as 12VAC30-20-141. This regulatory action will add new definitions for "cost effective" and "homestead of modest value." The definitions for "estate" and "applicable medical payments" will be deleted from 12VAC30-10-560 and moved into new 12VAC30-20-141. This revision also includes the exemption from Medicaid estate recovery for American Indian/Alaska Native income, resources and property as defined in the federal State Medicaid Manual. Consistent with the State Medicaid Manual, assets or resources that were*

*disregarded due to an authorized State Long-Term Medicaid Insurance Partnership policy are being exempted from estate recovery actions.*

**12VAC30-10-560. Liens and recoveries.**

Liens are not imposed against an individual's property.

A. Adjustments or recoveries for Medicaid claims correctly paid are as follows: See ~~12VAC30-20-140~~ 12VAC30-20-141.

1. For permanently institutionalized individuals, adjustments or recoveries are made from the individual's estate.

2. For any individual who received medical assistance at age 55 or older, recovery of payments are made for nursing facility services, home- and community-based services, and related hospital and prescription drug services.

Payments are recovered for all services covered under the plan which are provided to individuals at age 55.

~~3. For any individual with long term care insurance policies, if assets or resources are disregarded, recovery is made for all Medicaid costs for nursing facility and other long term care services from the estate of persons who have such policies.~~

4. 3. If an individual covered under a qualified long-term care partnership insurance policy pursuant to §32.1-325 of the Code of Virginia received benefits for which assets or resources were disregarded as provided for in 12VAC30-40-290 G, the state Commonwealth does not seek adjustment or recovery from the individual's estate for the amount of assets or resources disregarded.

B. No money payments under another program are reduced as a means of recovering Medicaid claims incorrectly paid.

C. Liens. See 12VAC30-20-130.

1. Specifies the process for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home; the description of the process meets the requirements of 42 CFR 433.36(d).

The Commonwealth does not impose liens therefore this subsection is not applicable.

2. Specifies the criteria by which a son or daughter can establish that he or she has been providing care under 42 CFR 433.36(f).

3. Definitions: individual's home; equity interest in home; residing in home for at least 1 or 2 years, on a continuing basis; discharge from the medical institution and return home; and lawfully residing.

The Commonwealth does not impose liens therefore this subsection is not applicable.

D. Estate recoveries.

**1. Definitions.**

~~"Applicable medical assistance payments" means the amount of any medical assistance payments made on behalf of an individual under Title XIX of the Social Security Act.~~

~~"Estate" means with respect to a deceased individual, (i) all real and personal property and other assets held by the individual at the time of death and (ii) any other real and personal property and other assets in which the individual had any legal title or interest (to the extent of such interest) at the time of death.~~

~~2.~~ 12VAC30-20-140 further 12VAC30-20-141 (Attachment 4.17-C) specifies the policy for estate recoveries.

**12VAC30-20-140. Estate recoveries. (Repealed.)**

A. General. Under the authority and consistent with the requirements of the Social Security Act §1917, the Commonwealth recovers certain Medicaid benefits when they have been correctly paid on behalf of certain individuals. The Commonwealth seeks recovery for all services which have been paid for consistent with the coverage and reimbursement policies in the State Plan for Medical Assistance.

B. Identification of deceased recipients' estates. The Medical Assistance Title XIX agency shall take all reasonable measures to determine the existence of deceased eligible individuals with recoverable estates.

C. Initiation of claim and recovery.

~~1. The Medical Assistance Title XIX agency's estate recovery unit will review and initiate recovery activities for all deceased eligible individual's estates identified which meet agency minimum criteria defined in subsection B of this section. A review of all deceased eligible individuals' applicable medical assistance payments paid correctly must be performed to determine the amount of the Commonwealth's claim against the estate. A "Notice of Claim" shall be sent to the deceased eligible individual's estate administrator or executor upon determination that estate recovery meets the minimum criteria. The "Notice of Claim" shall include, at minimum, (i) the deceased eligible individual's identification information, (ii) the claim amount, (iii) the agency contact, and (iv) the attached summary of applicable medical claims paid. The "Notice of Claim" shall also contain, but not necessarily be limited to, information regarding the exclusions identified below, the applicant's right to appeal, and the hardship rule.~~

~~2. The Medical Assistance Title XIX agency will, at a minimum, initiate recovery when the following conditions are met:~~

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~~a. Legal estate administrator or executor has been verified.~~

~~b. Dollar amount of applicable medical assistance payments (claim amount) and estate meets agency cost effective threshold. The Title XIX agency will determine a cost effective threshold based on the administrative costs to pursue recovery from an estate. The Title XIX agency will adjust the cost effective threshold as the agency's administrative costs change. Recovery shall not be initiated unless both the amount of the claim and the value of the estate at least exceed the administrative cost of recovery.~~

~~c. Deceased eligible was single or surviving spouse is deceased.~~

~~d. Deceased eligible has no surviving children under 21 or children who are blind or disabled.~~

~~e. Deceased eligible was 55 years of age or older when the individual received such medical assistance.~~

~~f. Deceased eligible had no surviving sibling who had an equity interest in the deceased's home and such sibling resided in the property for at least one year prior to the deceased's entering a nursing facility.~~

~~3. Appeals related to the recovery of funds will be administered by the Medical Assistance Title XIX agency.~~

~~4. The Medical Assistance Title XIX agency will pursue recovery only to the extent that payments for applicable medical claims have been correctly made under the State Plan for Medical Assistance.~~

~~D. Hardship clause. The Medical Assistance Title XIX agency shall waive its claim if it determines that enforcement of the claim would result in substantial hardship to the devisees, legatees, and heirs or dependents of the individual against whose estate the claim exists. Special consideration shall be given to cases in which the estate subject to recovery is (i) the sole income producing asset of survivors (where such income is limited), such as a family farm or other business, or (ii) a homestead of modest value, or (iii) other compelling circumstances. In cases where recovery is not waived and beneficiaries of the estate from which recovery is sought wish to satisfy the Commonwealth's claim without selling a nonliquid asset which is subject to recovery, alternative methods of recovery may be considered.~~

## 12VAC30-20-141. Estate recoveries.

A. Definitions. The following words and terms when used in this regulation shall have the following meanings unless the context clearly indicates otherwise:

"Act" means the Social Security Act (42 USC §1396) as applicable.

"Applicable medical assistance payment" means the amount of any medical assistance payments made on behalf of an individual under Title XIX of the Social Security Act.

"Claim" means, for the purposes of this section, action taken by DMAS to recover from the estate of an individual, who was age 55 or older when that person received medical assistance, the total amount of assistance paid for services consistent with the coverage and reimbursement policies in the State Plan for Medical Assistance.

"Cost effective" means that both the dollar amount of the medical assistance payments (claim) and the value of the estate at least exceed the administrative costs of recovery.

"Dual eligibles" mean individuals who are entitled to Medicare hospital insurance under Part A or supplementary medical insurance under Part B, or both, and are eligible for some form of Medicaid benefit.

"Estate" means, with respect to a deceased individual, (i) all real and personal property and other assets held by the individual at the time of death and (ii) any other real and personal property and other assets in which the individual had any legal title or interest (to the extent of such interest) at the time of his death.

"Homestead of modest value" means a home that is worth 50% or less of the average price, as contained in the most recent U.S. Census data, of homes in the county or city, as appropriate, where the homestead is located as of the date of the individual's death.

"Undue hardship" means that DMAS has determined that enforcement of a claim to recover Medicaid benefits would result in substantial hardship to the devisees, legatees, and heirs or dependents of the deceased individual against whose estate the Medicaid claim exists.

B. Under the authority and consistent with the requirements of the Social Security Act §1917 (the Act), the Commonwealth shall recover applicable medical assistance payments when such payments have been correctly or incorrectly paid on behalf of certain individuals. The Department of Medical Assistance Services (DMAS) shall provide notice of the Commonwealth's Medicaid estate recovery program at the time of application for medical assistance.

C. Adjustment and recovery. Adjustment or recovery can only be made after the death of the individual's surviving spouse, if any, and only at a time when the individual has no surviving child under age 21, or a blind or disabled child as defined in §1614 of the Act. The Commonwealth shall seek adjustment or recovery of all medical assistance payments correctly paid on behalf of an individual under the State Plan as follows:

1. The Commonwealth shall seek adjustment or recovery from the estate of an individual who was age 55 or older

when that person received medical assistance. The Commonwealth shall recover amounts up to the total amount spent on the individual's behalf for medical assistance for all items or services provided for the individual under the State Plan.

2. The Commonwealth shall recover from the estates of the following dual eligibles who receive full Medicaid benefits in addition to Medicare: (i) qualified Medicare beneficiaries with full Medicaid benefits (QMB Plus), (ii) specified low-income Medicare beneficiaries with full Medicaid benefits (SLMB Plus), and (iii) Medicare beneficiaries eligible for a limited package of Medicaid benefits (QMB, SLMB, qualified individuals (QI) or qualified disabled and working individuals (QDWI)). The Commonwealth shall recover from the individual's estate for all medical assistance payments made on behalf of the individual. In addition, the Commonwealth shall include in the Commonwealth's claim against the estate, amounts expended for Medicare cost-sharing or Medicare premiums, or both.

3. The Commonwealth shall recover from individuals with long-term care insurance policies. The Commonwealth shall not seek adjustment or recovery from the individual's estate for all Medicaid costs for nursing facility and other long-term care services if assets or resources are disregarded to the extent of payments made under a qualified long-term care partnership insurance policy.

4. Estate recovery and managed care. When a Medicaid beneficiary is enrolled in a managed care organization and services are provided by the managed care organization that are included under the State Plan, the Commonwealth shall seek adjustment or recovery from the individual's estate for the premium payments in the Commonwealth's claim against the estate. When the individual enrolls in the managed care organization, the Commonwealth shall provide a separate notice to the individual that explains that the premium payments made to the managed care organization are included in whole in the claim against the estate. The Commonwealth shall recover from the individual's estate the total capitation rate for the period the individual was enrolled in the managed care organization.

5. The following American Indian/Alaska Native (AI/AN) income, resources, and property shall be exempt from Medicaid estate recovery pursuant to §1917(b)(3) of the Act for hardship applicable to federally recognized tribes:

a. Certain AI/AN income and resources (such as interests in and income derived from tribal land and other resources currently held in trust status and judgment funds from the Indian Claims Commission and the U.S. Claims Court) that are exempt from Medicaid estate recovery by other laws and regulations;

b. Ownership interest in trust or nontrust property, including real property and improvements:

(1) Located on a reservation (any federally recognized Indian tribe's reservation or near a reservation) as designated and approved by the Bureau of Indian Affairs of the U.S. Department of the Interior; or

(2) For any federally recognized tribe not described in this subdivision, located within the most recent boundaries of a prior federal reservation.

(3) Protection of nontrust property described in this subdivision is limited to circumstances when it passes from an Indian (as defined in §4 of the Indian Health Care Improvement Act, 25 USC §§ 1601-1683) to one or more relatives (by blood, adoption, or marriage), including Indians not enrolled as members of a tribe and non-Indians, such as spouses and step-children, that their culture would nevertheless protect as family members; to a tribe or tribal organization or to one or more Indians, or all of these;

c. Income left as a remainder in an estate derived from property protected in this subdivision, that was either collected by an Indian, or by a tribe or tribal organization and distributed to an Indian or Indians, as long as the individual can clearly trace such income as coming from the protected property.

d. Ownership interests left as a remainder in an estate in rents, leases, royalties, or usage rights related to natural resources (including, but not necessarily limited to, extraction of natural resources or harvesting of timber, other plants and plant products, animals, fish, and shellfish) resulting from the exercise of federally protected rights, and income either collected by an Indian, or by a tribe or tribal organization and distributed to an Indian or Indians derived from these sources as long as the individual can clearly trace the interest as coming from protected sources.

e. Ownership interests in or usage rights to items not covered by this subdivision that have unique religious, spiritual, traditional, or cultural significance or rights, or all of these, that support subsistence or a traditional lifestyle according to applicable tribal law or custom.

6. The Commonwealth shall recover the following income, resources and property from the estates of American Indians and Alaska Natives:

a. Ownership interests in assets and property, both real and personal, that are not described in this subdivision.

b. Any income and assets left as a remainder in an estate that do not derive from protected property or sources in this subdivision.

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7. Reparation payments to individuals. Government reparation payments to special populations shall be exempt from Medicaid estate recovery.

8. Annuities. The Commonwealth considers annuities to be legal devices by which ownership of assets, such as estates, is defined and therefore may seek recovery from individuals' estates that may include such annuities. This provision is effective for deaths or estates that are opened 90 days after the Commonwealth meets applicable state and federal law for appropriate notice and due process.

D. Undue hardship. Whenever estate recovery would work an undue hardship on the deceased individual's heirs, the Commonwealth shall waive adjustment or recovery. Recovery from deceased individuals' estates shall be waived when the heirs are themselves Medicaid eligible. The Commonwealth shall determine whether individuals who will be affected by Medicaid estate recovery may have the right to apply for an undue hardship waiver.

1. Special consideration shall be shown in cases in which the estate subject to recovery is: (i) the sole income-producing asset of survivors (where such income is limited), such as a family farm or other family business; (ii) a homestead of modest value; or (iii) other compelling circumstances as may be set out in agency guidance documents.

2. The Commonwealth may determine that an undue hardship exists when it would not be cost effective to recover the assistance paid.

3. In cases where recovery is not waived and heirs of the estate from which recovery is sought wish to satisfy the Commonwealth's claim without selling a nonliquid asset that is subject to recovery, alternative methods of recovery may be considered. DMAS may also establish a reasonable payment schedule.

4. The Commonwealth may limit the hardship waiver to the time period during which the undue hardship circumstances existed or continue to exist.

5. An undue hardship shall not exist if the beneficiary created the hardship by resorting to estate planning methods under which the beneficiary divested assets in order to avoid estate recovery.

E. DMAS shall establish collection procedures to include identification of the estate administrator or executor, determination of the medical assistance claim amount, notification procedures, and such other procedures as are appropriate to pursue the recovery of medical assistance expenditures. Such procedures will be set out in an agency guidance document.

F. Recovery or adjustment not cost effective.

1. The Commonwealth may waive adjustment or recovery in cases in which it is determined that it would not be cost effective for the Commonwealth to recover from a deceased individual's estate. The estate administrator, executor, survivor, or heir does not need to assert undue hardship in such situations.

2. In determining whether recovery would be cost effective, the department may consider, but is not limited to consideration of, the following costs: staff time, litigation costs, expert witness fees, deposition expenses, travel expenses, office supplies, postage, advertising, and publishing costs. DMAS shall adjust the cost effective threshold as the agency's administrative costs change.

G. Appeals. The DMAS Appeals Division will administer appeals related to the recovery of funds pursuant to 12VAC30-110.

VA.R. Doc. No. R07-750; Filed August 27, 2008, 11:42 a.m.

## Emergency Regulation

Title of Regulation: 12VAC30-40. Eligibility Conditions and Requirements (amending 12VAC30-40-290).

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

Effective Dates: August 27, 2008, through August 26, 2009.

Agency Contact: Cindy Olson, Project Manager, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4282, FAX (804) 786-1680, or email cindy.olson@dmas.virginia.gov.

### Preamble:

*Section 2.2-4011 of the Administrative Process Act provides that agencies may adopt emergency regulations in situations in which Virginia statutory law, the Virginia appropriation act, or federal law or regulation requires that a regulation shall be effective in 280 days or less from its enactment.*

*Item 306 NN of the 2008 Appropriation Act (Chapter 879 of the 2008 Acts of Assembly) directs the Department of Medical Assistance Services (DMAS) to count life estates as a resource in determining Medicaid eligibility for covered groups for which a resource determination is required, including individuals requesting Medicaid payment for long-term care services. This action is intended to satisfy that mandate.*

*This regulatory action is intended to change the way life estates are evaluated in the Medicaid eligibility determination process per the requirement of the 2008 Appropriation Act. Upon implementation of this change, life estates will be evaluated as a resource for those Medicaid groups that have a resource requirement. This change will require the amendment of regulations addressing Medicaid eligibility.*

*This change is needed to eliminate the opportunity to shelter assets equal to the value of a life estate for individuals who are subject to a resource test for Medicaid eligibility.*

**12VAC30-40-290. 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 established prior to August 28, 2008, 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 12VAC30-40-300. Life rights to real property established on or after August 28, 2008 are evaluated as a resource in determining Medicaid eligibility in covered groups for which a resource determination is required, in the same manner as home or real property, as applicable.

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.

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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. Long-term care partnership insurance policy (partnership policy). Resources equal to the amount of benefits paid on the insured's behalf by the long-term care insurer through a Virginia issued long-term care partnership insurance policy shall be disregarded. A long-term care partnership insurance policy shall meet the following requirements:

1. The policy is a qualified long-term care partnership insurance policy as defined in §7702B(b) of the Internal Revenue Code of 1986.
2. The policy meets the requirements of the National Association of Insurance Commissioners (NAIC) Long-Term Care Insurance Model Regulation and Long-Term Care Insurance Model Act as those requirements are set forth in §1917(b)(5)(A) of the Social Security Act (42 USC §1396p).
3. The policy was issued no earlier than May 1, 2007.
4. The insured individual was a resident of a partnership state when coverage first became effective under the policy. If the policy is later exchanged for a different long-

term care policy, the individual was a resident of a partnership state when coverage under the earliest policy became effective.

5. The policy meets the inflation protection requirements set forth in §1917(b)(1)(C)(iii)(IV) of the Social Security Act.

6. The Insurance Commissioner requires the issuer of the partnership policy to make regular reports to the federal Secretary of Health and Human Services that include notification of the date benefits provided under the policy were paid and the amount paid, the date the policy terminates, and such other information as the secretary determines may be appropriate to the administration of such partnerships. Such information shall also be made available to the Department of Medical Assistance Services upon request.

7. The state does not impose any requirement affecting the terms or benefits of a partnership policy that the state does not also impose on nonpartnership policies.

8. The policy meets all the requirements of the Bureau of Insurance of the State Corporation Commission described in 14VAC5-200.

H. Reserved.

I. 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.

J. 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.

K. 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 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.

L. 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.

VA.R. Doc. No. R09-1326; Filed August 27, 2008, 11:36 a.m.

**Proposed Regulation**

**Title of Regulation:** 12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (adding 12VAC30-60-500).

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

**Public Hearing Information:** No public hearings are scheduled.

**Public Comments:** Public comments may be submitted until November 14, 2008.

**Agency Contact:** Meredith Lee, Health Care Services Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-5040, FAX (804) 786-1680, or email meredith.lee@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.

This action was also mandated by the 2006 Appropriation Act, Items 302 CC and GG. In Chapter 847 of the 2007 Acts of Assembly, Item 302 FFF required DMAS to add chronic obstructive pulmonary disease (COPD) to the conditions already covered under the DMAS Disease Management program.

**Purpose:** The Commonwealth of Virginia seeks to offer a voluntary alternative benefits package that combines traditional Medicaid services with new, comprehensive disease management (DM) services. This initiative will be established under authority granted by the Deficit Reduction Act of 2005, P.L. 109-171, State Flexibility in Benefits Packages. This option provides states with the opportunity to offer an alternative benefits package to beneficiaries without regard to comparability (42 CFR 440.240) and certain other traditional Medicaid requirements.

The DM program offered through the alternative benefits package is called Healthy Returns<sup>SM</sup>. Healthy Returns<sup>SM</sup> targets chronic care conditions in both children and adults. It provides DM services statewide to Medicaid clients eligible for Title XIX Medicaid fee-for-service. The program provides services on an "opt-in" basis so individuals eligible for the program must proactively enroll to receive DM services. The goal of this program is to improve a patient's ability to manage his condition(s) and thereby improve his health and quality of life.

**Substance:** The section of the State Plan for Medical Assistance that is affected by this action is Attachment 3.1-C; Standards Established and Methods used to Assure High Quality Care: Alternate Benefits for Disease Management (12VAC30-60).

The alternative benefits disease management program is described in a new regulatory section, 12VAC30-60-500. The alternative benefits package that includes Healthy Returns<sup>SM</sup> DM services will be offered to all Medicaid and Medicaid expansion enrollees who meet the criteria for Healthy Returns<sup>SM</sup> with the exception of:

1. Individuals enrolled in managed care organizations (managed care organizations already provide these same DM services to their beneficiaries);
2. Individuals enrolled in Medicare and Medicaid (dual eligibles);
3. Individuals who live in institutional settings (such as nursing homes); and
4. Individuals who have third-party insurance.

The Virginia program will also include individuals who receive home- and community-based 1915(c) waiver services. Virginia currently has seven home- and community-based services waiver programs.

Virginia's chronic condition alternative benefits program is designed to meet the following objectives:

1. Identification, evaluation, and management of disease state(s) specified in the contract;

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2. Adherence to national evidence-based disease management practice guidelines in order to improve participants' health status;
3. Integration of preventive care into the clinical management tool;
4. Overall reduction of acute medical expenditures, on average, for the population of participants served;
5. Reduction in hospital admissions and nonemergent emergency department use;
6. Coordination and reduction of inappropriate medication;
7. Increased participant and provider education and participant self-management skills;
8. Measured indication of participant and provider satisfaction with program;
9. Coordination of participant care including establishment of coordination between providers, the participant, and the community; and
10. Regular reporting of clinical outcome measures, profiles of participants and providers, and Medicaid health care expenditures of participants.

Previous emergency regulations provided that any qualifying individual in fee-for-service who was determined to have asthma and diabetes could participate in this program and also provided that qualifying individuals 21 years and older having coronary artery disease (CAD), congestive heart failure (CHF), and chronic obstructive pulmonary disease (COPD) were eligible for the Healthy Returns<sup>SM</sup> program. In this proposed regulation, the language "for individuals age 21 and over" has been changed to read "for individuals age 18 and over" to modify the provisions that any fee-for-service individual 18 years or older having CAD, CHF, or COPD may elect to participate in this program.

Healthy Returns<sup>SM</sup> may cover, but will not be limited to covering, the following conditions:

1. Asthma (all qualifying fee-for-service individuals);
2. Chronic obstructive pulmonary disease (individuals 18 years old and over)--The emergency regulations stated that all qualifying individuals in fee-for-service who have COPD and are aged 21 years or older, are eligible for the Healthy Returns<sup>SM</sup> program. In this proposed regulation, for COPD, the language has been changed to "individuals age 18 and over" are eligible for the Healthy Returns<sup>SM</sup> program;
3. Congestive heart failure (CHF) (individuals 18 years old and over)--The emergency regulations stated that all qualifying individuals in fee-for-service who have CHF and are aged 21 years or older, are eligible for the Healthy Returns<sup>SM</sup> program. In this proposed regulation

package, for CHF, the language has been changed to "individuals age 18 and over" are eligible for the Healthy Returns<sup>SM</sup> program;

4. Coronary artery disease (CAD) (individuals 18 years old and over)--The emergency regulations stated that all qualifying individuals in fee-for-service who have CAD and are aged 21 years or older, are eligible for the Healthy Returns<sup>SM</sup> program. In this proposed regulation, for CAD, the language has been changed to "individuals age 18 and over" are eligible for the Healthy Returns<sup>SM</sup> program;

5. Diabetes (all qualifying fee-for-service individuals).

The Family Access to Medical Insurance Security (FAMIS) enrollees are shown as being excluded (12VAC 30-60-500(B)(2)(e)) in this additional benefit because they already receive this benefit under Title XXI (see 12 VAC 30-141-200).

Various technical edits and corrections have been made in this proposed stage over the previous emergency regulatory action to conform this new Virginia Administrative Code (VAC) section to the Registrar's style and format requirements.

Issues: Increased preventive care and patient education increases participants' ability to effectively manage chronic conditions and ultimately decrease the number of hospitalizations and inappropriate emergency room use. The goal of Healthy Returns<sup>SM</sup> is to improve the health and quality of life for program participants. Participants with asthma, COPD, CHF, CAD, and diabetes stand to greatly benefit from the support, education, and interventions provided through disease management.

Since this is strictly an opt-in benefit, the regulatory action poses no disadvantages to the public or the Commonwealth.

### The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to the legislative mandates<sup>1</sup>, the Department of Medical Assistance Services proposes to establish a voluntary disease management program for Medicaid adult and children fee-for-service recipients with chronic care conditions. The proposed regulations have temporarily been in effect since January 2006 under emergency regulations.

Result of Analysis. There is insufficient data to accurately compare the magnitude of the benefits versus the costs.

Estimated Economic Impact. Pursuant to the legislative mandates<sup>1</sup>, the Department of Medical Assistance Services (DMAS) proposes to establish a disease management (DM) program for Medicaid fee-for-service recipients with chronic care conditions. The proposed permanent DM program covers all adult and children enrolled in the Medicaid fee-for-service

delivery model who have asthma or diabetes and individuals 18 years and older<sup>2</sup> who have coronary artery disease, congestive heart failure, and chronic obstructive pulmonary disease. The participation in the program is voluntary. The proposed DM program has been known in practice as Healthy Returns<sup>SM</sup> program.

The purpose of a DM program is to improve the health status of the recipients with chronic diseases while reducing treatment costs. A DM program may improve health status by establishing a coordinated system of intervention and information sharing, encouraging healthcare providers to use proven practice guidelines, educating patients about their condition and how to avoid complications, and monitoring patient outcomes.<sup>3</sup> Healthy Returns<sup>SM</sup> program specifically focuses on preventive care, promotion of self-management, and appropriate use of medical services.<sup>4</sup> According to DMAS, approximately 14,488 recipients were actively enrolled in the program as of November 2007.

Currently, Medicaid recipients enrolled in managed care organizations have access to DM programs through their managed care organizations. The proposed regulations make access to DM programs available for fee-for-service recipients.

The main expected benefits of the program are improving the status and the quality of health outcomes and preventing more expensive and serious medical services such as inpatient admissions and emergency visits. Based on the preliminary evaluation of one-year results, DMAS finds the program generally successful in improving health outcomes, but acknowledges improvement is needed in some areas.<sup>4</sup> While reducing health care costs is also an important goal of the program, there is no available data to measure the amount of savings the program may have produced.

On the other hand, providing DM services to about 15,000 recipients requires significant resources. DMAS provides DM services through a contractor. The contractor received \$2.3 million in Fiscal Year (FY) 2007 for DM services provided and the projected payments for the FY 2008 are \$4.2 million.

**Businesses and Entities Affected.** The proposed DM program will directly affect one DM contractor and the participating enrollees. As of November 2007, approximately 14,488 recipients were voluntarily enrolled in the program. The program may also have indirect effects on certain health care providers. As discussed above, DM programs increase utilization of preventative care in order to reduce inpatient admissions and emergency room visits.

**Localities Particularly Affected.** The proposed regulations apply throughout the Commonwealth. However, localities where managed care is not available are expected to be affected more than others.

**Projected Impact on Employment.** The effect of proposed DM program on employment is ambiguous. On one hand the demand for labor is expected to increase due to administration of the program and preventative health care services. On the other hand, demand for labor is expected to decrease due to likely reduction in inpatient admissions and emergency room visits. The net effect on labor demand is uncertain.

**Effects on the Use and Value of Private Property.** The proposed regulations are expected to increase the asset value of the contractor due to increased revenues and the asset value of premeditative health care service provider while the asset value of inpatient and emergency services are expected to decrease.

**Small Businesses: Costs and Other Effects.** The proposed regulations do not have a direct effect on any small businesses. However, if some of the Medicaid inpatient and emergency services providers are small businesses, there may be a reduction in their revenues.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** In order to implement a DM program, a reduction in the use of inpatient and emergency services appear to be unavoidable.

**Real Estate Development Costs.** There are no anticipated effects of the real estate development costs.

**Legal Mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 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, §2.2-4007.04 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.

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<sup>1</sup> 2006 Appropriation Act, Items 302 CC and GG and the 2007 Acts of Assembly, Chapter 847, Item 302 FFF.

<sup>2</sup> The emergency regulations covers individuals 21 years and older who have coronary artery disease, congestive heart failure, and chronic obstructive pulmonary disease.

<sup>3</sup> Rural Medicaid Disease Management: Afterthought or Strategic Aim? Report of a National Study, The Council of State Governments and Julia F. Costich, J.D., Ph.D., August 2007.

<sup>4</sup> Virginia Medicaid Healthy Returns<sup>SM</sup> Disease Management Program, Virginia Department of Medical Assistance Services, November 1, 2007.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Medical Assistance Services has reviewed the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning Disease Management 12VAC30-60-500. The agency raises no issues with this analysis.

## Summary:

*The proposed amendments establish a voluntary alternative benefit package (known as the Healthy Returns<sup>SM</sup> program) that combines traditional Medicaid services with comprehensive disease management (DM) services. Previous emergency regulations provided that (i) both adults and children in fee-for-service who are determined to have asthma and diabetes could participate in this program and (ii) individuals 21 years and older having coronary artery disease (CAD), congestive heart failure (CHF), and chronic obstructive pulmonary disease (COPD) were eligible for the Healthy Returns<sup>SM</sup> program. The substantive change recommended in the proposed regulations is to drop the age limit of 21 years for CHF, CAD, and COPD to age 18 years and older.*

## **12VAC30-60-500. Disease management services.**

A. The Commonwealth elects to provide secretary-approved coverage as appropriate for the population served under §1937 of the Social Security Act (the Act). Virginia's disease management program is designed to help patients better understand and manage their condition or conditions through prevention, education, lifestyle changes, and adherence to their physician-prescribed plans of care (POC). The purpose of the program is not to offer medical advice, but rather to support providers in reinforcing patients' POCs.

### B. Populations.

1. The Commonwealth shall provide the alternative benefit package to individuals who voluntarily enroll in the program (opt-in). Individuals shall be informed of the available benefit options prior to having the option to voluntarily enroll.

a. Opt-in alternative coverage will be offered to the following populations of Medicaid recipients:

(1) All individuals in fee-for-service who have asthma or diabetes.

(2) All individuals in fee-for-service age 18 and over who have congestive heart failure (CHF), coronary artery disease (CAD), or chronic obstructive pulmonary disease (COPD).

b. Individuals who choose to participate in the opt-in program shall maintain their eligibility for the regular Medicaid benefits at all times.

### 2. Persons excluded from this program shall be those:

a. Who have third-party insurance;

b. Who are enrolled in Medicaid managed care organizations;

c. Who reside in institutional settings;

d. Who are enrolled in both Medicare and Medicaid (dual eligibles); or

e. Who are children enrolled in Virginia's Title XXI program, Family Access to Medical Insurance Security (FAMIS). Children enrolled in FAMIS receive disease management services through the FAMIS program pursuant to 12VAC30-141-200.

3. The Commonwealth shall inform each individual that such enrollment is voluntary, that such individual may opt out of such alternative benefit package at any time, and retain eligibility for the standard Medicaid program under the State Plan.

4. Individuals are to be encouraged to participate in the program through mailings and telephonic outreach by DMAS or the disease management program administrator.

C. Benchmark benefits. In addition to all regular Medicaid program benefits, the alternative benefit package includes at least the following disease management services:

1. Condition-specific education on an ongoing basis;

2. Access to a 24-hour nurse call line;

3. Regularly scheduled telephonic condition management, support and referrals (for individuals identified by DMAS as having more acute or intensive health care needs); and

4. Patient health activity monitoring and providing information feedback to primary care physicians to help facilitate changes to patients' plans of care pursuant to the provision of disease management services (for individuals identified by DMAS as having more acute or intensive health care needs).

D. Geographical classification. Services under this alternative benefit package shall be available statewide.

E. Service delivery system. Alternative benefits shall be offered through a prepaid ambulatory health plan, under contract with the Commonwealth. All other Medicaid State Plan services shall be provided on a fee-for-service basis.

**F. Additional assurances.**

1. The Commonwealth assures that individuals shall have access, through benchmark coverage, benchmark-equivalent coverage, or otherwise, to rural health clinic services and federally qualified health center services as defined in §1905(a)(2) (B) and (C) of the Act.

2. The Commonwealth assures that payment for rural health clinic and federally qualified health clinic services shall be made in accordance with the requirements of §1902(bb) of the Act.

**G. Cost effectiveness of plans.** Benchmark or benchmark-equivalent coverage and any additional benefits are provided in accordance with economy and efficiency principles.

**H. Compliance with the law.** The Commonwealth shall continue to comply with all other provisions of the Social Security Act in the administration of the Commonwealth's disease management program under this chapter.

VA.R. Doc. No. R07-738; Filed August 26, 2008, 3:34 p.m.

### Emergency Regulation

**Title of Regulation:** **12VAC30-80. Methods and Standards for Establishing Payment Rates; other Types of Care (amending 12VAC30-80-190).**

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

**Effective Dates:** August 27, 2008, through August 26, 2009.

**Agency Contact:** Carla Russell, Project Manager, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4586, FAX (804) 786-1680, or email carla.russell@dmas.virginia.gov.

**Preamble:**

*Section 2.2-4011 of the Administrative Process Act provides that agencies may adopt emergency regulations in situations in which Virginia statutory law, the Virginia appropriation act, or federal law or regulation requires that a regulation shall be effective in 280 days or less from its enactment.*

*Item 306 PP of the 2008 Appropriation Act directed recalibration of Resource Based Relative Value System (RBRVS) physician rates and implementation of site of service differentials. This regulation is intended to satisfy the mandate effective July 1, 2008.*

*12VAC30-80-190 is being amended to implement a site of service differential for RBRVS physician rates. Payment for physician services in some cases will be recalibrated to implement different rates for services depending on the site of service, based on the relative value units (RVUs) for a procedure code published by the Centers for Medicare and Medicaid Services (CMS). For*

*procedure codes that can be performed in either a facility or nonfacility, CMS has been publishing separate RVUs for several years and Medicare rates are based on site of service.*

*Currently, DMAS uses only the nonfacility RVU in calculating rates. Different Medicaid rates by site of service will be phased in over a four-year period. In FY09, DMAS will add 75% of the difference between the facility RVU and nonfacility RVU to the facility RVU. In FY10, DMAS will add 50% of the difference between the facility RVU and nonfacility RVU to the facility RVU. In FY11, DMAS will add 25% of the difference between the facility RVU and nonfacility RVU to the facility RVU. In subsequent fiscal years, DMAS will use the Medicare facility RVU.*

*Different rates based on site of service will be implemented in a budget neutral manner. Any savings in total reimbursement to physicians as a result of the implementation of site of service rates will be reallocated proportionately to all physician categories of service as a percentage increase. The annual RBRVS update to physician services will be performed in conjunction with the implementation of site of service.*

**12VAC30-80-190. 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 12VAC30-80-180) and durable medical equipment services (see 12VAC30-80-30), 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.

a. Effective for dates of service on or after July 1, 2008, DMAS shall implement site of service differentials and employ both non-facility and facility RVUs. The implementation shall be budget neutral using the methodology in subsection 2 below.

b. The implementation of site of service shall be transitioned over a four-year period.

(1) Effective for dates of service on or after July 1, 2008, DMAS shall calculate the transitioned facility RVU by adding 75 percent of the difference between the facility RVU and non-facility RVU to the facility RVU.

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(2) Effective for dates of service on or after July 1, 2009, DMAS shall calculate the transitioned facility RVU by adding 50 percent of the difference between the facility RVU and non-facility RVU to the facility RVU.

(3) Effective for dates of service on or after July 1, 2010, DMAS shall calculate the transitioned facility RVU by adding 25 percent of the difference between the facility RVU and non-facility RVU to the facility RVU.

(4) Effective for dates of service on or after July 1, 2011, DMAS shall use the unadjusted Medicare facility RVU.

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 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.

VA.R. Doc. No. R09-1331; Filed August 27, 2008, 11:35 a.m.

### Proposed Regulation

**Title of Regulation:** 12VAC30-120. Waivered Services (amending 12VAC30-120-370, 12VAC30-120-380).

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

**Public Hearing Information:** No public hearings are scheduled.

**Public Comments:** Public comments may be submitted until November 14, 2008.

**Agency Contact:** Adrienne Fegans, Program Operations Administrator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-4112, FAX (804) 786-1680, or email [adrienne.fegans@dmass.virginia.gov](mailto:adrienne.fegans@dmass.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.

The legislation (Chapter 3, 2006 Acts of Assembly, Special Session I) directed DMAS, in consultation with the appropriate stakeholders, to develop a long-range blueprint

for the development and implementation of an integrated acute and long-term care system. In addition to this plan, the department was directed to move forward with two different models for the integration of acute and long-term care services: a community model (Chapter 847 Item 302, AAA) and the regional model (Item 302, BBB). Item 302 M.1 and M.2 of the 2006 Acts of Assembly provided DMAS with the authority to seek federal approval of these changes to its MEDALLION and Medallion II waivers.

**Purpose:** In order to best protect the health, safety, and welfare of the persons who qualify for home and community-based care services, DMAS is proposing that they retain their enrollment in their managed care organizations once approved for waiver services rather than being required to seek needed acute care services from the fee-for-service program. This change will sustain already established physician-patient relationships for these often fragile Medicaid recipients.

The goals of this action are to (i) better support these affected often fragile Medicaid recipients in their receipt of acute care services, once they qualify for waiver services and (ii) begin the process of integrating acute and long-term care services as mandated to the department.

**Substance:** Managed care systems (MCOs) were introduced in the Commonwealth in 1996. Currently, 114 localities are served by MCOs, with their approved provider networks that provide services to 400,783 Medicaid recipients. DMAS expends \$1.17 billion on capitation rates for the seven MCOs that operate in the Commonwealth. The recipients who live in localities of the Commonwealth that are not served by MCOs obtain their acute medical care from individual fee-for-service providers. Presently, when a recipient who has been in managed care qualifies for waiver services, this individual is disenrolled from his MCO thereby requiring that he obtain his acute care services from individual fee-for-service providers. This has disrupted long-standing physician-patient relationships and forced vulnerable Medicaid recipients to negotiate a complex, unmanaged health care system on their own.

Governor Timothy Kaine, with support from the 2006 General Assembly, set in motion a major reform of the Virginia Medicaid funded long-term care services program to focus on care coordination and integration of acute and long-term care services for our most vulnerable citizens—low-income seniors and individuals with disabilities. The legislation (Chapter 3, 2006 Acts of Assembly, Special Session I) directed DMAS, in consultation with the appropriate stakeholders, to develop a long-range blueprint for the development and implementation of an integrated acute and long-term care system. In addition to this plan, the department was directed to move forward with two different models for the integration of acute and long-term care services: a community model and a regional model.

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The proposed change will permit managed care enrolled persons to remain in their MCOs while receiving their waiver services. Excluded from this proposed program change are those persons who qualify for the Technology Assisted Waiver, nursing facility residents and persons classified as dual eligibles (Medicare-Medicaid eligibles).

The home and community-based waiver population is currently excluded from participation in the managed care program. This policy derives from years of federal policy that precluded recipients from participating in more than one waiver program at a time. In light of the ever-increasing nationwide aging population, more federal policy options are available to the states than ever before.

This regulatory change will expand managed care operations over previously "unmanaged" populations and also integrate acute and long-term care by increasing care coordination for the elderly and certain persons with disabilities. This program change will prevent enrollees, when they are approved for CBC waiver services, from having to change their current managed care organization for their acute medical care, therefore eliminating any disruptions in care (loss of established provider relationships). Key provisions allow for MCO enrollees who are newly enrolled into the HIV-AIDS, IFDDS, MR, EDCD, Day Support, and Alzheimer's Waiver programs to continue enrollment in one of the contracted MCOs for their acute care medical needs.

Issues: There are no disadvantages to the public for these proposed regulations. The advantages to the public and the Commonwealth are that reductions in Medicaid expenditures may be realized for the coordination of services previously provided in an unmanaged care environment. Medicaid recipients will still have ready access to medical and long-term care providers and services.

The degree of chronic illness and disability among seniors and individuals with disabilities is a key policy and budget issue for the Commonwealth as well as nationwide with the graying of the general population. Seniors and individuals with disabilities make up 30% of the Medicaid population in the state, but 70% of the costs of a budget that now exceeds \$5 billion annually. The Commonwealth's challenge is curbing Medicaid growth in the long run without compromising access to services for vulnerable populations. While Virginia has been successful in implementing managed care for low-income children and families, it has not yet applied the same successful principles to programs specifically designed for the long-term care populations. Currently in Virginia, most Medicaid seniors and individuals with disabilities receive acute and long-term care services through a patchwork of fragmented health and social programs that are not necessarily responsive to individual consumer needs. Acute care for these often fragile individuals is provided in a fee-for-service environment with little chronic care management. Long-term care is provided in a

nursing facility or by a variety of home and community-based care providers with little overall care coordination or case management. In addition, many Medicaid seniors and individuals with disabilities qualify for both Medicare and Medicaid, which further complicates the access, quality, and funding of an integrated system.

This regulatory change responds to the need to expand managed care operations over "unmanaged" populations and also integrate acute and long-term care by improving the current system and increasing care coordination for the elderly and disabled population.

## The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The proposed changes allow Medicaid recipients to retain their enrollment in managed care organizations and access needed acute care services through their managed care organization when they qualify for certain waivers. The proposed changes have been mandated by the 2006 Acts of Assembly and have been in effect since September 2007 under emergency regulations.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. The main goal of the proposed regulations is to prevent disruption of a recipient's relationship with his/her managed care organization when they become eligible for certain waivers<sup>1</sup>. The proposed changes have been mandated by the 2006 Acts of Assembly<sup>2</sup> and have been in effect since September 2007 under emergency regulations.

Prior to the emergency regulations, when a managed care recipient enrolled in certain community-based care waivers, they were required to disenroll from their managed care organization and were provided acute care services through the fee-for-service delivery model. With the proposed changes, when a managed care recipient enrolls in the certain community-based care waivers, their acute care services will be provided through the managed care service delivery model rather than the fee-for-service delivery model, and they will not be required to drop their enrollment in the managed care organization.

The main fiscal effect of the proposed changes would be the cost difference of providing acute care services to approximately 500 individuals under fee-for-service delivery model versus delivering the same services under managed care model. Department of Medical Services (DMAS) estimates that fee-for-service payments would be about the same as managed care payments to provide acute care services rendering the proposed changes budget neutral.

A significant benefit of the proposed changes is preventing the interruption of the relationship between the managed care

provider and the recipient. Prior to the emergency regulations, the recipient were required to disenroll from his/her managed care organization and receive services under unmanaged fee-for-service delivery model. Since managed care organizations have access to an individuals' health history and have case management resources already in place, uninterrupted relationship is expected to produce better health outcomes and prevent otherwise likely health care costs.

**Businesses and Entities Affected.** The proposed regulations are expected to primarily affect approximately 500 recipients and seven managed care organizations.

**Localities Particularly Affected.** The proposed changes are statewide. However, the effects of the proposed changes are likely to occur in areas where managed care is available. According to DMAS, 114 localities are currently served by managed care organizations.

**Projected Impact on Employment.** The proposed changes are not expected to create any significant effect on employment.

**Effects on the Use and Value of Private Property.** The proposed changes are not expected to create any significant effect on the use and value of private property.

**Small Businesses: Costs and Other Effects.** The proposed changes are not expected to impose any significant costs or other affects on small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** No effect on small businesses is anticipated.

**Real Estate Development Costs.** No effect on real estate development costs is anticipated.

**Legal Mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 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, §2.2-4007.04 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.

<sup>1</sup> The certain waivers referenced are the following community-based care waivers: HIV-AIDS waiver, Individual and Family Developmental Disabilities Support waiver, Mental Retardation waiver, Elderly or Disabled with Consumer Direction waiver, Day Support waiver, and Alzheimer's waiver.

<sup>2</sup> Chapter 847, Item 302, AAA, BBB, M.1, M.2.

**Agency's Response to the Department of Planning and Budget's Economic Impact Analysis:** The Department of Medical Assistance Services concurs with the economic impact analysis prepared by the Virginia Department of Planning and Budget regarding the regulations concerning Acute Long Term Care (12VAC 30-120-370; 12VAC 30-120-380).

**Summary:**

*This proposed change, generally referred to as Phase I of the Integration of Acute and Long-Term Care, will permit persons who become newly enrolled home-based and community-based care (CBC) waiver recipients (HIV-AIDS, Individual and Family Developmental Disabilities Support (IFDDS), Mental Retardation (MR), Elderly or Disabled with Consumer Direction (EDCD), Day Support, and Alzheimer's Waiver programs) to retain their enrollment in their managed care organization for purposes of obtaining needed acute medical care. Excluded from this change will be persons newly admitted to the Technology Assisted waiver, to nursing facilities, and those persons who become dual eligibles (eligible for both Medicare and Medicaid). Prior to the agency's current emergency regulation, these persons have been disenrolled from their managed care organization (once they qualify for certain CBC waivers) and have been required to seek needed acute care services in the unmanaged fee-for-service environment. The persons who will be affected by this change will have their home-based and community-based waiver services, including necessary transportation to waiver services, reimbursed by the Department of Medical Assistance Services (DMAS) through a fee-for-service mechanism. The managed care organizations will be financially responsible for these affected persons' acute medical care.*

**12VAC30-120-370. Medallion II enrollees.**

A. DMAS shall determine enrollment in Medallion II. Enrollment in Medallion II is not a guarantee of continuing eligibility for services and benefits under the Virginia Medical Assistance Services Program. DMAS reserves the right to exclude from participation in the Medallion II managed care program any recipient who has been consistently noncompliant with the policies and procedures of

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managed care or who is threatening to providers, MCOs, or DMAS. There must be sufficient documentation from various providers, the MCO, and DMAS of these noncompliance issues and any attempts at resolution. Recipients excluded from Medallion II through this provision may appeal the decision to DMAS.

B. The following individuals shall be excluded (as defined in 12VAC30-120-360) from participating in Medallion II. Individuals not meeting the exclusion criteria must participate in the Medallion II program.

1. Individuals who are inpatients in state mental hospitals;
2. Individuals who are approved by DMAS as inpatients in long-stay hospitals, nursing facilities, or intermediate care facilities for the mentally retarded;
3. Individuals who are placed on spend-down;
4. Individuals who are participating in the family planning waiver, ~~and~~ or in federal waiver programs for home-based and community-based Medicaid coverage prior to managed care enrollment;
5. Individuals who are participating in foster care or subsidized adoption programs;
6. Individuals under age 21 who are enrolled in DMAS authorized residential treatment or treatment foster care programs;
7. Newly eligible individuals who are in the third trimester of pregnancy and who request exclusion within a department-specified timeframe of the effective date of their MCO enrollment. Exclusion may be granted only if the member's obstetrical provider (physician or hospital) does not participate with the enrollee's assigned MCO. Exclusion requests made during the third trimester may be made by the recipient, MCO, or provider. DMAS shall determine if the request meets the criteria for exclusion. Following the end of the pregnancy, these individuals shall be required to enroll to the extent they remain eligible for Medicaid;
8. Individuals, other than students, who permanently live outside their area of residence for greater than 60 consecutive days except those individuals placed there for medically necessary services funded by the MCO;
9. Individuals who receive hospice services in accordance with DMAS criteria;
10. Individuals with other comprehensive group or individual health insurance coverage, including Medicare, insurance provided to military dependents, and any other insurance purchased through the Health Insurance Premium Payment Program (HIPP);
11. Individuals requesting exclusion who are inpatients in hospitals, other than those listed in subdivisions 1 and 2 of

this subsection, at the scheduled time of enrollment or who are scheduled for inpatient hospital stay or surgery within 30 calendar days of the enrollment effective date. The exclusion shall remain effective until the first day of the month following discharge;

12. Individuals who request exclusion during preassignment to an MCO or within a time set by DMAS from the effective date of their MCO enrollment, who have been diagnosed with a terminal condition and who have a life expectancy of six months or less. The client's physician must certify the life expectancy;

13. Certain individuals between birth and age three certified by the Department of Mental Health, Mental Retardation and Substance Abuse Services as eligible for services pursuant to Part C of the Individuals with Disabilities Education Act (20 USC §1471 et seq.) who are granted an exception by DMAS to the mandatory Medallion II enrollment;

14. Individuals who have an eligibility period that is less than three months;

15. Individuals who are enrolled in the Commonwealth's Title XXI SCHIP program;

16. Individuals who have an eligibility period that is only retroactive; and

17. Children enrolled in the Virginia Birth-Related Neurological Injury Compensation Program established pursuant to Chapter 50 (§38.2-5000 et seq.) of Title 38.2 of the Code of Virginia.

C. Individuals enrolled with a MCO that subsequently meet one or more of the aforementioned criteria during MCO enrollment shall be excluded from MCO participation as determined by DMAS, with the exception of those who subsequently become recipients in the federal long-term care waiver programs, as otherwise defined elsewhere in this chapter, for home-based and community-based Medicaid coverage (AIDS, IFDDS, MR, EDCD, Day Support, or Alzheimers, or as may be amended from time to time). These individuals shall receive acute and primary medical services via the MCO and shall receive waiver services and related transportation to waiver services via the fee-for-service program.

Individuals excluded from mandatory managed care enrollment shall receive Medicaid services under the current fee-for-service system. When enrollees no longer meet the criteria for exclusion, they shall be required to enroll in the appropriate managed care program.

D. Medallion II managed care plans shall be offered to recipients, and recipients shall be enrolled in those plans, exclusively through an independent enrollment broker under contract to DMAS.

~~D.~~ E. Clients shall be enrolled as follows:

1. All eligible persons, except those meeting one of the exclusions of subsection B of this section, shall be enrolled in Medallion II.
2. Clients shall receive a Medicaid card from DMAS, and shall be provided authorized medical care in accordance with DMAS' procedures after Medicaid eligibility has been determined to exist.
3. Once individuals are enrolled in Medicaid, they will receive a letter indicating that they may select one of the contracted MCOs. These letters shall indicate a preassigned MCO, determined as provided in subsection ~~E~~ F of this section, in which the client will be enrolled if he does not make a selection within a period specified by DMAS of not less than 30 days.
4. Any newborn whose mother is enrolled with an MCO at the time of birth shall be considered an enrollee of that same MCO for the newborn enrollment period. This requirement does not preclude the enrollee, once he is assigned a Medicaid identification number, from disenrolling from one MCO to another in accordance with subdivision ~~F-G~~ 1 of this section.

The newborn's continued enrollment with the MCO is not contingent upon the mother's enrollment. Additionally, if the MCO's contract is terminated in whole or in part, the MCO shall continue newborn coverage if the child is born while the contract is active, until the newborn receives a Medicaid number or for the newborn enrollment period, whichever timeframe is earlier. Infants who do not receive a Medicaid identification number prior to the end of the newborn enrollment period will be disenrolled. Newborns who remain eligible for participation in Medallion II will be reenrolled in an MCO through the preassignment process upon receiving a Medicaid identification number.

5. Individuals who lose then regain eligibility for Medallion II within 60 days will be reenrolled into their previous MCO without going through preassignment and selection.

~~E.~~ F. Clients who do not select an MCO as described in subdivision ~~D E~~ 3 of this section shall be assigned to an MCO as follows:

1. Clients are assigned through a system algorithm based upon the client's history with a contracted MCO.
2. Clients not assigned pursuant to subdivision 1 of this subsection shall be assigned to the MCO of another family member, if applicable.
3. All other clients shall be assigned to an MCO on a basis of approximately equal number by MCO in each locality.

4. In areas where there is only one contracted MCO, recipients have a choice of enrolling with the contracted MCO or the PCCM program. All eligible recipients in areas where one contracted MCO exists, however, are automatically assigned to the contracted MCO. Individuals are allowed 90 days after the effective date of new or initial enrollment to change from either the contracted MCO to the PCCM program or vice versa.

5. DMAS shall have the discretion to utilize an alternate strategy for enrollment or transition of enrollment from the method described in this section for expansions to new client populations, new geographical areas, expansion through procurement, or any or all of these.

~~F.~~ G. Following their initial enrollment into an MCO or PCCM program, recipients shall be restricted to the MCO or PCCM program until the next open enrollment period, unless appropriately disenrolled or excluded by the department (as defined in 12VAC30-120-360).

1. During the first 90 calendar days of enrollment in a new or initial MCO, a client may disenroll from that MCO to enroll into another MCO or into PCCM, if applicable, for any reason. Such disenrollment shall be effective no later than the first day of the second month after the month in which the client requests disenrollment.

2. During the remainder of the enrollment period, the client may only disenroll from one MCO into another MCO or PCCM, if applicable, upon determination by DMAS that good cause exists as determined under subsection ~~H~~ I of this section.

~~G.~~ H. The department shall conduct an annual open enrollment for all Medallion II participants. The open enrollment period shall be the 60 calendar days before the end of the enrollment period. Prior to the open enrollment period, DMAS will inform the recipient of the opportunity to remain with the current MCO or change to another MCO, without cause, for the following year. In areas with only one contracted MCO, recipients will be given the opportunity to select either the MCO or the PCCM program. Enrollment selections will be effective on the first day of the next month following the open enrollment period. Recipients who do not make a choice during the open enrollment period will remain with their current MCO selection.

~~H.~~ I. Disenrollment for cause may be requested at any time.

1. After the first 90 days of enrollment in an MCO, clients must request disenrollment from DMAS based on cause. The request may be made orally or in writing to DMAS and must cite the reasons why the client wishes to disenroll. Cause for disenrollment shall include the following:

- a. A recipient's desire to seek services from a federally qualified health center which is not under contract with

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the recipient's current MCO, and the recipient (i) requests a change to another MCO that subcontracts with the desired federally qualified health center or (ii) requests a change to the PCCM, if the federally qualified health center is contracting directly with DMAS as a PCCM;

b. Performance or nonperformance of service to the recipient by an MCO or one or more of its providers which is deemed by the department's external quality review organizations to be below the generally accepted community practice of health care. This may include poor quality care;

c. Lack of access to a PCP or necessary specialty services covered under the State Plan or lack of access to providers experienced in dealing with the enrollee's health care needs;

d. A client has a combination of complex medical factors that, in the sole discretion of DMAS, would be better served under another contracted MCO or PCCM program, if applicable, or provider;

e. The enrollee moves out of the MCO's service area;

f. The MCO does not, because of moral or religious objections, cover the service the enrollee seeks;

g. The enrollee needs related services to be performed at the same time; not all related services are available within the network, and the enrollee's primary care provider or another provider determines that receiving the services separately would subject the enrollee to unnecessary risk; or

h. Other reasons as determined by DMAS through written policy directives.

2. DMAS shall determine whether cause exists for disenrollment. Written responses shall be provided within a timeframe set by department policy; however, the effective date of an approved disenrollment shall be no later than the first day of the second month following the month in which the enrollee files the request, in compliance with 42 CFR 438.56.

3. Cause for disenrollment shall be deemed to exist and the disenrollment shall be granted if DMAS fails to take final action on a valid request prior to the first day of the second month after the request.

4. The DMAS determination concerning cause for disenrollment may be appealed by the client in accordance with the department's client appeals process at 12VAC30-110-10 through 12VAC30-110-380.

5. The current MCO shall provide, within two working days of a request from DMAS, information necessary to determine cause.

6. Individuals enrolled with a MCO that subsequently meet one or more of the exclusions in subsection B of this section during MCO enrollment shall be disenrolled as appropriate by DMAS, with the exception of those who subsequently become recipients into the AIDS, IFDDS, MR, EDCD, Day Support, or Alzheimer's federal waiver programs for home-based and community-based Medicaid coverage. These individuals shall receive acute and primary medical services via the MCO and shall receive waiver services and related transportation to waiver services via the fee-for-service program.

Individuals excluded from mandatory managed care enrollment shall receive Medicaid services under the current fee-for-service system. When enrollees no longer meet the criteria for exclusion, they shall be required to enroll in the appropriate managed care program.

## **12VAC30-120-380. Medallion II MCO responsibilities.**

A. The MCO shall provide, at a minimum, all medically necessary covered services provided under the State Plan for Medical Assistance and further defined by written DMAS regulations, policies and instructions, except as otherwise modified or excluded in this part.

1. Nonemergency services provided by hospital emergency departments shall be covered by MCOs in accordance with rates negotiated between the MCOs and the emergency departments.

2. Services that shall be provided outside the MCO network shall include those services identified and defined by the contract between DMAS and the MCO. Services reimbursed by DMAS include dental and orthodontic services for children up to age 21; for all others, dental services (as described in 12VAC30-50-190), school health services (as defined in 12VAC30-120-360) ~~and~~, community mental health services (rehabilitative, targeted case management and substance abuse services), ~~and long-term care services provided under the §1915(c) home-based and community-based waivers including related transportation to such authorized waiver services.~~

3. The MCOs shall pay for emergency services and family planning services and supplies whether they are provided inside or outside the MCO network.

B. EPSDT services shall be covered by the MCO. The MCO shall have the authority to determine the provider of service for EPSDT screenings.

C. The MCOs shall report data to DMAS under the contract requirements, which may include data reports, report cards for clients, and ad hoc quality studies performed by the MCO or third parties.

D. Documentation requirements.

1. The MCO shall maintain records as required by federal and state law and regulation and by DMAS policy. The MCO shall furnish such required information to DMAS, the Attorney General of Virginia or his authorized representatives, or the State Medicaid Fraud Control Unit on request and in the form requested.

2. Each MCO shall have written policies regarding enrollee rights and shall comply with any applicable federal and state laws that pertain to enrollee rights and shall ensure that its staff and affiliated providers take those rights into account when furnishing services to enrollees in accordance with 42 CFR 438.100.

E. The MCO shall ensure that the health care provided to its clients meets all applicable federal and state mandates, community standards for quality, and standards developed pursuant to the DMAS managed care quality program.

F. The MCOs shall promptly provide or arrange for the provision of all required services as specified in the contract between the state and the contractor. Medical evaluations shall be available within 48 hours for urgent care and within 30 calendar days for routine care. On-call clinicians shall be available 24 hours per day, seven days per week.

G. The MCOs must meet standards specified by DMAS for sufficiency of provider networks as specified in the contract between the state and the contractor.

H. Each MCO and its subcontractors shall have in place, and follow, written policies and procedures for processing requests for initial and continuing authorizations of service. Each MCO and its subcontractors shall ensure that any decision to deny a service authorization request or to authorize a service in an amount, duration, or scope that is less than requested, be made by a health care professional who has appropriate clinical expertise in treating the enrollee's condition or disease. Each MCO and its subcontractors shall have in effect mechanisms to ensure consistent application of review criteria for authorization decisions and shall consult with the requesting provider when appropriate.

I. In accordance with 42 CFR 447.50 through 42 CFR 447.60, MCOs shall not impose any cost sharing obligations on enrollees except as set forth in 12VAC30-20-150 and 12VAC30-20-160.

J. An MCO may not prohibit, or otherwise restrict, a health care professional acting within the lawful scope of practice, from advising or advocating on behalf of an enrollee who is his patient in accordance with 42 CFR 438.102.

K. An MCO that would otherwise be required to reimburse for or provide coverage of a counseling or referral service is not required to do so if the MCO objects to the service on moral or religious grounds and furnishes information about

the service it does not cover in accordance with 42 CFR 438.102.

VA.R. Doc. No. R07-729; Filed August 27, 2008, 11:38 a.m.

## TITLE 16. LABOR AND EMPLOYMENT

### VIRGINIA WORKERS' COMPENSATION COMMISSION

#### Proposed Regulation

Titles of Regulations: **16VAC30-90. Procedural Regulations for Filing First Reports Under the Virginia Workers' Compensation Act (repealing 16VAC30-90-10 through 16VAC30-90-80).**

**16VAC30-91. Claims Reporting (adding 16VAC30-91-10, 16VAC30-91-20, 16VAC30-91-30).**

Statutory Authority: §§65.2-201 and 65.2-900 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until 5 p.m. on November 14, 2008.

Agency Contact: Matthew Bryant, Director, Technology Alignment Program, Virginia Workers' Compensation Commission, 1000 DMV Drive, Richmond, VA 23220, telephone (804) 367-2253, FAX (877) 432-5423, or email matthew.bryant@vwc.state.va.us.

Basis: The commission is an independent, nonexecutive branch agency, governed by three commissioners elected by the General Assembly. The commission is charged with carrying out the provisions of the Virginia Workers' Compensation Act (§65.2-100 et seq. of the Code of Virginia). The commission is authorized to promulgate rules and regulations, and to examine the "books and records" of parties to proceedings relating to compensation pursuant to §65.2-201 of the Code of Virginia. The commission is authorized to collect specific accident data, as well as "such other information as may be required by the Commission" concerning injuries, and to regulate this activity (§65.2-900 of the Code of Virginia). The commission is required to notify injured workers of their rights and also to provide reports to other state agencies concerning accidents (§§65.2-201 and 65.2-900 of the Code of Virginia). Any voluntary agreements as to compensation, falling outside the dispute resolution authority of the commission must be filed with the commission in the form prescribed by the commission (§65.2-701 of the Code of Virginia). Also, several of the commission's dispute resolution rules concern data reporting,

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including rules requiring agreements, denial, and medical reports to be filed with the commission (16VAC30-50-50).

Purpose: Since the adoption of 16VAC30-90 in 1996, pertaining to the electronic filing of accident reports with the commission, technology and data standards have changed significantly. The commission desires to conform its electronic data collection methods to current industry practice, and provide its customers that are required to submit reports to the commission pursuant to the Virginia Workers' Compensation Act electronic methods that are simple, efficient, and effective. Accordingly, the commission proposes adopting 16VAC30-91, which seeks to conform its electronic data reporting methods to those of the nationwide workers' compensation community standards-setting organization, the International Association of Industrial Accident Boards and Commissions, or IAIABC.

Substance: This action is related to how organizations report certain data to the commission. There are no substantive changes to what the law requires to be reported, only to how the reports are transmitted to the commission. Thus, the substance of the action is this: effective July 1, 2009, such reports shall be filed electronically with the commission.

Issues: The primary advantage to the public and to the Commonwealth is the consistent, efficient and accurate electronic collection of data required by law. In this way the public can better comply with current reporting laws and the commission can better collect such reports. Of particular importance is the standard being proposed, which is industry-created, tested, and controlled, through the International Association of Industrial Accident Boards and Commissions, or the IAIABC. Most workers' compensation jurisdictions, including the Virginia Workers' Compensation Commission, are members of the IAIABC, in addition to a vast array of private industry carriers, administrators, and workers' compensation vendors.

The primary disadvantage to the public is that the reporting methods currently in operation (primarily paper submission) will be changing, and thus operations accustomed to reporting by hand, on paper, or through the mail, will be moving to an electronic system. It is believed that the available alternatives, including web-based submissions available through an Internet browser, will over time virtually eliminate any disadvantage this action might cause, and instead provide tremendous value to the public. There is no disadvantage to the Commonwealth other than in its role as an employer subject to workers' compensation reporting requirements.

## The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Regulation. The Virginia Workers' Compensation Commission (commission) proposes to repeal the existing regulations on claims reporting and promulgate a new replacement regulation to conform its electronic data

reporting methods to the industry standard. The proposed regulation requires that the claims reports be filed with the commission through Electronic Data Interchange (EDI) or through the internet portal established by the commission effective July 1, 2009.

Results of Analysis. There is insufficient data to accurately compare the magnitude of the benefits versus the costs. Detailed analysis of the benefits and costs can be found in the next section.

Estimated Economic Impact. Adopted in 1996, the existing regulation allows both paper submission of the claim reports and electronic transmission via a non-standardized format developed specifically for the commission, with paper submission being the primary data transmission method. In order to conform to the significant changes in technology and data standards that have occurred over the years, the commission proposes to repeal the current regulation and promulgate a replacement regulation. The proposed regulation will require that effective July 1, 2009, all claims reports shall be filed electronically either through Electronic Data Interchange (EDI) or through the internet portal established by the commission. This proposed action will only change the way the claims reports are transmitted to the commission without making any substantive changes to the content of data to be reported. The commission will describe the technical specifications and update any changes to the technical formats in the "implementation guide" which will be published by May 1 of each year.

The proposed regulations will provide a consistent, efficient, and accurate electronic collection, based on the standard that is industry-created, tested, and controlled, through the International Association of Industrial Accident Boards and Commissions (IAIABC). According to the commission, using EDI within the workers' compensation community has been a long established practice. Currently thirty states use an IAIABC data standard for transacting EDI. Four states, including Virginia, are using a "proprietary" EID format to some degree<sup>1</sup> and are moving to an IAIABC format.

The organizations that are required to file workers' compensation claims reports to the commission include the insurance carriers and the self-insured employers. According to the commission, about 80-90% of the insurance companies and self-insured employers either use a workers' compensation vendor or purchase a claim management system from the vendors to do the reporting. Currently most of the vendors and the multi-state insurance companies are performing EDI reporting in some other jurisdictions. This proposed action will allow them to utilize their existing resources in a more efficient way and will likely generate economy of scales. The commission reports that it will cost these organizations a one-time expense ranging from \$2,300 to \$6,150 to modify their current data transmission systems to conform to Virginia's specifications. Part or all of the costs

on the vendors may later be passed on to the insurance companies and self-insured employers they serve in the form of higher prices. The other 10-20% of the insurance companies and self-insured are mostly small volume reporters that submit fewer than 100 claims annually. They may use the commission's free internet-based submission method as an alternative to EDI processing. The use of alternative data transmission method will keep reporting consistent among all filers while minimizing the negative impact on small filers.

The commission will incur a one-time cost of about \$3,537,772 to implement the new claims management system, half of which is attributed to electronic reporting. The commission will also spend \$95,000 annually for using a data ingestion and cleansing service.

Moving from paper reporting to EDI processing will likely save the amount of time spent on transmitting the claims reports. The commission reports that on average each claim requires 2 claims reports<sup>2</sup>, which may take 180 minutes to complete. EDI processing will replace these two paper reports with four EDI reports which will take 60 minutes to finish. Therefore, switching to EDI processing may cause an approximate saving of 120 minutes for each claim. The savings in time may reduce the service fees charged by the vendors. The commission estimates that approximately 200,000 claims are filed every year.

**Businesses and Entities Affected.** According to the commission, there are approximately 215 affiliated insurance companies and self-insured companies. Approximately 80-90% of them use vendors to do the reporting. Currently there are four reporting vendors and about 14 vendors who develop and sell the claims management systems.

**Localities Particularly Affected.** The proposed regulations will affect all of the localities in the Commonwealth.

**Projected Impact on Employment.** Moving from paper reporting to EDI processing will likely save the amount of time spent on transmitting the claims reports. For organizations that already perform EDI processing in other states, it may take a full-time employee two to four weeks to adjust their existing systems to Virginia's specifications.

**Effects on the Use and Value of Private Property.** Moving from paper reporting to EDI processing will likely save the amount of time spent on providing the claims reports for the reports, which may have a positive impact on the value of filers. Filers who are currently conducting EDI processing in some other jurisdictions will incur a one-time cost ranging from \$2,300 to \$6,150 to modify their current data transmission systems to conform to Virginia's specifications. This cost may slightly reduce their profit and may have a slight adverse impact on the value of their properties.

**Small Businesses: Costs and Other Effects.** There are approximately 25 insurance companies or self-insured

companies who are small businesses. They may use the free internet-based submission method as an alternative to EDI processing. Therefore, they will not be significantly affected by the proposed regulations.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** Small businesses will likely not be significantly affected by the proposed amendments.

**Real Estate Development Costs.** The proposed amendments are unlikely to significantly affect real estate development costs.

**Legal Mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 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, §2.2-4007.04 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.

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<sup>1</sup> The "proprietary" EDI format means that basic, fundamental data elements common to every workers' compensation report, such as employee name and address, employer name and address, policy number, date of injury, etc., result in programming that is unique.

<sup>2</sup> Each claim will also require on average five other paper reports which will not be affected by this regulation.

**Agency's Response to the Department of Planning and Budget's Economic Impact Analysis:** The commission has no objection.

**Summary:**

*This action repeals 16VAC30-90 and promulgates 16VAC30-91 to conform the electronic filing method for mandatory reports to the commission to the industry standard for such reports.*

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## CHAPTER 91 CLAIMS REPORTING

### **16VAC30-91-10. Definitions.**

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

"Claims reports" means FROI and SROI reports concerning an injury filed by or on behalf of an insurer or self-insurer with the commission pursuant to the requirements set forth in the implementation guide.

"Commission" means the Virginia Workers' Compensation Commission.

"EDI" or "electronic data interchange" means the method used to exchange data electronically between the commission and those organizations submitting claims reports to the commission.

"Filed electronically" means filed with the commission through EDI or through the Internet portal established by the commission for submission of claims reports, pursuant to the requirements set forth in the implementation guide.

"First report of injury" or "FROI" means the initial claims report filed with the commission concerning an injury.

"Implementation guide" means the Electronic Data Interchange (EDI) Implementation Guide, May 1, 2008 Edition, which contains requirements published and updated by the commission to be followed when claims reports are filed electronically with the commission.

"Insurer" means a company licensed to write workers' compensation coverage in Virginia.

"Minor injury" means an injury that meets none of the following seven reporting criteria:

1. Lost time or partial disability exceeding seven days.
2. Medical expenses exceeding \$1,000.
3. Any denial of compensability.
4. Any disputed issues.
5. An accident that results in death.
6. Any permanent disability or disfigurement.
7. Any specific request made by the commission.

"Self-insurer" means an entity providing workers' compensation coverage directly to its employees based on formal approval by either the Virginia Workers' Compensation Commission or the State Corporation Commission.

"Subsequent report of injury" or "SROI" means a claims report filed with the commission after a FROI, which reports

medical or indemnity payment activity about an injury or a decision to deny or no longer make payment on an injury.

### **16VAC30-91-20. Procedures for filing claims reports.**

A. By no later than July 1, 2009, all claims reports must be filed electronically with the commission.

B. The commission shall publish an implementation guide describing the requirements to be followed when claims reports are filed electronically with the commission. Any changes or updates to the implementation guide shall be published by the commission on an annual basis on or about September 1.

C. A FROI must be filed on all injuries in accordance with the implementation guide.

D. SROI reports concerning denials, indemnity payments, medical payments, and suspensions must be filed on all injuries that do not meet the definition of a minor injury in accordance with the implementation guide.

E. An injury that meets the definition of a minor injury may be reported as such to the commission on a FROI in accordance with the implementation guide. If an injury that is reported to the commission as being a minor injury subsequently fails to meet the definition of a minor injury, then an updated FROI on that injury, followed by required SROI reports, must be filed with the commission immediately, in accordance with the implementation guide.

**NOTICE:** The forms used in administering the above regulation are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

### FORMS

First Report of Injury (rev. 5/1/08).

### First Report of Injury

For questions contact your Claim Administrator  
See definitions on the reverse of this form

Employer		
1. Employer's Legal Name		2. Federal Employer Identification Number
3. Employer Mailing Address		
4. Name/FEIN of Entity on Policy		5. Nature of Business
6. Name and Address of Insurer or Self-Insurer for this Claim		7. Policy Number
Time and Place of Accident		
8. Location Where Accident Occurred		9. Date of Injury
		10. Hour of Injury <input type="text"/> <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.
11. Date Injury or Illness Reported		12. If Fatal, Give Date of Death
		13. If Fatal, Give Marital Status <input type="checkbox"/> Single <input type="checkbox"/> Divorced <input type="checkbox"/> Married <input type="checkbox"/> Widowed
		14. If Fatal, Give Number of Dependent Children
Employee		
15. Name of Employee (Last, First, Middle)		16. Phone Number
18. Employee Mailing Address		17a. Employee ID Number
19. Occupation at Time of Injury or Illness		17b. Type of ID Number <input type="checkbox"/> Social Security Number <input type="checkbox"/> Employment Visa <input type="checkbox"/> Green Card <input type="checkbox"/> Passport Number <input type="checkbox"/> Unknown
		20. Date of Birth
		21. Sex <input type="checkbox"/> Male <input type="checkbox"/> Female
Nature and Cause of Accident		
22. Machine, Tool, or Object Causing Injury or Illness		
23. Describe Fully How Injury or Illness Occurred		
24. Describe Nature of Injury, Occupational Disease, or Illness, including Parts of Body Affected		

First Report of Injury  
(rev. 05/01/08)

## *Definitions of First Report of Injury Fields*

1. **Employer's Legal Name:** The legal name of the business entity that is filing the claim, hired the employee and provided direction and remuneration to the employee at the time of injury; or as jurisdictionally defined for volunteers and other non-paid classes of employees. In a leasing situation, this would be the lessor. If the employer is a client company of a PEO, fill in the client company's name here.
2. **Federal Employer Identification Number:** The Federal Employer Identification Number (FEIN) of the employer where the employee was employed at the time of the injury.
3. **Employer Mailing Address:** The mailing address as provided by the employer to the claim administrator.
4. **Name/FEIN of Entity on Policy:** The named entity of the policy. Typically, the insured name is the parent company in a hierarchically structured organization as well as the Federal Employer Identification Number (FEIN) corresponding to and uniquely identifying the insured. If represented by a PEO, it should be named here.
5. **Nature of Business:** The nature of the employer's business. This will be converted by the Claim Administrator to a North American Industry Classification System (NAICS) code.
6. **Name and Address of Insurer or Self-Insurer for this Claim:** The legal name of the insurance company, self-insured, or guarantee fund assuming the employer's financial responsibility for this claim as well as the mailing address of the claim adjusting office handling the claim. This will be the carrier's claim adjusting office if there is no Third Party/Claim Administrator.
7. **Policy Number:** The number identifying the coverage policy in effect for the claim. If self-insured or uninsured leave field blank.
8. **Location Where Accident Occurred:** The location where the accident or injury occurred. This will be converted to postal code.
9. **Date of Injury:** For traumatic injury, the date on which the accident occurred. For occupational disease or cumulative injury, the date of injury is the date on which the diagnosis is made and communicated to the employee.
10. **Hour of Injury:** The time of the accident/injury.
11. **Date Injury or Illness Reported:** The earlier of the date that the accident was reported to the employer or the date that the employer had actual knowledge of an accident or injury.
12. **If Fatal, Give Date of Death:** The date the employee died.
13. **If Fatal, Give Marital Status:** The employee's marital status as of the date of the injury.
14. **If Fatal, Give Number of Dependent Children:** The number of individuals relying on the employee for economic support as defined by the jurisdiction's statute.
15. **Name of Employee:** The employee's legally recognized last name and first name. If available provide middle name or initial.
16. **Phone Number:** The phone number where the employee can be reached.
- 17a. **Employee ID Number:** An identification number unique to the employee.
- 17b. **Type of ID Number:** Identifies the type of employee ID being transmitted. If you do not know the ID of the employee and select "Unknown", your insurer has been instructed to submit a jurisdiction-defined ID to the Commission.
18. **Employee Mailing Address:** The mailing address of the employee.
19. **Occupation at Time of Injury or Illness:** The primary occupation in which the employee was engaged at the time of accident/injury, or injurious exposure. This will be converted by the Claim Administrator to a Standard Occupational Classification (SOC) code.
20. **Date of Birth:** The date the employee was born.
21. **Sex:** The sex of the employee.
22. **Machine, Tool, or Object Causing Injury or Illness:** The cause of the injury based on the information available to the claim administrator.
23. **Describe Fully How Injury or Illness Occurred:** A free form description of how the accident occurred and the resulting injuries.
24. **Describe Nature of Injury, Occupational Disease, or Illness, Including Parts of Body Affected:** The nature of the injury sustained by the employee as well as the part(s) of the body injured.

DOCUMENTS INCORPORATED BY REFERENCE

Electronic Data Interchange (EDI) Implementation Guide, Virginia Workers' Compensation Commission, May 1, 2008 Edition.

V.A.R. Doc. No. R08-1094; Filed August 22, 2008, 1:36 p.m.

**TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING**

**VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS**

**Final Regulation**

**REGISTRAR'S NOTICE:** The following model public participation guidelines are exempt from Article 2 (§2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia pursuant to Chapter 321 of the 2008 Acts of Assembly.

**Titles of Regulations:** **18VAC15-10. Public Participation Guidelines (repealing 18VAC15-10-10 through 18VAC15-10-90).**

**18VAC15-11. Public Participation Guidelines (adding 18VAC15-11-10 through 18VAC15-11-110).**

**Statutory Authority:** §§2.2-4007.02 and 54.1-501 of the Code of Virginia.

**Effective Date:** October 15, 2008.

**Agency Contact:** David Dick, Executive Director, Virginia Board for Asbestos, Lead and Home Inspectors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (804) 527-4297, or email alhi@dpor.virginia.gov.

**Summary:**

*The regulations comply with the legislative mandate (Chapter 321, 2008 Acts of Assembly) that agencies adopt model public participation guidelines issued by the Department of Planning and Budget by December 1, 2008. Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of an agency's regulations.*

*This regulatory action repeals the current public participation guidelines and promulgates new public participation guidelines as required by Chapter 321 of the 2008 Acts of Assembly. Highlights of the public participation guidelines include (i) providing for the establishment and maintenance of notification lists of interested persons and specifying the information to be sent to such persons; (ii) providing for public comments on regulatory action; (iii) establishing the time period*

*during which public comments shall be accepted; (iv) providing that the plan to hold a public meeting shall be indicated in any notice of intended regulatory action; (v) providing for the appointment, when necessary, of regulatory advisory panels to provide professional specialization or technical assistance and negotiated rulemaking panels if a regulatory action is expected to be controversial; and (vi) providing for the periodic review of regulations.*

**CHAPTER 11  
PUBLIC PARTICIPATION GUIDELINES**

**Part I  
Purpose and Definitions**

**18VAC15-11-10. Purpose.**

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Virginia Board for Asbestos, Lead, and Home Inspectors. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

**18VAC15-11-20. 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.

"Agency" means the Virginia Board for Asbestos, Lead, and Home Inspectors, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by §2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

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"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at [www.townhall.virginia.gov](http://www.townhall.virginia.gov), which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§2.2-4031 et seq.) of the Administrative Process Act.

## Part II

### Notification of Interested Persons

#### **18VAC15-11-30. Notification list.**

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be

deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

#### **18VAC15-11-40. Information to be sent to persons on the notification list.**

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 18VAC15-11-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).
2. A notice of the comment period on a proposed, a re-proposed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.
3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to §2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

## Part III

### Public Participation Procedures

#### **18VAC15-11-50. Public comment.**

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.
2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).

2. For a minimum of 60 calendar days following the publication of a proposed regulation.

3. For a minimum of 30 calendar days following the publication of a repropoed regulation.

4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with §2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to §2.2-4012 E of the Code of Virginia.

### **18VAC15-11-60. Petition for rulemaking.**

A. As provided in §2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;

2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and

3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to §2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

### **18VAC15-11-70. Appointment of regulatory advisory panel.**

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

### **18VAC15-11-80. Appointment of negotiated rulemaking panel.**

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. An NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or

3. The agency determines that resolution of a controversy is unlikely.

### **18VAC15-11-90. Meetings.**

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with §2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

### **18VAC15-11-100. Public hearings on regulations.**

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing

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following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;

2. The Governor directs the agency to hold a public hearing; or

3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

## **18VAC15-11-110. Periodic review of regulations.**

A. The agency shall conduct a periodic review of its regulations consistent with:

1. An executive order issued by the Governor pursuant to §2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance; and

2. The requirements in §2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

VA.R. Doc. No. R09-1465; Filed August 20, 2008, 2:56 p.m.

## **BOARD OF DENTISTRY**

### **Forms**

**NOTICE:** The following forms have been filed by the Board of Dentistry. The forms are available for public inspection at the Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, Virginia 23233, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219. Copies of the forms may be obtained from Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960

Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

## **Title of Regulation: 18VAC60-20. Regulations Governing the Practice of Dentistry and Dental Hygiene.**

### **FORMS (18VAC60-20)**

Application Requirements for Dentists (rev. ~~9/06~~ 8/08).

Application for ~~Licensure~~ License to Practice Dentistry (rev. ~~12/02~~ 8/08).

Application Requirements for Restricted Dental Volunteer License/Restricted Dental Hygiene License (rev. 8/08).

Application for Restricted Volunteer ~~Licensure~~ License to Practice Dentistry ~~and or~~ Dental Hygiene (eff. ~~7/98~~ rev. 8/08).

Requirements and Instructions for a Temporary Resident's License to Persons Enrolled in Advanced Dental Education Programs (eff. ~~6/06~~ rev. 5/08).

Application for Temporary Resident's License (eff. ~~7/04~~ rev. 5/08).

Form A, Certification of Dental School for Temporary Resident's License (eff. ~~7/04~~ rev. 5/08).

Form B, Temporary Resident's License (Certification from Dean of Dental School or Director of Accredited Graduate Program), ~~Temporary Resident's License~~ (eff. ~~7/04~~ rev. 5/08).

Form C, Temporary Resident's License (Certification of Dental Licensure), ~~Temporary Resident's License~~ (eff. ~~7/04~~ rev. 5/08).

Form D, Temporary Resident's License (Chronology), ~~Temporary Resident's License~~ (eff. ~~7/04~~ rev. 5/08).

Form A, Certification of Dental/Dental Hygiene School (rev. ~~12/02~~ 8/08).

Form AA, Sponsor Certification for Dental/Dental Hygiene Volunteer License (eff. ~~7/98~~ rev. 8/08).

Form B, Chronology (rev. ~~12/02~~ 8/08).

Form C, Certification of Dental/Dental Hygiene Boards (rev. ~~12/02~~ 8/08).

~~Licensure Procedures~~ Application Requirements for Dental Hygienists (rev. ~~9/06~~ 1/08).

Application for Licensure to Practice Dental Hygiene (rev. ~~12/02~~ 1/08).

Instructions for Reinstatement of License (rev. ~~9/06~~ 4/08).

Reinstatement Application for Dental/Dental Hygiene Licensure (rev. ~~12/02~~ 4/08).

Instructions for Application for Reactivation of License (rev. ~~9/06~~ 8/08).

Application for Reactivation of License (rev. ~~9/06~~ 8/08).

## BOARD OF NURSING

### Forms

~~Radiology Information for Dental Assistants (rev. 7/97).~~

~~Renewal Notice and Application, 0401 Dentist (rev. 12/02).~~

~~Renewal Notice and Application, 0402 Dental Hygienist (rev. 12/02).~~

~~Renewal Notice and Application, 0404 Dental Teacher (rev. 12/02).~~

~~Renewal Notice and Application, 0406 Dental Hygiene Teacher (rev. 12/02).~~

~~Renewal Notice and Application, 0411 Full time Faculty (rev. 12/02).~~

~~Renewal Notice and Application, 0438 Cosmetic Procedure Certification (rev. 12/02).~~

~~Renewal Notice and Application, 0439 Oral and Maxillofacial (rev. 12/02).~~

~~Application for Certification to Perform Cosmetic Procedures (rev. 9/06 8/08).~~

~~Rhinoplasty/similar Procedures (rev. 7/02).~~

~~Blepharoplasty/similar Procedures (rev. 7/02).~~

~~Rhytidectomy/similar Procedures (rev. 7/02).~~

~~Submental liposuction/similar Procedures (rev. 7/02).~~

~~Browlift/either open or endoscopic technique/similar Procedures (rev. 7/02).~~

~~Otoplasty/similar Procedures (7/02).~~

~~Laser Resurfacing or Dermabrasion/similar Procedures (rev. 7/02).~~

~~Platysmal muscle plication/similar Procedures (rev. 7/02).~~

~~Application Review Worksheet (rev. 7/02).~~

~~Practitioner Questionnaire (rev. 12/02).~~

~~Oral and Maxillofacial Surgeon Registration of Practice (rev. 9/06 8/08).~~

~~Application for Registration for Volunteer Practice (eff. 12/02 rev. 8/08).~~

~~Sponsor Certification for Volunteer Registration (eff. 1/03 rev. 8/08).~~

VA.R. Doc. No. R09-1578; Filed August 27, 2008, 11:58 a.m.

**NOTICE:** The following forms have been filed by the Board of Nursing. The forms are available for public inspection at the Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219. Copies of the forms may be obtained from Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463.

**Titles of Regulations: 18VAC90-20. Regulations Governing the Practice of Nursing.**

**18VAC90-25. Regulations Governing Certified Nurse Aides.**

**18VAC90-30. Regulations Governing the Licensure of Nurse Practitioners.**

**18VAC90-40. Regulations for Prescriptive Authority for Nurse Practitioners.**

**18VAC90-50. Regulations Governing the Certification of Massage Therapists.**

**18VAC90-60. Regulations Governing the Registration of Medication Aides.**

#### FORMS (18VAC90-20)

Application for Licensure by Endorsement -- Registered Nurse (rev. ~~11/04~~ 1/08).

Instructions for Licensure by Endorsement -- Registered Nurse (rev. ~~12/04~~ 1/08).

Instructions for Licensure by Endorsement -- Licensed Practical Nurse (rev. ~~12/04~~ 1/08).

Application for Licensure by Endorsement -- Licensed Practical Nurse (rev. ~~11/04~~ 1/08).

Instructions for Filing Application for Licensure by Examination for Registered Nurses (rev. ~~12/04~~ 7/07).

Application for Licensure by Examination -- Registered Nurse (rev. ~~12/04~~ 7/07).

Instructions for Filing Application for Licensure by Examination for Practical Nurses (rev. ~~11/04~~ 7/07).

Application for Licensure by Examination -- Licensed Practical Nurse (rev. ~~12/04~~ 7/07).

Instructions for Filing Application for Licensure by Repeat Examination for Registered Nurses (rev. ~~6/04~~ 8/08).

Application for Licensure by Repeat Examination for Registered Nurse (rev. ~~10/02~~ 7/07).

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Instructions for Filing Application for Licensure by Repeat Examination for Practical Nurses (rev. ~~2/03~~ 8/08).

Application for Licensure by Repeat Examination for Licensed Practical Nurse (rev. ~~10/02~~ 7/07).

Instructions for Filing Application for Licensure by Examination for Licensed Practical Nurses Educated in Other Countries (rev. ~~12/04~~ 7/07).

Application for Licensure by Examination for Licensed Practical Nurses Educated in Other Countries (rev. ~~12/04~~ 7/07).

Instructions for Filing Application for Licensure by Examination for Registered Nurses Educated in Other Countries (rev. ~~12/04~~ 7/07).

Application for Licensure by Examination for Registered Nurses Educated in Other Countries (rev. ~~12/04~~ 7/07).

Temporary Exemption to Licensure (~~eff. 10/02~~) (rev. 7/07).

Instructions for Application for Reinstatement -- Registered Nurse (~~eff. 12/04~~) (rev. 7/07).

Application for Reinstatement -- Registered Nurse (rev. ~~12/04~~ 7/07).

Instructions for Application for Reinstatement -- Licensed Practical Nurse (~~eff. 12/04~~) (rev. 7/07).

Application for Reinstatement of License as a Licensed Practical Nurse (rev. ~~12/04~~ 7/07).

Instructions for Application for Reinstatement Following Suspension or Revocation -- Registered Nurse (~~eff. 12/04~~) (rev. 7/07).

Application for Reinstatement of License as a Registered Nurse Following Suspension or Revocation (rev. ~~12/04~~ 7/07).

Instructions for Application for Reinstatement Following Suspension or Revocation -- Licensed Practical Nurse (~~eff. 12/04~~) (rev. 7/07).

Application for Reinstatement of License as a Licensed Practical Nurse Following Suspension or Revocation (rev. ~~12/04~~ 7/07).

License Verification Form (rev. ~~10/02~~) 1/08).

~~Renewal Notice and Application, 0001, RN (rev. 11/03).~~

~~Renewal Notice and Application, 0002, LPN (rev. 11/03).~~

~~Renewal Notice and Application, 0015, Clinical Nurse Specialist (rev. 12/02).~~

Application for Registration as a Clinical Nurse Specialist (rev. ~~10/02~~ 7/07).

Procedure for Registration as a Clinical Nurse Specialist (rev 7/07).

Survey Visit Report (rev. ~~12/02~~) 7/07).

~~Annual Report for Registered Nursing Programs (rev. 12/02).~~

~~Annual Report for Practical Nursing Programs (rev. 12/02).~~

Application for Registration for Volunteer Practice (~~eff. 12/02~~) (rev. 7/07).

Sponsor Certification for Volunteer Registration (~~eff. 1/03~~) (rev. 8/08).

## FORMS (18VAC90-25)

Instructions for Application for Nurse Aide Certification by Endorsement (rev. ~~1/06~~ 8/07).

Application for Nurse Aide Certification by Endorsement (rev. ~~8/06~~ 8/07).

Nurse Aide Certification Verification Form (rev. ~~12/02~~ 11/07).

Instructions for Applicant for Advanced Certified Nurse Aide Registration (~~eff. 8/06~~ rev. 8/07).

Application for Certification as Advanced Certified Nurse Aide (rev. ~~8/06~~ 8/07).

Instructions for Application for Reinstatement of Nurse Aide Certification (rev. ~~8/06~~ 1/08).

Application for Reinstatement of Nurse Aide Certification (rev. ~~8/06~~ 1/08).

Instructions for Application for Reinstatement of Advanced Nurse Aide Certification (~~eff. 2/03~~ rev. 8/07).

Application for Reinstatement of Advanced Nurse Aide Certification (~~eff. 2/03~~ rev. 8/07).

Application to Establish Nurse Aide Education Program (rev. ~~12/02~~ 8/07).

Application to Establish an Advanced Certification Nurse Aide Education Program (~~eff. 12/02~~ rev. 8/07).

Nurse Aide Education Program Evaluation Report (rev. ~~11/02~~ 8/07).

Nurse Aide Education Program-On-site Review Report (rev. ~~11/02~~ 8/07).

Advanced Certification Nurse Aide Education Program Evaluation Report (rev. 8/08).

Advanced Certification Nurse Aide Education Program-On-site Review Report (~~eff. 12/02~~ rev. 8/07).

~~Evaluation of On-Site Visitor (rev. 12/02).~~

Request for Statistical Information (rev. ~~12/02~~ 6/08).

~~Renewal Notice (eff. 4/05).~~

~~Renewal Notice and Application, 1401, Certified Nurse Aide (rev. 12/02).~~

~~Renewal Notice and Application, Advanced Certified Nurse Aide (eff. 12/02).~~

## FORMS (18VAC90-30)

Instructions for Licensure -- Nurse Practitioner (rev. ~~10/02~~ 1/08).

Application for Licensure as a Nurse Practitioner (rev. ~~10/02~~ 1/08).

~~Renewal Notice and Application, Nurse Practitioner, 0024 (rev. 1/03).~~

Application for Reinstatement of License as a Nurse Practitioner (eff. ~~10/02~~ rev. 7/07).

License Verification Form (rev. 7/07).

## FORMS (18VAC90-40)

Application for Prescriptive Authority for Licensed Nurse Practitioners (rev. ~~10/02~~ 7/07).

Prescriptive Authority for Licensed Nurse Practitioners Practice Agreement (rev. ~~10/02~~ 7/07).

~~License Renewal Notice and Application (rev. 2002).~~

Application for Reinstatement of Prescriptive Authority (rev. 7/07).

## FORMS (18 VAC 90-50)

Instructions for Filing Application for Certification as a Massage Therapist (rev. ~~10/02~~ 7/07).

Application for Certification -- Massage Therapist (rev. ~~10/02~~ 7/07).

Instructions for Filing Application for Certification as a Massage Therapist by Endorsement (rev. ~~10/02~~ 7/07).

Application for Certification by Endorsement -- Massage Therapist (rev. ~~10/02~~ 7/07).

Massage Therapist Certification/Licensure Verification Form (rev. ~~10/02~~ 7/07).

Application for Reinstatement of Certificate as a Massage Therapist (rev. ~~10/02~~ 7/07).

~~Renewal Notice and Application (rev. 6/02).~~

Instructions for Application for Reinstatement following Suspension or Revocation – Certified Massage Therapist (rev. 7/07).

Application for Reinstatement of Certificate as a Massage Therapist following Suspension or Revocation (rev. 7/07).

## FORMS (18VAC90-60)

Application to Establish a Medication Aide Training Program (eff. 7/07).

Instructions for Filing Application for Registration by Examination for Medication Aides (eff. 7/07).

Application for Registration by Examination for Medication Aide (eff. 7/07).

Instructions for Filing Application for Reinstatement as a Medication Aide (eff. 7/07).

Application for Reinstatement of Medication Aide Registration (eff. 7/07).

Application for Registration by Repeat Examination for Medication Aide (eff. 8/08).

VA.R. Doc. No. R09-1563; Filed August 27, 2008, 12:00 p.m.

## BOARD OF PHYSICAL THERAPY

### Final Regulation

<p><b>REGISTRAR'S NOTICE:</b> The following model public participation guidelines are exempt from Article 2 (§2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia pursuant to Chapter 321 of the 2008 Acts of Assembly.</p>
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**Titles of Regulations:** **18VAC112-10. Public Participation Guidelines (repealing 18VAC112-10-10 through 18VAC112-10-120).**

**18VAC112-11. Public Participation Guidelines (adding 18VAC112-11-10 through 18VAC112-11-110).**

**Statutory Authority:** §§2.2-4007.02 and 54.1-2400 of the Code of Virginia.

**Effective Date:** October 15, 2008.

**Agency Contact:** Lisa R. Hahn, Executive Director, Board of Physical Therapy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4424, FAX (804) 527-4413, or email [lisa.hahn@dhp.virginia.gov](mailto:lisa.hahn@dhp.virginia.gov).

### **Summary:**

*The regulations comply with the legislative mandate (Chapter 321, 2008 Acts of Assembly) that agencies adopt model public participation guidelines issued by the Department of Planning and Budget by December 1, 2008. Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of an agency's regulations.*

*This regulatory action repeals the current public participation guidelines and promulgates new public participation guidelines as required by Chapter 321 of the 2008 Acts of Assembly. Highlights of the public participation guidelines include (i) providing for the establishment and maintenance of notification lists of interested persons and specifying the information to be*

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*sent to such persons; (ii) providing for public comments on regulatory action; (iii) establishing the time period during which public comments shall be accepted; (iv) providing that the plan to hold a public meeting shall be indicated in any notice of intended regulatory action; (v) providing for the appointment, when necessary, of regulatory advisory panels to provide professional specialization or technical assistance and negotiated rulemaking panels if a regulatory action is expected to be controversial; and (vi) providing for the periodic review of regulations.*

## CHAPTER 11 PUBLIC PARTICIPATION GUIDELINES

### Part I Purpose and Definitions

#### **18VAC112-11-10. Purpose.**

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Board of Physical Therapy. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

#### **18VAC112-11-20. 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.

"Agency" means the Board of Physical Therapy, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by §2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at [www.townhall.virginia.gov](http://www.townhall.virginia.gov), which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§2.2-4031 et seq.) of the Administrative Process Act.

### Part II Notification of Interested Persons

#### **18VAC112-11-30. Notification list.**

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be

deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

**18VAC112-11-40. Information to be sent to persons on the notification list.**

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 18VAC112-11-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).
2. A notice of the comment period on a proposed, a repropoed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.
3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to §2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

Part III  
Public Participation Procedures

**18VAC112-11-50. Public comment.**

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.
2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).

2. For a minimum of 60 calendar days following the publication of a proposed regulation.

3. For a minimum of 30 calendar days following the publication of a repropoed regulation.

4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with §2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to §2.2-4012 E of the Code of Virginia.

**18VAC112-11-60. Petition for rulemaking.**

A. As provided in §2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;
2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and
3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to §2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

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# Regulations

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E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

## **18VAC112-11-70. Appointment of regulatory advisory panel.**

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

## **18VAC112-11-80. Appointment of negotiated rulemaking panel.**

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. An NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or

3. The agency determines that resolution of a controversy is unlikely.

## **18VAC112-11-90. Meetings.**

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with §2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

## **18VAC112-11-100. Public hearings on regulations.**

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing

following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;

2. The Governor directs the agency to hold a public hearing; or

3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

## **18VAC112-11-110. Periodic review of regulations.**

A. The agency shall conduct a periodic review of its regulations consistent with:

1. An executive order issued by the Governor pursuant to §2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance; and

2. The requirements in §2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

VA.R. Doc. No. R09-1486; Filed August 27, 2008, 11:55 a.m.

## **BOARD OF COUNSELING**

### **Forms**

**NOTICE:** The following forms have been filed by the Board of Counseling. The forms are available for public inspection at the Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, Virginia 23233, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219. Copies of the forms may be obtained from Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960

Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

**Titles of Regulations: 18VAC115-20. Regulations Governing the Practice of Professional Counseling.**

**18VAC115-30. Regulations Governing the Certification of Substance Abuse Counselors and Substance Abuse Counseling.**

**18VAC115-40. Regulations Governing the Certification of Rehabilitation Providers.**

**18VAC115-50. Regulations Governing the Practice of Marriage and Family Therapy.**

**18VAC115-60. Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners.**

**FORMS (18VAC115-20)**

License Renewal Notice and Application (rev. 7/04).

Registration of Supervision, LPC Form 1– Post Graduate Degree Supervised Experience, (rev. 8/08).

Quarterly Evaluation, LPC Form 1-QE (rev. 8/08).

Licensure Verification of Out-of-State Supervisor, LPC Form 1-LV (rev. 8/08).

Licensure Application, LPC Form 2 (rev. 8/08).

Verification of Supervision – Post-Graduate Degree Supervised Experience, Form LPC 2-VS (rev. 8/08).

Coursework Outline Form, Form LPC 2-CO (rev. 8/08).

Verification of Internship Hours Towards the Residency, Form LPC 2-IR (rev. 8/08).

Verification of Internship, Form LPC 2-VI (rev. 8/08).

Verification of Licensure, Form LPC 2-VL (rev. 8/08).

Supervision Outline Form – Examination Applicants Only, Form LPC 2-SO (rev. 8/08).

Verification of Clinical Practice, Endorsement Applicants Only, Form LPC-ECP (rev. 8/08).

Continuing Education Summary Form (LPC) (rev. 8/07).

Application for Reinstatement of a Lapsed License (eff. 11/03 rev. 8/07).

**FORMS (18VAC115-30)**

Certification Application for Certification as a – Certified Substance Abuse Counselor, Form 1 (rev. 10/02 1/08).

Registration of Supervision – Form 1 (rev. 1/08).

Substance Abuse Counselor Verification of Supervision, Form 3 CSAC-2VS (rev. 10/02 1/08).

Supervisor's Experience and Education, Form 3A (eff. 10/02).

Licensure or Certification Verification of Out-of-State Supervisor, Form 4 CSAC-LV, (eff. 10/02 rev. 1/08).

Substance Abuse Education Outline, Form CSAC-EO (rev. 1/08).

Substance Abuse Education Tasks, Form CSAC-ET (rev. 1/08).

CSAC-A Certification Application for Certification as a Substance Abuse Counseling Assistant, Form 1A (eff. 10/02 rev. 8/08).

Substance Abuse Certification Verification of Licensure/Certification Verification of Applicant, Form 2 CSAC-VL (eff. 10/02 rev. 1/08).

Application for Reinstatement of a Lapsed Certification (eff. 10/02 rev. 8/07).

Renewal Notice and Application, 0710 (rev. 3/03).

Renewal Notice and Application, CSAC Assistant (rev. 3/03).

**FORMS (18VAC115-40)**

Application for Certification as a Rehabilitation Provider, CRPAPP Form 1 (rev. 10/99 8/07).

General Information for Certification as a Rehabilitation Provider (eff. 3/98 rev. 8/07).

Verification of Experience for Rehabilitation Provider Certification, Form 2 (eff. 3/98 rev. 8/07).

Rehabilitation Provider Verification of Licensure/Certification, Form 3 (eff. 3/98 rev. 8/07).

Licensure/Certification Verification of Out-of-State Supervisor, Form 4 (eff. 3/98 rev. 8/07).

Rehabilitation Provider Application for Reinstatement of a Lapsed Certificate (rev. 8/07).

Renewal Notice and Application (rev. 2/00).

**FORMS (18VAC115-50)**

Marriage and Family Therapist Licensure Application, MFT Form 1 2 (rev. 11/03 8/08).

Licensure Verification of Applicant Licensure, MFT Form 2-VL (rev. 11/03 8/08).

Verification of Supervision for Marriage and Family Therapist Licensure – Post-Graduate Degree Supervised Experience, MFT Form 3 2-VS (rev. 11/03 8/08).

Licensure Verification of Out-of-State Supervisor, MFT Form 4 1-LV (rev. 11/03 8/08).

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~~Quarterly Evaluation, MFT Form 1-QE (rev. 8/08).~~

~~Courses Coursework Outline Form for Marriage and Family Therapist Licensure, MFT Form 5 2-CO (rev. 4/03 8/08).~~

~~Verification of Internship, MFT Form 6 2-VI (rev. 4/03 8/08).~~

~~Verification of Internship Hours Towards the Residency, MFT Form 7 2-IR (rev. 4/03 8/08).~~

~~Supervision Outline Form for Marriage and Family Endorsement Examination Applicants Only, MFT Form 8 2-SO (rev. 4/03 8/08).~~

~~Verification of Clinical Practice, Endorsement Applicants Only, Form MFT-ECP (rev. 8/08).~~

~~Registration of Supervision for Marriage and Family Therapist Licensure, MFT Form A 1 (rev. 4/03 8/08).~~

~~Application for Reinstatement of a Lapsed License (eff. 4/03 rev. 8/07).~~

~~Continuing Education Summary Form (LMFT) (rev. 8/07).~~

~~General Information for Licensure as a Marriage and Family Therapist (eff. 11/03).~~

~~Application Instructions — Licensure by Examination (eff. 4/03).~~

~~Application Instructions — Licensure by Endorsement (eff. 4/03).~~

~~License Renewal Notice and Application (rev. 7/04).~~

## FORMS (18VAC115-60)

~~Licensed Substance Abuse Treatment Practitioner Licensure Application, LSATP Form 4 2 (rev. 4/03 8/08).~~

~~General Information for Licensure as a Substance Abuse Treatment Practitioner (rev. 11/03).~~

~~Verification of Competency for Independent Practice of Substance Abuse Treatment (TLW) (rev. 11/03).~~

~~Licensure/Certification Verification of Applicant Licensure, Form 2 LSATP 2-VL (rev. 4/03 8/08).~~

~~Verification of Supervision for Substance Abuse Treatment Practitioner Licensure — Post Graduate Degree Supervised Experience, LSATP Form 3 2-VS (rev. 4/03 8/08).~~

~~Supervisor's Experience and Education, Form 3A (rev. 4/03 8/08).~~

~~Licensure Verification of Out-of-State Supervisor, LSATP Form 4 1-LV (rev. 4/03 8/08).~~

~~Courses Coursework Outline Form for Substance Abuse Treatment Practitioner Licensure, Form 5 LSATP 2-CO (rev. 4/03 8/08).~~

~~Graduate Course/Hour Outline Form for Substance Abuse Treatment Practitioner Licensure (TLW) (rev. 11/03).~~

~~Verification of Internship, Form 6 LSATP 2-VI (rev. 4/03 8/08).~~

~~Verification of Internship Hours Towards the Residency, Form 7 LSATP 2-IR (rev. 4/03 8/08).~~

~~Registration of Supervision for Substance Abuse Treatment Practitioner Licensure — Post Graduate Degree Supervised Experience, LSATP Form A 1 (rev. 4/03 8/08).~~

~~Quarterly Evaluation Form, LSATP Form 6 1-QE (rev. 4/03 8/08).~~

~~Supervision Outline Form for Substance Abuse Treatment Practitioner Endorsement Applicants — Examination Applicants Only, Form 8 LSATP 2-SO (rev. 4/03 8/08).~~

~~Verification of Clinical Practice, Endorsement Applicants Only, Form LSATP-ECP (rev. 8/08).~~

~~License Renewal Notice and Application (rev. 7/04).~~

~~Licensed Substance Abuse Treatment Practitioner Application for Reinstatement of a Lapsed License Certificate (rev. 4/03 rev. 8/07).~~

~~Substance Abuse Treatment Practitioner Application for Reinstatement Following Disciplinary Action, SATPREDISC (rev. 1/03).~~

~~Continuing Education Summary Form (LSATP) (rev. 8/07).~~

V.A.R. Doc. No. R09-1581; Filed August 27, 2008, 12:01 p.m.

## BOARD OF PSYCHOLOGY

### Forms

**NOTICE:** The following forms have been filed by the Board of Psychology. The forms are available for public inspection at the Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, Virginia 23233, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219. Copies of the forms may be obtained from Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

Titles of Regulations: **18VAC125-20. Regulations Governing the Practice of Psychology.**

**18VAC125-30. Regulations Governing the Certification of Sex Offender Treatment Providers.**

### FORMS (18VAC125-20)

Instructions for Virginia Board of Psychology Application for Licensure by Examination (rev. 4/03 10/03).

Instructions for Virginia Board of Psychology Application of Licensure by Endorsement (rev. ~~4/03~~ 10/03).

Psychologist Application for Licensure by Examination, Form 1 (rev. ~~4/03~~ 8/07).

Application for Licensure as a School Psychologist-Limited (rev. ~~4/03~~ 8/07).

Employment Verification Form (rev. ~~4/03~~ 8/07).

Registration of Residency—Post-Graduate Degree Supervised Experience, Form 2 (rev. ~~4/03~~ 8/07).

Psychologist Application for Licensure by Endorsement, Form 1 (rev. ~~4/03~~ 8/07).

Psychologist Application for Reinstatement of a Lapsed License, PSYREIN (rev. ~~4/03~~ 8/07).

School Psychologist-Limited Application for Reinstatement of a Lapsed License, PSYREIN (rev. 8/07).

Psychologist Application for Reinstatement Following Disciplinary Action, PSYREDIS (rev. ~~4/03~~ 8/07).

Verification of Post-Degree Supervision, Form 3 (rev. ~~4/03~~ 8/07).

Internship Verification, Form 4 (rev. ~~4/03~~ 8/07).

Licensure/Certification Verification, Form 5 (rev. ~~4/03~~ 8/07).

Areas of Graduate Study, Form 6 (rev. ~~4/03~~ 8/07).

~~Renewal Notice and Application, 0803, 0810, 0811 (rev. 1/03).~~

~~Renewal Notice and Application, 0814 (rev. 1/03).~~

Application for Approval as a “Paragraph B” Continuing Education Provider (rev. 8/07).

Continuing Education Audit Summary Form (rev. 8/07).

## FORMS (18VAC125-30)

General Information for Certification as a Sex Offender Treatment Provider (rev. ~~4/02~~ 8/07).

Application for Certification as a Sex Offender Treatment Provider, ~~SOTP~~ Form 1 (rev. ~~4/02~~ 8/07).

Licensure or Certification Verification of Applicant, SOTP Form 2 (rev. ~~4/02~~ 8/07).

Sex Offender Treatment Provider, Verification of Supervision, SOTP Form 3 (rev. ~~4/02~~ 8/07).

Licensure Verification of Out-of-State Supervisor, SOTP Form 4 (rev. ~~4/02~~ 8/07).

Registration of Supervision Instructions (rev. ~~4/02~~ 8/07).

Registration of Supervision, Post-Graduate Degree Supervised Experience, ~~SOTP~~ Form 5 (rev. ~~4/02~~ 8/07).

Application for Reinstatement of Certification as a Sex Offender Treatment Provider (rev. ~~4/02~~ 8/07).

~~Renewal Notice and Application (rev. 9/01).~~

V.A.R. Doc. No. R09-1580; Filed August 27, 2008, 12:00 p.m.

## BOARD OF SOCIAL WORK

### Forms

**NOTICE:** The following forms have been filed by the Board of Social Services. The forms are available for public inspection at the Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, Virginia 23233, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219. Copies of the forms may be obtained from Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

**Title of Regulation: 18VAC140-20. Regulations Governing the Practice of Social Work.**

### FORMS (18VAC140-20)

Registration of Supervision Post-Graduate Degree Supervised Experience (rev. ~~12/02~~ 8/07).

Social Worker Licensure Application (rev. ~~12/02~~ 8/07).

Clinical Social Worker Licensure Application (rev. ~~12/02~~ 8/07).

Verification of Clinical Supervision (rev. ~~12/02~~ 8/07).

Verification of Casework Management and Supportive Services (rev. ~~12/02~~ 8/07).

~~Renewal Notice and Application (rev. 12/02).~~

Out of State Licensure Verification (rev. ~~12/02~~ 8/07).

Licensure Verification of Out-of-State Supervisor (rev. ~~12/02~~ 8/07).

Form for Reporting Social Work Attendance at Formal Staffing (rev. ~~12/02~~ 8/07).

Form for Reporting Social Work Independent Study (rev. ~~12/02~~ 8/07).

General Information for Licensure by Examination as a Licensed Social Worker, with Application Instructions (rev. ~~12/02~~ 8/07).

General Information for Licensure by Endorsement as a Licensed Social Worker, with Application Instructions (rev. ~~12/02~~ 8/07).

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# Regulations

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General Information for Licensure by Examination as a Clinical Social Worker, with Application Instructions (rev. ~~12/02~~ 8/07).

General Information for Licensure by Endorsement as a Clinical Social Worker, with Application Instructions (rev. ~~12/02~~ 8/07).

Registration of Supervision Instructions (rev. ~~12/02~~ 8/07).

Clinical Social Worker Reinstatement Application (rev. 8/07).

Social Work Reinstatement Application (rev. 8/07).

Clinical Social Worker Licensure Application - Reinstatement Following Disciplinary Action (rev. 8/07).

Continuing Education Summary Form (rev. 8/07).

VA.R. Doc. No. R09-1579; Filed August 27, 2008, 11:59 a.m.

## BOARD OF VETERINARY MEDICINE

### Final Regulation

**REGISTRAR'S NOTICE:** The following model public participation guidelines are exempt from Article 2 (§2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia pursuant to Chapter 321 of the 2008 Acts of Assembly.

**Titles of Regulations:** **18VAC150-10. Public Participation Guidelines (repealing 18VAC150-10-10 through 18VAC150-10-120).**

**18VAC150-11. Public Participation Guidelines (adding 18VAC150-11-10 through 18VAC150-11-110).**

**Statutory Authority:** §§2.2-4007.02 and 54.1-2400 of the Code of Virginia.

**Effective Date:** October 15, 2008.

**Agency Contact:** Elizabeth Carter, Executive Director, Board of Veterinary Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 662-4426, FAX (804) 527-4471, or email elizabeth.carter@dhp.virginia.gov.

#### Summary:

*The regulations comply with the legislative mandate (Chapter 321, 2008 Acts of Assembly) that agencies adopt model public participation guidelines issued by the Department of Planning and Budget by December 1, 2008. Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of an agency's regulations.*

*This regulatory action repeals the current public participation guidelines and promulgates new public participation guidelines as required by Chapter 321 of the 2008 Acts of Assembly. Highlights of the public participation guidelines include (i) providing for the establishment and maintenance of notification lists of*

*interested persons and specifying the information to be sent to such persons; (ii) providing for public comments on regulatory action; (iii) establishing the time period during which public comments shall be accepted; (iv) providing that the plan to hold a public meeting shall be indicated in any notice of intended regulatory action; (v) providing for the appointment, when necessary, of regulatory advisory panels to provide professional specialization or technical assistance and negotiated rulemaking panels if a regulatory action is expected to be controversial; and (vi) providing for the periodic review of regulations.*

## CHAPTER 11 PUBLIC PARTICIPATION GUIDELINES

### Part I Purpose and Definitions

#### **18VAC150-11-10. Purpose.**

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Board of Veterinary Medicine. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

#### **18VAC150-11-20. 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.

"Agency" means the Board of Veterinary Medicine, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by §2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic

list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at [www.townhall.virginia.gov](http://www.townhall.virginia.gov), which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§2.2-4031 et seq.) of the Administrative Process Act.

## Part II Notification of Interested Persons

### **18VAC150-11-30. Notification list.**

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

### **18VAC150-11-40. Information to be sent to persons on the notification list.**

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 18VAC150-11-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).
2. A notice of the comment period on a proposed, a repropoed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.
3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to §2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

## Part III Public Participation Procedures

### **18VAC150-11-50. Public comment.**

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

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# Regulations

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B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).
2. For a minimum of 60 calendar days following the publication of a proposed regulation.
3. For a minimum of 30 calendar days following the publication of a repropoed regulation.
4. For a minimum of 30 calendar days following the publication of a final adopted regulation.
5. For a minimum of 30 calendar days following the publication of a fast-track regulation.
6. For a minimum of 21 calendar days following the publication of a notice of periodic review.
7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with §2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to §2.2-4012 E of the Code of Virginia.

## **18VAC150-11-60. Petition for rulemaking.**

A. As provided in §2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;
2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and
3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to §2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

## **18VAC150-11-70. Appointment of regulatory advisory panel.**

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or
2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

## **18VAC150-11-80. Appointment of negotiated rulemaking panel.**

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. An NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;
2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or
3. The agency determines that resolution of a controversy is unlikely.

## **18VAC150-11-90. Meetings.**

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with §2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

**18VAC150-11-100. Public hearings on regulations.**

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

- 1. The agency's basic law requires the agency to hold a public hearing;
- 2. The Governor directs the agency to hold a public hearing; or
- 3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

**18VAC150-11-110. Periodic review of regulations.**

A. The agency shall conduct a periodic review of its regulations consistent with:

- 1. An executive order issued by the Governor pursuant to §2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance; and
- 2. The requirements in §2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

VA.R. Doc. No. R09-1494; Filed August 27, 2008, 11:57 a.m.



**TITLE 22. SOCIAL SERVICES**

**DEPARTMENT OF REHABILITATIVE SERVICES**

**Final Regulation**

**REGISTRAR'S NOTICE:** The following model public participation guidelines are exempt from Article 2 (§2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia pursuant to Chapter 321 of the 2008 Acts of Assembly.

**Titles of Regulations:** **22VAC30-10. Public Participation Guidelines (repealing 22VAC30-10-10, 22VAC30-10-20, 22VAC30-10-40, 22VAC30-10-50, 22VAC30-10-60).**

**22VAC30-11. Public Participation Guidelines (adding 22VAC30-11-10 through 22VAC30-11-110).**

**Statutory Authority:** §§2.2-4007.02 and 51.5-14 of the Code of Virginia.

**Effective Date:** October 15, 2008.

**Agency Contact:** Vanessa S. Rakestraw, Policy Analyst, Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7612, FAX (804) 662-7696, TTY (800) 464-9950, or email [vanessa.rakestraw@drs.virginia.gov](mailto:vanessa.rakestraw@drs.virginia.gov).

**Summary:**

*The regulations comply with the legislative mandate (Chapter 321, 2008 Acts of Assembly) that agencies adopt model public participation guidelines issued by the Department of Planning and Budget by December 1, 2008. Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of an agency's regulations.*

*This regulatory action repeals the current public participation guidelines and promulgates new public participation guidelines as required by Chapter 321 of the 2008 Acts of Assembly. Highlights of the public participation guidelines include (i) providing for the establishment and maintenance of notification lists of interested persons and specifying the information to be sent to such persons; (ii) providing for public comments on regulatory action; (iii) establishing the time period during which public comments shall be accepted; (iv) providing that the plan to hold a public meeting shall be indicated in any notice of intended regulatory action; (v) providing for the appointment, when necessary, of regulatory advisory panels to provide professional specialization or technical assistance and negotiated rulemaking panels if a regulatory action is expected to be controversial; and (vi) providing for the periodic review of regulations.*

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# Regulations

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## CHAPTER 11 PUBLIC PARTICIPATION GUIDELINES

### Part I Purpose and Definitions

#### **22VAC30-11-10. Purpose.**

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Department of Rehabilitative Services. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

#### **22VAC30-11-20. 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.

"Agency" means the Department of Rehabilitative Services, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by §2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at [www.townhall.virginia.gov](http://www.townhall.virginia.gov), which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§2.2-4031 et seq.) of the Administrative Process Act.

### Part II Notification of Interested Persons

#### **22VAC30-11-30. Notification list.**

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

**22VAC30-11-40. Information to be sent to persons on the notification list.**

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 22VAC30-11-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).
2. A notice of the comment period on a proposed, a repropoed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.
3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to §2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

**Part III**  
**Public Participation Procedures**

**22VAC30-11-50. Public comment.**

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.
2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).
2. For a minimum of 60 calendar days following the publication of a proposed regulation.
3. For a minimum of 30 calendar days following the publication of a repropoed regulation.
4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with §2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to §2.2-4012 E of the Code of Virginia.

**22VAC30-11-60. Petition for rulemaking.**

A. As provided in §2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;
2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and
3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to §2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

**22VAC30-11-70. Appointment of regulatory advisory panel.**

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

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# Regulations

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B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

## **22VAC30-11-80. Appointment of negotiated rulemaking panel.**

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. An NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or

3. The agency determines that resolution of a controversy is unlikely.

## **22VAC30-11-90. Meetings.**

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with §2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

## **22VAC30-11-100. Public hearings on regulations.**

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;

2. The Governor directs the agency to hold a public hearing; or

3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

## **22VAC30-11-110. Periodic review of regulations.**

A. The agency shall conduct a periodic review of its regulations consistent with:

1. An executive order issued by the Governor pursuant to §2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance; and

2. The requirements in §2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

VA.R. Doc. No. R09-1504; Filed August 22, 2008, 1:22 p.m.

## **STATE BOARD OF SOCIAL SERVICES**

### **Final Regulation**

**REGISTRAR'S NOTICE:** The following model public participation guidelines are exempt from Article 2 (§2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia pursuant to Chapter 321 of the 2008 Acts of Assembly.

**Titles of Regulations:** **22VAC40-11. Public Participation Guidelines (repealing 22VAC40-11-10 through 22VAC40-11-70).**

**22VAC40-12. Public Participation Guidelines (adding 22VAC40-12-10 through 22VAC40-12-110).**

**Statutory Authority:** §§2.2-4007.02 and 63.2-217 of the Code of Virginia.

**Effective Date:** January 1, 2009.

**Agency Contact:** L. Richard Martin, Jr., Manager, Department of Social Services, Office of Legislative and Regulatory Affairs, 7 North Eighth Street, Room 5214, Richmond, Virginia 23219, telephone (804) 726-7902, FAX (804) 726-7906, TTY (800) 828-1120, or email richard.martin@dss.virginia.gov.

**Summary:**

*The regulations comply with the legislative mandate (Chapter 321, 2008 Acts of Assembly) that agencies adopt model public participation guidelines issued by the Department of Planning and Budget by December 1, 2008. Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of an agency's regulations.*

*This regulatory action repeals the current public participation guidelines and promulgates new public participation guidelines as required by Chapter 321 of the 2008 Acts of Assembly. Highlights of the public participation guidelines include (i) providing for the establishment and maintenance of notification lists of interested persons and specifying the information to be sent to such persons; (ii) providing for public comments on regulatory action; (iii) establishing the time period during which public comments shall be accepted; (iv) providing that the plan to hold a public meeting shall be indicated in any notice of intended regulatory action; (v) providing for the appointment, when necessary, of regulatory advisory panels to provide professional specialization or technical assistance and negotiated rulemaking panels if a regulatory action is expected to be controversial; and (vi) providing for the periodic review of regulations.*

## CHAPTER 12 PUBLIC PARTICIPATION GUIDELINES

### Part I Purpose and Definitions

#### **22VAC40-12-10. Purpose.**

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the State Board of Social Services. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

#### **22VAC40-12-20. 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.

"Agency" means the State Board of Social Services, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by §2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at [www.townhall.virginia.gov](http://www.townhall.virginia.gov), which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§2.2-4031 et seq.) of the Administrative Process Act.

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# Regulations

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## Part II

### Notification of Interested Persons

#### **22VAC40-12-30. Notification list.**

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

#### **22VAC40-12-40. Information to be sent to persons on the notification list.**

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 22VAC40-12-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).
2. A notice of the comment period on a proposed, a repropoed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.
3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to §2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

## Part III

### Public Participation Procedures

#### **22VAC40-12-50. Public comment.**

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an

opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).

2. For a minimum of 60 calendar days following the publication of a proposed regulation.

3. For a minimum of 30 calendar days following the publication of a repropoed regulation.

4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with §2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to §2.2-4012 E of the Code of Virginia.

#### **22VAC40-12-60. Petition for rulemaking.**

A. As provided in §2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;
2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and
3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to §2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

### **22VAC40-12-70. Appointment of regulatory advisory panel.**

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or
2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

### **22VAC40-12-80. Appointment of negotiated rulemaking panel.**

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. An NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;
2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or

3. The agency determines that resolution of a controversy is unlikely.

### **22VAC40-12-90. Meetings.**

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with §2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

### **22VAC40-12-100. Public hearings on regulations.**

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;
2. The Governor directs the agency to hold a public hearing; or
3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

### **22VAC40-12-110. Periodic review of regulations.**

A. The agency shall conduct a periodic review of its regulations consistent with:

1. An executive order issued by the Governor pursuant to §2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance; and
2. The requirements in §2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

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C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

VA.R. Doc. No. R09-1505; Filed August 27, 2008, 9:44 a.m.

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## TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

### BOARD OF TOWING AND RECOVERY OPERATORS

#### Final Regulation

Title of Regulation: 24VAC27-30. General Regulations for Towing and Recovery Operators (adding 24VAC27-30-10 through 24VAC27-30-190).

Statutory Authority: §46.2-2805 of the Code of Virginia.

Effective Date: October 15, 2008.

Agency Contact: J. Marc Copeland, Acting Executive Director, Board of Towing and Recovery Operators, 2601 West Broad Street, Suite 200, Richmond, VA 23220, telephone (804) 367-0712, FAX (804) 367-0718, or email marc.copeland@btro.virginia.gov.

Summary:

*The regulation establishes (i) requirements for licensure of towing operators, including requirements for license renewal and continuing education; (ii) standards of practice; (iii) what constitutes unprofessional conduct; (iv) exemptions from the regulation; and (v) licensure and related fees.*

*Since publication of the proposed regulation, the fees for Class B operators is reduced in response to public comment. The continuing education requirements, intended to be a place holder in the proposed regulations, is removed from the final adopted regulations as the board will be giving further study to this important area. The board made numerous changes, specifically in response to public comments, in these final adopted regulations over those that were proposed for the public comment period. The most significant changes are: (i) reducing the licensing fees for Class B towers; (ii) removing the one-year time limit on the grandfather clause relative to taking an initial qualifying examination; (iii) removing TRAA examination requirements; (iv) changing the requirement that fees be posted to reflect the intent that such postings apply to facilities and not tow trucks; (v) modifying the specified amounts of required insurance coverage to show that the amounts are the required minimums; (vi) clarifying that the requirement that operators be required to be able to make change for a customer up to \$100 to applies to operators at their business offices and not to drivers in their trucks; (vii) requiring operators to notify the board about changes in drivers that they employ rather*

*than the drivers notifying the board of employer changes; and (viii) after the initial licensing step, only requiring criminal background checks with fingerprinting every three years at license renewal.*

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 30

#### GENERAL REGULATIONS FOR TOWING AND RECOVERY OPERATORS

#### 24VAC27-30-10. Definitions.

The following words and terms when used in these regulations by the Virginia Board of Towing and Recovery Operators or the board's related documents, unless expressly stated otherwise, shall have the following meanings [ except in those instances where the context clearly indicates a different meaning ]:

"Board" means the Virginia Board of Towing and Recovery Operators.

"Class A operator" means a towing and recovery business towing vehicles of an unlimited gross vehicle weight.

"Class B operator" means a towing and recovery business towing vehicles of a gross vehicle weight of 26,000 pounds or less.

"Driver" means a person who drives or is in actual physical control of a tow truck. A driver shall have obtained an authorization document issued by the board in order to drive a tow truck while providing towing or recovery services.

"Equipment" means any tow truck, vehicle or related machinery or tools used to provide towing or recovery services.

"Gross vehicle weight" means the aggregate weight of a vehicle and the load thereon.

"Gross vehicle weight rating" means as defined in §46.2-341.4 of the Code of the Virginia.

"Law-enforcement officer" means any officer authorized [ by law ] to direct or regulate traffic or to make arrests for violations of the Code of Virginia or local ordinances [ authorized by law ] relating to drivers or driving of motor vehicles.

"Operator" means the same as "towing and recovery operator," notwithstanding the provisions of §46.2-100 of the Code of Virginia, which defines operator differently.

"Private property/trespass tow" means requests for towing and recovery services made by the owner, [ operator manager, ] or lessee of private property, or the authorized agent thereof, pursuant to the provisions of Article 3 (§46.2-

1216 et seq.) of Chapter 12 of Title 46.2 of the Code of Virginia, or local ordinances adopted under that article, or under contract between such person and a towing and recovery operator that specifies what tows are to be made from the property when a motor vehicle or vehicle or self-propelled apparatus is on the property in violation of law or rules promulgated by the owner, [ ~~operator~~ manager ], or lessee of the private property.

"Responsible individual" means an individual identified through the operator's licensure process who is designated by the operator to represent and be accountable for all aspects of licensure for the operator and who is either the principal owner or chief executive officer of the business entity or manager [ ~~or both~~ ] of business operations for the operator.

"Tow" means when the [ ~~towing vehicle~~ tow truck ] has engaged the towed vehicle by a physical, mechanical means that causes the towed vehicle to be lifted off of the ground or moved for any distance whatsoever.

"Towing and recovery operator" means any person, including a business, corporation, or sole proprietor, offering services involving the use of a tow truck and services incidental to the use of a tow truck. Such [ ~~services definition~~ ] shall include but not be limited to those engaged in the business of (i) removing disabled vehicles, parts of vehicles, their cargoes, and other objects to facilities for repair or safekeeping and (ii) restoring to the highway or other location where they either can be operated or removed to other locations for repair or safekeeping vehicles that have come to rest in places where they cannot be operated.

"Towing and recovery services" means services offered by a towing and recovery operator. Any person who in any way advertises himself as a towing and recovery operator or in any way conveys the impression that he is engaged in [ ~~services of~~ ] providing towing and recovery of vehicles shall be deemed to be engaged in towing and recovery services.

"Tow truck" means a motor vehicle for hire (i) designed to lift, pull, or carry another vehicle by means of a hoist or other mechanical apparatus and (ii) having a manufacturer's gross vehicle weight rating of at least 10,000 pounds. "Tow truck" also includes vehicles designed with a ramp on wheels and a hydraulic lift with a capacity to haul or tow another vehicle, commonly referred to as "rollbacks." "Tow truck" does not include any "automobile or watercraft transporter," "stinger-steered automobile or watercraft transporter," or "tractor truck" as defined in §46.2-100 of the Code of Virginia.

"Tow truck decal," "decal" or similar words mean a board-issued decal to be affixed to the driver side door of a tow truck owned, leased or operated by a licensed towing and recovery operator.

**24VAC27-30-20. Fees.**

A. The following fees shall be applicable:

License Item	Fee
Initial [ <del>fee structure/application</del> license/application ] fee (includes the fee for one driver authorization)  [ Class A operators ] [ Class B operators ]	[ \$500 ]  [ \$500 ] [ \$250 for up to two trucks plus \$50 for each additional truck exceeding two trucks up to a cap of \$500 ]
Annual license renewal, Class A operator (includes the fee for one driver authorization)	\$500
Annual license renewal, Class B operator (includes the fee for one driver authorization)	[ \$250 for up to two trucks plus \$50 for each additional truck exceeding two trucks up to a cap of ] \$500
Annual tow truck decal, per vehicle	\$10
Annual driver authorization [ <del>documentation document</del> application fee ], per driver	\$50
Late renewal (operator, truck decal and driver)	150% of renewal fee
Reinstatement following revocation or suspension of license	\$1,000
Verification of licensure to another jurisdiction or government entity	\$25
Returned check	\$35
Duplicate copy of license, tow truck decal or driver authorization [ document ]	\$10
[ <del>Out of state temporary</del> Temporary ] trip permit (each permit)	\$50

B. All fees shall be nonrefundable.

[ ~~C. Examination fees shall be determined by the board.~~ ]

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## 24VAC27-30-30. General requirements for operator's licensure.

As a condition for licensure, an operator shall:

1. Be an individual or other entity legally authorized to conduct business in the Commonwealth of Virginia.
2. Provide the name of the individual or business entity under which the applicant intends to be licensed. However, the applicant/licensee, at time of application and each renewal of license, shall provide the board with any and all trade or fictitious names under which the operator conducts or offers towing and recovery services.
3. Designate and advise the board of the main or principal office and all additional satellite facilities and the physical addresses. Should such change, the board shall be notified within 30 days [ after ] such change occurs.
4. Designate [ a the operator's ] responsible individual who shall be knowledgeable of all applicable state, federal or local laws and regulations related to those towing and recovery services offered or rendered by the operator and who shall be responsible for assuring that the operator conforms to them.
5. List the principal owner's name or owners' names and the name of the responsible individual and of the principal manager and of all other individuals involved in the management and operation of the business on the application for license and advise the board of any change [ within 30 days ] of same.
6. Certify on the application whether any owner, manager, or other individual involved in the management or operation of the business entity, including the responsible individual, has been convicted of any criminal offense, whether felony or misdemeanor.

a. An applicant may not be refused a license or a tow truck driver's authorization document by the board solely because of a prior criminal conviction against such applicant or against any individual who is an owner, manager or other person involved in the management or operation of the applicant's business, including the responsible individual, unless the criminal conviction directly relates to the provision of towing and recovery services or the safety of the users of such services offered by a licensee or holder of a tow truck driver's authorization document. However, the board may refuse to issue a license or tow truck driver's authorization document if, based upon all the information available, including the record of prior convictions of the applicant or any individual who is an owner, manager or other person involved in the management or operation of the applicant's business, including the responsible individual, it finds that the applicant is unfit or unsuited to engage in providing towing and recovery services.

b. The board shall consider the following criteria in determining whether [ a criminal conviction ] directly relates to the provision of towing and recovery services or the safety of the users of towing and recovery services:

- (1) The nature and seriousness of the crime;
- (2) The relationship of the crime to the purpose for requiring a license or tow truck driver's authorization document to provide towing and recovery services, which includes protecting the safety of users of such services;
- (3) The extent to which providing towing and recovery services might offer an opportunity to engage in further criminal activity of the same type as that in which the convicted person had been involved;
- (4) The relationship of the crime to the ability, capacity or fitness required to perform the duties and discharge the responsibilities of providing towing and recovery services;
- (5) The extent and nature of the person's past criminal activity;
- (6) The age of the person at the time of the commission of the crime;
- (7) The amount of time that has elapsed since the person's last involvement in the commission of a crime;
- (8) The conduct and work activity of the person prior to and following the criminal activity; and
- (9) Evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release or at any time following the conviction.

c. The board may consider the criminal information as contained in the state or national criminal history record of the applicant or of each individual who is an owner, manager, or other person involved in the management or operation of the applicant's business, including the responsible individual, if such record is available, in lieu of the applicant providing certified copies of court records as to such convictions in determining whether a criminal conviction directly relates to the provision of towing and recovery services, and in determining whether an applicant is unfit or unsuited to engage in towing and recovery services. The board may request additional information from the applicant or relevant individuals in making such determination.

d. The following criminal convictions may not be considered a bar to licensing by the board, meaning that the inclusion of these items on the record of any individual who is an owner, manager or other person involved in the management or operation of the business entity, including the responsible individual, shall not be

sufficient as the sole grounds for denial of an operator's license.

(1) Felony convictions more than 10 years old with no subsequent reportable convictions, unless the conviction resulted in incarceration where the release date is less than three years from the date of the application. This does not include convictions involving murder, manslaughter, sexual assault, rape, robbery, or indecent liberties.

(2) Misdemeanor convictions more than three years old from the date of application.

(3) Felony convictions for possession of controlled substances more than two years old from the date of application, where the applicant has completed a deterrence program.

(4) Felony convictions of Title 46.2 of the Code of Virginia (Traffic Code) more than three years old from the date of application.

(5) Convictions of grand larceny, breaking and entering, or burglary, more than five years old with no subsequent convictions, provided they did not result in incarceration where the release date is less than three years from the application date.

7. Provide the board with information [ ~~indicating~~ identifying ] all tow trucks owned, leased or used by the operator, and obtain the appropriate tow truck decal for each such tow truck. Such information shall include a basic description of the type of tow truck, make, model and vehicle identification number, and its license plate number and state issuing such license plate. Information shall be provided no less frequently than on an annual basis, at time of initial licensure or renewal of license, and when obtaining a decal for any tow truck newly acquired.

8. Provide the board with a list of all drivers employed by the operator to drive tow trucks, including their [ ~~driver's~~ drivers' ] license numbers [ ~~and driver authorization document numbers~~ and state of issue ] at the time of [ ~~initial~~ ] licensure and [ ~~additionally~~ driver authorization document numbers ] at each renewal of the license.

**24VAC27-30-40. Operator's licensure without examination.**

Applicants for licensure [ ~~who were engaged in towing and recovery services on or prior to January 1, 2006 who qualify for grandfather status to take effect July 1, 2008,~~ ] shall be required to:

1. Submit an application for license on a form provided by the board, indicating on the application whether it is for a Class A or Class B operator's license, and remit payment of fees applicable for application and first year license,

including fees for tow truck decals. Applications shall include the operator's federal tax identification number.

2. Certify in writing that the responsible individual has read and understands the laws and regulations governing towing and recovery services.

3. In order to qualify for "grandfather status" so that no examination is required for [ ~~initial~~ ] licensure, the applicant shall submit evidence to the board that the operator was actively engaged in the business of towing and recovery services on January 1, 2006. Such evidence shall include a date prior to January 1, 2006, and the business name of the operator and may include but shall not be limited to a copy of a state or federal tax return, local business license, receipt for payment of other taxes or government fees, paid purchase order forms or similar documents related to repair, lease, or purchase of a tow truck. [ ~~The grandfather exemption shall expire if the application for license has not been received by close of business July 1, 2008.~~ ]

**24VAC27-30-50. Operator's licensure by examination.**

[ ~~A.~~ ] Applicants for licensure who were not engaged in the towing and recovery business before January 1, 2006, or who do not qualify for grandfather status or both shall be required to:

1. Submit an application for license on a form provided by the board, indicating on the application whether it is for a Class A or Class B operator's license, and remit payment of fees applicable for application and first year license, including fees for tow truck decals. Applications shall include the operator's federal tax identification number.

[ ~~2. For license as a Class A operator, submit evidence of passage by the principal owner or responsible individual of all sections of Level I and of Level II of the Towing and Recovery Association of America's certification examination or the appropriate sections of any other examination deemed by the board to be equivalent. Examinations that the board has deemed equivalent shall be posted on the board's website (<http://www.btro.vi.virginia.gov>).~~ ]

3. For license as a Class B operator, submit evidence of passage by the principal owner or responsible individual of all sections of Level I of the Towing and Recovery Association of America's certification examination or the appropriate sections of any other examination deemed by the board to be equivalent. Examinations that the board has deemed equivalent shall be posted on the board's website (<http://www.btro.vi.virginia.gov>).

~~B. The~~ 2. Have the ] principal owner or responsible individual [ ~~of applicants for Class A and Class B operator's license shall additionally submit to and ] successfully pass an open book [ ~~jurisprudence~~ ]~~

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examination [ provided by the board on the laws and regulations governing towing and recovery operators concerning laws and regulations governing the towing and recovery of vehicles and the proper and safe means by which such may be offered to the public ].

## **24VAC27-30-60. Operator's licensure by endorsement.**

An applicant may receive licensure by endorsement providing he (i) provides evidence of passage of the applicable examination requirements set out herein for a Class A or Class B license, (ii) submits evidence that he has been actively engaged in towing and recovery services in another state for the past five consecutive years, (iii) provides a statement from a government entity in the state in which he has been conducting business or businesses in the past five consecutive years that the applicant's business has not violated or been disciplined for violation of the other state's laws and regulations governing towing and recovery services, (iv) has passed the [ portion of the ] board required [ jurisprudence ] examination [ concerning the Virginia laws and regulations governing towing and recovery of vehicles ], and (v) has submitted the required applications and fees to the board.

## **24VAC27-30-70. Exemptions.**

The following shall be exempt from these regulations:

1. "Rollbacks" used exclusively to transport cargo other than vehicles.
2. "Automobile or watercraft transporters," "stinger-steered automobiles or watercraft transporters" or "tractor trucks" as defined in [ §46.2-100 §46.2-2100 ] of the Code of Virginia. Such transporters are only exempt if capable of transporting five or more vehicles and have appropriate and required interstate operating authority.
3. "Household goods carriers" as defined in §46.2-100 of the Code of Virginia providing they have been issued a valid "certificate of public convenience and necessity" [ means ] by the Virginia Department of Motor Vehicles.
4. Tow trucks solely owned and operated directly by a government entity used for public safety towing or noncommercial purposes [ , providing such do not impose a fee for services rendered ].
5. Tow trucks that are properly registered and domiciled in another state and have proper interstate operating authority may be operated within the Commonwealth of Virginia while passing through the Commonwealth to another jurisdiction or while delivering a vehicle within the Commonwealth, but only if the pick up of the vehicle and origin of the trip is outside of the Commonwealth. However, tow trucks registered and domiciled in another state are not exempt from licensure or provisions of applicable state laws or regulations of the board if pick up or hook up of a vehicle is in Virginia. Such tow trucks

must obtain a temporary trip permit from the board prior to operating in Virginia unless licensed by the board.

6. Tow trucks owned by a person and used exclusively to transport vehicles owned by such person providing there is no charge or acceptance of fees or payment for services. In such situations, ownership of vehicles being transported must be supported by possession of title, bill of sale, registration or other legal document while the vehicle is being transported and signage must be permanently posted on the door of both sides of said tow truck indicating "NOT FOR HIRE." Letters for such signs shall each be at least three inches in height and 1/4" in width and in a color contrasting with the tow truck's color.

7. Tow trucks owned by tow truck dealers or tow truck manufacturers operating with a legally recognized dealer license plate. Such tow trucks may only be operated by an employee of the dealer or manufacturer for the sole purpose of transporting it to and from the location of sale or demonstration. Such tow trucks shall be required to have temporary or permanent lettering with the dealer's or manufacturer's name, city and state and the words "NOT FOR HIRE" displayed on both of the side doors of the tow truck. Letters for such signs shall each be at least three inches in height and 1/4" in width and in a color contrasting with the tow truck's color.

## **24VAC27-30-80. Transfer of operator's license.**

A. Except as provided in subsection B of this section, an operator's license is not transferable.

B. Transfer of an operator's license under emergency circumstances, as agreed to by the board executive director, may be granted for up to 90 days.

## **24VAC27-30-90. Temporary trip permits, regulations, fees.**

The board may, on application on forms provided by the board, issue a temporary trip permit to any owner of a tow truck who would otherwise be subject to licensure by the board but is not currently [ registered ] licensed as an operator [ , ]. The permit shall be valid for three days and shall show the vehicle identification number, tag number, authorized driver's name and the beginning point and the point of destination, and other information as may be required by the board, including certification that the driver is not required to register as a sex offender in any jurisdiction.

## **24VAC27-30-100. Unprofessional conduct.**

It shall be deemed unprofessional conduct, which may be subject to disciplinary action or sanctions imposed by the board, for any licensed operator in the Commonwealth to violate any statute or regulation governing towing and recovery services, or fail to:

1. Employ only tow truck drivers who comply with the board's requirements for drivers and hold a valid driver's authorization document from the board.

2. Advise the board in writing of any change in ownership listed on the application or management, including a change in the responsible individual, or in the licensee's principal or business mailing address within 30 days of such change occurring.

3. Have the licensee's trade name, clearly indicated on all of the operator's tow trucks. Provided, however, that if the licensee's towing business is exclusively limited to towing only vehicles that are being repossessed, then the name of the licensee and any other markings that might identify the vehicle as associated with the business of repossessing vehicles shall not be required [ ~~except for their~~ but the ] board-issued decal [ for the vehicle must be displayed ].

4. Retain for a minimum of one year from last date of service, records of services and fees charged or collected. If said records are not maintained at the operator's principal place of business, the location of such records shall be made known to the board at the board's request.

5. Allow an authorized [ ~~agent~~ staff person or agent who is not a member ] of the board to review or inspect, during regular business hours, the operator's records of services rendered and fees charged or collected, facilities and equipment. Such inspections shall be limited to that which is related to compliance with laws or regulations governing towing and recovery operators and towing and recovery services. [ All information obtained through any such inspection, to the extent permitted or required by the laws of the Commonwealth of Virginia, shall be considered confidential and shall not be disclosed except as necessary for investigations conducted by the board. ]

6. Accept at least one of two nationally recognized credit cards. However, any individual credit card offered in payment, even if of a type normally accepted, may be considered unacceptable by the operator if the credit card processing company denies charges being applied to said card or if the actual card is not presented to the operator for inspection. Operators may insist payment by credit card be made at their principal place of business or any location at which payment for fees for services is normally accepted. [ ~~Operators may also insist on accepting a credit card only from the owner of the vehicle towed or impounded.~~ ]

7. For operators engaged in towing passenger vehicles without the consent of their owners pursuant to §46.2-1231 of the Code of Virginia, also known herein as private property/trespass towing, prominently display at their main place of business and at any other location where towed vehicles may be reclaimed, a comprehensive list of all their fees for towing and recovery or the basis of such charges. This requirement to display a list of fees may also be

satisfied by providing, when the towed passenger vehicle is reclaimed, a written list of such fees, either as part of a receipt or separately, to the person who reclaims the vehicle. Charges in excess of those posted shall not be collectible from any motor vehicle owner whose vehicle is towed or recovered without his consent. If the owner or representative or agent of the owner of the trespassing passenger vehicle is present and removes the trespassing vehicle from the premises before it is actually towed, the trespassing vehicle shall not be towed, but the owner or representative or agent of the owner of the trespassing vehicle shall be liable for a reasonable fee, not to exceed the fee set out in §46.2-1231 of the Code of Virginia, or such other limit as the governing body of the county, city, or town may set by ordinance, in lieu of towing.

8. Provide, at the customer's request, a price list indicating the maximum fees normally charged for basic services for towing, recovery and processing fees for vehicles weighing 26,000 pounds or less. If storage fees are not included in the list of charges, the list shall include a statement indicating storage fees [ ~~may be~~ are ] additional and vary according to the size and condition of the vehicle, length of time the vehicle is stored and other costs that may be incurred by the operator when storing the vehicle.

9. Have affixed on the driver's side of all of the operator's tow trucks a tow truck decal issued by the board to all licensed operators.

10. Display his operator's license in a conspicuous place in the principal office in which he operates and display a copy of his operator's license at all other [ ~~locations-facilities~~ ] at which payment for fees is accepted.

## **24VAC27-30-110. Standards of practice.**

Violations of any standard of practice set out in this section may be subject to board disciplinary actions or sanctions, including suspension or revocation of an operator's license and imposition of civil penalties.

1. All of an operator's places of business, including their offices and storage facilities, shall comply with any required state or local building or zoning laws or codes.

2. If required by the locality in which the operator designates as his principal place of business, an operator must maintain a valid business license from that locality.

3. Any operator permanently ceasing to provide towing and recovery services shall notify the board in writing and return the board-issued operator's license for voluntary cancellation and termination within [ ~~15~~ 30 days ].

4. A licensed operator must maintain the following proof of insurance: (i) [ a minimum of ] \$750,000 for automobile liability; (ii) [ a minimum of ] \$750,000 for commercial general liability; (iii) [ a minimum of ] \$50,000 for

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garagekeepers liability; [ and ] (iv) [ ~~a minimum of \$50,000 for on hook coverage; and (v) ] worker's compensation as required by state and federal entities.~~

5. Operators shall assure that only equipment designed and rated for the type of vehicle being transported is used. Operators shall additionally assure that at no time shall one of their tow trucks exceed the manufacturer's gross vehicle weight rating: for a Class B [ ~~operator operator's tow truck~~ ], a minimum of 14,500 pounds on a rollback and a minimum of 10,000 pounds on a wrecker; for a Class A [ ~~operator operator's tow truck~~ ], a minimum of 29,000 pounds gross vehicle weight rating for a wrecker or the manufacturer's rated capacity for towing apparatus.

6. All tow trucks shall meet all federal Department of Transportation and applicable Virginia regulations. [ ~~Towing or rollback units shall be a factory manufactured unit and only used as designed and rated to haul the vehicle being transported.~~ A winch, boom or crane will not be prohibited by this subsection if the tow truck owner submits to the board a certification from a reputable testing laboratory, regularly engaged in the testing of such equipment, indicating that the capacity of the winch, boom, or crane as mounted on the tow truck is not less than the weight for which the application has been made and the certification is carried in the truck at all times. ] Tow trucks shall be able to retain 50% of its front axle weight during towing operations. Safety chains or straps shall be used in all towing operations with such chains or straps rated to secure the towed vehicle to the tow truck.

7. [ ~~Any person who in any way advertises himself as a towing and recovery operator or in any way conveys the impression that he is engaged in services of providing towing and recovery of vehicles shall be deemed to be engaged in towing and recovery services.~~ ] Any and all advertisements, promotions, and offers for services shall include the operator's trade name and board license number. Invoices shall include the operator's trade name, address, telephone number, and board license number.

8. Operators shall be responsible for the supervision [ , training ] and all actions of their employees and drivers [ ; ~~including~~ pertaining to ] their compliance with laws and regulations governing towing and recovery services.

9. [ ~~Operators~~ On or after the effective date of regulations established by the board for public safety towing and recovery services pursuant to § 46.2-2826 of the Code of Virginia, or on or after such later date as may be set out in those regulations, operators ] shall not provide public safety towing and recovery services unless they have met the criteria established by the board [ ~~pursuant to §46.2-2826 of the Code of Virginia~~ in those regulations ] and have been placed on the list authorized by [ ~~that section §46.2-2826~~ ].

10. Whenever a trespassing vehicle is removed or towed without the owner's consent pursuant to §46.2-1231 of the Code of Virginia, then in accordance with that section, notice of the removal or towing shall forthwith be given by the driver of the tow truck to the Virginia State Police or the local law-enforcement agency of the jurisdiction from which the vehicle was towed. Should the driver fail to report such action, it shall limit the amount that may be charged for the storage and safekeeping of the towed vehicle to an amount no greater than that charged for one day of storage and safekeeping. If the vehicle is removed and stored, the vehicle owner may be charged and the vehicle may be held for a reasonable fee for the removal and storage.

11. An operator shall comply with all local ordinances and with all contracts, if any, that he has entered into, including any agreements related to private property/trespass towing pursuant to §46.2-1231 of the Code of Virginia. At the request of both the locality and a towing and recovery operator, the board may assist in conflict resolution between an operator and a locality regarding compliance with local ordinances or contracts.

12. For vehicles towed or removed from private property without the consent of the owner, unless different limits are established by ordinance of the local governing body, an operator shall not charge a hookup and initial towing fee in excess of the amount set out in §46.2-1233.1 of the Code of Virginia. For towing such a vehicle between 7 p.m. and 8 a.m. or on any Saturday, Sunday, or holiday, an additional fee of no more than the amount set out in §46.2-1233.1 of the Code of Virginia may be charged per instance; however, in no event shall more than two such fees be charged for towing any such vehicle. No charge shall be made for storage and safekeeping for such vehicle if it is stored for a period of 24 hours or less. Except for such [ ~~stated~~ ] fees [ as are set out in this subsection ], no other fees or charges shall be imposed during the first 24-hour period.

13. As provided in [ ~~§46.2-2828~~ §46.2-2820 ] of the Code of Virginia, no operator shall impersonate a licensed operator of a like or different name.

14. As provided in [ ~~§46.2-2828~~ §46.2-2820 ] of the Code of Virginia, no operator shall publish or cause to be published in any manner an advertisement that is false, deceptive, misleading or that violates regulations of the board governing advertising by towing and recovery operators.

15. No operator shall provide any towing and recovery services for vehicles of a gross vehicle weight over 26,000 pounds unless licensed as a Class A operator.

16. In addition to the foregoing, the standards of practice for operators require that no operator shall:

(a) Engage in fraud or deceit in the offering or delivering of towing and recovery services.

(b) Conduct his business or offering services in such a manner as to endanger the health and welfare of the public.

(c) Use or allow the use of alcohol or drugs to the extent such use renders the operator or his drivers unsafe to provide towing and recovery services.

(d) Neglect to maintain on record at the licensed operator's principal office a list of all drivers in the employ of the operator. [ Operators shall be required to notify the board within 30 days of the occurrence of all changes of drivers. ]

(e) Obtain any fee by fraud or misrepresentation.

(f) Advertise in a way that directly or indirectly deceives, misleads, or defrauds the public.

(g) Advertise or offer services under a name other than one's own name or trade name [ ~~(as specified on the truck)~~ ] as set forth on the operator's license.

(h) Fail to accept for payment cash, insurance company check, certified check, money order, at least one of two commonly used, nationally recognized credit cards, or additional methods of payment approved by the board.

(i) Fail to display at the licensed operator's principal office in a conspicuous place a listing of all towing, recovery, and processing fees for vehicles of 26,000 pounds gross vehicle weight or less.

(j) Fail to have readily available at the customer's request the maximum fees normally charged by the licensed operator for basic services for towing and initial hookup of vehicles of 26,000 pounds gross vehicle weight or less.

(k) Fail to provide at the consumer's request the phone number for which consumer complaints may be filed with the board.

(l) Knowingly charge excessive fees for towing, storage, or administrative services or charge fees for services not rendered.

(m) Fail to maintain all towing records, which shall include itemized fees, for a period of one year from the date of service.

(n) Willfully invoice for payment any services not stipulated or otherwise incorporated in a contract for services rendered between the licensed operator and any locality or political subdivision of the Commonwealth that has established a local Towing Advisory Board pursuant to §46.2-1233.2 of the Code of Virginia.

(o) Employ any driver required to register as a sex offender as provided in §9.1-901 of the Code of Virginia.

(p) Remove or tow a trespassing vehicle, as provided in §46.2-1231 of the Code of Virginia, or a vehicle towed or removed at any request of a law-enforcement officer to any location outside the Commonwealth.

(q) Refuse at [ ~~any the~~ ] operator's place of business [ ~~where payment is accepted~~ ] to make change up to \$100 for the owner of the vehicle towed without the owner's consent if the owner pays in cash for charges for towing and storage of the vehicle.

(r) Violate, assist, induce, or cooperate with others in violating any provisions of law related to the offering or delivery of towing and recovery services, including the provisions of Chapter 28 (§46.2-2800 et seq.) of Title 46.2 of the Code of Virginia and the provisions of these regulations.

(s) Fail to provide the owner of a stolen vehicle written notice of his right under the law to be reimbursed for towing and storage of his vehicle out of the state treasury from the appropriation for criminal charges as required in §46.2-1209 of the Code of Virginia.

(t) Fail to satisfy the procedural steps, including the timely mailing of all notices, required by §§43-32 and 43-34 of the Code of Virginia, in order to perfect and enforce the liens provided therein for towing and recovery and vehicle storage.

## **24VAC27-30-120. Operating without a license; penalties.**

A. Should the board, after investigation, determine an operator is engaged in or offering towing and recovery services without a license, then, as authorized by §46.2-2808 of the Code of Virginia, the board may bring an action in the name of the Commonwealth to enjoin any such violation of law [ ~~as well as any violations of these regulations, or Chapter 28 (§46.2-2800 et seq.) of Title 46.2 of the Code of Virginia~~ ].

B. Those persons found to be engaged in or offering towing and recovery services without a license may be subject to a board-imposed civil penalty of up to \$1,000 for each violation pursuant to §§46.2-2811 [ , 46.2-2820 ] and 46.2-2824 of the Code of Virginia.

C. The board may seek criminal prosecution for [ ~~such a violation~~ any person engaging in business as a towing and recovery operator without obtaining a license ] pursuant to §46.2-2812 of the Code of Virginia.

## **24VAC27-30-130. Expedited process to consider consumer complaints.**

[ ~~A. The board's executive director or designated staff shall have the authority to initiate an expedited process to mediate~~

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~~and resolve complaints filed against those licensed or otherwise regulated by the board according to guidelines developed by the board.~~

~~B. Anonymous complaints received by the board shall be handled in accordance with board's policy and guidance documents.~~

~~A. The board's executive director or designated staff shall have the authority to receive and investigate complaints of illegal, fraudulent, deceptive or dangerous practices filed against those licensed or otherwise regulated by the board.~~

~~B. Complaints that do not fall within the specific jurisdiction of the board shall be referred to the appropriate federal, state or local departments or agencies charged with enforcement of the laws that are applicable to the allegations in the complaint.~~

~~C. In the case of complaints filed against those licensed or otherwise regulated by the board, but that do not allege a specific violation of Chapter 28 (§46.2-2800 et seq.) of Title 46.2 of the Code of Virginia, the board's executive director or designated staff shall offer mediation to facilitate a negotiated resolution of the complaint. The mediators shall observe the Standards of Ethics and Professional Responsibility for Certified Mediators adopted by the Judicial Council of Virginia.~~

~~D. In the case of complaints filed against those licensed or otherwise regulated by the board that allege a specific violation of Chapter 28 of Title 46.2 of the Code of Virginia, the board's executive director or designated staff shall conduct all pertinent investigations and, if appropriate, seek compliance with the statute and the regulations according to the provisions of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).~~

~~E. The board shall maintain records of consumer complaints and their eventual disposition, which records shall be open for public inspection, provided that information disclosing business records of licensees, business interests of any person, trade secrets, or the names of customers shall be held confidential to the extent permitted or required by laws of the Commonwealth of Virginia, and except to the extent that disclosure of such matters may be necessary for the enforcement of laws. ]~~

## **24VAC27-30-140. Prerequisites for application for tow truck driver's authorization document.**

~~A. The board shall accept applications for tow truck driver's authorization documents at its office in Richmond or via its website. To be included with the application shall be the board application fee plus the prevailing fee required by state and federal police authorities for reviewing the fingerprints submitted by the applicant and processing the criminal history background checks required by the statutes and these regulations.~~

~~B. After the application and fees are received, the applicant shall be issued the board originating number to provide to the entity taking the fingerprints at the time the fingerprints and criminal history background check data are taken before being forwarded to Virginia State Police to be processed. [ ~~The~~ In lieu of inked fingerprints, the ] board [ ~~may~~ will ] accept electronically processed fingerprints [ , ] such as those available from LiveScan or other electronic systems [ ~~that take the fingerprints and forward them electronically~~ ] for [ ~~almost immediate~~ ] processing by state and federal officials [ , sometimes within 24 hours, in addition to ink fingerprint cards submitted to the Virginia State Police, noting that ink cards have processing times from 30 to 60 days and higher rates of rejection requiring retesting than electronic systems ] .~~

~~C. When the results of the criminal history background check are received by the board, they shall be evaluated and the application may either continue to be processed, or, if the results are such that the applicant appears to be ineligible to obtain a driver authorization document under the statutes or these regulations, the applicant shall receive a denial notice from the board.~~

~~D. A denied applicant may appeal such denial by requesting review by the board in accordance with informal proceeding provisions of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia) within 30 days of the denial notice.~~

~~E. Results of the criminal history background check shall be sent directly to the board office and maintained confidentially unless its contents are used to reject or place conditions upon a driver's authorization document. An applicant shall not be refused a tow truck driver's authorization document by the board solely because of a prior criminal conviction against such applicant unless the criminal conviction directly relates to the provision of towing and recovery services or the safety of the users of such services offered by a licensee or holder of a tow truck driver's authorization document. However, the board shall refuse to issue a tow truck driver's authorization document if, based upon all the information available, including the record of prior convictions of the applicant, it finds that the applicant is unfit or unsuited to engage in providing towing and recovery services as a tow truck driver.~~

~~1. The board shall consider the following criteria in determining whether a criminal conviction directly relates to the provision of towing and recovery services or the safety of the users of towing and recovery services by a tow truck driver:~~

- ~~a. The nature and seriousness of the crime;~~
- ~~b. The relationship of the crime to the purpose for requiring a license or tow truck driver's authorization document to provide towing and recovery services, which includes protecting the safety of users of such services;~~

c. The extent to which providing towing and recovery services might offer an opportunity to engage in further criminal activity of the same type as that in which the convicted person had been involved;

d. The relationship of the crime to the ability, capacity or fitness required to perform the duties and discharge the responsibilities of providing towing and recovery services;

e. The extent and nature of the person's past criminal activity;

f. The age of the person at the time of the commission of the crime;

g. The amount of time that has elapsed since the person's last involvement in the commission of the crime;

h. The conduct and work activity of the person prior to and following the criminal activity; and

i. Evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release or at any time following the conviction.

2. The following criminal convictions shall not be considered a bar to authorization by the board, meaning that the inclusion of these items on a criminal history record shall not be sufficient as the sole grounds for denial of a tow truck driver's authorization document:

a. Felony convictions more than 10 years old with no subsequent reportable convictions, unless the conviction resulted in incarceration where the release date is less than three years from the date of the application. This does not include convictions involving murder, manslaughter, sexual assault, rape, robbery, or indecent liberties.

b. Misdemeanor convictions more than three years old from the date of application.

c. Convictions of grand larceny, breaking and entering, or burglary or all of these convictions, more than five years old with no subsequent convictions, provided such convictions did not result in incarceration where the release date is less than three years from the application date.

d. Driving-under-the-influence (DUI) convictions where the applicant has completed Virginia Alcohol Safety Action Program (VASAP) or another similar program accepted by the court after the latest conviction. However, no tow truck driver's authorization document shall be issued, and none shall continue to be valid, during any time period for which (i) the person's driver's license is suspended or revoked or (ii) the person has been authorized only a restricted license during a period of suspension or revocation resulting from a conviction

or convictions for DUI or any DUI-related offense, except that if the driver demonstrates that he is not required to possess a commercial driver's license in order to drive a tow truck, then an authorization document can be issued for the period during which he has a restricted license if it authorizes the driver to drive only tow trucks for which a commercial drivers license is not required.

3. The applicant must possess a valid driver's license at the time of the application. The driver shall be required to possess a commercial driver's license if applicable to the class of operator the driver is to be employed by or the type of tow truck to be driven.

4. Applicants shall be required to sign a statement verifying they are not currently on any state or federal list as a sex offender and are not required to register as a sex offender under any state, federal or local law, or the law of any foreign country.

5. A tow truck driver's authorization documents shall be valid for one year and shall be subject to annual renewal by [ ~~June 30~~ December 31 ] of each year. [ After the initial authorization, the applicant is required to submit criminal history background checks with fingerprints every three years thereafter as a part of the renewal. ] Driver authorization documents issued on or after [ ~~April~~ October ] 1 of any year, with the payment of a full year's fee, shall be valid until [ ~~June 30~~ December 31 ] of the following year.

## **24VAC27-30-150. Exemptions from tow truck driver authorizations.**

A tow truck driver's authorization document shall be required for operation of a tow truck in Virginia only if such operation is for hire and involves a pick up of the towed vehicle in Virginia. Driving a tow truck into or through Virginia while towing a vehicle picked up outside of Virginia shall not require a driver's authorization document.

## **24VAC27-30-160. Requirements for drivers.**

A tow truck driver shall:

1. Possess a valid and appropriate driver's license and tow truck driver's authorization document while operating a tow truck for hire in Virginia when the pick up of the towed vehicle takes place in Virginia.

2. Provide evidence at time of application for a tow truck driver's authorization document that he is employed or about to be employed by a licensed operator and the name and address of that operator.

3. Maintain in his possession and have readily available for inspection when providing towing and recovery services his board-issued tow truck driver's authorization document. The driver's authorization document shall include the name of the driver and the driver's [ ~~appropriate driver's~~ ] license

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~~number [ and the name ] of the state in which he holds a valid driver's license [ and the name and board-issued license number of the driver's employer ],~~

~~4. Notify the board within five business days upon the driver being convicted of any criminal offense, including any offense for which the driver is required to register as a sex offender under any state, federal or local law, or the law of any foreign country.~~

~~5. Provide towing and recovery services in a safe manner.~~

~~6. Review and read all regulations and laws related to standards of practice, unprofessional conduct and safety prior to operating a tow truck or providing towing and recovery services. The driver shall sign a statement to be retained by the operator who employs the driver verifying the driver's compliance with this subsection.~~

~~[ 7. Notify the board within 15 days of any change in licensed operator who employs the driver. The driver's authorized documentation shall, within 30 days of any change in employer, reflect the current operator or operators who employ the driver.~~

~~8. 7.] Surrender his tow truck driver's authorization document should the board rescind, cancel, suspend, revoke or deny such tow truck driver's authorization document upon a determination by the board that the driver has violated laws or regulations governing towing and recovery services or otherwise has become unqualified to hold a tow truck authorization document.~~

## **24VAC27-30-170. Renewal of licensure; reinstatement; renewal of fees.**

~~A. All those licensed by the board as a towing and recovery operator shall, on or before [ June 30 December 31 ] of every year, submit a completed renewal application and pay the prescribed annual licensure fee.~~

~~B. It shall be the duty and responsibility of each licensee to assure that the board has the licensee's current mailing address. All changes of mailing addresses or change of name shall be furnished to the board within 30 days after the change occurs. All notices [ required by law or by these rules and regulations to an operator or driver from the board ] are to be deemed validly tendered when mailed to the address given by the licensee to the board, and the licensee shall not be relieved of the obligation to comply with any notice so mailed if there has been a failure to notify the board of changes.~~

~~C. The license of every operator who does not submit the completed form and fee or forms and fees, as applicable, by [ June 30 December 31 ] of each year may be allowed to apply for renewal for up to [ one year two months ] after that date by paying the prescribed renewal fee and late fee. However, if the renewal has not been [ submitted to received by ] the board within [ 62 days two months ] after the [ June 30 December 31 ] due date, then on and after [ August 31~~

~~March 1 ] of that year the operator's license is [ lapsed expired and cannot be renewed ]. Engaging in towing and recovery services with [ a lapsed an expired ] license constitutes operating without a license and may subject the licensee to disciplinary action and civil penalties imposed by the board.~~

~~D. An operator whose license has [ been lapsed for more than one year expired ] and who wishes to resume providing services as a towing and recovery operator shall apply for a new operator's license.~~

## **24VAC27-30-180. Requirements for continuing education [ shall become effective July 1, 2011. (Reserved.) ]**

~~[ A. Exclusive of additional hours that may be required of those recognized by the board to provide public safety towing and recovery services, each application for operator's license renewal shall be conditioned upon submission of evidence to the board of eight hours of continuing education taken by the principal owner or responsible individual or other person responsible for the day to day operations of the applicant for renewal during the previous license period, and an additional four hours of continuing education taken by each of the tow truck drivers employed by the applicant during the previous licensing period and employed by the operator at the time the operator submits his license renewal application.~~

~~1. The required hours of continuing education shall be directly related to the safe and proper rendering and business practices of towing and recovery services, proper inspection and maintenance of equipment, and laws and regulations governing towing and recovery operators.~~

~~2. Courses that are offered directly by or of which a majority of their content promote the sale of specific equipment or products or on augmenting income are excluded and may not receive credit by the board.~~

~~B. Each licensee shall attest to fulfillment of continuing education requirements on the required annual renewal application form completed by the applicant for renewal and submitted to the board. All continuing education shall be completed prior to application for renewal being submitted each year unless an extension or waiver has been granted by the board's continuing education committee.~~

~~C. Requests to the board for consideration of waiver, reduction in the number of hours or an extension for time to complete continuing education shall be in writing and must be received by the board no later than April 1 of the year for which such request is made. Such requests are only to be considered when based on documented illness or undue hardship.~~

~~D. All continuing education courses shall be offered by an approved sponsor, a list of whom shall be posted on the board's website. Courses that are not offered by an approved sponsor shall not be accepted for continuing education credit.~~

~~but the sponsor of such a course may apply for approval by submitting an application to the board's executive director.~~

~~E. At least one half of the required number of continuing education credit hours completed annually must be through face-to-face instruction, which requires the presenter and audience to see and to hear each other during the presentation.~~

~~F. Courses presented via the Internet or by correspondence must (i) be sponsored by a board approved sponsor and (ii) require a post test with credit only to be granted for the licensee receiving a passing grade as indicated on the certificate of completion of the course.~~

~~G. Licensees shall maintain documentation for a period of at least three years of the continuing education completed as required for renewal of their license.~~

~~H. At the discretion of the board, a random audit of licensees may be conducted by the board, which shall require that the licensee, within 21 days of the request, provide evidence substantiating completion of the required continuing education courses.~~

~~I. Documentation of hours shall clearly indicate: (i) the name of the sponsor of the continuing education; (ii) the name or title of the presentation or instruction; (iii) the name of the instructor or instructors; (iv) the location where the instruction was presented; (v) the time period of the instruction; (vi) the number of applicable continuing education hours received; (vii) the name of the person taking the course and that person's relationship to the licensee, as well as the name of the licensee; and (viii) either a signature, a type of stamp, or some other means to verify attendance. Documents failing to have the required information shall not be acceptable to the board. Correspondence or internet courses shall be credited according to the date on which the post test was graded as indicated on the applicable continuing education certificate.~~

~~J. One hour of continuing education credit shall require the licensee's presence and participation for at least 50 minutes.~~

~~K. A licensee shall be exempt from the continuing education competency requirements for the first renewal following the date of initial licensure by examination in Virginia. ]~~

NOTICE: The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

[ FORMS

~~Operators License Application, 27LIC (eff. 1/08).~~

~~Tow Truck Driver Authorization Application (eff. 1/08).~~

~~Change of Responsible Individual Application (eff. 1/08). ]~~

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# GENERAL NOTICES/ERRATA

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## STATE AIR POLLUTION CONTROL BOARD

### Draft Permit/SIP Plan Revision

Purpose of notice: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed permit to limit air pollution emitted by a facility in Richmond, Virginia. If adopted, the Commonwealth intends to submit the permit or portion thereof as a revision to its state implementation plan (SIP) in accordance with the requirements of §110(a) of the federal Clean Air Act. The SIP is the plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act.

Public comment period: September 1, 2008, to September 30, 2008.

State public hearing procedure: Interested persons may request a public hearing. The request must be made in writing to the contact listed below and received by DEQ by 5 p.m. on the last day of the comment period. In order to be considered, the request must include the full name, address and telephone number of the person requesting the hearing and of all people represented by the requester. The request must also include: (i) the reason why a public hearing is requested; (ii) a brief statement setting forth the factual nature and extent of interest in the proposed permit, including how the operation of the facility affects the requester; and (iii) specific references to applicable terms and conditions of concern as well as suggested revisions. A public hearing may be held as required by §10.1-1322.01 of the Code of Virginia if at least 25 requests are received in accordance with these procedures. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

Federal public hearing procedure: Interested persons may request a public hearing. The request must be made in writing to the contact listed below and received by DEQ by 5 p.m. on the last day of the comment period. In order to be considered, the request must include the full name, address and telephone number of the person requesting the hearing and of all people represented by the requester. A public hearing will be held as required by 40 CFR 51.102(a) if a request is received in accordance with these procedures. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

Permit name: State operating permit issued by DEQ, under the authority of the State Air Pollution Control Board.

Name, address and registration number: Reynolds Consumer Products Company (Richmond Foil Plant South), P.O. Box

24688, 7th and Bainbridge Streets, Richmond, VA 23224, Registration No. 50534.

Description of proposal: The proposed revision consists of the control of emissions of volatile organic compounds (VOCs) to the atmosphere from the Reynolds Consumer Products Company located in Richmond, VA.

The proposed revision consists of a determination of reasonably available control technology (RACT) for the control of emissions of volatile organic compounds (VOC) to the atmosphere from the Reynolds Consumer Products Company. The RACT determination is being made pursuant to 9VAC5-40-7370 of state regulations. A state operating permit is being issued as an administrative mechanism to enforce the RACT determination. The permit is being issued pursuant to Article 5 (9VAC5-80-800 et seq.) of 9VAC5-80 (Permit for Stationary Sources) of state regulations and is federally enforceable upon issuance. RACT for emissions of VOC has been determined to be use of a rolling fluid that is either (i) a normal paraffin lubricant containing a minimum of 88% saturated aliphatic compounds of a carbon number C12 or higher; or (ii) any other material, as approved by DEQ, that can be demonstrated to emit no more VOC than a normal paraffin; and (iii) limiting flood temperature.

Federal information: This notice is also being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102). Except as noted below, the proposal will be submitted as a revision to the Commonwealth of Virginia SIP under §110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104. It is planned to submit all provisions of the proposal as a revision to the Commonwealth of Virginia SIP.

How to comment: DEQ accepts written comments by email, facsimile transmission and postal mail. In order to be considered, written comments must include the full name, address and telephone number of the person commenting and be received by DEQ by 5 p.m. on the last day of the comment period. All testimony, exhibits and documents received are part of the public record. Please note this proposed permit is being concurrently reviewed by the U.S. EPA.

To review proposal: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website (<http://www.deq.virginia.gov/air/permitting/planotes.html>). The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following locations: Department of Environmental Quality, Main Street Office, 629 East Main St, 8th Floor, Richmond, VA, telephone (804) 698-4070 and Department of Environmental Quality, Piedmont Regional Office, 4949-A, Cox Road, Glen Allen, VA, telephone (804) 527-5020.

Contact for public comments, document requests and additional information: Alison Sinclair, Environmental Engineer, Department of Environmental Quality, 4949-A, Cox Road, Glen Allen, VA, telephone (804) 527-5155, FAX (804) 527-5106, or email [amsinclair@deq.virginia.gov](mailto:amsinclair@deq.virginia.gov).

## STATE CORPORATION COMMISSION

### Bureau of Insurance

August 18, 2008

Administrative Letter 2008-11

To: All Insurers, Health, Dental, Optometric and Legal Services Plans, Health Maintenance Organizations and Other Interested Parties

Re: Implementation of the New Bureau of Insurance Sircon for States System

The Bureau of Insurance (bureau) is implementing Sircon for States, a fully-hosted, web-based system in use in 17 states, beginning September 16, 2008. Increased efficiency in processing producer licensing transactions and the resulting impact on the bureau's overall ability to regulate efficiently and more uniformly across states are important considerations for the bureau.

The new technology will offer insurers, agencies and producers the opportunity to conduct most producer licensing transactions electronically. Sircon's Compliance Express will allow for real-time connection with the bureau Sircon for States system. Some of the new features available via Compliance Express are as follows:

- Producer license applications and inquiry ability regarding application status
- Producer license renewals
- Appointment and termination processing with instant online confirmation
- Producer address changes
- Appointment status and other producer inquiries
- Appointment renewal processing
- Continuing education compliance status

The Sircon for States system has assigned new license identification numbers to all producers and business entities. These license identification numbers may be accessed beginning September 16, 2008, at the bureau's website. The address for the website is <http://www.scc.virginia.gov/division/boi/webpages/boiproducer.htm>.

The bureau will post a web cast for regulated entities accessing the new system and flash videos on specific topics,

such as how to apply for a license, to assist insurers and producers in navigating the new electronic processing system. We hope to have these materials available on the website effective September 16, 2008, at <http://www.scc.virginia.gov/division/boi/webpages/boihomepage.htm>. The bureau may place other information and helpful tips, questions/answers on the website as they are developed in response to inquiries from users.

As a result of the conversion to the new system, the bureau will be unable to process any transactions or provide information for producer licensing, consumer services, or company admissions from 5 p.m. on Thursday, September 4, 2008, until Tuesday, September 16, 2008. Please keep these dates in mind as you plan for your business needs in September.

If you have any questions regarding this administrative letter, please contact: J. Preston Winn, Supervisor or Linda Newsome, Producer Licensing & CE Coordinator, Agents Licensing Section, Virginia Bureau of Insurance, Agent Regulation and Administration Division, P.O. Box 1157, Richmond, Virginia 23218, telephone (804) 371-9631.

/s/ Alfred W. Gross  
Commissioner of Insurance

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Consent Order - Al M. Cooper Construction, Incorporated

Purpose of notice: To seek public comment on a proposed consent order from the Department of Environmental Quality for a facility in Roanoke County, Virginia.

Public comment period: September 16, 2008, through October 15, 2008.

Consent order description: The State Water Control Board proposes to issue a consent order to Al M. Cooper Construction, Incorporated to address alleged violations of Virginia's regulations. The location of the facility, a subdivision, where the alleged violation occurred is (Tax Parcel ID: 087.20-01-09.00-0000) located north of Buck Mountain Road and known as "Berkeley Manor & Bellview Garden." The consent order describes a settlement to resolve violations involving construction activities without a permit affecting state waters of an unnamed tributary of Back Creek.

How to comment: DEQ accepts comments from the public by email, fax or postal mail. All comments must include the name, address and telephone number of the person commenting and be received by DEQ within the comment period. The public may review the proposed consent order at the DEQ office named below or on the DEQ website at [www.deq.virginia.gov](http://www.deq.virginia.gov).

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## General Notices/Errata

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Contact for public comments, document requests and additional information: Steven B. Wright, West Central Regional Office, Department of Environmental Quality, 3019 Peters Creek Road, Roanoke, VA 24019, telephone (540) 562-6792, FAX (540) 562-6725 or email sbwright@deq.virginia.gov.

### **Consent Order - Ennis Paint, Inc.**

An enforcement action has been proposed for Ennis Paint, Inc., for alleged violations in Richmond. The consent order settles unpermitted discharges to state waters and the failure to maintain reports. A description of the proposed action is available at the DEQ office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Jennifer Hoeffner will accept comments by email [jhoeffner@deq.virginia.gov](mailto:jhoeffner@deq.virginia.gov), FAX (804) 527-5106, or postal mail Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from September 10, 2008, to October 15, 2008.

Contact information: Jennifer Hoeffner, Enforcement Specialist, Sr., Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5123, FAX (804) 527-5106, or email [jhoeffner@deq.virginia.gov](mailto:jhoeffner@deq.virginia.gov).

### **Consent Order - HHHunt Corporation**

An enforcement action has been proposed for HHHunt Corporation for alleged violations at the Rutland development in Hanover County. The proposed consent order describes the alleged violations, requires corrective action and contains a civil charge. A description of the proposed action is available at the DEQ office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Allison Dunaway will accept comments by email at [acdunaway@deq.virginia.gov](mailto:acdunaway@deq.virginia.gov), FAX (804) 527-5106 or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from September 10, 2008, to October 15, 2008.

Contact information: Allison Dunaway, Enforcement Manager, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5086, FAX (804) 527-5106, or email [acdunaway@deq.virginia.gov](mailto:acdunaway@deq.virginia.gov).

### **Consent Order - Mr. Richard Haywood d/b/a Shells Unlimited**

An enforcement action has been proposed for Mr. Richard Haywood d/b/a Shells Unlimited for an alleged violation in Gloucester, Virginia. A consent order describes a settlement to resolve an unauthorized unreported discharge that occurred at 9809 Ditch Bank Road. The order requires payment of a civil charge. A description of the proposed order is available at the DEQ office named below or online at

[www.deq.virginia.gov](http://www.deq.virginia.gov). Frank Lupini will accept comments by email [felupini@deq.virginia.gov](mailto:felupini@deq.virginia.gov), FAX (804) 527-5106, or postal mail Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from June 23, 2008, to July 24, 2008.

Contact information: Frank Lupini, Enforcement Specialist, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5093, FAX (804) 527-5106, or email [felupini@deq.virginia.gov](mailto:felupini@deq.virginia.gov).

### **Consent Order - City of Newport News**

An enforcement action has been proposed for the City of Newport News for alleged violations in Newport News. A consent order describes a settlement to resolve unpermitted wetland impacts that occurred at 513 Oyster Point Road. The order requires restoration and payment of a civil charge. A description of the proposed order is available at the DEQ office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). John M. Brandt will accept comments by email [jmbrandt@deq.virginia.gov](mailto:jmbrandt@deq.virginia.gov), FAX (757) 518-2009, or postal mail Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from September 15, 2008, to October 15, 2008.

Contact information: John M. Brandt, Regional Enforcement Manager, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, telephone (757) 518-2010, FAX (757) 518-2009, or email [jmbrandt@deq.virginia.gov](mailto:jmbrandt@deq.virginia.gov).

### **Consent Order - Mr. and Mrs. Christoforo Russo**

An enforcement action has been proposed for Mr. and Mrs. Christoforo Russo for alleged violations in Hampton, Virginia. A consent order describes a settlement to resolve unpermitted wetland impacts that occurred at 2845 North Armistead Avenue. The order requires restoration and payment of a civil charge. A description of the proposed order is available at the DEQ office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Daniel J. Van Orman will accept comments by email [djvanorman@deq.virginia.gov](mailto:djvanorman@deq.virginia.gov), FAX (757) 518-2009, or postal mail Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from September 15, 2008, to October 15, 2008.

Contact Information: Daniel J. Van Orman, Esquire, Enforcement Specialist, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, telephone (757) 518-2014, FAX (757) 518-2009, or email [djvanorman@deq.virginia.gov](mailto:djvanorman@deq.virginia.gov).

**Consent Order - Town of Big Stone Gap**

An enforcement action has been proposed for the Town of Big Stone Gap for alleged violations at the Town’s Wastewater Treatment Plant (WWTP) in Big Stone Gap, Virginia. This action involves amendment of an existing consent order with schedules of compliance for both upgrade and expansion of the WWTP, and for additional sewer line repair work. A description of the proposed action is available at the DEQ office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Dallas R. Sizemore will accept comments by email [drsizemore@deq.virginia.gov](mailto:drsizemore@deq.virginia.gov), FAX (276) 676-4899, or postal mail Department of Environmental Quality, Southwest Regional Office, P.O. Box 1688, 355 Deadmore Street, Abingdon, VA 24212, from September 15, 2008, to October 15, 2008.

**Restore Water Quality - Indian, Dymer, Tabbs, and Antipoison Creeks**

Public meeting: September 29, 2008, at the Bank of Lancaster, North Branch Meeting Room, 432 N. Main Street, Kilmarnock, VA 22482. Technical advisory committee (TAC) meeting will be held from 2 p.m. to 4 p.m. and the public meeting from 7 p.m. to 9 p.m. Both meetings are open to the public.

Purpose of notice: The Virginia Department of Environmental Quality and the Department of Conservation and Recreation are announcing a study to restore water quality for a shellfish growing area, a public comment opportunity, a technical advisory committee meeting, and public meeting.

Meeting description: First TAC and public meeting on a study to restore water quality for shellfish growing areas along Indian, Dymer, Tabbs, and Antipoison Creeks, which are impaired due to bacterial violations.

Description of study: Virginia agencies are working to identify sources of the bacterial contamination in the shellfish growing waters of the (tidal) Indian, Dymer, Tabbs, and Antipoison Creeks and their tributaries, an area totalling approximately two miles in Northumberland and Lancaster Counties. These streams are impaired for failure to meet the designated use of shellfish consumption because of bacterial water quality standard violations.

Stream	County	Area (miles <sup>2</sup> )	Impairment
Indian Creek (headwaters to south of Arthur Cove)	Northumberland & Lancaster	0.42	Shellfish Use  (Fecal Coliform) bacteria
Unnamed Cove	Northumberland	0.02	
Bells Creek	Northumberland	0.05	
Henrys Creek	Northumberland	0.10	
Barnes Creek	Northumberland	0.27	
Long Creek	Lancaster	0.02	
Dymer Creek (headwaters to south of Johnson Creek)	Lancaster	0.34	
Hunts Cove	Lancaster	0.04	
Lees Cove	Lancaster	0.02	
Georges Cove	Lancaster	0.03	
Tabbs Creek	Lancaster	0.24	
Antipoison Creek (headwaters to mouth)	Lancaster	0.45	
Davenport Creek	Lancaster	0.02	

The study reports the current status of the creeks via sampling performed by the Virginia Department of Health; Division of Shellfish Sanitation, shellfish area condemnations and the sources of bacterial contamination. The study recommends total maximum daily loads, or TMDLs, for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, bacterial levels have to be reduced to the TMDL amount.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person

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commenting and be received by DEQ during the comment period, which will expire on October 29, 2008. DEQ also accepts written and oral comments at the public meeting announced in this notice.

Contact for additional information: Margaret Smigo, TMDL Coordinator, Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804)-527-5106, or email [mj-smigo@deq.virginia.gov](mailto:mj-smigo@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 August 20, 2008. 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 Forty-Four \(08\)](#)

Virginia's Instant Game Lottery 1062; "\$120 Million Cash Blowout" (effective 8/12/08)

### STATE BOARD OF SOCIAL SERVICES

#### Delegation of Authority

The State Board of Social Services (board) delegates to the Commissioner of the Department of Social Services and his designees the following responsibilities of the board that are delineated in the regulation 22VAC40-12, Public Participation Guidelines:

Maintaining lists of persons who have requested to be notified of regulatory actions being pursued by the board as required by 22VAC40-12-30 A;

Maintaining lists of persons who have requested to be informed of specific regulatory issues, proposals, or actions as required by 22VAC40-12-30 C;

Distributing information to persons on notification lists pursuant to 22VAC40-12-40;

Accepting public comment and distributing specific information on behalf of the board pursuant to 22VAC40-12-50 A;

Preparing and distributing a summary of public comment pursuant to 22VAC40-12-50 E;

Posting all meeting notices pursuant to 22VAC40-12-90 and 22VAC40-12-100; and

Conducting public hearings on regulations pursuant to 22VAC40-12-100.

This delegation of authority is effective January 1, 2009, and shall remain in effect until it is rescinded or amended by the State Board of Social Services.

Approved by the State Board of Social Services on August 20, 2008.

/s/ Trudy Brisendine, Chair

### VIRGINIA SOIL AND WATER CONSERVATION BOARD

#### Proposed Consent Special Order - Town of Dumfries

Purpose of notice: To seek public comment on the terms of a proposed consent special order issued to the Town of Dumfries regarding the town's municipal separate storm sewer system.

Public comment period: September 15, 2008, through October 14, 2008.

Summary of proposal: The proposed consent special order describes a settlement with the Town of Dumfries regarding the town's municipal separate storm sewer system to ensure compliance with the Virginia Stormwater Management Act and Regulations.

How to comment: The Virginia Department of Conservation and Recreation accepts written comments from the public by mail, email, or facsimile. All comments must include the name, address, and telephone number of the person commenting. Comments must be received during the comment period. A copy of the proposed consent special order is available on request from the person identified directly below as the contact.

Contact for documents and additional information: Edward A. Liggett, Virginia Department of Conservation and Recreation, 900 Natural Resources Drive, Suite 800-DCR, Charlottesville, VA 22903, telephone (434) 220-9067, FAX (804) 786-1798, or email [ed.liggett@dcr.virginia.gov](mailto:ed.liggett@dcr.virginia.gov).

Contact information: David C. Dowling, Policy, Planning, and Budget Director, Virginia Soil and Water Conservation Board, 203 Governor Street, Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, or email [david.dowling@dcr.virginia.gov](mailto:david.dowling@dcr.virginia.gov).

## STATE WATER CONTROL BOARD

### Proposed Consent Order - Dismal Swamp Properties, LLC

Purpose of notice: To seek public comment on a proposed consent order from the Department of Environmental Quality for a location in Suffolk, Virginia.

Public comment period: September 15, 2008, to October 15, 2008.

Consent order description: The State Water Control Board proposes to issue a consent order to address alleged violations of the Virginia Water Protection Permit Regulations to Dismal Swamp Properties, LLC, at property adjacent to the US Highways 13/58/460 bypass in the City of Suffolk. The consent order describes a settlement to resolve unauthorized clearing, ditching and filling of approximately 4.4 acres of forested wetlands and requires development and implementation of a restoration plan and payment of a civil charge.

How to comment: DEQ accepts comments from the public by email, fax or postal mail. All comments must include the name, address and telephone number of the person commenting and be received by DEQ within the comment period. The public may review the proposed consent order at the DEQ office named below or on the DEQ website at [www.deq.virginia.gov](http://www.deq.virginia.gov).

Contact for public comments, document requests and additional information: Paul R. Smith, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd, Virginia Beach, VA 23462, telephone (757) 518-2020, FAX (757) 518-2009, or email [prsmith@deq.virginia.gov](mailto:prsmith@deq.virginia.gov).

### Proposed Consent Order - Gutterman Iron & Metal Corporation

Purpose of notice: To seek public comment on a proposed consent order from the Department of Environmental Quality for a location in Norfolk, Virginia.

Public comment period: September 15, 2008, to October 15, 2008.

Consent order description: The State Water Control Board proposes to issue a consent order to Gutterman Iron & Metal Corporation, to address alleged violations of Virginia State Water Control Law. The location where the alleged violations occurred is 706 May Avenue, Norfolk. The consent order describes a settlement to resolve alleged violations of the facility Virginia Pollutant Discharge Elimination System General Permit VAR05.

How to comment: DEQ accepts comments from the public by email, fax or postal mail. All comments must include the

name, address and telephone number of the person commenting and be received by DEQ within the comment period. The public may review the proposed consent order at the DEQ office named below or on the DEQ website at [www.deq.virginia.gov](http://www.deq.virginia.gov).

Contact for public comments, document requests and additional information: Paul R. Smith, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd, Virginia Beach, VA 23462, telephone (757) 518-2020, FAX (757) 518-2009, or email [prsmith@deq.virginia.gov](mailto:prsmith@deq.virginia.gov).

### Proposed Consent Order - Snow Family, LLC

Purpose of notice: To invite citizens to comment on a proposed consent order for a facility.

Public comment period: September 15, 2008, to October 15, 2008.

Consent order description: The State Water Control Board proposes to issue a consent order to Snow Family, LLC to address alleged violations of the regulations. The location of the UST facility where the alleged violations occurred is in Greene County, Virginia. The consent order describes a settlement to resolve these violations.

How to comment: DEQ accepts comments from the public by email, fax or postal mail. All comments must include the name, address and telephone number of the person commenting and be received by DEQ within the comment period. The public may review the proposed consent order at the DEQ office named below or on the DEQ web site at [www.deq.virginia.gov](http://www.deq.virginia.gov).

Contact for public comments, document requests and additional information: David C. Robinett, Department of Environmental Quality, Valley Regional Office, Post Office Box 3000, 4411 Early Road, Harrisonburg, VA 22801-9519, telephone (540) 574-7862, FAX (540) 574-7878, or email [dcrobinett@deq.virginia.gov](mailto:dcrobinett@deq.virginia.gov).

## VIRGINIA CODE COMMISSION

### Notice to State Agencies

**Mailing Address:** Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219.

### Filing Material for Publication in the Virginia Register of Regulations

Agencies are required to use the Regulation Information System (RIS) when filing regulations for publication in the Virginia Register of Regulations. The Office of the Virginia Register of Regulations implemented a web-based application called RIS for filing regulations and related items for

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publication in the Virginia Register. The Registrar's office has worked closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

The Office of the Virginia Register is working toward the eventual elimination of the requirement that agencies file print copies of regulatory packages. Until that time, agencies may file petitions for rulemaking, notices of intended regulatory actions and general notices in electronic form only; however, until further notice, agencies must continue to file print copies of proposed, final, fast-track and emergency regulatory packages.

### ERRATA

#### DEPARTMENT OF GENERAL SERVICES

Titles of Regulations: **1VAC30-45. Certification for Noncommercial Environmental Laboratories (adding 1VAC30-45-10 through 1VAC30-45-860).**

**1VAC30-46. Accreditation for Commercial Environmental Laboratories (adding 1VAC30-46-10 through 1VAC30-46-210).**

Publication: 24:25 VA.R. 3449-3523 August 18, 2008.

Corrections to Final Regulations:

Page 3449, Agency contact, correct email address to read, "nssaylor@verizon.net"

Page 3460, 1VAC30-45-90 C 6, line 1, insert an ending bracket after [ ~~5~~. 6. ] and insert a beginning bracket before [ the new...

Page 3507, 1VAC30-46-30 B 1, line 5, after "before" strike "the program under this chapter and 1VAC30-45 is established" and insert "October 1, 2011"

Page 3521, 1VAC30-46-160 E 1 a, line 3, remove brackets and unstrike "and"

VA.R. Doc. No. R98-312

#### CHILD DAY CARE COUNCIL

Title of Regulation: **22VAC15-51. Background Checks for Licensed Child Day Centers.**

Publication: 24:26 VA.R. 3853 September 1, 2008.

Correction to General Notice:

Page 3853, column 1, top of page, change "STATE BOARD OF SOCIAL SERVICES" to "CHILD DAY CARE COUNCIL."