VIRGINIA REGISTER OF REGULATIONS

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THE VIRGINIA REGISTER INFORMATION PAGE

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

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.

A 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

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. 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 no more than 12 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. 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. **26:20 VA.R. 2510-2515 June 7, 2010,** refers to Volume 26, Issue 20, pages 2510 through 2515 of the *Virginia Register* issued on June 7, 2010.

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.

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the *Register*'s Internet home page (http://register.dls.virginia.gov).

June 2011 through June 2012

Volume: Issue	Material Submitted By Noon*	Will Be Published On
27:21	June 1, 2011	June 20, 2011
27:22	June 15, 2011	July 4, 2011
27:23	June 29, 2011	July 18, 2011
27:24	July 13, 2011	August 1, 2011
27:25	July 27, 2011	August 15, 2011
27:26	August 10, 2011	August 29, 2011
28:1	August 24, 2011	September 12, 2011
28:2	September 7, 2011	September 26, 2011
28:3	September 21, 2011	October 10, 2011
28:4	October 5, 2011	October 24, 2011
28:5	October 19, 2011	November 7, 2011
28:6	November 2, 2011	November 21, 2011
28:7	November 15, 2011 **(Tuesday)**	December 5, 2011
28:8	November 30, 2011	December 19, 2011
28:9	December 13, 2011 **(Tuesday)**	January 2, 2012
28:10	December 27, 2011 **(Tuesday)**	January 16, 2012
28:11	January 11, 2012	January 30, 2012
28:12	January 25, 2012	February 13, 2012
28:13	February 8, 2012	February 27, 2012
28:14	February 22, 2012	March 12, 2012
28:15	March 7, 2012	March 26, 2012
28:16	March 21, 2012	April 9, 2012
28:17	April 4, 2012	April 23, 2012
28:18	April 18, 2012	May 7, 2012
28:19	May 2, 2012	May 21, 2012
28:20	May 16, 2012	June 4, 2012

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

Initial Agency Notice

Title of Regulation: **18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic.**

Statutory Authority: § 54.1-2900 of the Code of Virginia.

Name of Petitioner: Dr. Kenneth Knox.

Nature of Petitioner's Request: To amend regulations to allow a chiropractor who has been practicing for five or more years in another state to be licensed if he has passed Parts I, II, and III of the board examination and has failed Part IV but has a score of 375 on the Special Purpose Examination for Chiropractic.

Agency's Plan for Disposition of Request: Following receipt of all comments on the petition to amend the regulations, the board will decide whether to make any changes to the regulatory language. This matter will be on the board's agenda for its meeting on August 5, 2011, and the petitioner will be informed of the board's decision on the request after that meeting.

Public Comment Deadline: July 20, 2011.

Agency Contact: Elaine J. 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.

VA.R. Doc. No. R11-44; Filed May 23, 2011, 11:36 a.m.

BOARD OF PHARMACY

Initial Agency Notice

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy.**

Statutory Authority: §§ 54.1-3300 and 54.1-3400 of the Code of Virginia.

Names of Petitioners: Karen Dunavant, Courtney Fuller, and Annette Reichenbaugh.

Nature of Petitioners' Requests: Amend requirement for monthly inspection of automated dispensing devices by pharmacy personnel to verify proper storage, location of drugs, expiration dates, drug security, and validity of access codes.

Agency's Plan for Disposition of Request: The board will publish the petition on June 20, 2011, and request 21 days of public comment ending July 11, 2011. The board will consider the petition and comments received at its meeting on September 22, 2011, to determine whether to initiate a regulatory action.

Public Comment Deadline: July 11, 2011.

Agency Contact: Elaine J. 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.

VA.R. Doc. No. R11-45; Filed May 27, 2011, 2:19 p.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Medical Assistance Services has WITHDRAWN the Notice of Intended Regulatory Action for **12VAC30-80, Methods and Standards for Establishing Payment Rate; Other Types of Care,** which was published in 27:11 VA.R. 967 January 31, 2011. The Board of Medical Assistance Services will reconsider this methodology at a later date.

Agency Contact: Brian McCormick, Regulatory Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680, or email brian.mccormick@dmas.virginia.gov.

VA.R. Doc. No. R11-2713; Filed May 23, 2011, 3:04 p.m.

Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the Department of Medical Assistance Services has WITHDRAWN the Notice of Intended Regulatory Action (NOIRA) for the regulations entitled State Plan Under Title XIX of the Social Security Act Medical Assistance Program: 12VAC30-10, General Provisions; 12VAC30-20, Administration of Medical Assistance Services; and 12VAC30-110, Eligibility and Appeals. The NOIRA was published in 22:19 VA.R. 2570 May 29, 2006.

Contact Information: Lois Gray, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email lois.gray@dmas.virginia.gov.

VA.R. Doc. No. R06-234; Filed May 23, 2011, 11:12 a.m.

REGULATIONS

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

Symbol Key

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

TITLE 1. ADMINISTRATION

STATE BOARD OF ELECTIONS

Proposed Regulation

REGISTRAR'S NOTICE: The State Board of Elections is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 8 of the Code of Virginia, which exempts agency action relating to the conduct of elections or eligibility to vote.

Title of Regulation: **1VAC20-40. Voter Registration (adding 1VAC20-40-80).**

Statutory Authority: § 24.2-103 of the Code of Virginia.

Public Hearing Information:

July 6, 2011 - 2 p.m. -- The Capitol, House Room 2, Richmond, VA

Public Comment Deadline: July 1, 2011.

Agency Contact: Martha Brissette, Policy Analyst, State Board of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8925, FAX (804) 786-0760, or email martha.brissette@sbe.virginia.gov.

Summary:

The proposed regulation provides that absent military and overseas citizens who apply to register to vote or request an absentee ballot by emailing or faxing a signed Federal Post Card Application (FPCA) to the local voting official do not also have to mail the FPCA to the local voting official.

1VAC20-40-80. Application for registration on Federal Post Card Application (FPCA).

An applicant eligible for registration who applies for registration simultaneously with a request for an absentee ballot on a Federal Post Card Application (FPCA) as authorized by § 24.2-703 of the Code of Virginia may apply for registration as well as request an absentee ballot by facsimile transmission or scanned email attachment. An electronically submitted FPCA shall be sufficient to apply for registration and request an absentee ballot if signed and otherwise complete.

NOTICE: The following form used in administering the regulation was filed by the agency. The form is not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name to access the form. The form is also available through the agency contact or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (1VAC20-40)

Federal Post Card Application, Standard Form 76A (rev. 10/05).

VA.R. Doc. No. R11-2620; Filed May 27, 2011, 11:19 a.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The following regulations filed by the Marine Resources Commission are exempt from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-270. Pertaining to Crabbing (amending 4VAC20-270-30).**

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

Effective Date: June 1, 2011.

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

Summary:

This amendment establishes an alternate eight-hour daily time limit permit for any licensed crab pot and peeler pot fisherman. The alternate lawful daily time periods for the commercial harvesting of crabs by crab or peeler pot is from 4 a.m. to 12 noon from June 1 through August 31, and from 5 a.m. to 1 p.m. from September 1 through September 30. The amendment also allows crabbers to fish aboard the same vessel only if their eight-hour time limits are identical.

4VAC20-270-30. Daily time limits.

A. It shall be unlawful for any person licensed to catch and sell crabs taken by crab pot or peeler pot to take and harvest crabs from any crab pot or peeler pot, or to retrieve, bait, or set any crab pot or peeler pot, except during the lawful daily time periods described in this subsection or subsection B or C of this section. The lawful daily time periods for the commercial harvesting of crabs by crab pot or peeler pot shall be from 6 a.m. to 2 p.m. from March 17 through April 30 and September 1 through November 30, except as described in subsection ~~C~~ D of this section, and from 5 a.m. to 1 p.m. during the months of May, June, July, and August, except as specified in subsection B or C of this section. Crab pots or peeler pots already on board a boat at the end of the lawful daily time period, as defined in this subsection or subsection B or C of this section, may be set during the period starting immediately following the lawful daily time period and ending one hour after the lawful daily time period.

B. Any licensed crab pot or peeler pot fisherman who provides an opinion and supporting documentation from an attending physician to the commissioner of an existing medical condition that prevents him from adhering to the daily time limit established in subsection A of this section may be permitted by the commissioner or his designee to take and harvest crabs from his crab pot or peeler pot, or to retrieve, bait, or set his crab pot or peeler pot during an alternate eight-hour daily time limit. That alternative eight-hour daily time limit will be prescribed by the commissioner or his designee in accordance with the medical condition that forms a basis for the exception to the daily time limit as described in subsection A of this section.

Nothing in this regulation shall prohibit any licensed crab pot or peeler pot fisherman, who has been granted an exception to the eight-hour work schedule, on a medical basis, from using another licensed crab pot or peeler pot fisherman as a mate~~;~~ provided~~;~~, however, during the designated alternate work hours, only the crab pots or peeler pots of the fisherman receiving the exception shall be fished. Further, it shall be unlawful for the licensed crab fisherman, who has been granted an exception, or his mate, who is a licensed crab pot or peeler pot fisherman, to fish, set, retrieve, or bait, during the alternate work hours, any crab pot or peeler pot that is not owned and licensed by the fisherman granted the exception.

C. Any licensed crab pot or peeler pot fisherman who requests and obtains an alternate eight-hour daily time limit permit shall be authorized to take and harvest crabs from his crab pot or peeler pot or to retrieve, bait, or set his crab pot or peeler pot one hour earlier than described in subsection A of this section, only for the months of June, July, August, and September. During the months of March, April, May, October, and November, the lawful daily time period described in subsection A of this section applies to any crab pot or peeler pot licensee. The alternate lawful daily time periods for the commercial harvesting of crabs by crab pot or peeler pot shall be from 4 a.m. to 12 noon from June 1 through August 31 and from 5 a.m. to 1 p.m. from September 1 through September 30. Individuals must apply for this permit on an annual basis and shall adhere to the alternate daily time limit from the day the permit is issued through September 30, as well as subdivisions 1, 2, and 3 of this subsection.

1. It shall be unlawful for two or more licensed crab pot or peeler pot fishermen, or their agents, to crab aboard the same vessel if their authorized eight-hour daily time limits are not identical.

2. After January 1, 2012, requests for an alternate eight-hour time limit permit shall be submitted to the Marine Resources Commission annually and prior to May 15. Requests submitted on or after May 15 will not be considered.

3. Once any legal crab pot or peeler pot licensee obtains an alternate eight-hour daily time limit permit, that permittee shall be legally bound by the alternate eight-hour daily time limit as described in this subsection.

~~C.~~ D. The lawful daily time periods for the commercial harvest of crabs by crab pot or peeler pot may be rescinded by the Commissioner of Marine Resources when he determines that a pending weather event is sufficient cause for the removal of crab pots from the tidal waters of the Commonwealth.

VA.R. Doc. No. R11-2865; Filed May 26, 2011, 4:13 p.m.

Final Regulation

Title of Regulation: **4VAC20-450. Pertaining to the Taking of Bluefish (amending 4VAC20-450-30).**

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

Effective Date: June 1, 2011.

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

Summary:

The amendment changes the commercial landings quota for bluefish to 1,113,727 pounds.

4VAC20-450-30. Commercial landings quota.

A. During the period of January 1 through December 31, commercial landings of bluefish shall be limited to ~~1,213,280~~ 1,113,727 pounds.

B. When it is projected that 95% of the commercial landings quota has been realized, a notice will be posted to close

commercial harvest and landings from the bluefish fishery within five days of posting.

C. It shall be unlawful for any person to harvest or land bluefish for commercial purposes after the closure date set forth in the notice described in subsection B of this section.

VA.R. Doc. No. R11-2864; Filed May 26, 2011, 4:10 p.m.

TITLE 5. CORPORATIONS

STATE CORPORATION COMMISSION

Proposed Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **5VAC5-20. State Corporation Commission Rules of Practice and Procedure (amending 5VAC5-20-260, 5VAC5-20-280).**

Statutory Authority: § 12.1-13 of the Code of Virginia.

Public Hearing Information:

July 12, 2011 - 10 a.m. - State Corporation Commission, Tyler Building, 1300 East Main Street, 2nd Floor, Richmond, VA

Public Comment Deadline: July 5, 2011.

Agency Contact: Scott White, Deputy General Counsel, Financial Services, State Corporation Commission, 1300 East Main Street, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9671, FAX (804) 371-9240, or email scott.white@scc.virginia.gov.

Summary:

The proposed revisions to 5VAC5-20-260 and 5VAC5-20-280 of the State Corporation Commission's Rules of Practice and Procedure modify the opportunity for parties and the commission staff to obtain discovery in regulatory and adjudicatory proceedings. Some revisions are proposed to provide for additional discovery of the commission staff and the commission staff's experts in regulatory proceedings. Other revisions are proposed to permit the expansion of discovery regarding witnesses and items of evidence in adjudicatory proceedings.

AT RICHMOND, MAY 26, 2011

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. CLK-2011-00001

Ex Parte: In the matter concerning revised State Corporation Commission Rules of Practice and Procedure

ORDER FOR NOTICE AND HEARING TO CONSIDER PROPOSED REVISIONS TO PART IV OF THE COMMISSION'S RULES OF PRACTICE AND PROCEDURE

On January 11, 2011, the State Corporation Commission ("Commission") issued its Order for Notice of Proceeding to Consider Revisions to the Commission's Rules of Practice and Procedure ("Order for Notice of Proceeding") in this case. The Commission determined that it was appropriate to revisit Part IV of the Rules of Practice and Procedure, 5 VAC 5-20-10 et seq. ("Rules"), to consider issues related to discovery in Commission proceedings. The Commission invited interested parties to address, among other things, whether: (i) Commission Staff should be subject to additional discovery and, if so, what types of additional discovery and in what types of proceedings;[1] and (ii) whether experts or consultants retained by Commission Staff should be subject to discovery and, if so, what types of discovery and in what types of proceedings. The Commission also invited interested parties to address how subjecting Commission Staff to additional discovery may affect: (i) the Commission's ability to meet statutory deadlines in certain types of proceedings; (ii) available resources and efficiency in handling cases; (iii) the Commission Staff's ability to interact informally with regulated entities and their customers to effect resolution of disputes; (iv) the ability of the Commission's Staff to work with regulated entities in competitive industries; and (v) the protection of sensitive information provided to the Commission Staff by regulated entities.

The Commission received eight comments in response to its Order for Notice of Proceeding. The Virginia Committee for Fair Utility Rates and the Old Dominion Committee for Fair Utility Rates, representing large industrial customers, filed comments in support of maintaining the Commission's existing Rules. The following filed comments suggesting revisions to the Rules: Columbia Gas of Virginia, Inc., Washington Gas Light Company, Verizon Virginia Inc. and Verizon South Inc., and the Virginia Telecommunications Industry Association ("VTIA"). One individual filed comments adopting the position of the VTIA. The Office of Attorney General, Division of Consumer Counsel, filed a Notice of Participation, but raised no concerns with the current Rules. Shenandoah Valley Electric Cooperative filed comments in support of electronic filing and management of documents.

On April 8, 2011, the Commission Staff ("Staff") filed its Response to the comments filed herein, addressing the necessity for the suggested revisions. The Staff noted that no electric, water, or sewer utilities filed comments raising concerns with the Commission's Rules, nor did any companies or individuals associated with the financial services industry.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that certain revisions to Part IV of the Rules should be considered ("Proposed Rules"); that public notice and an opportunity for comment on the Proposed Rules should be given; and that a hearing should be convened to hear oral comment on the Proposed Rules. A copy of the Proposed Rules is attached hereto. The Commission's Division of Information Resources is directed to cause the Proposed Rules to be published in the Virginia Register of Regulations and to make the Proposed Rules available for inspection on the Commission's website.

Accordingly, IT IS ORDERED THAT:

(1) The Commission's Division of Information Resources shall forward this Order to the Registrar of Regulations for publication in the Virginia Register of Regulations.

(2) The Commission's Division of Information Resources shall make a downloadable version of the Proposed Rules available for access by the public at the Commission's website, http://www.scc.virginia.gov/case. The Clerk of the Commission shall make a copy of the Proposed Rules available, free of charge, in response to any written request for one.

(3) A public hearing shall be convened on July 12, 2011, at 10 a.m., in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, to receive oral comment from any interested persons on the Proposed Rules.

(4) Commission Staff and interested persons wishing to comment on the Proposed Rules may also file an original and fifteen (15) copies of any such comments with the Clerk, State Corporation Commission, 1300 East Main Street, Richmond, Virginia 23219, on or before July 5, 2011, making reference to Case No. CLK-2011-00001. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website, http://www.scc.virginia.gov/caseinfo.htm.

(5) This matter is continued for further order of the Commission.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all public utilities providing service within the Commonwealth of Virginia and to representatives of the insurance, banking, and securities industries as shown on the attached appendices and to the individuals and organizations on the service list attached hereto.

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[1] The Rules currently provide for some discovery of Staff in adjudicatory proceedings in Rule 280. Additionally, the Rules require Commission Staff to file workpapers supporting its recommendations in actions pursuant to Rule 80 A.

5VAC5-20-260. Interrogatories ~~to parties~~ or requests for production of documents and things.

The commission staff and any party in a formal proceeding before the commission, other than a proceeding under 5VAC5-20-100 A, may serve written interrogatories or requests for production of documents upon a party, to be answered by the party served, or if the party served is an entity, by an officer or agent of the entity, who shall furnish to the staff or requesting party information as is known. Interrogatories or requests for production of documents, including workpapers pursuant to 5VAC5-20-270, that cannot be timely answered before the scheduled hearing date may be served only with leave of the commission for good cause shown and upon such conditions as the commission may prescribe. Such otherwise untimely interrogatories or requests for production of documents, including workpapers pursuant to 5VAC5-20-270, may not be served until such leave is granted. ~~No interrogatories~~ Interrogatories or requests for production of documents may be served upon a member of the commission staff ~~except~~, or an expert or consultant filing testimony on behalf of the commission staff, in a proceeding under 5 VAC 5-20-80 to discover: (i) factual information that supports the workpapers submitted by the staff pursuant to 5VAC5-20-270, including electronic spreadsheets that include underlying formulas and assumptions; (ii) any other documents relied upon as a basis for recommendations or assertions in prefiled testimony, staff reports or exhibits filed by staff, or by an expert or consultant filing testimony on behalf of the staff; or (iii) the identity of other formal proceedings in which an expert or consultant filing testimony on behalf of the staff testified regarding the same or a substantially similar subject matter. The disclosure of communications within the commission shall not be required and, except for good cause shown, no interrogatories or requests for production of documents may be served upon a member of the commission staff, or an expert or consultant filing testimony on behalf of the staff, prior to the filing of staff's testimony. All interrogatories and requests for production of documents shall be filed with the Clerk of the Commission. Responses to interrogatories and requests for production of documents shall not be filed with the Clerk of the Commission.

The response to each interrogatory or document request shall identify by name the person making the response. Any objection to an interrogatory or document request shall identify the interrogatory or document request to which the objection is raised, and shall state with specificity the basis

and supporting legal theory for the objection. Objections shall be served with the list of responses or in such manner as the commission may designate by order. Responses and objections to interrogatories or requests for production of documents shall be served within 10 days of receipt, unless otherwise ordered by the commission. Upon motion promptly made and accompanied by a copy of the interrogatory or document request and the response or objection that is subject to the motion, the commission will rule upon the validity of the objection; the objection otherwise will be considered sustained.

Interrogatories or requests for production of documents may relate to any matter not privileged, which is relevant to the subject matter involved, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of evidentiary value. It is not grounds for objection that the information sought will be inadmissible at the hearing if the information appears reasonably calculated to lead to the discovery of admissible evidence.

Where the response to an interrogatory or document request may only be derived or ascertained from the business records of the party questioned, from an examination, audit, or inspection of business records, or from a compilation, abstract, or summary of business records, and the burden of deriving or ascertaining the response is substantially the same for one entity as for the other, a response is sufficient if it (i) identifies by name and location all records from which the response may be derived or ascertained; and (ii) tenders to the inquiring party reasonable opportunity to examine, audit, or inspect the records subject to objection as to their proprietary or confidential nature. The inquiring party bears the expense of making copies, compilations, abstracts, or summaries.

5VAC5-20-280. Discovery applicable only to 5VAC5-20-90 proceedings.

This rule applies only to a proceeding in which a defendant is subject to a monetary penalty or injunction, or revocation, cancellation, or curtailment of a license, certificate of authority, registration, or similar authority previously issued by the commission to the defendant:

1. Discovery of material in possession of the commission staff. Upon written motion of the defendant, the commission shall permit the defendant to inspect and, at the defendant's expense, copy or photograph: (i) any relevant written or recorded statements, the existence of which is known, after reasonable inquiry, by the commission staff counsel assigned to the matter to be within the custody, possession, or control of commission staff, made by (a) the defendant, or representatives~~,~~ or agents of the defendant if the defendant is other than an individual, or (b) any witness whom the commission staff intends to call to testify at the hearing (exclusive of investigative notes), to a commission staff member or law enforcement officer; (ii) designated books, tangible objects, papers, documents, or copies or portions thereof, that are within the custody, possession, or control of commission staff and that commission staff intends to introduce into evidence at the hearing; and (iii) the list of the witnesses that commission staff intends to call to testify at the hearing. Upon good cause shown, the commission or hearing examiner may direct the commission staff to withhold disclosure of the identity of the persons described in clause (iii).

A motion by the defendant under this rule shall be filed and served at least ~~10~~ 20 days before the hearing date. The motion shall include all relief sought. A subsequent motion may be made only upon a showing of cause as to why the motion would be in the interest of justice. An order or ruling granting relief under this rule shall specify the time, place, and manner of making discovery and inspection permitted, and may prescribe such terms and conditions as the commission may determine.

The commission staff may also obtain the list of witnesses that the defendant intends to call to testify at the hearing, and inspect, copy, and photograph, at commission staff's expense, the evidence that the defendant intends to introduce into evidence at the hearing.

The commission staff and the defendant shall be required to produce the information described above as directed by the commission or hearing examiner, but not later than 10 days prior to the scheduled hearing; and the admission of any additional evidence not provided in accordance herewith shall not be denied solely on the basis that it was not produced timely, provided the additional evidence was produced to commission staff or the defendant as soon as practicable prior to the hearing, or prior to the introduction of such evidence at the hearing. The requirement to produce the information described in this section shall be in addition to any requirement by commission staff or the defendant to timely respond to an interrogatory or document request made pursuant to 5VAC5-20-260.

Nothing in this rule shall require the disclosure of any information, the disclosure of which is prohibited by statute. The disclosure of the results of a commission staff investigation or work product of commission staff counsel shall not be required.

2. Depositions. After commencement of a proceeding to which this rule applies, the commission staff or a party may take the testimony of (i) a party, or (ii) a person not a party for good cause shown to the commission or hearing examiner, other than a member of the commission staff, by deposition on oral examination or by written questions. Depositions may be used for any purpose for which they may be used in the courts of record of the Commonwealth. Except where the commission or hearing examiner finds

that an emergency exists, no deposition may be taken later than 10 days in advance of the formal hearing. The attendance of witnesses at depositions may be compelled by subpoena. Examination and cross-examination of the witness shall be as at hearing. Depositions may be taken in the City of Richmond or in the town, city, or county in which the deposed person resides, is employed, or does business. The parties and the commission staff, by agreement, may designate another place for the taking of the deposition. Reasonable notice of the intent to take a deposition must be given in writing to the commission staff counsel and to each party to the action, stating the time and place where the deposition is to be taken. A deposition may be taken before any person (the "officer") authorized to administer oaths by the laws of the jurisdiction in which the deposition is to be taken. The officer shall certify his authorization in writing, administer the oath to the deponent, record or cause to be recorded the testimony given, and note any objections raised. In lieu of participating in the oral examination, a party or the commission staff may deliver sealed written questions to the officer, who shall propound the questions to the witness. The officer may terminate the deposition if convinced that the examination is being conducted in bad faith or in an unreasonable manner. Costs of the deposition shall be borne by the party noticing the deposition, unless otherwise ordered by the commission.

3. Requests for admissions. The commission staff or a party to a proceeding may serve upon a party written requests for admission. Each matter on which an admission is requested shall be stated separately. A matter shall be deemed admitted unless within 21 days of the service of the request, or some other period the commission may designate, the party to whom the request is directed serves upon the requesting party a written answer addressing or objecting to the request. The response shall set forth in specific terms a denial of the matter set forth or an explanation as to the reasons the responding party cannot truthfully admit or deny the matter set forth. Requests for admission shall be filed with the Clerk of the Commission and simultaneously served on commission staff counsel and on all parties to the proceeding.

VA.R. Doc. No. R11-2429; Filed May 27, 2011, 9:25 p.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Final Regulation

Title of Regulation: **12VAC5-66. Regulations Governing Durable Do Not Resuscitate Orders (amending 12VAC5-66-10, 12VAC5-66-40, 12VAC5-66-50, 12VAC5-66-60, 12VAC5-66-70, 12VAC5-66-80).**

Statutory Authority: § 32.1-153 of the Code of Virginia.

Effective Date: July 20, 2011.

Agency Contact: Michael Berg, Compliance Director, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7615, FAX (804) 864-7580, or email michael.berg@vdh.virginia.gov.

Summary:

These amendments to the regulations regarding DDNR orders add several definitions, specify that DDNR forms may be obtained from the Office of Emergency Medical Services' website, and allow legible electronic copies of DDNR orders to be used and recognized as valid by healthcare facilities. The changes made since publication of the proposed regulations amend and revise portions of the regulation to highlight corrections in terminology, clarify the honoring of the DDNR by all levels of healthcare providers, and allow utilization of current technology to obtain and implement the DDNR forms.

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.

Part I
Definitions

12VAC5-66-10. Definitions.

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

"Agent" means an adult appointed by the declarant under an advance directive, executed or made in accordance with the provisions of § 54.1-2983 of the Code of Virginia to make health care decisions for him.

"Alternate Durable DNR [jewelry]" means a Durable DNR bracelet or necklace issued by a vendor approved by the Virginia Office of Emergency Medical Services. A Durable DNR Order [~~Form~~] must be obtained by the patient, from a physician, to obtain [Alternate] Durable DNR jewelry.

"Board" means the State Board of Health.

"Cardiac arrest" means the cessation of a functional heartbeat.

"Commissioner" means the State Health Commissioner.

"Durable Do Not Resuscitate Order [~~Form~~]" or "Durable DNR Order [~~Form~~]" means a written physician's order issued pursuant to § 54.1-2987.1 of the Code of Virginia in a form or forms authorized by the board to withhold cardiopulmonary resuscitation from an individual in the event of cardiac or respiratory arrest. For purposes of this chapter, cardiopulmonary resuscitation shall include cardiac compression, endotracheal intubation and other advanced airway management, artificial ventilation, ~~and~~ defibrillation, administration of cardiac resuscitative medications, and related procedures. As the terms "advance directive" and "Durable Do Not Resuscitate Order" are used in this article, a Durable Do Not Resuscitate Order [~~Form~~] or other DNR Order is not and shall not be construed as an advance directive. When used in these regulations, the term "Durable DNR Order [~~Form~~]" shall include any authorized ~~alternate form of identification~~ Alternate Durable DNR [~~Jewelry~~ jewelry] issued in conjunction with an original Durable DNR Order ~~form~~ [~~Form~~].

"Emergency Medical Services" or "EMS" means the services rendered by an agency licensed by the Virginia Office of Emergency Medical Services, an equivalent agency licensed by another state or a similar agency of the federal government when operating within this Commonwealth.

"Emergency medical services agency" or "EMS agency" means any ~~person~~ agency, licensed to engage in the business, service, or regular activity, whether or not for profit, of transporting and/or rendering immediate medical care to such persons who are sick, injured, wounded or otherwise incapacitated or helpless.

"Incapable of making an informed decision" means the inability of an adult patient, because of mental illness, mental retardation, or any other mental or physical disorder that precludes communication or impairs judgment [~~and that has been diagnosed and certified in writing by his physician with whom he has a bona fide physician/patient relationship and a second physician or licensed clinical psychologist after personal examination of such patient~~], to make an informed decision about providing, withholding, or withdrawing a specific medical treatment or course of treatment because he is unable to understand the nature, extent, or probable consequences of the proposed medical decision, or to make a rational evaluation of the risks and benefits of alternatives to that decision. For purposes of this article, persons who are deaf [~~,~~ or] dysphasic or have other communication disorders [~~,~~ but] who are otherwise mentally competent and able to communicate by means other than speech, shall not be considered incapable of making an informed decision. [The determination that the patient is "incapable of making an informed decision" shall be made in accordance with § 54.1-2983.2 of the Code of Virginia.]

"Office of EMS" or "OEMS" means the Virginia Office of Emergency Medical Services. The Virginia Office of Emergency Medical Services is a state office located within the Virginia Department of Health (VDH).

"Other Do Not Resuscitate Order" or "Other DNR Order" means a written physician's order [not to resuscitate a patient in the event of cardiac or respiratory arrest] on a form other than the authorized state standardized Durable DNR Form [under policies and procedures of the health care facility to which the individual who is the subject of the order has been admitted]. [~~An Other DNR form must contain all the information required in subdivision 1 of 12VAC5-66-40 to be covered by these regulations.~~]

"Person authorized to consent on the patient's behalf" means any person authorized by law to consent on behalf of the patient incapable of making an informed decision or, in the case of a minor child, the parent or parents having custody of the child or the child's legal guardian or as otherwise provided by law.

"Physician" means a person licensed to practice medicine in the Commonwealth of Virginia or in the jurisdiction where the treatment is to be rendered or withheld.

"Qualified emergency medical services personnel" means personnel certified to practice as defined by § 32.1-111.1 of the Code of Virginia when acting within the scope of their certification.

"Qualified health care facility" means a facility, program, or organization operated or licensed by the State Board of Health or by the Department of Behavioral Health and Developmental Services (DBHDS) or operated, licensed, or owned by another state agency.

"Qualified health care personnel" means any qualified emergency medical services personnel and any licensed healthcare provider or practitioner functioning in any facility, program or organization operated or licensed by the State Board of Health~~,~~ or by ~~the Department of Mental Health, Mental Retardation and Substance Abuse Services~~ DBHDS or operated, licensed, or owned by another state agency.

"Respiratory arrest" means cessation of breathing.

Part III
Requirements and Provisions

12VAC5-66-40. The Durable Do Not Resuscitate Order Form.

The Durable DNR Order Form shall be a ~~unique~~ standardized document ~~printed on distinctive paper,~~ as approved by the board and consistent with these regulations. The following requirements and provisions shall apply to the approved Durable DNR Order Form.

1. Content of the Form - A Durable DNR Order Form shall contain, from a physician with whom the patient has a

bona fide physician/patient relationship, a do not resuscitate determination, signature and the date of issue, the signature of the patient or, if applicable, the person authorized to consent on the patient's behalf.

2. Effective Period for a Signed Durable DNR Order [~~Form~~] - A signed Durable DNR Order shall remain valid until revoked [in accordance with § 54.1-2987.1 of the Code of Virginia and 12VAC5-66-80 E or until rescinded, in accordance with accepted medical practice, by the provider who issued the Durable Do Not Resuscitate Order].

3. ~~Original~~ Durable DNR Order Form - ~~An original~~ A Durable DNR Order or [~~an~~] ~~alternate form~~ Alternate Durable DNR [~~Jewelry~~ jewelry] that complies with 12VAC5-66-50 shall be valid for the purposes of withholding or withdrawing cardiopulmonary resuscitation by qualified health care personnel in the event of cardiac or respiratory arrest.

4. Availability of the Durable DNR Order Form. The ~~original~~ Durable DNR Order ~~or an alternate form~~ Form that complies with [~~12VAC5-66-50~~ this section] or [~~an~~] Alternate Durable DNR [jewelry] that complies with [~~12VAC5-66-60~~ 12VAC5-66-50] shall be maintained and ~~displayed~~ readily available [to qualified health care personnel] at the patient's current location or residence ~~in one of the places designated on the form, or should accompany the patient, if traveling. Photocopies of the Durable DNR Order may be given to other providers or persons for information, with the express consent of the patient or the patient's designated agent or the person authorized to consent on the patient's behalf. However, such photocopies of the Durable DNR Order are not valid for withholding cardiopulmonary resuscitation~~. [~~Within any facility, program or organization operated or licensed by the State Board of Health or by DBHDS or operated, licensed, or owned by another state agency, the Durable DNR Order Form, Alternate Durable DNR, or an Other Durable DNR Order should be readily available to the patient.~~]

5. Qualified health care personnel may honor a legible photocopy of a Durable DNR Form or Other Durable DNR Order [as if it were an original].

6. A patient who is traveling outside his home or between health care facilities should have an original or photocopied Durable DNR Order [~~Form or~~ ,] Other Durable DNR Order [, or Alternate Durable DNR jewelry] accompany him.

~~4.~~ [~~7. Revocation of a Durable DNR Order Form. A Durable DNR Order may be revoked at any time by the patient (i)~~] ~~by physical cancellation~~ [~~physically destroying the Durable DNR Order Form or~~] ~~destruction by the patient or~~ [~~having another person in his presence and at his direction~~] ~~of~~ [~~destroy the Durable DNR Order Form and/or any alternate form of identification~~]; [~~or (ii) by oral expression of intent to revoke. The Durable DNR Order may also be revoked by the patient's designated agent or the person authorized to consent on the patient's behalf unless that person knows the patient would object to such revocation. If an Other Durable DNR Order exists and a patient or his authorized agent revokes the Durable DNR, health care personnel should assure the revocation is honored by updating or destroying the Other Durable DNR Order.~~]

~~5.~~ [~~8.~~ 7.] Distribution of Durable DNR Order Forms - ~~Authorized~~ The authorized Virginia Durable DNR ~~Forms, with instructions,~~ Order Form shall be a standardized form available ~~only to physicians~~ for download via the Internet from the Office of Emergency Medical Services website. The downloadable form will contain directions for completing the form and three identical Durable DNR Order Forms: one [original] form to be kept by the patient, the second to be placed in the patient's permanent medical record, and the third to be used [by the patient] for requesting [~~an~~] Alternate Durable DNR [jewelry].

[~~9.~~ 8.] Hard copies of the Durable DNR Order Form shall also be made available to physicians or licensed health care facilities by the Office of EMS. The Office of EMS may utilize a vendor to print and distribute the Durable DNR Order Form and a nominal fee [~~can~~ may] be charged [in an amount necessary] to cover printing and shipping fees.

12VAC5-66-50. Authorized alternate ~~forms of~~ Durable DNR ~~Order identification~~ jewelry.

The board authorizes the ~~issuance~~ use of ~~alternate forms of~~ Alternate Durable DNR ~~Order identification~~ [~~Jewelry~~ jewelry] in conjunction with the issuance of [a] Durable DNR ~~Orders~~ Order [~~Forms~~]. These ~~alternate forms~~ Alternate Durable DNR [~~Jewelry~~ jewelry] items shall be uniquely-designed and uniquely-identifiable bracelets and necklaces that are available only from a vendor approved by the Virginia Department of Health, Office of EMS. ~~These alternate forms of identification~~ The Alternate Durable DNR [~~Jewelry~~ jewelry] must be purchased from the approved vendor by the person to whom a Durable DNR Order Form applies, or ~~that~~ the person authorized to consent on the patient's behalf~~, and in conjunction with a~~. An original Durable DNR Order Form must be obtained from a physician and provided to the vendor in order to receive Alternate Durable DNR [~~Jewelry~~ jewelry]. Such a necklace or bracelet may be utilized either to validate the Durable DNR Order Form or in place of an original Durable DNR Order Form in the event that the original order is not readily available at the site where the person to whom the order applies is found. In order to be honored by qualified health care personnel in place of the ~~original~~ standard Durable DNR Order Form, ~~this alternate form of identification~~ the Alternate Durable DNR

[~~Jewelry~~ jewelry] must contain the minimum information approved by the State Board of Health in 12VAC5-66-60.

12VAC5-66-60. Other DNR Orders.

[A. Nothing in these regulations shall be construed to preclude licensed health care practitioners from following any ~~other~~ Other] ~~written orders of a physician not to resuscitate a patient in the event of cardiac or respiratory arrest.~~ [Do Not Resuscitate Order in accordance with the applicable policies and procedures of the health care facility in which they practice.]

~~B. Additionally, nothing in these regulations or in the definition of Durable DNR Orders provided in § 54.1-2982 of the Code of Virginia shall be construed to limit the authorization of qualified health care personnel to follow Do Not Resuscitate Orders other than Durable DNR Orders that are written by a physician. Such other DNR Orders issued in this manner, to be honored by EMS personnel, shall~~

[~~A.~~ B.] Qualified health care personnel [~~can~~ are authorized to] honor [~~do not resusicitate~~ any Other Do Not Resuscitate] (DNR) [~~orders by a physician that are written in a format other than using the standardized Durable DNR Order Form to not resuscitate a patient in the event of a cardiac or respiratory arrest~~ Order as if it were a Durable Do Not Resuscitate Order] when the patient is currently admitted to a hospital or other qualified health care facility [~~. If an Other Durable DNR Order is used, it must contain~~ or is in transit from a qualified health care facility provided that such order includes] the same information as listed in subdivision 1 of 12VAC5-66-40 ~~and the time of issuance by the physician in accordance with accepted medical practice, for patients who are currently admitted to a hospital or other health care facility~~ [, except that an Other DNR Order shall not be required to include the signature of the patient or a person authorized to consent for the patient on the order itself].

[C. ~~B.~~] Nothing in these regulations shall prohibit qualified health care personnel from following any direct verbal order issued by a licensed physician not to resuscitate a patient in cardiac or respiratory arrest when such physician is physically present ~~in attendance of such patient~~.

Part IV
Implementation Procedures

12VAC5-66-70. Issuance of a Durable DNR Order [~~Form or Other DNR Order~~].

A. A Durable DNR Order [~~Form or Other DNR Order~~] may be issued to a patient by a physician, with whom the patient has established a bona fide physician/patient relationship, as defined by the Board of Medicine in their current guidelines, only with the consent of the patient or, if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon the request of and with the consent of the person authorized to consent on the patient's behalf.

B. The use of the authorized Durable DNR Order Form is encouraged to provide uniformity throughout the health care continuum.

C. The authorized Durable DNR Order [~~Form~~] can be honored by qualified health care [~~providers~~ personnel] in any setting.

D. [~~Patients who are not within a qualified health care facility must have an authorized Durable DNR Order Form to be honored by qualified health care providers~~ Qualified health care personnel are authorized to honor only a Durable DNR Order on an authorized form or Alternate DNR jewelry [, except] as provided in 12VAC5-66-60 of these regulations.]

[~~E. Other DNR Orders can be honored any time when a patient is within a qualified health care facility or during transfer between qualified health care facilities when the patient remains attended by qualified health care providers.~~]

~~B.~~ [~~F. The~~ E. Prior to issuing a Durable DNR Order, the] physician shall explain to the patient or the person authorized to consent on the patient's behalf, the alternatives available~~,~~ ~~including issuance of a Durable DNR Order~~ [for response in the event of cardiac or respiratory arrest]. If the option of a Durable DNR Order is agreed upon, the physician shall have the following responsibilities:

1. Explain [~~when~~] the [circumstances under which qualified health care personnel may follow a] Durable DNR [~~Form is valid~~ Order].

2. Explain how to and who may revoke the Durable DNR [Order].

3. Document the patient's full legal name.

4. Document the execution date of the Durable DNR [Order].

~~1.~~ 5. Obtain the signature of the patient or the person authorized to consent on the patient's behalf on all three forms [~~,~~ :] the [~~patients~~ patient's] copy, medical record copy, and the copy used for obtaining [Alternate] DNR [~~Jewelry~~ jewelry].

~~2. Execute and date the Physician Order on the Durable DNR Order Form.~~

6. Make sure that the [issuing] physician's name is clearly printed and the form is signed.

7. [~~Note~~ Record] the contact telephone number for the issuing physician.

~~3.~~ 8. Issue the original Durable DNR Order Form, [and the] patient and [Alternate] DNR [~~Jewelry~~ jewelry] copies to the patient and maintain the medical record copy in the patient's medical file.

4. Explain how to and who may revoke the Durable DNR Order.

C. [G. F.] The person to whom a Durable DNR [order Order] applies or the person authorized to consent on the patient's behalf must present the following information to the approved vendor in order to purchase and be issued an approved Alternate Durable DNR necklace or bracelet. The necklace or bracelet must contain the following information:

1. The following words: Do Not Resuscitate;

1. 2. The patient's full legal name;

2. The Durable DNR number on the Virginia Durable DNR form or a number unique to the patient that is assigned by the vendor;

3. The physician's name and phone number; and

4. The Virginia Durable DNR issuance date.

12VAC5-66-80. Durable DNR Order [Form] implementation procedures.

A. Qualified health care personnel shall comply with the following general procedures and published Virginia Durable DNR Order Implementation Protocols when caring for a patient who is in cardiac or respiratory arrest and who is known or suspected to have a Durable DNR Order in effect.

B. Initial assessment and intervention. Perform routine patient assessment and resuscitation or intervention until the a valid Durable DNR Order [Form, Alternate DNR jewelry,] or other Other DNR Order validity status is can be confirmed, as follows:

1. Determine the presence of a Durable DNR Order [Form] or, [an] approved alternate form of Alternate Durable DNR identification [Jewelry jewelry], or Other DNR Order.

2. If the patient is within a qualified health care facility [or in transit between qualified health care facilities], any qualified health care personnel may honor [a written physician's order that contains the items noted in 12VAC5-66-40 (a do not resuscitate determination, signature and the date of issue, the signature of the patient or, if applicable, the person authorized to consent on the patient's behalf) an Other DNR Order as set forth in 12VAC5-66-60].

2. 3. Determine that the Durable DNR [item form or Alternate DNR jewelry] is not altered.

3. 4. Verify, through driver's license or other identification with photograph and signature or by positive identification by a family member or other person who knows the patient, that the patient in question is the one for whom the Durable DNR Order [Form, Alternate DNR jewelry,] or other Other DNR Order was issued.

4. If no Durable DNR Order or approved alternate form of identification is found, ask a family member or other person to look for the original Durable DNR Order Form or other written DNR order.

[5. If a Durable DNR Order Form or Alternate Durable DNR is not immediately available, care should be provided until a valid Durable DNR Form, Alternate Durable DNR, or Other DNR Order can be produced.]

[5. 6.] If [the Durable any type of] DNR Order or approved alternate form of identification is not intact or has been altered or other [, Alternate DNR jewelry, or Other DNR Order is] produced, [intact, unaltered, and verified as issued for the patient,] the qualified health care personnel [is presented to] qualified health care personnel [, it shall may consider] the Durable DNR Order to [be] invalid [considered it] valid.

C. Resuscitative measures to be withheld or withdrawn. In the event of cardiac or respiratory arrest of a patient with a valid Durable DNR Order [Form], Alternate Durable DNR [Jewelry jewelry], or Other DNR Order under the criteria set forth above in subsection B of this section, [the following procedures should be withheld or withdrawn by] qualified health care personnel [shall withhold or withdraw cardiopulmonary resuscitation (CPR)] unless otherwise directed by a physician physically present at the patient location [:. CPR shall include:]

1. [Cardiopulmonary Resuscitation (CPR) Cardiac compression];

2. Endotracheal Intubation or other advanced airway management;

3. 2. Artificial ventilation;

4. 3. Defibrillation; or

4. Endotracheal Intubation or other advanced airway management including supra-glottic devices such as the LMA, or other airway devices that pass beyond the oral pharynx, such as the Combi Tube, PTL etc.; or

5. [Continuation Administration] of related procedures or cardiac resuscitation medications as prescribed by the patient's physician or medical protocols.

D. Procedures to provide comfort care or to alleviate pain. In order to provide comfort care or to alleviate pain for a patient with a valid Durable DNR Order or other DNR Order of any type [or Other DNR Order] the following interventions may be provided, depending on the needs of the particular patient:

1. Airway management (excluding intubation or advanced, including positioning, nasal or pharyngeal airway management) placement;

2. Suctioning;

3. Supplemental oxygen delivery devices;

4. Pain medications or intravenous fluids;

5. Bleeding control;

6. Patient positioning; or

7. Other therapies deemed necessary to provide comfort care or to alleviate pain.

E. Revocation.

1. [~~These regulations shall not authorize any qualified health care personnel to follow a Durable DNR Order for any patient who is able to, and does, express to such qualified health care personnel the desire to be resuscitated in the event of cardiac or respiratory arrest.~~

~~If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall so revoke the qualified health care personnel's authority to follow a Durable DNR Order or other DNR Order~~ If a patient is able to, and does, express to a health care provider or practitioner the desire to be resuscitated in the event of cardiac or respiratory arrest, such expression shall revoke the provider's or practitioner's authority to follow a Durable DNR Order or Other DNR Order. In no case shall any person other than the patient have authority to revoke a Durable DNR Order or Other DNR Order executed upon the request of and with the consent of the patient himself.

If the patient is a minor or is otherwise incapable of making an informed decision and the Durable DNR Order or Other DNR Order was issued upon the request and with the consent of the person authorized to consent on the patient's behalf, then the expression by said person to a health care provider or practitioner of the desire that the patient be resuscitated shall so revoke the provider's or practitioner's authority to follow a Durable DNR Order or Other DNR Order].

2. The expression of such desire to be resuscitated prior to cardiac or respiratory arrest shall constitute revocation of the order; however, a new order may be issued upon consent of the patient or the person authorized to consent on the patient's behalf.

3. The provisions of this section shall not authorize any qualified emergency medical services personnel or licensed health care provider or practitioner who is attending the patient at the time of cardiac or respiratory arrest to provide, continue, withhold or withdraw treatment if such provider or practitioner knows that taking such action is protested by the patient incapable of making an informed decision. No person shall authorize providing, continuing, withholding or withdrawing treatment pursuant to this section that such person knows, or upon reasonable inquiry ought to know, is contrary to the religious beliefs or basic values of a patient incapable of making an informed decision or the wishes of such patient fairly expressed when the patient was capable of making an informed decision.

F. Documentation. When following a Durable DNR Order or [~~other~~ Other] DNR Order for a particular patient [admitted to a qualified health care facility], qualified health care personnel shall document [care rendered or withheld as required by facility policies and procedures. When following a Durable DNR Order or Other DNR Order for a particular patient who is not admitted to a qualified health care facility or who is in transit from a health care facility, qualified health care personnel shall document] in the patient's medical record the care rendered or withheld in the following manner:

1. Use standard patient care reporting documents (i.e. patient chart, pre-hospital patient care report).

2. Describe assessment of patient's [cardiac or respiratory arrest] status.

3. Document which identification (Durable DNR Order [~~Form~~], Alternate Durable DNR [jewelry], or ~~other~~ Other DNR Order or alternate form of identification) was used to confirm Durable DNR status and that it was intact, not altered, not canceled or not officially revoked.

4. Record the name of the patient's physician who issued the Durable DNR Order ~~Number and name of patient's physician~~ [~~Form~~], or Other DNR Order.

5. If the patient is being transported, keep the Durable DNR Order [~~Form~~], Alternate Durable DNR [jewelry], or Other DNR Order with the patient.

G. General considerations. The following general principles shall apply to implementation of [all] Durable DNR Orders.

1. If there is misunderstanding with family members or others present at the patient's location or if there are other concerns about following the Durable DNR Order or [~~other~~ Other] DNR Order, contact the patient's physician or EMS medical control for guidance.

2. If there is any question about the validity of a Durable DNR Order, resuscitative measures should be administered until the validity of the Durable DNR Order [or Other DNR Order] is established.

VA.R. Doc. No. R08-1132; Filed May 27, 2011, 4:26 p.m.

◆ ◆

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and

any agency that by the Constitution is expressly granted any of the powers of a court of record.

Final Regulation

Title of Regulation: **14VAC5-350. Rules Governing Surplus Lines Insurance (repealing 14VAC5-350-10, 14VAC5-350-20, 14VAC5-350-30, 14VAC5-350-85, 14VAC5-350-90, 14VAC5-350-95, 14VAC5-350-150, 14VAC5-350-155, 14VAC5-350-160, 14VAC5-350-165, 14VAC5-350-190, 14VAC5-350-200, 14VAC5-350-210, 14VAC5-350-220).**

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Effective Date: July 1, 2011.

Agency Contact: Katie Johnson, Coordinator Special Projects, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9688, FAX (804) 371-9396, or email katie.johnson@scc.virginia.gov.

Summary:

The General Assembly passed House Bill 2286 (Chapter 498 of the 2011 Acts of Assembly) effective July 1, 2011, which changes how surplus lines brokers pay premium taxes. Consequently, the Rules Governing Surplus Lines Insurance are no longer needed and are repealed. In addition, the forms used by surplus lines brokers are on the website for the State Corporation Commission's Bureau of Insurance, and the surplus lines brokers are to be notified of changes by administrative letter. No comments or requests for a hearing were received.

AT RICHMOND, MAY 31, 2011

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2011-00049

Ex Parte: In the matter of Repealing the
Rules Governing Surplus Lines Insurance

ORDER REPEALING RULES

By Order To Take Notice entered March 30, 2011, all interested persons were ordered to take notice that subsequent to May 9, 2011, the State Corporation Commission ("Commission") would consider the entry of an order repealing the rules entitled Rules Governing Surplus Lines Insurance ("Rules"), as proposed by the Bureau of Insurance, which repeals the Rules at 14 VAC 5-350-10 through 14 VAC 5-350-220, unless on or before May 9, 2011, any person objecting to the repeal of the Rules filed a request for a hearing with the Clerk of the Commission ("Clerk").

The Order to Take Notice also required all interested persons to file their comments in support of or in opposition to the repeal of the Rules on or before May 9, 2011.

There were no comments or requests for hearing on the proposed repeal of the Rules filed with the Clerk.

The repeal is necessitated by the passage of House Bill 2286 during the 2011 General Assembly Session, which amended Chapter 48 of Title 38.2 of the Code of Virginia making it administrable without the Rules. The provisions of House Bill 2286 implement provisions of the federal Nonadmitted and Reinsurance Reform Act of 2010, which requires states to adopt nationwide uniform requirements, forms and procedures for the reporting, payment, collection, and allocation of insurance premium license taxes for nonadmitted insurance.[1] The Bureau of Insurance recommends that the the Rules be repealed.

NOW THE COMMISSION, having considered the recommendation of the Bureau of Insurance, is of the opinion that the Rules should be repealed.

Accordingly, IT IS ORDERED THAT:

(1) The Rules Governing Surplus Lines Insurance at 14 VAC 5-350-10 through 14 VAC 5-350-220, which are attached hereto and made a part hereof, should be, and they are hereby, REPEALED to be effective July 1, 2011.

(2) AN ATTESTED COPY hereof, together with a copy of the repealed Rules, shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Brian P. Gaudiose, who forthwith shall give further notice of the repeal of the rules by mailing a copy of this Order, together with the attached repealed rules, to all licensed surplus lines brokers, surplus lines insurers and certain interested parties designated by the Bureau of Insurance.

(3) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the attached repealed rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(4) The Commission's Division of Information Resources shall make available this Order and the repealed rules on the Commission's website, http://www.scc.virginia.gov/case.

(5) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (2) above.

[1] 111 P.L. 203.

VA.R. Doc. No. R11-2765; Filed June 1, 2011, 11:31 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

Forms

REGISTRAR'S NOTICE: The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name to access a form. The forms are also available through the agency contact or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

Title of Regulation: **18VAC15-60. Mold Inspector and Remediator Regulations.**

Agency Contact: David Dick, Executive Director, Virginia Board for Asbestos, Lead, Mold, 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.

FORMS (18VAC15-60)

Mold License Application, A506-33MLIC (5/11).

Mold Education Verification Form, A506-33MED (5/11).

Mold Experience Verification Form, A506-33MEXP (5/11).

Mold Inspectors/Remediators Association Membership Form, A506-33MAMF (5/11).

Mold Remediator Supervisor/Inspector Disclosure Form, A506-33MDIS (5/11).

Mold Training Provider/Course Application, A506-33MTCAPP (5/11).

VA.R. Doc. No. R11-2869; Filed May 31, 2011, 12:02 p.m.

BOARD OF MEDICINE

Proposed Regulation

Title of Regulation: **18VAC85-130. Regulations Governing the Practice of Licensed Midwives (amending 18VAC85-130-80; adding 18VAC85-130-81).**

Statutory Authority: §§ 54.1-2400 and 54.1-2957.9 of the Code of Virginia.

Public Hearing Information:

June 23, 2011 - 8:30 a.m. - Department of Health Professions, 9960 Mayland Drive, 2nd Floor Conference Center, Board Room 2, Richmond, VA

Public Comment Deadline: August 19, 2011.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4621, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia authorizes the Board of Medicine to promulgate regulations to administer the regulatory system. A specific regulatory mandate for the Board of Medicine regarding midwifery is found in § 54.1-2957.9 of the Code of Virginia.

Purpose: The purpose of the planned regulatory action is compliance with a legislative mandate for the adoption of regulations relating to disclosures of risk to certain patients. Chapter 646 of the 2009 Acts of Assembly requires the board to adopt regulations governing the practice of midwifery, upon consultation with the Advisory Board on Midwifery. The regulations must require midwives to disclose to their patients, when appropriate, (i) options for consultation and referral to a physician and (ii) evidence-based information on health risks associated with birth of a child outside of a hospital or birthing center, as defined in § 32.1-11.5 E of the Code of Virginia, including but not limited to risks associated with vaginal births after a prior cesarean section, breech births, births by women experiencing high-risk pregnancies, and births involving multiple gestation.

The amendments set out the conditions or risks factors for which it is appropriate to disclose the options available for referral and consultation and to provide the evidence-based information to a client about risks associated with birth outside of a hospital or birthing center for women with certain conditions or clinical situations.

The Code of Virginia requires that regulations be consistent with the North American Registry of Midwives' (NARM) current job description for the profession. The NARM Position Paper on the Practice of Midwifery states that: Certified Professional Midwives (CPMs) have demonstrated the knowledge and skills to provide full prenatal, birth, and postpartum care to low-risk women; to recognize deviations from normal; and to refer, consult, or transfer care if appropriate. The proposed regulation is consistent with the NARM model in which midwives are expected to appropriately assess deviations from normal and to disclose to clients those conditions or situations in which an out-of-hospital birth is not appropriate or those that may present certain risks to a woman or her baby.

The goal for the amended regulation is to ensure that women are adequately informed of any risk for home birth associated with certain health conditions or prior birth history. Regulation of risk disclosure requires that women are adequately assessed and informed of a condition that presents increased risk for home birth and ensures that the choice of provider and birth setting are made with full disclosure of risk.

Substance: The proposed regulations include:

1. A requirement that, upon initiation of care, the midwife reviews the woman's medical history, including records from prior pregnancies, to identify pre-existing conditions that require disclosure of risk for home birth. The midwife will also be required to continually assess the pregnant woman in order to recognize conditions that may arise during the course of care that require disclosure of risk for home birth.

2. A listing of those factors or criteria that require disclosure that the client is not an appropriate candidate for an out-of-hospital birth, and a listing of those factors or criteria that require disclosure of options for consultation and referral.

3. If factors or criteria have been identified that may indicate health risks associated with birth of a child outside of a hospital, a requirement for the midwife to provide evidence-based information on such risks. Such information would be specified by the board for certain conditions and would include statements and evidence from both the medical and midwifery models of care.

4. A requirement for documentation in the client record of the assessment, the presence or absence of high risks and, if appropriate, the provision of disclosures and evidence-based information.

Issues: The primary advantage to the public (clients of midwifery) is the assurance that an appropriate assessment of health risks has been made and documented, that disclosure of such risks has been given to the client, and that evidence-based information on risks has been made available. The advantage to licensed midwives is the existence of a clear regulatory standard by which to practice. There are no disadvantages, because consumer choice will not be abridged. There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation: Pursuant to Chapter 646 of the 2009 Acts of Assembly, the Board of Medicine (Board) proposes to amend its Regulations Governing Licensed Midwives to include requirements for midwives to disclose evidence-based information on health risks associated with birth of a child outside of a hospital or birthing center. The Board proposes to promulgate a list of for risk factors for which midwives will need to provide information to be determined later in guidance documents.

Result of Analysis. There is insufficient evidence to ascertain whether benefits will outweigh costs for these proposed changes.

Estimated Economic Impact. In 2005, the General Assembly passed a law which required the licensure of midwives and mandated the parameters of that licensure. In 2009, the legislature amended this law (Chapter 646) to require midwives to disclose evidence-based information on risk factors that might influence a patient's choice as to whether she will give birth in a hospital or in some other setting with the aid of a midwife. The Board now proposes to amend its regulations to reflect the requirements of Chapter 646 and to list the risk factors for which midwives will have to provide evidence-based information. The regulations as amended specify that the evidence-based information will be in guidance documents and shall include evidence-based research and clinical expertise from both the medical and midwifery models of care.

To the extent that the evidence-based information provided to the clients of midwives allows them to make informed decisions about whether to continue with a plan to give birth outside of a hospital, these regulations will provide a benefit. For clients who choose to give birth in a hospital when that choice forestalls health problems, or even death, for themselves or their infants, those benefits will be quite large. For licensed midwives, the costs that will be accrued on account of this regulatory change will likely include some minimal costs for copying the information to be provided and lost fees for any individuals who decide on a hospital birth as a direct result of the information provided. To the extent that individuals who could have safely given birth at home are steered by the information toward a hospital delivery instead, they will incur costs that include the price differential between a home birth and a hospital birth, possible thousands of dollars, and the loss of the comfort that being in their home would likely provide them. Whether the benefits of this regulatory change outweigh the costs for this regulatory change will depend on several factors which likely include how well midwives and their potential clients currently assess any risk factors and how balanced, and therefore useful, the information that will be provided turns out to be.

Businesses and Entities Affected. The Department of Health Professions (DHP) reports that the Board currently licenses 49 midwives, all of which are independent small businesses. These individuals, any individuals who choose to be licensed in the future and pregnant women who choose home birth and use the services of midwives will all be affected by these regulations.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This regulatory action will likely have little impact on employment in the Commonwealth given the very small population of individuals that currently practice midwifery.

Effects on the Use and Value of Private Property. This regulatory action may decrease the value of midwife businesses if fewer individuals choose to use midwife services on account of these regulations.

Small Businesses: Costs and Other Effects. Small businesses in the Commonwealth will likely incur minimal costs for copying information to be provided to their clients and may incur lost income.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Costs for small businesses will likely be minimized by providing the best available information on all risk factors so that individuals are not steered away from home birth unnecessarily.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). 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 Economic Impact Analysis: The Board of Medicine has the following response to the economic impact analysis prepared by the Department of Planning and Budget for 18VAC85-130, Regulations Governing the Practice of Licensed Midwives.

On page 2 of the EIA, it states: To the extent that individuals who could have safely given birth at home are steered by the information toward a hospital delivery instead, they will incur costs that include the price differential between a home birth and a hospital birth, possible thousands of dollars, and the loss of the comfort that being in their home would likely provide them.

The EIA does not account for the costs associated with a high-risk pregnancy for which disclosures and options for referral were not appropriately provided. If a woman with a high risk pregnancy is not provided information about risks, the result could potentially be a delivery that has become problematic, necessitating a transfer to a hospital, an emergency delivery and care of a newborn in a NICU. Those costs could range from $35,000 to $50,000. If the infant remained in NICU beyond seven days, the costs extend from $3,500 to $4,800 for each additional day.

Ultimately, the goal is a viable, healthy infant, regardless of the birth setting. There can be no comparison of costs for that purpose.

Summary:

The proposed regulation requires midwives to disclose to their clients options for consultation and referral to a physician and evidence-based information on health risks associated with a home birth when certain antepartum or intrapartum conditions exist.

Part III
Practice Standards

18VAC85-130-80. ~~Disclosure~~ General disclosure requirements.

A licensed midwife shall provide written disclosures to any client seeking midwifery care. The licensed midwife shall review each disclosure item and obtain the client's signature as evidence that the disclosures have been received and explained. Such disclosures shall include:

1. A description of the licensed midwife's qualifications, experience, and training;

2. A written protocol for medical emergencies, including hospital transport, particular to each client;

3. A statement as to whether the licensed midwife has hospital privileges;

4. A statement that a licensed midwife is prohibited from prescribing, possessing or administering controlled substances;

5. A description of the midwife's model of care;

6. A copy of the regulations governing the practice of midwifery;

7. A statement as to whether the licensed midwife carries malpractice or liability insurance coverage and, if so, the extent of that coverage;

8. An explanation of the Virginia Birth-Related Neurological Injury Compensation Fund and a statement that licensed midwives are currently not covered by the fund; and

9. A description of the right to file a complaint with the Board of Medicine and with NARM and the procedures and contact information for filing such complaint.

18VAC85-130-81. Disclosures on health risks.

A. Upon initiation of care, a midwife shall review the client's medical history in order to identify pre-existing conditions or indicators that require disclosure of risk for home birth. The midwife shall offer standard tests and screenings for evaluating risks and shall document client response to such recommendations. The midwife shall also continually assess the pregnant woman and baby in order to recognize conditions that may arise during the course of care that require disclosure of risk for birth outside of a hospital or birthing center.

B. If any of the following conditions or risk factors are presented, the midwife shall request and review the client's medical history, including records of the current or previous pregnancies; disclose to the client the risks associated with a birth outside of a hospital or birthing center; and provide options for consultation and referral. If the client is under the care of a physician for any of the following medical conditions or risk factors, the midwife shall consult with or request documentation from the physician as part of the risk assessment for birth outside of a hospital or birthing center.

1. Antepartum risks:

Conditions requiring ongoing medical supervision or ongoing use of medications;

Active cancer;

Cardiac disease;

Severe renal disease -- active or chronic;

Severe liver disease -- active or chronic;

HIV positive status with AIDS;

Uncontrolled hyperthyroidism;

Chronic obstructive pulmonary disease;

Seizure disorder requiring prescriptive medication;

Psychiatric disorders;

Current substance abuse known to cause adverse effects;

Essential chronic hypertension over 140/90;

Significant glucose intolerance;

Genital herpes;

Inappropriate fetal size for gestation;

Significant 2nd or 3rd trimester bleeding;

Incomplete spontaneous abortion;

Abnormal fetal cardiac rate or rhythm;

Uterine anomaly;

Platelet count less than 120,000;

Previous uterine incision and/or myomectomy with review of surgical records and/or subsequent birth history;

Isoimmunization to blood factors;

Body mass index (BMI) equal to or greater than 30;

History of hemoglobinopathies;

Acute or chronic thrombophlebitis;

Anemia (hematocrit less than 30 or hemoglobin less than 10 at term);

Blood coagulation defect;

Pre-eclampsia/eclampsia;

Uterine ablation;

Placental abruption;

Placenta previa at onset of labor;

Persistent severe abnormal quantity of amniotic fluid;

Suspected chorioamnionitis;

Ectopic pregnancy;

Pregnancy lasting longer than 42 completed weeks with an abnormal nonstress test;

Any pregnancy with abnormal fetal surveillance tests;

Rupture of membranes 24 hours before the onset of labor;

Position presentation other than vertex at term or while in labor; or

Multiple gestation.

2. Intrapartum risks:

Current substance abuse;

Documented intrauterine growth retardation (IUGR)/small for gestational age (SGA) at term;

Suspected uterine rupture;

Active herpes lesion in an unprotectable area;

Prolapsed cord or cord presentation;

Suspected complete or partial placental abruption;

Suspected placental previa;

Suspected chorioamnionitis;

Pre-eclampsia/eclampsia;

Thick meconium stained amniotic fluid without reassuring fetal heart tones and birth is not imminent;

Position presentation other than vertex at term or while in labor;

Abnormal auscultated fetal heart rate pattern unresponsive to treatment or inability to auscultate fetal heart tones;

Excessive vomiting, dehydration, or exhaustion unresponsive to treatment;

Blood pressure greater than 140/90 that persists or rises and birth is not imminent;

Maternal fever equal to or greater than 100.4°F; or

Labor or premature rupture of membrane (PROM) less than 37 weeks according to due date.

3. If a risk factor first develops when birth is imminent, the individual midwife must use judgment taking into account the health and condition of the mother and baby in determining whether to proceed with a home birth or arrange transportation to a hospital.

C. If the risks factors or criteria have been identified that may indicate health risks associated with birth of a child outside of a hospital or birthing center, the midwife shall provide evidence-based information on such risks. Such information shall be specified by the board in guidance documents and shall include evidence-based research and clinical expertise from both the medical and midwifery models of care.

D. The midwife shall document in the client record the assessment of all health risks that pose a potential for a high risk pregnancy and, if appropriate, the provision of disclosures and evidence-based information.

VA.R. Doc. No. R10-2179; Filed May 27, 2011, 3:25 p.m.

BOARD OF PHYSICAL THERAPY

Reproposed Regulation

Title of Regulation: **18VAC112-20. Regulations Governing the Practice of Physical Therapy (amending 18VAC112-20-10, 18VAC112-20-50, 18VAC112-20-65, 18VAC112-20-70, 18VAC112-20-131, 18VAC112-20-135, 18VAC112-20-136, 18VAC112-20-140).**

Statutory Authority: §§ 54.1-2400 and 54.1-3473 of the Code of Virginia.

Public Hearing Information:

June 30, 2011 - 9 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 200, Henrico, VA

Public Comment Deadline: July 20, 2011.

Agency Contact: Lisa R. Hahn, Executive Director, Board of Physical Therapy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4674, FAX (804) 527-4413, or email ptboard@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of health regulatory boards including the responsibility of the Board of Physical Therapy to promulgate regulations that are reasonable and necessary to administer effectively the regulatory system.

Section 54.1-3474 of the Code of Virginia requires the board to promulgate regulations establishing requirements to ensure continuing competency of physical therapists (PTs) and physical therapist assistants (PTAs), which may include continuing education, testing, or such other requirements as the board may determine to be necessary.

Purpose: The purpose of the regulatory action is to provide more flexibility and accountability in traineeships for graduates of approved or unapproved (foreign) programs in physical therapy and for applicants who have not had recent clinical experience and are seeking licensure by endorsement or reinstatement. Additionally, the goal of the amendments is to provide more opportunities for obtaining the necessary continuing education hours for physical therapists and physical therapist assistants to maintain current licensure.

During the periodic review of regulations conducted in 2008, there were several comments and issues relating to traineeships and continuing competency that the board elected to refer to its Legislative/Regulatory Committee. In consultation with the Virginia Physical Therapy Association's representatives and a faculty member at VCU Health Systems, the committee and the board concluded that it should retain traineeships but make certain adjustments that would offer more flexibility and licensee oversight. Certain requirements were added for more accountability and greater assurance of public safety including provisions that should result in adequate supervision of the trainee, appropriate diagnosis and treatment being provided by a trainee, and a continuity of supervision. For the sake of public health and safety, a trainee should be so identified to the patient, and the progress notes from the trainee should be countersigned to document physical therapist oversight and responsibility for patient care.

Substance: The board has recommended the following substantive changes:

1. Clarify 18VAC112-20-70 to specify that the unlicensed graduate applying for a traineeship has been scheduled to take the national examination.

2. Amend 18VAC112-20-140 to limit the number of supervisors for each trainee to no more than two PTs to ensure some continuity in training.

3. Amend 18VAC112-20-140 to specify that a trainee be designated as a "PT Trainee" or "PTA Trainee" for the sake of public safety.

4. Amend 18VAC112-20-140 to state that all patient progress notes must be countersigned by the trainee's

supervisor. This includes computerized/electronic patient care notes to have documentation that the trainee is being supervised.

5. Amend 18VAC112-20-50 D, which currently requires a 1,000-hour full-time traineeship to allow a part-time traineeship, but include a limitation of two years on the amount of time allotted for completion. The time limit could be waived or extended for hardship circumstances in which the trainee needs additional time for completion.

6. Allow the PTA traineeship to be a fewer number of hours than the PT traineeship, since PTA education programs are shorter than PT education programs, and the scope of services provided by the PTA is less than that provided by a PT. Traineeship hours for an unlicensed graduate or an inactive PTA would be reduced from 480 hours to 320 hours.

7. Eliminate "face-to-face" requirement for Type 1 courses to allow home study, online, or audio courses offered by the approving organizations to be counted, but increase the number of hours that must be Type 1 from 15 to 20 per biennium for PTs and from 10 to 15 for PTAs. Type 2 hours would be reduced from 15 to 10 for PTs and from 20 to 15 for PTAs, so the total number of hours would remain the same.

8. Grant credit for all or part of the continuing competency hours for licensee who takes the new Practice Review Tool (PRT) of the Federation of State Boards of Physical Therapy. The amount of credit would be designated depending on whether the PT used the PRT as a self-assessment or as a measure of competency by meeting the standard set by the federation.

9. Amend sections on endorsement, reinstatement, or reactivation to use the PRT of the Federation of State Boards of Physical Therapy as a competency assessment for PT's who have not been in active clinical practice. The PRT would be used to allow the PT to assess his areas of weakness, so a precepted experience could be more directed. Additionally, PTs who meet the standard on the review tool would be granted credit for some of the traineeship hours.

At its meeting on May 13, 2011, the board adopted additional changes in response to public comment:

1. Defined FSBPT as the Federation of State Boards of Physical Therapy (18VAC112-20-10).

2. Clarified that the PRT is an assessment "developed and administered by FSBPT" (18VAC112-20-10).

3. Clarified that the Coursework Evaluation Tool is based on the year of graduation (18VAC112-20-50).

4. Clarified that an applicant for licensure by endorsement may document meeting the standard on the PRT, rather than passing the PRT (18VAC112-20-65).

5. Added the FSBPT to the list of organizations that may approve or provide continuing education (18VAC112-20-131).

6. Clarified that the PRT is an assessment rather than an examination and PT's meet the standard of the assessment rather than pass the examination (18VAC112-20-131).

7. Clarified that an applicant for reactivation of an inactive license may document meeting the standard on the PRT, rather than passing the PRT (18VAC112-20-135).

8. Clarified that an applicant for reinstatement of a lapsed license may document meeting the standard on the PRT, rather than passing the PRT (18VAC112-20-135).

Issues: The primary advantage to the public would be greater protection for patients in the practice of trainees by closer supervision of their practice and identification of their status as a trainee. Use of the PRT will offer applicants and licensees information about their weaknesses in current practice knowledge to allow them to direct continuing education (CE) or supervised practice in those areas. Elimination of the face-to-face requirement for Type 1 hours will reduce the financial burden of PTs and PTAs while continuing to ensure the safety of the public by allowing licensees to fulfill their CE requirements with less time from practice and patient care. There are no disadvantages to the public.

There are no advantages or disadvantages to the agency or the Commonwealth.

Background: The Board of Physical Therapy published proposed amendments to 18VAC112-20 in 27:12 VA.R. 1454-1461 February 14, 2011. In response to comment, the board adopted additional changes to the proposed regulation at its meeting on May 13, 2011, as detailed in the Substance section. The board is publishing the reproposed regulations with amendments suggested by Federation of State Boards of Physical Therapy (FSBPT) and has re-opened the comment period for an additional 30 days. Changes made since publication of the proposed amendments are shown in brackets.

Summary:

The proposed amendments, as originally proposed, (i) offer the option of passage of the Practice Review Tool in lieu of some training hours for applicants returning to practice through reinstatement, reactivation, or endorsement; (ii) reduce the traineeship hours for physical therapist assistants; (iii) allow part-time traineeships for graduates of nonapproved physical therapy schools; (iv) limit the numbers of supervisors for each trainee; (v) require co-signing of trainee documentation in patient

records and identification of a trainee for the patient; and (vi) eliminate the requirement that Type 1 continuing education training be face-to-face.

Since publication of the proposed regulations, the board amended the regulations to clarify that the Practice Review Tool is not an examination but an assessment of which a physical therapist may or may not meet the standard. Since the PRT may be counted as continuing education, the board added FSBPT to the list of continuing education providers. The board also clarified that the coursework evaluation tool used to evaluate education in a non-accredited PT program should be based on the year of graduation.

Part I
General Provisions

18VAC112-20-10. Definitions.

In addition to the words and terms defined in § 54.1-3473 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Active practice" means a minimum of 160 hours of professional practice as a physical therapist or physical therapist assistant within the 24-month period immediately preceding renewal. Active practice may include supervisory, administrative, educational or consultative activities or responsibilities for the delivery of such services.

"Approved program" means an educational program accredited by the Commission on Accreditation in Physical Therapy Education of the American Physical Therapy Association.

"CLEP" means the College Level Examination Program.

"Contact hour" means 60 minutes of time spent in continuing learning activity exclusive of breaks, meals or vendor exhibits.

"Direct supervision" means a physical therapist or a physical therapist assistant is physically present and immediately available and is fully responsible for the physical therapy tasks or activities being performed.

"Discharge" means the discontinuation of interventions in an episode of care that have been provided in an unbroken sequence in a single practice setting and related to the physical therapy interventions for a given condition or problem.

"Evaluation" means a process in which the physical therapist makes clinical judgments based on data gathered during an examination or screening in order to plan and implement a treatment intervention, provide preventive care, reduce risks of injury and impairment, or provide for consultation.

~~"Face-to-face" means learning activities or courses obtained in a group setting or through interactive, real-time technology.~~

"FCCPT" means the Foreign Credentialing Commission on Physical Therapy.

["FSBPT" means the Federation of State Boards of Physical Therapy.]

"General supervision" means a physical therapist shall be available for consultation.

"National examination" means the examinations developed and administered by the Federation of State Boards of Physical Therapy and approved by the board for licensure as a physical therapist or physical therapist assistant.

"PRT" means the Practice Review Tool for competency assessment [~~given by the Federation of State Boards of Physical Therapy~~ developed and administered by FSBPT].

"Support personnel" means a person who is performing designated routine tasks related to physical therapy under the direction and supervision of a physical therapist or physical therapist assistant within the scope of this chapter.

"TOEFL" means the Test of English as a Foreign Language.

"Trainee" means a person seeking licensure as a physical therapist or physical therapist assistant who is undergoing a traineeship.

"Traineeship" means a period of active clinical practice during which an applicant for licensure as a physical therapist or physical therapist assistant works under the direct supervision of a physical therapist approved by the board.

"TSE" means the Test of Spoken English.

"Type 1" means ~~face-to-face~~ continuing learning activities offered by an approved organization as specified in 18VAC112-20-131.

"Type 2" means continuing learning activities which may or may not be offered by an approved organization but shall be activities considered by the learner to be beneficial to practice or to continuing learning.

18VAC112-20-50. Education requirements: graduates of schools not approved by an accrediting agency approved by the board.

A. An applicant for initial licensure as a physical therapist who is a graduate of a school not approved by an accrediting agency approved by the board shall submit the required application and fee and provide documentation of the physical therapist's certification by a report from the FCCPT or of the physical therapist eligibility for licensure as verified by a report from any other credentialing agency approved by the board that substantiates that the physical therapist has

been evaluated in accordance with requirements of subsection B of this section.

B. The board shall only approve a credentialing agency that:

1. Utilizes the [FSBPT] Coursework Evaluation Tool for Foreign Educated Physical Therapists [~~of the Federation of State Boards of Physical Therapy~~ , based on the year of graduation,] and utilizes original source documents to establish substantial equivalency to an approved physical therapy program;

2. Conducts a review of any license or registration held by the physical therapist in any country or jurisdiction to ensure that the license or registration is current and unrestricted or was unrestricted at the time it expired or was lapsed; and

3. Verifies English language proficiency by passage of the TOEFL and TSE examination or the TOEFL iBT, the Internet-based tests of listening, reading, speaking and writing or by review of evidence that the applicant's physical therapy program was taught in English or that the native tongue of the applicant's nationality is English.

C. An applicant for licensure as a physical therapist assistant who is a graduate of a school not approved by the board shall submit with the required application and fee the following:

1. Proof of proficiency in the English language by passing TOEFL and TSE or the TOEFL iBT, the Internet-based tests of listening, reading, speaking, and writing by a score determined by the board or an equivalent examination approved by the board. TOEFL iBT or TOEFL and TSE may be waived upon evidence that the applicant's physical therapist assistant program was taught in English or that the native tongue of the applicant's nationality is English.

2. A copy of the original certificate or diploma that has been certified as a true copy of the original by a notary public, verifying his graduation from a physical therapy curriculum. If the certificate or diploma is not in the English language, submit either:

a. An English translation of such certificate or diploma by a qualified translator other than the applicant; or

b. An official certification in English from the school attesting to the applicant's attendance and graduation date.

3. Verification of the equivalency of the applicant's education to the educational requirements of an approved program for physical therapist assistants from a scholastic credentials service approved by the board.

D. An applicant for initial licensure as a physical therapist or a physical therapist assistant who is not a graduate of an approved program shall also submit verification of having successfully completed a ~~full-time~~ 1,000-hour traineeship within a two-year period under the direct supervision of a licensed physical therapist. The board may grant an extension beyond two years for circumstances beyond the control of the applicant, such as temporary disability or mandatory military service.

1. The traineeship shall be in accordance with requirements in 18VAC112-20-140.

2. The traineeship requirements of this part may be waived if the applicant for a license can verify, in writing, the successful completion of one year of clinical physical therapy practice as a licensed physical therapist or physical therapist assistant in the United States, its territories, the District of Columbia, or Canada, equivalent to the requirements of this chapter.

18VAC112-20-65. Requirements for licensure by endorsement.

A. A physical therapist or physical therapist assistant who holds a current, unrestricted license in the United States, its territories, the District of Columbia, or Canada may be licensed in Virginia by endorsement.

B. An applicant for licensure by endorsement shall submit:

1. Documentation of having met the educational requirements prescribed in 18VAC112-20-40 or 18VAC112-20-50. In lieu of meeting such requirements, an applicant may provide evidence of clinical practice during the five years immediately preceding application for licensure in Virginia with a current, unrestricted license issued by another U.S. jurisdiction;

2. The required application, fees, and credentials to the board;

3. A current report from the Healthcare Integrity and Protection Data Bank (HIPDB) and a current report from the National Practitioner Data Bank (NPDB);

4. Evidence of completion of 15 hours of continuing education for each year in which the applicant held a license in another U.S. jurisdiction, or 60 hours obtained within the past four years; and

5. Documentation of passage of an examination equivalent to the Virginia examination at the time of initial licensure or documentation of passage of an examination required by another state at the time of initial licensure in that state and active, clinical practice with a current, unrestricted license for at least five years prior to applying for licensure in Virginia.

For the purpose of this subsection, active, clinical practice shall mean at least 2,500 hours of patient care over a five-year period.

C. A physical therapist ~~or physical therapist assistant~~ seeking licensure by endorsement who has not actively practiced physical therapy for at least 320 hours within the

four years immediately preceding his application for licensure shall ~~first successfully~~:

1. Successfully complete 480 hours in a traineeship in accordance with requirements in 18VAC112-20-140; or

2. Document [~~passage of~~ that he meets the standard of] the PRT within the two years preceding application for licensure in Virginia and successfully complete 320 hours in a traineeship in accordance with the requirements in 18VAC112-20-140.

D. A physical therapist assistant seeking licensure by endorsement who has not actively practiced physical therapy for at least 320 hours within the four years immediately preceding his application for licensure shall successfully complete 320 hours in a traineeship in accordance with the requirements in 18VAC112-20-140.

18VAC112-20-70. Traineeship for unlicensed graduate scheduled to sit for the national examination.

A. Upon approval of the president of the board or his designee, an unlicensed graduate who is registered with the Federation of State Boards of Physical Therapy to sit for the national examination may be employed as a trainee under the direct supervision of a licensed physical therapist until the results of the national examination are received.

B. The traineeship, which shall be in accordance with requirements in 18VAC112-20-140, shall terminate two working days following receipt by the candidate of the licensure examination results.

C. The unlicensed graduate may reapply for a new traineeship while awaiting to take the next examination. A new traineeship shall not be approved for more than one year following the receipt of the first examination results.

18VAC112-20-131. Continued competency requirements for renewal of an active license.

A. In order to renew an active license biennially, a physical therapist or a physical therapist assistant shall complete at least 30 contact hours of continuing learning activities within the two years immediately preceding renewal. In choosing continuing learning activities or courses, the licensee shall consider the following: (i) the need to promote ethical practice, (ii) an appropriate standard of care, (iii) patient safety, (iv) application of new medical technology, (v) appropriate communication with patients, and (vi) knowledge of the changing health care system.

B. To document the required hours, the licensee shall maintain the Continued Competency Activity and Assessment Form that is provided by the board and that shall indicate completion of the following:

1. A minimum of ~~15~~ 20 of the contact hours required for physical therapists and ~~10~~ 15 of the contact hours required for physical therapist assistants shall be in Type 1 ~~face-to-face~~ courses. For the purpose of this section, "course" means an organized program of study, classroom experience or similar educational experience that is directly related to the clinical practice of physical therapy and approved or provided by one of the following organizations or any of its components:

a. The Virginia Physical Therapy Association;

b. The American Physical Therapy Association;

c. Local, state or federal government agencies;

d. Regionally accredited colleges and universities;

e. Health care organizations accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO);

f. The American Medical Association - Category I Continuing Medical Education course; [~~and~~]

g. The National Athletic Trainers Association [; and

h. The FSBPT].

2. No more than ~~15~~ 10 of the contact hours required for physical therapists and ~~20~~ 15 of the contact hours required for physical therapist assistants may be Type 2 activities or courses, which may or may not be offered by an approved organization but which shall be related to the clinical practice of physical therapy. Type 2 activities may include but not be limited to consultation with colleagues, independent study, and research or writing on subjects related to practice.

3. Documentation of specialty certification by the American Physical Therapy Association may be provided as evidence of completion of continuing competency requirements for the biennium in which initial certification or recertification occurs.

4. Documentation of graduation from a transitional doctor of physical therapy program may be provided as evidence of completion of continuing competency requirements for the biennium in which the physical therapist was awarded the degree.

5. A physical therapist who can document that he has taken the PRT may receive 10 hours of Type 1 credit for the biennium in which the assessment [~~examination~~ tool] was taken. A physical therapist who can document that he has [~~passed~~ met the standard of] the PRT may receive 20 hours of Type 1 credit for the biennium in which the assessment [~~examination was passed~~ tool was taken].

C. A licensee shall be exempt from the continuing competency requirements for the first biennial renewal following the date of initial licensure by examination in Virginia.

D. The licensee shall retain his records on the completed form with all supporting documentation for a period of four years following the renewal of an active license.

E. The licensees selected in a random audit conducted by the board shall provide the completed Continued Competency Activity and Assessment Form and all supporting documentation within 30 days of receiving notification of the audit.

F. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

G. The board may grant an extension of the deadline for continuing competency requirements for up to one year for good cause shown upon a written request from the licensee prior to the renewal date.

H. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

I. Physical therapists holding certification to provide direct access without a referral shall include four contact hours as part of the required 30 contact hours of continuing education in courses related to clinical practice in a direct access setting.

18VAC112-20-135. Inactive license.

A. A physical therapist or physical therapist assistant who holds a current, unrestricted license in Virginia shall, upon a request on the renewal application and submission of the required renewal fee of $70 for a physical therapist and $35 for a physical therapist assistant, be issued an inactive license. The fee for the renewal of an inactive license due December 31, 2010, shall be $60 for a physical therapist and $30 for a physical therapist assistant.

1. The holder of an inactive license shall not be required to meet active practice requirements.

2. An inactive licensee shall not be entitled to perform any act requiring a license to practice physical therapy in Virginia.

B. A physical therapist or physical therapist assistant who holds an inactive license may reactivate his license by:

1. Paying the difference between the renewal fee for an inactive license and that of an active license for the biennium in which the license is being reactivated; ~~and~~

2. Providing proof of~~: a. Active~~ active practice hours in another jurisdiction equal to those required for renewal of an active license in Virginia for the period in which the license has been inactive.

a. If the inactive physical therapist licensee does not meet the requirement for active practice, the license may be reactivated by completing 480 hours in a traineeship that meets the requirements prescribed in 18VAC112-20-140 or documenting [~~passage~~ that he has met the standard] of the PRT within the two years preceding application for licensure in Virginia and successfully completing 320 hours in a traineeship in accordance with requirements in 18VAC112-20-140.

b. If the inactive physical therapist assistant licensee does not meet the requirement for active practice, the license may be reactivated by completing 320 hours in a traineeship that meets the requirements prescribed in 18VAC112-20-140; and

~~b. Completion of~~ 3. Completing the number of continuing competency hours required for the period in which the license has been inactive, not to exceed four years.

18VAC112-20-136. Reinstatement requirements.

A. A physical therapist or physical therapist assistant whose Virginia license is lapsed for two years or less may reinstate his license by payment of the renewal and late fees as set forth in 18VAC112-20-150 and completion of continued competency requirements as set forth in 18VAC112-20-131.

B. A physical therapist or physical therapist assistant whose Virginia license is lapsed for more than two years and who is seeking reinstatement shall:

1. Apply for reinstatement and pay the fee specified in 18VAC112-20-150; ~~Practice physical therapy in another jurisdiction for at least 320 hours within the four years immediately preceding applying for reinstatement or successfully complete 480 hours as specified in 18VAC112-20-140; and~~

2. Complete the number of continuing competency hours required for the period in which the license has been lapsed, not to exceed four years; and

3. Have actively practiced physical therapy in another jurisdiction for at least 320 hours within the four years immediately preceding applying for reinstatement.

a. If a physical therapist licensee does not meet the requirement for active practice, the license may be reinstated by completing 480 hours in a traineeship that meets the requirements prescribed in 18VAC112-20-140 or documenting [~~passage~~ that he has met the standard] of the PRT within the two years preceding application for licensure in Virginia and successfully completing 320 hours in a traineeship in accordance with requirements in 18VAC112-20-140.

b. If a physical therapist assistant licensee does not meet the requirement for active practice, the license may be reinstated by completing 320 hours in a traineeship that meets the requirements prescribed in 18VAC112-20-140.

18VAC112-20-140. Traineeship requirements.

A. The traineeship~~:~~ shall be (i) ~~shall be~~ in a facility that serves as a clinical education facility for students enrolled in an accredited program educating physical therapists in Virginia, (ii) ~~is~~ approved by the board, and (iii) ~~is~~ under the direction and supervision of a licensed physical therapist.

B. Supervision and identification of trainees:

1. There shall be a limit of two physical therapists assigned to provide supervision for each trainee.

2. The supervising physical therapist shall countersign patient documentation (i.e., notes, records, charts) for services provided by a trainee.

3. The trainee shall wear identification designating them as a "physical therapist trainee" or a "physical therapist assistant trainee."

C. Completion of traineeship.

1. The physical therapist supervising the ~~inactive practice~~ trainee shall submit a report to the board at the end of the required number of hours on forms supplied by the board.

2. If the traineeship is not successfully completed at the end of the required hours, as determined by the supervising physical therapist, the president of the board or his designee shall determine if a new traineeship shall commence. If the president of the board determines that a new traineeship shall not commence, then the application for licensure shall be denied.

3. The second traineeship may be served under a different supervising physical therapist and may be served in a different organization than the initial traineeship. If the second traineeship is not successfully completed, as determined by the supervising physical therapist, then the application for licensure shall be denied.

VA.R. Doc. No. R09-1926; Filed May 31, 2011, 4:24 p.m.

STATE CORPORATION COMMISSION

Bureau of Insurance

May 27, 2011

Administrative Letter 2011-03

To: All Licensed Property and Casualty Insurance Companies Writing Medical Malpractice Insurance in Virginia

Re: Amendments to § 8.01-581.15 of the Code of Virginia - Notice May Be Required by § 38.2-231 When the Insurer Increases the Policy's Liability Limits

During the 2011 Session of the Virginia General Assembly, Senate Bill 771 and House Bill 1459 amended § 8.01-581.15 of the Code of Virginia. Effective July 1, 2012, this amendment increases the total amount recoverable for any injury to, or death of, a patient to $2.05 million, and each year thereafter, the amount recoverable is increased $50,000 until it reaches the maximum of $3 million on July 1, 2031.

The amendment to § 8.01-581.15 does not require insurers to issue or amend policies that provide medical malpractice liability limits that are equal to the limits set forth in the statute. However, it is important to note that if an insurer chooses to increase a policy's liability limits in response to § 8.01-581.15, there may be some situations when the insurer will be required to provide the notice set forth in § 38.2-231 L of the Code of Virginia.

Section 38.2-231 L requires insurers to issue a notice when an insurer-initiated increase results in the renewal premium being increased greater than 25% of the expiring policy's premium. Administrative Letter 2006-12 provides examples of insurer-initiated increases. The following should also be considered when determining if the premium increase greater than 25% is insurer-initiated:

- When an insurer increases the insured's liability limit at renewal, the increase would be considered an insurer-initiated increase.
- If an insurer issues policies containing a condition that increases the policy limits automatically as the recoverable amount increases, the premium increase associated with the change in the liability limit would be considered an insurer-initiated increase.
- It is not considered an insurer-initiated increase when the insurer has documentation in its underwriting files to show that the insured has requested the insurer to increase the liability limit as the recoverable amount increases. Additionally, the insurer's applications or renewal questionnaires may include a statement, signed by the insured, requesting the insurer to increase the liability limit as the recoverable amount increases.

If you have any questions regarding this administrative letter, please contact Melinda Willis, Supervisor of the Commercial Casualty Rates and Forms Section, at (804) 371-9667.

/s/ Jacqueline K. Cunningham
Commissioner of Insurance

DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice of Release of Final 2012 Water Quality Assessment Guidance

The Virginia Department of Environmental Quality (DEQ) will release the final 2012 Water Quality Assessment Guidance Manual on June 20, 2011.

Virginia's 2012 Water Quality Assessment Guidance Manual contains the assessment procedures and methods to be used for the development of Virginia's 2012 § 305(b)/§ 303(d) Integrated (i.e., combined Water Quality Assessment and Impaired Waters) Report. The assessment guidance seeks to address all key elements of the U.S Environmental Protection Agency (EPA) 2006 Assessment Guidance and subsequent updates current up to March 2011, in addition to the assessment methodology for Chesapeake Bay Water Quality Standards established by EPA, most recently updated in the May 2010 addendum to Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity, and Chlorophyll a for the Chesapeake Bay and Its Tidal Tributaries.

The assessment guidance also reflects changes in Virginia's Water Quality Standards, which became effective on January 6, 2011. The Standards were updated with refinements to the methodology used in the estimation of pycnoclines in the Chesapeake Bay. Furthermore, the use of a geometric mean for seasonal chlorophyll a criteria in the James River has now been explicitly specified.

The assessment guidance also includes a new section devoted to the assessment of continuous monitoring data.

Section 62.1-44.19:5 C of the Code of Virginia requires DEQ to develop and publish the procedures used for defining and determining impaired waters and provide for public comment on the procedures. A draft version of this guidance was released for public review and comment on March 28, 2011. The comment period closed on April 29, 2011. Only one comment was received from the public.

A copy of the final 2012 Water Quality Assessment Guidance Manual will be available to download from the DEQ Water Quality Assessment webpage at http://www.deq.virginia.gov/wqa/ on June 20, 2011. A hard copy can also be requested from Tish Robertson, DEQ Water Quality Assessment Coordinator, using the contact information below.

DEQ's response to comments received during the public comment period are also available for download at the URL

above. This document has also been mailed to the organization that submitted comment.

Contact Information: Tish Robertson, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4309, FAX (804) 698-4032, or email tish.robertson@deq.virginia.gov.

Proposed Consent Order for Celebrate Virginia North Community Development Authority and T.S.C.

An enforcement action has been proposed for Celebrate Virginia North Community Development Authority and T.S.C. for alleged violations in Stafford County associated with the Celebrate Virginia North Development. The consent order describes a settlement to resolve unpermitted impacts taken to surface waters conducted on the property. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Sarah Baker will accept comments by email at sarah.baker@deq.virginia.gov, FAX at (703) 583-3821, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from June 21, 2011, through July 21, 2011.

Proposed Consent Order for SCI Virginia Funeral Services, Inc.

An enforcement action has been proposed for SCI Virginia Funeral Services, Inc. for alleged violations in Fairfax County associated with the King David Memorial Cemetery. The consent order describes a settlement to resolve unpermitted impacts taken to surface waters associated with the King David Memorial Cemetery. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Daniel Burstein will accept comments by email at daniel.durstein@deq.virginia.gov, FAX at (703) 583-3821, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from June 21, 2011, through July 21, 2011.

Proposed Consent Order for W. Harold Talley II, LLC

An enforcement action has been proposed for W. Harold Talley II, LLC, for violations of the underground storage tank regulations at the Surry Quick Stop in Surry County. The consent order requires corrective action. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Jennifer Hoeffner will accept comments by email at jennifer.hoeffner@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 June 20, 2011, to July 22, 2011.

Total Maximum Daily Load Study for Parker Creek

Purpose of notice: To seek public comment on a proposed modification to the completed benthic total maximum daily load (TMDL) study for Parker Creek, located in Accomack County, Virginia.

First Public Notice Issue Date: June 20, 2011.

Public comment period: 30 days following first public notice issue date.

Project Description - Parker Creek TMDL Study Modification: This TMDL was approved by the Environmental Protection Agency on November 7, 2008, and can be found at the following website: http://www.deq.virginia.gov/tmdl/apptmdls/baycoast/parkerbc.pdf. The Department of Environmental Quality (DEQ) proposes to revise the original TMDL to clarify language that describes the mechanism to achieve the Parker Creek benthic aquatic life use through the TMDL's total phosphorus concentration endpoint. The original TMDL will be changed to describe how a previously permitted facility, Perdue Farms, Inc in Accomack, VA (VPDES Permit No. VA0003808) will be required to assure compliance with the TMDL total phosphorus concentration endpoint, 0.10 mg/L. TMDL equations and WLA equations should remain and narrative description added to provide reinforcement that this is a concentration based nutrient TMDL. The concentration endpoint should be achieved by enforcement of the 0.10 mg/L total phosphorus permit limit, and appropriate implementation to achieve reductions in the original nonpoint phosphorus sources in the watershed. The TMDL does not require flow restrictions to assure attainability of Parker Creek's benthic aquatic life use. Although overall loading may change at the TMDL outlet this should not impact stream water quality or attainment of the currently impaired use.

Updating the description of the mechanism for achieving the TMDL and associated text in the Parker Creek benthic TMDL will protect and preserve water quality because the original endpoint is used, and the reasonable assurance will be reinforced by clarifying the mechanism to achieve the endpoint.

How to comment on the TMDL modification: DEQ accepts comments by email, fax, or postal mail. All comments must be in writing and be received by DEQ during the comment period. The public also may request a public meeting. Submittals must include the names, mailing addresses, and telephone numbers of the commenter and of all persons represented by the commenter.

Contact for public comments, document requests, and additional information: Jennifer Howell, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2000, FAX (757) 518-2009, or email jennifer.howell@deq.virginia.gov.

The public may review the documents at the DEQ office named in the above contact information.

Total Maximum Daily Load for York River Basin

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation seek written and oral comments from interested persons on the development of an implementation plan (IP) for bacteria total maximum daily loads (TMDLs) on a 7.33 mile stream segment of Goldmine Creek in Louisa County; a 2.51 mile segment of Beaver Creek, 2.52 mile segment of Mountain Run, 12.15 mile segment of Pamunkey Creek, and 1.83 mile segment of Terry's Run in Orange County; and a 3.12 mile segment of Plentiful Creek in Spotsylvania County. The TMDLs for these stream impairments were completed in August 2005 and can be found in the Bacteria TMDLs for York River Basin Orange, Louisa, Spotsylvania Counties, Virginia study report on DEQ's website, http://www.deq.virginia.gov/tmdl/apptmdls/yorkrvr/lakeanna.pdf.

Section 62.1-44.19:7 C of the Code of Virginia requires the development of an IP for approved TMDLs. The IP should provide measurable goals and the date of expected achievement of water quality objectives. The IP should also include the corrective actions needed and their associated costs, benefits, and environmental impacts.

The final public meeting to discuss the draft IP for the bacteria TMDLs listed in this notice will be held on Thursday, June 21, 2011, 6 p.m. to 8 p.m. at the Town of Orange Public Works Community Room, 235 Warren Street, Orange, Virginia. At this meeting, the implementation plan development process for this project will be reviewed and the draft implementation plan will be made available for public discussion and comment. The previous public and working group meeting notes, as well as other supplemental information can be found at www.rrregion.org/tmdl_york.html.

The 30-day public comment period on the information presented at the meetings will end on July 21, 2011. A fact sheet on the development of an IP for Goldmine Creek, Beaver Creek, Mountain Run, Pamunkey Creek, Terry's Run, and Plentiful Creek is available at www.rrregion.org/tmdl_york.html. Questions or information requests should be addressed to May Sligh with the Virginia Department of Conservation and Recreation. Written comments and inquiries should include the name, address, and telephone number of the person submitting the comments and should be sent to May Sligh, Department of Conservation and Recreation, email may.sligh@dcr.virginia.gov, or telephone (804) 443-1494.

COMMISSION ON LOCAL GOVERNMENT

Schedule for the Assessment of State and Federal Mandates on Local Governments

Pursuant to the provisions of §§ 2.2-613 and 15.2-2903(6) of the Code of Virginia, the following schedule, established by the Commission on Local Government and approved by the Secretary of Commerce and Trade and Governor McDonnell, represents the timetable that the listed executive agencies will follow in conducting their assessments of certain state and federal mandates that they administer that are imposed on local governments. Such mandates are either new (in effect for at least 24 months) or newly identified. In conducting these assessments, agencies will follow the process established by Executive Order 58 which became effective October 11, 2007. These mandates are abstracted in the Catalog of State and Federal Mandates on Local Governments published by the Commission on Local Government.

For further information contact Zachary Robbins, Senior Policy Analyst, Commission on Local Government, email zachary.robbins@dhcd.virginia.gov or telephone (804) 371-8010 or visit the Commission's website at www.dhcd.virginia.gov.

STATE AND FEDERAL MANDATES ON LOCAL GOVERNMENTS

Approved Schedule of Assessment Periods
July 2011 through June 2012 for Executive Agency
Assessment of Cataloged Mandates

AGENCY Mandate Short Title	CATALOG NUMBER	ASSESSMENT PERIOD
AGRICULTURE AND CONSUMER SERVICES, DEPARTMENT OF		
Inspection of Commercial Dog Breeding Locations	SAF.VDACS010	8/1/11 to 10/31/11
CONSERVATION AND RECREATION, DEPARTMENT OF		
Dam Safety, Flood Prevention and Protection Assistance Fund	SNR.DCR003	10/1/11 to 12/31/11
Dam Safety and Flood Prevention Planning	SNR.DCR020	10/1/11 to 12/31/11
CRIMINAL JUSTICE SERVICE SERVICES, DEPT OF		
Domestic and Sexual Assault Policies	SPS.DCJS030	8/1/11 to 10/31/11
EDUCATION, DEPARTMENT OF		
Felony/Child Abuse/Molestation/ Crime of Moral	SOE.DOE003	7/1/11 to 8/31/11

Turpitude Offense Certification Required		
School Board Background Checks for Employees and Contractors	SOE.DOE006	8/1/11 to 9/30/11
Required Local Funding Effort for School Division	SOE.DOE095	9/1/11 to 10/31/11
Planning Time for Elementary School Teachers	SOE.DOE127	10/1/11 to 11/30/11
ENVIRONMENTAL QUALITY, DEPARTMENT OF		
Sewage Collection and Treatment Regulation	SNR.DEQ035	8/1/11 to 10/31/11
EMERGENCY MANAGEMENT, DEPARTMENT OF		
Appoint Local Emergency Management Director	SPS.VDEM001	4/1/12 to 6/30/12
GAME AND INLAND FISHERIES, DEPARTMENT OF		
Restrictions on Feeding Waterfowl	SNR.DGIF007	9/1/11 to 11/30/11
HOUSING AND COMMUNITY DEVELOPMENT, DEPARTMENT OF		
Disclosure of Proffered Cash Payments and Expenditures	SCT.DHCD018	7/1/11 to 9/30/11
LIBRARY OF VIRGINIA, THE		
Protection from Identity Theft	SOE.LVA007	3/1/12 to 5/31/12
SOCIAL SERVICES, DEPARTMENT OF		
Foster Care Services	SHHR.DSS032	9/1/11 to 10/31/11
TRANSPORTATION, DEPARTMENT OF		
Subdivision Street Development Control	STO.VDOT009	4/1/12 to 6/30/12
Traffic Signs, Signals, and Markings	STO.VDOT013	4/1/12 to 6/30/12

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on May 25, 2011. The orders may be viewed at the State Lottery Department, 900 East Main Street, Richmond, VA, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, VA.

Director's Order Number Forty-Three (11)

"Retailer Recruitment Incentive Plan" Virginia Lottery Retailer Incentive Program Rules (effective May 24, 2011)

Director's Order Number Forty-Four (11)

"You Activate/We Pay" Virginia Lottery Retailer Incentive Program Rules (effective May 24, 2011)

DEPARTMENT OF MEDICAL ASSISTANCE

2011 Managed Care Quality Strategy Final Draft for Public Comment

In accordance with the requirements of the federal Medicaid authority, the Centers for Medicare and Medicaid Services (CMS), the Department of Medical Assistance Services gives notice that the agency is publishing for public comment a final draft of the DMAS 2011 Managed Care Quality Strategy. The Code of Federal Regulations, specifically 42 CFR § 438.202, requires states that contract with Managed Care Organizations (MCOs) to have a written strategy for assessing and improving the quality of managed care services offered by all MCOs. It also requires those states to obtain the input of recipients and other stakeholders in the development of the strategy and to make the strategy available for public comment before adopting it in final. The purpose of this notice is to fulfill that requirement. This strategy was originally posted on February 23, 2011, until March 25, 2011. Two comment letters were received and added to the appendices of the strategy. The strategy was then reviewed by CMS. CMS provided suggestions for additional content, which DMAS agreed and added. The additions can be found highlighted on pages 5, 8, 9, 25, 26, 27 of the strategy.

CMS reviewed the additional content and approved the strategy. The CMS approval letter is included in the appendix as the back page.

A copy of the DMAS Final Draft 2011 Managed Care Quality Strategy may be viewed on the DMAS website at the following address: http://dmasva.dmas.virginia.gov/Content_atchs/mc/mc-qs.pdf.

This notice is being made available for comment by interested parties through June 21, 2011. Following this public notice period, DMAS shall take into consideration the public comments received by the agency. Anyone wishing to provide public comment on the Final DMAS Draft 2011 Managed Care Quality Strategy may submit their comments to: Carol L. Stanley, MS, CPHQ, Quality Improvement Analyst, as indicated in the contact information.

Contact Information: Carol L. Stanley, MS, CPHQ, Quality Improvement Analyst, Division of Health Care Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-7980, FAX (804) 786-1680, or email carol.stanley@dmas.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Consent Order for Hercules Incorporated

An enforcement action has been proposed for Hercules Incorporated for alleged violations of the Virginia Pollutant Discharge Elimination System Permit at the facility operated by Hercules at 27123 Shady Brook Trail, Southampton County. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Paul R. Smith will accept comments by email at paul.smith@deq.virginia.gov, FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, from June 20, 2011, to July 20, 2011.

Proposed Consent Order for the City of Lynchburg

An enforcement action has been proposed for the City of Lynchburg for violations of the State Water Control Law and Regulation in the City of Lynchburg. The State Water Control Board proposes to issue a Consent Order to the City of Lynchburg to resolve violations regarding sanitary sewer overflows at the City's Regional Wastewater Treatment Plant and Sanitary Sewer Collection System. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. G. Marvin Booth, III will accept comments by email at marvin.booth@deq.virginia.gov, FAX at (434) 582-5125 or postal mail at Department of Environmental Quality, 7705 Timberlake Road, Lynchburg, VA 24502, from June 20, 2011, to July 21, 2011.

Proposed Consent Order for S.E.A. Solutions Corporation

An enforcement action has been proposed for S.E.A. Solutions Corporation for alleged violations of Virginia Pollutant Discharge Elimination System General Permit VAR05 and for the unauthorized discharge of oil to state waters at its ship dismantling facility at 5500 Bainbridge Boulevard, Chesapeake, Virginia. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Paul R. Smith will accept comments by email at paul.smith@deq.virginia.gov, FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, from June 20, 2011, to July 20, 2011.

Proposed Consent Order for Tyson Farms, Inc.

An enforcement action has been proposed for Tyson Farms, Inc., for alleged violations of the Virginia Pollutant Discharge Elimination System Permit at the Tyson Facility at 11224 Lankford Highway, Temperanceville, Accomack County. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Paul R. Smith will accept comments by email at paul.smith@deq.virginia.gov, FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, from June 18, 2011, to July 20, 2011.

VIRGINIA CODE COMMISSION

Recodifying Titles of the Code of Virginia -- Public Input Requested

The Virginia Code Commission is responsible for publishing and maintaining the Code of Virginia, which contains the general and permanent statutes of the Commonwealth. In addition, it is the commission's duty to revise or recodify individual titles of the Code of Virginia as determined by the commission.

The Virginia Code Commission seeks input from law practitioners and other interested parties concerning which titles of the Code of Virginia the commission should consider placing on its future work plan for the purpose of recodification or revision. The main purposes of a title recodification are to improve the organization of the title and modernize the language. To the extent practical, the commission avoids making substantive changes to the statutory text. In the event a substantive change is made, the change is highlighted and explained in the final report.

The commission currently is completing its work on Title 64.1, Wills and Decedents' Estates, assisted by an advisory panel of practitioners experienced in this area. For a list of other recent title revisions and to view the final reports, go to the commission's website: http://codecommission.dls.virginia.gov/titlerevisions.htm.

Send recommendations to Jane Chaffin at jchaffin@dls.virginia.gov or 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, by July 1, 2011.

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; FAX (804) 692-0625; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing

regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at http://register.dls.virginia.gov/cumultab.htm.

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 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.

ERRATA

STATE CORPORATION COMMISSION

Title of Regulation: **14VAC5-215. Rules Governing Independent External Review of Final Adverse Utilization Review Decisions (amending 14VAC5-215-10).**

14VAC5-216. Rules Governing Internal Appeal and External Review (adding 14VAC5-216-10 through 14VAC5-216-130).

Publication: 27:19 VA.R. 2211 May 23, 2011.

Correction to Proposed Regulation:

Page 2211, the Order to Take Notice was inadvertently omitted from publication and should appear following the summary as follows:

AT RICHMOND, MAY 2, 2011

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2011-00070

Ex Parte: In the matter of
Amending Rules Governing Independent
External Review of Final Adverse Utilization
Review Decisions and Adopting New Rules
Governing Internal Appeal and
External Review

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code of Virginia provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code of Virginia.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code of Virginia are set forth in Title 14 of the Virginia Administrative Code.

The Bureau of Insurance ("Bureau") has submitted to the Commission a proposal to amend section 10 in Chapter 215 in Title 14 of the Virginia Administrative Code entitled "Rules Governing Independent External Review of Final Adverse Utilization Review Decisions" and adopt a new chapter, Chapter 216 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Internal Appeal and External Review," as set forth at 14 VAC 5-216-10 through 14 VAC 5-216-130 and accompanying forms.

The amendment to section 10 in Chapter 215 is necessary to limit the chapter's application to final adverse decisions made before or on June 30, 2011.

The proposed new rules in Chapter 216 are necessary because the federal Patient Protection and Affordable Care Act requires that the state's external review program be in conformity with the Uniform Health Carrier External Review Model Act prepared by the National Association of Insurance Commissioners. The 2011 General Assembly passed House Bill 1928 (Acts of the Assembly Ch. 788) to conform Virginia's internal appeal and external review processes to meet these requirements. These rules clarify and implement the provisions contained in House Bill 1928 which becomes effective on July 1, 2011.

The Commission is of the opinion that section 10 in Chapter 215 of Title 14 of the Virginia Administrative Code should be amended, and the new rules at proposed Chapter 216 of Title 14 of the Virginia Administrative Code should be considered for adoption.

Accordingly, IT IS ORDERED THAT:

(1) The proposal that section 10 in Chapter 215 of Title 14 of the Virginia Administrative Code be amended and a new chapter proposed at Chapter 216 of Title 14 of the Virginia Administrative Code set forth at 14 VAC 5-216-10 through 14 VAC 5-216-130 and accompanying forms be attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of, or in opposition to, or request a hearing to oppose amending section 10 in Chapter 215 and the adoption of the proposed new Chapter 216 shall file such comments or hearing request on or before June 1, 2011, with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. INS-2011-00070. Interested persons desiring to submit comments

electronically may do so by following the instructions at the Commission's website: http://www.scc.virginia.gov/case.

(3) If no written request for a hearing on the proposed amendment and adoption of new rules is filed on or before June 1, 2011, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may amend section 10 in Chapter 215 and adopt proposed Chapter 216 of Title 14 of the Virginia Administrative Code as proposed by the Bureau of Insurance.

(4) AN ATTESTED COPY hereof, together with a copy of the proposal to amend and adopt new rules, shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Althelia P. Battle, who forthwith shall give further notice of the proposal to amend current rules and adopt new rules by mailing a copy of this Order, together with the proposal, to all companies, HMOs and health services plans licensed by the Commission to write accident and sickness insurance in the Commonwealth of Virginia, as well as all interested parties.

(5) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposal to amend current rules and adopt new rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register.

(6) The Commission's Division of Information Resources shall make available this Order and the attached proposed revisions to the Rules on the Commission's website, http://www.scc.virginia.gov/case.

(7) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (4) above.

VA.R. Doc. No. R11-2809; Filed June 9, 2011, 4:07 p.m.