VIRGINIA REGISTER OF REGULATIONS

VOL. 28 ISS. 9 | PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION | JANUARY 2, 2012

TABLE OF CONTENTS

THE VIRGINIA REGISTER OF REGULATIONS (USPS 001-831) is published biweekly by Matthew Bender & Company, Inc., 1275 Broadway, Albany, NY 12204-2694 for $197.00 per year. Periodical postage is paid in Albany, NY and at additional mailing offices. POSTMASTER: Send address changes to The Virginia Register of Regulations, 136 Carlin Road, Conklin, NY 13748-1531.

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. **28:2 VA.R. 47-141 September 26, 2011,** refers to Volume 28, Issue 2, pages 47 through 141 of the *Virginia Register* issued on September 26, 2011.

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).

January 2011 through January 2013

Volume: Issue	Material Submitted By Noon*	Will Be Published On
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
28:21	May 30, 2012	June 18, 2012
28:22	June 13, 2012	July 2, 2012
28:23	June 27, 2012	July 16, 2012
28:24	July 11, 2012	July 30, 2012
28:25	July 25, 2012	August 13, 2012
28:26	August 8, 2012	August 27, 2012
29:1	August 22, 2012	September 10, 2012
29:2	September 5, 2012	September 24, 2012
29:3	September 19, 2012	October 8, 2012
29:4	October 3, 2012	October 22, 2012
29:5	October 17, 2012	November 5, 2012
29:6	October 31, 2012	November 19, 2012
29:7	November 13, 2012	December 3, 2012
29:8	November 28, 2012	December 17, 2012
29:9	December 11, 2012	December 31, 2012
29:10	December 26, 2012	January 14, 2013
29:11	January 9, 2013	January 28, 2013

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

Agency Decision

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

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

Name of Petitioner: Jeffrey Blessing.

Nature of Petitioner's Request: Based on new findings and national trend towards legalization for medical use, the request is to reschedule Tetrahydro-cannibol from Schedule I to Schedule II.

Agency Decision: Request denied.

Statement of Reason for Decision: At its meeting on December 14, 2011, the board reviewed the petition, the comments and a response from the Drug Enforcement Administration (DEA) to a recent petition received by that federal agency. The DEA concluded that there is no substantial evidence that marijuana should be removed from Schedule I because it continues to meet all the criteria for such scheduling. Therefore, the board voted to reject the petition and take no further action.

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. R12-11; Filed December 14, 2011, 1:54 p.m.

BOARD OF VETERINARY MEDICINE

Initial Agency Notice

Title of Regulation: **18VAC150-20. Regulations Governing the Practice of Veterinary Medicine.**

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

Name of Petitioner: Diane C. Carey.

Nature of Petitioner's Request:

1. All animal hospitals must post in each examination room and at the sign in (reception desk) a notice with the hours that the hospital is staffed, including a notice that the hospital is not staffed after business hours if that is applicable. This notice shall be prominently displayed in each examination room and at the sign in desk. This notice shall be at least 7 inches by 11 inches with a minimum font of 36.

2. All clients must be given a copy of the disclosure form that states the hours of the hospital for the clients to keep in their home files.

3. Any time that an animal is being kept overnight, the animal hospital must obtain a new signed disclosure form stating the hours and a copy is to be given to the client at the time the animal is left at the hospital.

Agency's Plan for Disposition of Request: In accordance with Virginia law, the petition has been filed with the Register of Regulations and will be published on January 2, 2012. Comment on the petition may be sent by email or regular mail, or posted on the Virginia Regulatory Townhall at www.townhall.virginia.gov; comment will be accepted until January 23, 2012. Following receipt of all comments on the petition to amend 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 scheduled for February 15, 2012, and the petitioner will be informed of the board's decision after that meeting.

Public Comment Deadline: January 23, 2012.

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. R12-14; Filed December 6, 2011, 10:23 a.m.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER 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 Board of Agriculture and Consumer Services has WITHDRAWN the Notice of Intended Regulatory Action for **2VAC5-60, Rules and Regulations Governing the Operation of Livestock Markets,** which was published in 27:13 VA.R. 1479 February 28, 2011. This action is being withdrawn as the agency is unable to complete the drafting of a proposed regulation until the federal government has completed its work to finalize rules that directly impact the proposed state regulation.

Agency Contact: Dr. Charles C. Broaddus, Program Manager, Office of Veterinary Services, Department of Agriculture and Consumer Services, 102 Governor Street, Richmond, VA 23219, telephone (804) 786-2483, FAX (804) 371-2380, TTY (800) 828-1120, or email charles.broaddus@vdacs.virginia.gov.

VA.R. Doc. No. R11-2716; Filed December 9, 2011, 10:11 a.m.

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 Board of Agriculture and Consumer Services has WITHDRAWN the Notice of Intended Regulatory Action for **2VAC5-120, Rules and Regulations Governing the Recordkeeping By Virginia Cattle Dealers for the Control or Eradication of Brucellosis of Cattle,** which was published in 27:13 VA.R. 1479 February 28, 2011. This action is being withdrawn as the agency is unable to complete the drafting of a proposed regulation until the federal government has completed its work to finalize rules that directly impact the proposed state regulation.

Agency Contact: Dr. Charles C. Broaddus, Program Manager, Office of Veterinary Services, Department of Agriculture and Consumer Services, 102 Governor Street, Richmond, VA 23219, telephone (804) 786-2483, FAX (804) 371-2380, TTY (800) 828-1120, or email charles.broaddus@vdacs.virginia.gov.

VA.R. Doc. No. R11-2717; Filed December 9, 2011, 10:12 a.m.

TITLE 9. ENVIRONMENT

DEPARTMENT OF ENVIRONMENTAL QUALITY

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 Environmental Quality has WITHDRAWN the Notice of Intended Regulatory Action for **9VAC15-80, Small Renewable Energy Projects (Water Related) Permit by Rule Regulation,** which was published in 27:25 VA.R. 2649 August 15, 2011. The action is being withdrawn as the Director of the Department of Environmental Quality has determined that it is not necessary or appropriate to develop a permit-by-rule for water related small renewable energy projects at this time. See the General Notices section of this issue of the Virginia Register for a related notice by the Department of Environmental Quality.

Agency Contact: Carol C. Wampler, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4579, FAX (804) 698-4346, or email carol.wampler@deq.virginia.gov.

VA.R. Doc. No. R11-2901; Filed December 5, 2011, 3:06 p.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Social Services intends to consider amending **22VAC40-771, Adult Services Approved Providers.** The purpose of the proposed action is to provide a general review of this regulation, which sets forth standards for adult services providers who are approved by the local department of social services. This proposed regulatory action will also amend the regulation to (i) clarify regulation content that may be unclear, inconsistent, or outdated; and (ii) utilize person-centered language throughout the regulation.

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

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

Public Comment Deadline: February 1, 2012.

Agency Contact: Paige McCleary, Department of Social Services, Division of Family Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7536, FAX (804) 726-7895, TTY (800) 828-1120, or email paige.mccleary@dss.virginia.gov.

VA.R. Doc. No. R12-3064; Filed December 2, 2011, 2:33 p.m.

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Final Regulation

REGISTRAR'S NOTICE: The Board of Agriculture and Consumer Services is claiming an exemption from the Administrative Process Act in accordance with § 3.2-703 of the Code of Virginia, which exempts quarantine to prevent or retard the spread of a pest into, within, or from the Commonwealth, and § 3.2-704 of the Code of Virginia, which provides that the Board of Agriculture and Consumer Services shall prohibit the importation of any regulated article from any locality of other states, territories, or countries, into the Commonwealth.

Title of Regulation: **2VAC5-318. Rules and Regulations for Enforcement of the Virginia Pest Law - Thousand Cankers Disease (adding 2VAC5-318-10 through 2VAC5-318-140).**

Statutory Authority: § 3.2-703 of the Code of Virginia.

Effective Date: January 2, 2012.

Agency Contact: Erin Williams, Policy and Planning Coordinator, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-1308, FAX (804) 371-7479, TTY (800) 828-1120, or email erin.williams@vdacs.virginia.gov.

Summary:

This action establishes a quarantine to restrict the movement within Virginia of certain articles capable of transporting Thousand Cankers Disease, which is a disease complex that attacks walnut trees and has become established in the Commonwealth. The purpose of the quarantine is to help prevent the artificial spread of Thousand Cankers Disease to uninfested areas of the Commonwealth. The regulation establishes those articles that are subject to the provisions of the quarantine and establishes the specific counties and cities of the Commonwealth that are quarantined for Thousand Cankers Disease as (i) the entire counties of Chesterfield, Goochland, Hanover, Henrico, and Powhatan and (ii) the entire cities of Colonial Heights and Richmond.

The regulation allows regulated articles to move freely within a regulated area and prescribes conditions for the intrastate movement of regulated articles. The regulation prescribes the conditions necessitating that a regulated article moving within Virginia have a certificate issued by an inspector or person operating in accordance with a compliance agreement with the Virginia Department of Agriculture and Consumer Services. Regulated articles from states where Thousand Cankers Disease is known to occur are prohibited entry into the Commonwealth unless prior written approval is issued by the Commissioner of the Department of Agriculture and Consumer Services.

CHAPTER 318
RULES AND REGULATIONS FOR ENFORCEMENT OF THE VIRGINIA PEST LAW - THOUSAND CANKERS DISEASE QUARANTINE

2VAC5-318-10. Declaration of quarantine.

A quarantine is hereby established to restrict the movement of certain articles capable of transporting Thousand Cankers Disease unless such articles comply with the conditions of this regulation.

2VAC5-318-20. Purpose of quarantine.

The purpose of this quarantine is to help prevent the artificial spread of Thousand Cankers Disease to uninfested areas of the Commonwealth by regulating the movement of articles that are capable of transporting the disease. Thousand Cankers Disease is a disease complex that attacks walnut trees, Juglans spp. The fungus Geosmithia morbida is vectored by the walnut twig beetle, Pityophthorus juglandis, causing small cankers under the bark of the tree. The beetle introduces the fungus while it tunnels beneath the bark. As more beetles attack the tree, the number of cankers increases until they coalesce to girdle twigs and branches, restricting movement of nutrients and eventually killing the tree. Thousand Cankers Disease has become established in the Commonwealth and has the potential to spread to uninfested areas by natural means or through the movement of infested articles.

2VAC5-318-30. Definitions.

The following words and terms shall have the following meanings unless the context clearly indicates otherwise:

"Board" means the Virginia Board of Agriculture and Consumer Services.

"Certificate" means a document issued by an inspector or person operating in accordance with a compliance agreement to allow the movement of regulated articles to any destination.

"Commissioner" means the Commissioner of the Virginia Department of Agriculture and Consumer Services.

"Commonwealth" means the Commonwealth of Virginia.

"Compliance agreement" means a written agreement between a person engaged in growing, handling, receiving, or moving regulated articles and the Virginia Department of Agriculture and Consumer Services, wherein the former agrees to comply with the requirements of the compliance agreement and comply with the provisions of this regulation.

"Department" means the Virginia Department of Agriculture and Consumer Services.

"Infestation" means the presence of Thousand Cankers Disease or the existence of circumstances that make it reasonable to suspect that Thousand Cankers Disease is present.

"Inspector" means an employee of the Virginia Department of Agriculture and Consumer Services or other person authorized by the Commissioner of the Virginia Department of Agriculture and Consumer Services to enforce the provisions of this quarantine or regulation.

"Limited permit" or "permit" means a document issued by an inspector to allow the movement of regulated articles to a specific destination.

"Moved," "move," or "movement" means shipped; offered for shipment; received for transportation; transported; carried; or allowed to be moved, shipped, transported, or carried.

"Person" means the term as defined in § 1-230 of the Code of Virginia.

"Regulated area" means the localities, areas, or states listed in 2VAC5-318-50 of this regulation.

"Thousand Cankers Disease" means the disease complex caused by the fungus Geosmithia morbida that is vectored into walnut trees by the walnut twig beetle, Pityophthorus juglandis.

"Virginia Pest Law" means Chapter 7 (§ 3.2-700 et seq.) of Title 3.2 of the Code of Virginia.

2VAC5-318-40. Regulated articles.

The following articles are regulated under the provisions of this regulation:

1. Any life stage of the walnut twig beetle, Pityophthorus juglandis.

2. The fungal pathogen, Geosmithia morbida.

3. All plants and plant parts of the genus Juglans including but not limited to nursery stock, budwood, scionwood, green lumber, firewood, and other material living, dead, cut, or fallen including stumps, roots, branches, mulch, and composted and uncomposted chips.

4. Specific exemptions include, but are not limited to, nuts, nut meats, hulls, processed lumber (100% bark-free, kiln-dried, with squared edges), and finished wood products without bark, including walnut furniture, instruments, and other items derived from the genus Juglans.

5. Any other article or means of conveyance when it is determined by an inspector that it presents a risk of spread of Thousand Cankers Disease.

2VAC5-318-50. Regulated areas.

The following areas in Virginia are quarantined for Thousand Cankers Disease:

1. The entire counties of:

Chesterfield
Goochland
Hanover
Henrico
Powhatan

2. The entire cities of:

Colonial Heights
Richmond

2VAC5-318-60. Conditions governing the intrastate movement of regulated articles.

A. Movement within a regulated area. Movement of a regulated article solely within a regulated area is allowed without restriction.

B. Movement from a regulated area to an unregulated area. Movement of a regulated article that originates from within a regulated area to an unregulated area is allowed only if the regulated article is accompanied by a certificate or limited permit issued in accordance with 2VAC5-318-70 and attached in accordance with 2VAC5-318-100.

C. Movement from an unregulated area through a regulated area. A regulated article that originates outside of a regulated area may move through a regulated area under the following conditions:

1. With a certificate or limited permit issued in accordance with 2VAC5-318-70 and attached in accordance with 2VAC5-318-100; or

2. Without a certificate or limited permit if:

a. Accompanied by a waybill that indicates the point of origin of the regulated article;

b. The regulated article is moved directly through the regulated area without stopping, except for refueling or due to traffic conditions; or has been stored, packed, or handled at locations approved by an inspector as not posing a risk of infestation; and

c. The regulated article has not been combined or commingled with other articles so as to lose its individual identity.

D. Movement from a regulated area through an unregulated area. A regulated article that originates from within a regulated area may be moved through an unregulated area to a regulated area under the following conditions:

1. With a certificate or limited permit issued in accordance with 2VAC5-318-70 and attached in accordance with 2VAC5-318-100; or

2. Without a certificate or limited permit if:

a. Accompanied by a waybill that indicates the point of origin of the regulated article;

b. The regulated article is moved directly through the unregulated area without stopping, except for refueling or due to traffic conditions; or has been stored, packed, or handled at locations approved by an inspector as not posing a risk of infestation; and

c. The regulated article has not been combined or commingled with other articles so as to lose its individual identity.

2VAC5-318-70. Issuance and cancellation of certificates and limited permits.

A. Certificates and limited permits may be issued by an inspector for the movement of regulated articles originating from within a regulated area to any destination within Virginia when:

1. The regulated articles have been examined by the inspector and found to be apparently free of the Thousand Cankers Disease, or the regulated articles have been grown, produced, manufactured, stored, or handled in such a manner that, in the judgment of the inspector, would prevent an infestation or destroy all life stages of Thousand Cankers Disease;

2. The regulated articles are to be moved in compliance with any additional conditions deemed necessary under the Virginia Pest Law to prevent the spread of Thousand Cankers Disease; and

3. The regulated articles are eligible for unrestricted movement under all other domestic plant quarantines and regulations applicable to the regulated articles.

B. Certificates may be issued by any person operating under a compliance agreement for the movement of regulated articles to any destination within Virginia when:

1. The regulated articles have been examined by any person operating under a compliance agreement and found to be apparently free of Thousand Cankers Disease, or the regulated articles have been grown, produced, manufactured, stored, or handled in such a manner, and following all requirements of the compliance agreement, that would prevent an infestation;

2. The regulated articles are to be moved in compliance with any additional conditions deemed necessary under the Virginia Pest Law to prevent the spread of Thousand Cankers Disease; and

3. The regulated articles are eligible for unrestricted movement under all other domestic plant quarantines and regulations applicable to the regulated articles.

C. Any certificate or limited permit that has been issued or authorized may be withdrawn by the inspector orally or in writing if the inspector determines that the holder of the certificate or limited permit has not complied with all conditions for the use of the certificate or limited permit or with any applicable compliance agreement. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal shall be confirmed in writing and communicated to the certificate or limited permit holder as promptly as circumstances allow.

2VAC5-318-80. Compliance agreements and cancellation.

A. Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement when an inspector determines that the person understands the requirements and obligations under this regulation. The agreement shall stipulate safeguards that must be maintained against the establishment and spread of Thousand Canker Disease and the conditions governing the movement of regulated articles.

B. Any compliance agreement may be canceled orally or in writing by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this regulation. If the cancellation is oral, the cancellation and the reasons for the cancellation shall be confirmed in writing and communicated to the person who entered into such compliance agreement as promptly as circumstances allow.

2VAC5-318-90. Assembly and inspection of regulated articles.

A. Any person, other than a person authorized to issue certificates under 2VAC5-318-70, requesting a certificate or limited permit shall apply for inspection of the regulated article as far in advance as practical, but no less than five business days before the regulated articles are to be moved.

B. The regulated articles must be assembled at the place and in the manner the inspector designates as necessary to facilitate inspection and shall be safeguarded from infestation.

2VAC5-318-100. Attachment and disposition of certificates and limited permits.

A. During the intrastate movement, a certificate or limited permit must be attached at all times to the outside of the

container that contains the regulated article or to the regulated article itself. The requirements of this section may also be met by attaching the certificate or limited permit to the consignee's copy of the waybill, provided the regulated article is sufficiently described on the certificate or limited permit and on the waybill to facilitate the identification of the regulated article.

B. The certificate or the limited permit for the intrastate movement of a regulated article must be furnished by the carrier to the consignee at the destination of the regulated article. A copy of the certificate or the limited permit must be retained by the sender of the regulated article at the place of shipment.

2VAC5-318-110. Inspection and disposal of regulated articles and pests.

Upon presentation of official credentials, an inspector is authorized to stop and inspect, and to seize, destroy, or otherwise dispose of or require disposal of regulated articles as provided in the Virginia Pest Law.

2VAC5-318-120. Prohibited entry into Virginia.

A. The movement into Virginia of a regulated article originating in states that are known to have Thousand Cankers Disease or from any other area of the United States where federal or state plant regulatory officials have determined Thousand Cankers Disease to be present is prohibited unless prior written approval is issued by the commissioner. States with known areas of infestation of Thousand Cankers Disease include, but are not limited to:

Arizona
California
Colorado
Idaho
Nevada
New Mexico
Oregon
Pennsylvania
Tennessee
Utah
Washington

B. The movement of a regulated article for research purposes is permissible with the commissioner's prior written approval.

2VAC5-318-130. Nonliability of the department.

The department shall not be liable for any costs incurred by third parties whose costs result from, or are incidental to, inspections required under the provisions of this regulation.

2VAC5-318-140. Revocation of this regulation.

This regulation may be revoked by the board when the board is satisfied that the need for this quarantine no longer exists. Such revocation shall take place upon the date specified by the board in the order that revokes this regulation.

VA.R. Doc. No. R12-3053; Filed December 9, 2011, 1:15 p.m.

Final Regulation

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

Title of Regulation: **2VAC5-405. Regulations for the Application of Fertilizer to Nonagricultural Lands (amending 2VAC5-405-10, 2VAC5-405-20, 2VAC5-405-50, 2VAC5-405-60, 2VAC5-405-80, 2VAC5-405-90, 2VAC5-405-100).**

Statutory Authority: § 3.2-3602.1 of the Code of Virginia.

Effective Date: February 1, 2012.

Agency Contact: Erin Williams, Policy and Planning Coordinator, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-1308, FAX (804) 371-7479, TTY (800) 828-1120, or email erin.williams@vdacs.virginia.gov.

Summary:

The amendments (i) extend the applicability of the regulations to employees, representatives, and agents of state agencies, localities, and other governmental entities who apply fertilizer to nonagricultural lands as part of their official duties; (ii) establish reporting requirements for certain fertilizer applications; and (iii) add several new definitions.

2VAC5-405-10. Definitions.

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

"Accident" means an unexpected, undesirable event involving the use of fertilizer or the presence of a fertilizer that adversely affects the environment.

"Agricultural activity" means any activity used in the production of agricultural products for commercial purposes, including farming, feedlots, grazing livestock, poultry raising, dairy farming, and aquaculture activities.

"Agricultural products" means any livestock, aquacultural, poultry, horticultural, floricultural, viticultural, silvicultural, or other farm crops produced for commercial purposes.

"Board" means the Board of Agriculture and Consumer Services.

"Board-approved training" means training offered by a state agency or private entity approved by the board that includes, at a minimum, study and review of course material pertaining to the application of fertilizer on nonagricultural land. Such training shall include testing and certification of the individual's successful completion of the training.

"Certificate" means the document issued to a fertilizer applicator upon satisfactory completion of board-approved training.

"Certification" means the recognition granted by the board to a fertilizer applicator upon satisfactory completion of board-approved training.

"Certified fertilizer applicator" means any individual who has successfully completed board-approved training.

"Commissioner" means the Commissioner of the Department of Agriculture and Consumer Services.

"Contractor-applicator" means any person required to hold a permit to ~~distribute or~~ apply any fertilizer pursuant to § 3.2-3608 of the Code of Virginia.

"Department" means the Department of Agriculture and Consumer Services.

"Distribute" means to import, consign, manufacture, produce, compound, mix, blend, or in any way alter the chemical or physical characteristics of a fertilizer, or to offer for sale, sell, barter, warehouse, or otherwise supply fertilizer in the Commonwealth.

"Fertilizer" means any substance containing one or more recognized plant nutrients that is used for its plant nutrient content and that is designed for use, or claimed to have value, in promoting plant growth. Fertilizer does not include unmanipulated animal and vegetable manures, marl, lime, limestone, and other products exempted by regulation.

"Incident" means a definite and separate occurrence or event involving the use of fertilizer or the presence of a fertilizer that adversely affects the environment.

"Individual applicator training" means training provided to individuals by a certified fertilizer applicator or training offered to individuals by any state agency or private entity approved by the board that includes, at a minimum, a study and review of fertilizer equipment calibration; handling of accidents involving fertilizer; proper methods of storing, mixing, loading, transporting, handling, applying, and disposing of fertilizer; and safety and health concerns related to fertilizer, including proper use of personal protective equipment.

"Label" means the display of all written, printed, or graphic matter upon the immediate container or a statement accompanying a fertilizer, including an invoice.

"Lawn fertilizer" means any fertilizer intended for nonagricultural use on newly established turf areas from sod or seed during the first growing season, turf areas being repaired or renovated, and turf areas where soil tests performed within the past three years indicate a nutrient deficiency.

"Lawn maintenance fertilizer" means any fertilizer intended for the nonagricultural routine maintenance of turf.

"Licensee" means the person who receives a license to distribute any fertilizer under the provisions of § 3.2-3606 of the Code of Virginia.

"Nonagricultural land" means land upon which no agricultural activities are conducted and from which no agricultural products are derived.

"Noncertified fertilizer applicator" means either a trained applicator or an untrained applicator, neither of whom has received certification as a certified fertilizer applicator.

"Public sector applicator" means an employee, representative, or agent of a state agency, locality, or other governmental entity who applies fertilizer to nonagricultural lands.

"Trained applicator" means an individual who is not a certified fertilizer applicator but who has successfully completed individual applicator training.

"Turf" means nonagricultural land that is planted as closely mowed, managed grass and includes golf courses, parks, cemeteries, publicly owned lands, and residential, commercial, or industrial property.

"Under the direct on-site supervision of" means the act or process whereby the application of a fertilizer is made by an individual acting under the instructions and control of a certified fertilizer applicator who is responsible for the actions of that person and who is physically present on the land upon which the fertilizer is being applied.

"Untrained applicator" means an individual who is not seeking or has not successfully completed individual applicator training.

"Use of fertilizer" includes application or mixing and handling, transfer, or any act with respect to a particular fertilizer that is consistent with the label directions for that particular fertilizer.

2VAC5-405-20. General requirements.

A. The board authorizes the commissioner to approve all courses of training required in this regulation.

B. All licensees and contractor-applicators who apply fertilizer for commercial purposes to nonagricultural land and all state agencies, localities, or other governmental entities who apply fertilizer to nonagricultural land shall:

1. Employ or retain the services of a certified fertilizer applicator.

2. Apply fertilizer at rates, times, and methods that are consistent with standards and criteria for nutrient management promulgated pursuant to § 10.1-104.2 of the Code of Virginia.

3. Ensure that fertilizer applications are conducted as prescribed by board-approved training or individual applicator training.

4. Comply with all applicable recordkeeping and reporting requirements in this regulation.

C. Certified fertilizer applicators may apply fertilizer to nonagricultural land for commercial purposes or, if they are public sector applicators, they may apply fertilizer to nonagricultural land as part of their official duties.

D. The following individuals may apply fertilizer to nonagricultural land for commercial purposes or to nonagricultural land as part of their official duties as public sector applicators provided they are under the control and instruction of a certified fertilizer applicator who is responsible for the actions of those individuals:

1. Trained applicators. The certified fertilizer applicator does not need to be physically present on the land upon which trained applicators are applying fertilizer. Trained applicators are not authorized to supervise the application of fertilizer by untrained applicators.

2. Untrained applicators provided that they are under the direct on-site supervision of a certified fertilizer applicator.

3. Individuals engaged in training required for certification as a certified fertilizer applicator provided that the individuals are under the direct on-site supervision of a certified fertilizer applicator.

2VAC5-405-50. Exemptions from certification.

The following individuals are exempt from certification:

1. Individuals conducting research in laboratories or field test plots involving fertilizers.

2. Individuals who use fertilizer or supervise the use of fertilizer as part of their duties only on nonagricultural land owned or leased by their employers. This exemption does not apply to public sector applicators.

3. Individuals holding turf and landscape certification from the Department of Conservation and Recreation as nutrient management planners.

2VAC5-405-60. General knowledge requirements for certified fertilizer applicators; continuing education.

A. All applicants for certification as a certified fertilizer applicator shall demonstrate practical knowledge of the principles and practices of the environmentally safe use of fertilizer.

B. Applicants shall be tested on their knowledge and qualifications concerning the use of fertilizer and the handling of fertilizer in the board-approved training. Testing will be based on problems and situations in the following core areas:

1. Proper nutrient management practices such as allowable rate of application for nutrients for various types of vegetation and determining quantity of product to apply based on nutrient analysis;

2. Timing of application during appropriate seasons for various types of vegetation and restrictions on intervals for reapplication;

3. Soil analysis techniques and interpretation of soil analysis results such as proper frequency and depth of sampling and determining appropriate rates of application based on soil analyses;

4. Equipment calibration techniques and procedures for liquid and dry fertilizer applicators and determination of size of application areas;

5. Understanding and interpreting fertilizer labels;

6. Proper handling and appropriate notification procedures of accidents and incidents;

7. Proper methods of storing, mixing, loading, transporting, handling, applying, and disposing of fertilizer;

8. Managing applications near impervious surfaces such as streets, driveways, sidewalks, or paved ditches, as well as near water bodies to avoid off-target applications;

9. Safety and health, including proper use of personal protective equipment; and

10. Recordkeeping and reporting requirements of this regulation.

C. Continuing education requirement. Certified fertilizer applicators shall complete a minimum of two hours of course work every two years on at least one of the following:

1. Proper nutrient management practices;

2. Timing of fertilizer application;

3. Soil analysis techniques and interpretation;

4. Equipment calibration;

5. Understanding and interpreting fertilizer labels; or

6. Management of fertilizer applications near impervious surfaces.

The courses may be offered by any state agency or private entity recognized by the board.

2VAC5-405-80. Qualifications for trained applicators.

All noncertified applicators desiring to apply fertilizer for commercial purposes on nonagricultural land while not under the direct on-site supervision of a certified fertilizer applicator shall successfully complete individual applicator training. All noncertified public sector applicators desiring to apply fertilizer as part of their official duties while not under the direct on-site supervision of a certified fertilizer applicator shall successfully complete individual applicator training.

2VAC5-405-90. Recordkeeping requirements for trained applicators.

A. Licensees ~~and~~, contractor-applicators, and state agencies, localities, or other governmental entities subject to this regulation shall maintain training records for each trained applicator employed by the licensee ~~or contract applicator~~, contractor-applicator, state agency, locality, or other governmental entity.

B. The training record shall include (i) the name of the trained applicator; (ii) the name of the state agency or private entity approved by the board or the name and affiliation of the certified fertilizer applicator providing the training; (iii) the type of training received; and (iv) the date when the trained applicator successfully completed individual applicator training.

C. The training records shall be maintained for as long as the trained applicator continues to apply fertilizer on nonagricultural land on behalf of the licensee ~~or~~, contractor-applicator, or state agency, locality, or other governmental entity and for three years following separation and shall be available for inspection by the commissioner.

2VAC5-405-100. Recordkeeping requirements and reporting for the application of fertilizer.

A. Licensees ~~and~~, contractor-applicators, and state agencies, localities, or other governmental entities subject to this regulation shall maintain records of each application of fertilizer to nonagricultural land for at least three years following the application. These records shall be available for inspection by the commissioner. Each record shall contain the:

1. Name, mailing address, and telephone number of customer, as well as address of application site if different from customer's mailing address;

2. Name of the person making or supervising the application;

3. Day, month, and year of application;

4. Weather conditions at the start of the application;

5. Acreage, area, square footage, or plants treated;

6. Analysis of fertilizer applied;

7. Amount of fertilizer used, by weight or volume; and

8. Type of application equipment used.

B. Contractor-applicators and licensees who apply lawn fertilizer and lawn maintenance fertilizer to more than a total of 100 acres of nonagricultural lands annually, and state agencies, localities, or other governmental entities that apply lawn fertilizer and lawn maintenance fertilizer to nonagricultural lands under their control, shall submit an annual report on or before February 1 indicating the total acreage or square footage by zip code of the land receiving lawn fertilizer and lawn maintenance fertilizer in the preceding calendar year. The report shall be submitted on a form prescribed by the commissioner.

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 from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (2VAC5-405)

Virginia Certified Fertilizer Applicator Application, Form CFA-101 (eff. 10/11).

Virginia Certified Fertilizer Applicator Renewal Application, Form CFA-102 (eff. 10/11).

Lawn Fertilizer and Lawn Maintenance Fertilizer Application Report, Form CFA-103 (eff. 11/11).

VA.R. Doc. No. R12-3049; Filed December 9, 2011, 11:17 a.m.

◆ ◆

TITLE 8. EDUCATION

GEORGE MASON UNIVERSITY

Final Regulation

REGISTRAR'S NOTICE: George Mason University is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 6 of the Code of Virginia, which exempts educational institutions operated by the Commonwealth.

Titles of Regulations: **8VAC35-21. Motor Vehicle Parking Policies and Regulations (repealing 8VAC35-21-10 through 8VAC35-21-360).**

8VAC35-22. Parking Regulation (adding 8VAC35-22-10 through 8VAC35-22-70).

Statutory Authority: § 23-91.29 of the Code of Virginia.

Effective Date: January 2, 2012.

Agency Contact: Kenneth W. Hubble, Agency Regulatory Coordinator, George Mason University, 4400 University Drive, Fairfax, VA 22030, telephone (703) 993-3091, or email khubble@gmu.edu.

Summary:

This action establishes new regulations for parking on property owned, leased, or controlled by George Mason University.

CHAPTER 22
PARKING REGULATION

8VAC35-22-10. Scope.

This chapter applies to all George Mason University faculty, staff, students, university contractors, and visitors who use university owned and leased parking facilities.

8VAC35-22-20. Definitions.

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

"Special events" means all Patriot Center ticketed events, Center for the Arts events, intercollegiate and club sports events, and any other events as designated by the university.

"University property" means any property owned, leased, or controlled by George Mason University.

"Visitor" means any person on university property that is not a faculty member, staff member, student, vendor, or contractor of the university.

8VAC35-22-30. Decal or permit required; exceptions.

A. All motor vehicles parked on university property are required to properly display a valid George Mason University parking permit, as defined by university policies.

B. The following exceptions apply:

1. Visitors are required to park in (i) designated areas with the appropriate permit or pass obtained from Parking Services or (ii) pay-based areas, which include the meters and parking decks.

2. Parking Services may designate specific parking areas or issue special permits to visitors for special events. Individuals visiting the university for special events may only park in areas designated for the event by Parking Services or may park in any other pay visitor area at the prevailing rates.

3. Other exceptions may apply in accordance with university policies.

8VAC35-22-40. Parking.

Parking is permitted in authorized, clearly identified spaces only. Parking is not allowed in or on lawns, loading zones, pedestrian crosswalks, handicap spaces, handicap access ramps, yellow lines or curbs, service areas, service vehicle spaces, sidewalks, and unmarked areas without specific authorization.

8VAC35-22-50. Enforcement.

A. All regulations enacted by the Commonwealth of Virginia and George Mason University are duly enforced. Motor vehicles in violation of this chapter may be subject to penalties in accord with university policies, including but not limited to citation, fine, immobilization, towing, or impoundment, at the owner's risk and expense.

B. If a vehicle is displaying a registered George Mason University permit and incurs a citation for violation of these rules and regulations, the registered owner of the permit will be held responsible for all citations and fines. However, the registered owner of a vehicle is ultimately responsible for all violations issued to that vehicle, regardless of who is operating the vehicle.

8VAC35-22-60. Persons lawfully in charge.

In addition to individuals authorized by university policies, George Mason University police officers are lawfully in charge for the purposes of enforcing violations of this regulation.

8VAC35-22-70. Appeals.

All individuals who receive a violation under this chapter have a right to appeal the violation as dictated by university policies. All individuals who operate a vehicle on George Mason University property give implied consent to first address citation appeals through the university's administrative appeal process.

VA.R. Doc. No. R12-3023; Filed December 8, 2011, 4:26 p.m.

Final Regulation

REGISTRAR'S NOTICE: George Mason University is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 6 of the Code of Virginia, which exempts educational institutions operated by the Commonwealth.

Title of Regulation: **8VAC35-70. Research Involving Human Subjects (adding 8VAC35-70-10, 8VAC35-70-20).**

Statutory Authority: § 23-91.29 of the Code of Virginia.

Effective Date: January 2, 2012.

Agency Contact: Kenneth W. Hubble, Agency Regulatory Coordinator, George Mason University, 4400 University

Drive, Fairfax, VA 22030, telephone (703) 993-3091, or email khubble@gmu.edu.

Summary:

This regulation adopts standards for human subject research at George Mason University.

CHAPTER 70
RESEARCH INVOLVING HUMAN SUBJECTS

8VAC35-70-10. Scope.

This policy applies to all research involving human subjects conducted by George Mason University. Research is conducted by George Mason University when its employees or agents are engaged in research as defined by the U.S. Department of Health and Human Services in the Office of Human Research Protections' Guidance on Engagement of Institutions in Human Subjects Research dated October 16, 2008.

8VAC35-70-20. Federal regulations adopted.

George Mason University will conduct research involving human subjects only if the research has been approved by and will be subject to continuing review by an Institutional Review Board (IRB) designated by George Mason University and operating in accordance with 45 CFR Part 46 with the following exceptions:

1. 45 CFR 46.103(a): Department or agency head means the President of George Mason University or any other official to whom the president has delegated authority.

2. 45 CFR 46.103(b): Institution means George Mason University.

3. 45 CFR 46.103 and 45 CFR 46.120-124: These sections are not followed as they are requirements of federal departments and agencies funding research and not applicable to George Mason University.

DOCUMENTS INCORPORATED BY REFERENCE (8VAC35-70)

Guidance on Engagement of Institutions in Human Subjects Research, October 16, 2008, U.S. Department of Health and Human Services, Office of Human Research Protections.

VA.R. Doc. No. R12-3024; Filed December 8, 2011, 4:31 p.m.

VIRGINIA MILITARY INSTITUTE

Final Regulation

REGISTRAR'S NOTICE: Virginia Military Institute is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 6 of the Code of Virginia, which exempts educational institutions operated by the Commonwealth.

Title of Regulation: **8VAC100-10. Weapons Regulation (adding 8VAC100-10-10, 8VAC100-10-20).**

Statutory Authority: §§ 23-9.2:3 and 23-99 the Code of Virginia.

Effective Date: December 19, 2011.

Agency Contact: Colonel Jeffrey Curtis, Virginia Military Institute, 201 Smith Hall, Lexington, VA 24450, telephone (540) 464-7104, or email curtisjh@vmi.edu.

Summary:

This regulation addresses the prohibition of weapons at Virginia Military Institute.

CHAPTER 10
PROHIBITION OF WEAPONS

8VAC100-10-10. Definitions.

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

"Police officer" means law-enforcement officials appointed pursuant to Article 3 (§ 15.2-1609 et seq.) of Chapter 16 and Chapter 17 (§ 15.2-1700 et seq.) of Title 15.2, Chapter 17 (§ 23-232 et seq.) of Title 23, Chapter 2 (§ 29.1-200 et seq.) of Title 29.1, or Chapter 1 (§ 52-1 et seq.) of Title 52 of the Code of Virginia or sworn federal law-enforcement officers.

"Institute property" means any property owned, leased, or controlled by the Virginia Military Institute.

"Weapon" means (i) any pistol, revolver, or other weapon designed or intended to propel a missile of any kind; (ii) any dirk, bowie knife, switchblade knife, ballistic knife, razor, slingshot, sprint stick, metal knucks, or blackjack; (iii) any flailing instrument consisting of two or more rigid parts connected in such manner as to allow them to swing freely, which may be known as nun chahka, nun chuck, nunchaku, shuriken, or fighting chain; or (iv) any disc, of whatever configuration, having at least two points or pointed blades that is designed to be thrown or propelled and that may be known as throwing star or oriental dart.

8VAC100-10-20. Prohibition of weapons; exceptions.

Possession, carrying, or storage of any weapon by any person, except a police officer, is prohibited (i) on institute property, to include academic buildings, administrative office buildings, support buildings, military training facilities, athletic facilities, barracks or any structure designated for cadet housing, or dining facilities, or (ii) while attending sporting, entertainment, or educational events. Entry upon any of this property in violation of this prohibition is expressly forbidden.

In addition to individuals authorized by institute policy, institute police officers are lawfully in charge for the purposes of forbidding entry upon or remaining upon institute property while possessing, carrying, or storing weapons in violation of this prohibition.

This prohibition would not apply to those activities falling under the Reserve Officer Training Corps programs, NCAA rifle teams, Trap and Skeet Club, VMI Firing Range(s) or Marksmanship Club, or other official institute club or other activities. These particular events will follow strict guidelines developed for these activities and are under the supervision of institute staff officials. This prohibition would also not apply to any individually authorized hunting or game reduction program expressly permitted by institute officials.

VA.R. Doc. No. R12-3076; Filed December 19, 2011, 2:47 p.m.

COLLEGE OF WILLIAM AND MARY

Final Regulation

REGISTRAR'S NOTICE: The College of William and Mary is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 6 of the Code of Virginia, which exempts educational institutions operated by the Commonwealth.

Title of Regulation: **8VAC115-20. Weapons on Campus (adding 8VAC115-20-10, 8VAC115-20-20, 8VAC115-20-30).**

Statutory Authority: § 23-44 of the Code of Virginia.

Effective Date: January 3, 2012.

Agency Contact: Kiersten Boyce, Compliance and Policy Officer, College of William & Mary, P.O. Box 8795, Williamsburg, VA 23187, telephone (757) 221-2743, or email kboyc@wm.edu.

Summary:

The regulation establishes the weapons limitation policy at the College of William & Mary. No changes were made to the regulation since publication of the proposed regulation.

CHAPTER 20
WEAPONS ON CAMPUS

8VAC115-20-10. Definitions.

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

"Police officer" means law-enforcement officials appointed pursuant to Article 3 (§ 15.2-1609 et seq.) of Chapter 16 and Chapter 17 (§ 15.2-1700 et seq.) of Title 15.2, Chapter 17 (§ 23-232 et seq.) of Title 23, Chapter 2 (§ 29.1-200 et seq.) of Title 29.1, or Chapter 1 (§ 52-1 et seq.) of Title 52 of the Code of Virginia or sworn federal law-enforcement officers.

"University property" means any property owned, leased, or controlled by the College of William & Mary in Virginia, including the Virginia Institute of Marine Science.

"Weapon" means any firearm or any other weapon listed in § 18.2-308 A of the Code of Virginia.

8VAC115-20-20. Possession of weapons prohibited.

Possession or carrying of any weapon by any person, except a police officer or an individual authorized pursuant to university policy, is prohibited on university property in academic buildings, administrative buildings, student residence and student life buildings, or dining or athletic facilities, or while attending an official university event, such as an athletic, academic, social, recreational or educational event, or on vessels that are university property. Entry upon such university property in violation of this prohibition is expressly forbidden.

8VAC115-20-30. Person lawfully in charge.

In addition to individuals authorized by university policy, College of William & Mary police officers are lawfully in charge for the purposes of forbidding entry upon or remaining upon university property while possessing or carrying weapons in violation of this prohibition.

VA.R. Doc. No. R12-3015; Filed December 13, 2011, 12:35 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The College of William and Mary is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 6 of the Code of Virginia, which exempts educational institutions operated by the Commonwealth.

Title of Regulation: **8VAC115-30. Richard Bland College Weapons Regulation (adding 8VAC115-30-10, 8VAC115-30-20, 8VAC115-30-30).**

Statutory Authority: § 23-44 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Agency Contact: J. Tyler Hart, Director of Institutional Effectiveness, Richard Bland College, 11301 Johnson Road, Petersburg, VA 23805, telephone (804) 863-2107, FAX (804) 862-6207, or email jhart@rbc.edu.

Summary:

The proposed regulation establishes the weapons limitation policy at Richard Bland College.

CHAPTER 30
RICHARD BLAND COLLEGE WEAPONS ON CAMPUS REGULATION

8VAC115-30-10. Definitions.

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

"College property" means any property owned, leased, or controlled by Richard Bland College of the College of William and Mary.

"Police officer" means law-enforcement officials appointed pursuant to Article 3 (§ 15.2-1609 et seq.) of Chapter 16 and Chapter 17 (§ 15.2-1700 et seq.) of Title 15.2, Chapter 17 (§ 23-232 et seq.) of Title 23, Chapter 2 (§ 29.1-200 et seq.) of Title 29.1, or Chapter 1 (§ 52-1 et seq.) of Title 52 of the Code of Virginia or sworn federal law-enforcement officers.

"Weapon" means any firearm or any other weapon listed in § 18.2-308 A of the Code of Virginia.

8VAC115-30-20. Possession of weapons prohibited.

Possession or carrying of any weapon by any person, except a police officer or an individual authorized pursuant to college policy, is prohibited on college property in academic buildings, administrative buildings, student residence and student life buildings, or dining or athletic facilities, or while attending an official college event, such as an athletic, academic, social, recreational or educational event, or on vessels that are college property. Entry upon such college property in violation of this prohibition is expressly forbidden.

8VAC115-30-30. Person lawfully in charge.

In addition to individuals authorized by college policy, Richard Bland College police officers are lawfully in charge for the purposes of forbidding entry upon or remaining upon college property while possessing or carrying weapons in violation of this prohibition.

VA.R. Doc. No. R12-3056; Filed December 13, 2011, 11:03 a.m.

◆

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Proposed Regulation

Titles of Regulations: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-165).**

12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (amending 12VAC30-60-75).

12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-30).

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia; 42 USC § 1396.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: March 2, 2012.

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.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. Sections 32.1-324 and 32.1-325 of the Code of Virginia authorize the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according to the board's requirements. Pursuant to these provisions, the Director of DMAS is authorized to regulate generally the provision of durable medical equipment (DME) and supplies to Medicaid individuals. The Medicaid authority as established by § 1902 (a) of the Social Security Act (42 USC § 1396a) provides governing authority for payments for services.

Chapter 874 of the 2010 Acts of Assembly, Item 297 UUU and WWW mandated changes to DMAS' reimbursement methodology for durable medical equipment and service limits for incontinence products. These mandated changes were initially promulgated with an emergency regulation that became effective July 1, 2010. This regulatory action makes the previous temporary changes part of the permanent regulations. Further changes reflected in this proposed regulation are made pursuant to the director's authority to prepare, administer, and amend the Plan for Medical Assistance.

Purpose: Durable medical equipment (DME) is a federally mandated service attached to home health services pursuant to 42 CFR 440.70. As such, it is essential to the health, safety, and welfare of Medicaid individuals that this service meets their identified medical needs and enables them to live safely in their homes and communities.

This proposal has several goals: (i) to better define and establish the requirements of the DME program; (ii) to modify and better define the agency's reimbursement method for this service; and (iii) to reduce waste and inappropriately rendered services in order to reach projected budget reductions.

In the Medicaid DME program prior to the emergency regulation, DMAS experienced problems with providers' incorrect, inappropriate billing practices; product waste; and provision of inappropriate, nonordered services.

Substance: In January 2004, the department required providers to use the national Healthcare Common Procedure Coding Systems (HCPCS) codes when billing for DME. Durable medical equipment is defined as medical supplies, equipment, and appliances suitable for use in the home (42 CFR 440.70(b) (3)). Such supplies, equipment, and appliances must be ordered by the individual's licensed

practitioner and such orders must be reviewed at least annually by the licensed practitioner. These supplies, equipment, and appliances can only be provided by licensed providers who are enrolled with Medicaid as DME service providers.

The agency had an independent contractor, CGI Group, Inc. (CGI), conduct a review in November 2009 of the agency's payment methodologies and current rates compared to other states. Based on this review and the agency's review, it was found that the DME program's reimbursement rates should be reduced to bring the Commonwealth in better alignment with other states of similar financial and demographic makeup. Based on this independent review, these reductions should not impact services since the agency's rates have been historically higher than most state Medicaid agencies.

Currently, all HCPCS codes that have a Durable Medical Equipment Regional Carrier (DMERC) rate are reimbursed at the DMERC rate. If the HCPCS code does not have a DMERC rate, but has an established DMAS rate, the provider uses the lesser of either DMAS' rate, which was established July 1, 1996, reduced by 4.5%, or the provider's actual charge. These rates were incorporated into the fee schedule in 1996. If an item or supply does not have a HCPCS code available, the provider uses the miscellaneous code E1399 until a national HCPCS code is developed. All HCPCS codes and rates are noted in Appendix B of DMAS' current DME Provider Manual. There have been no changes to the DME payment methodology or July 1, 1996, rates since that implementation.

The agency currently requires providers to complete the DMAS-115 (formerly DMAS-116) every six months in addition to the Certificate of Medical Necessity for Medicaid members who need enteral nutrition.

Currently the agency allows providers two to three cases of incontinence products per month, based on the HCPCS code, prior to the provider being required to seek service authorization. The agency's billing unit for incontinence supplies is currently per case.

The new recommended policy changes are discussed below:

Modification of rates (12VAC30-80-30)

The agency currently pays 100% of the DMERC rate for HCPCS codes that have a DMERC rate. Based on the study conducted by CGI, DMAS proposes to reduce the DMERC rate by 10% as recommended by CGI. This reduction will provide the agency with modest cost savings and bring DMAS' rates more in line with other states of similar financial and demographic makeup. Currently, if the HCPCS code does not have a DMERC rate, but had an established DMAS rate, the provider would use the lower of either the DMAS rate, which was established July 1, 1996, less 4.5%, or the provider's actual charge to the public. Based on the study conducted by CGI, DMAS will apply category-specific reductions as recommended by CGI. These category-specific reductions will provide an overall 5.5% decrease to the July 1996 rates and bring DMAS' rates in line with benchmark rates from other states with similar financial and demographic makeup. The DMAS rate will be noted in Appendix B of the DME Provider Manual (Appendix B).

Currently, HCPCS codes that have no DMERC rate or July 1996 rates are being paid at the provider's usual and customary charge. The agency has found it difficult to monitor and verify charges that are submitted by providers. In an effort to provide cost savings and better oversight to the program, the agency will set fees for some of the unpriced HCPCS codes based on benchmark data from other state Medicaid agencies. The procedure codes that cannot be priced because of the lack of benchmark data will be converted to an individual consideration (IC) payment. IC is reimbursed at the provider's net cost, minus shipping and handling, plus a 30% markup. IC is the current method of payment used for unpriced miscellaneous codes (E1399). By making this change, all unpriced codes will be reimbursed the same way thereby providing greater oversight, which will enable DMAS to confirm accurate pricing and decrease overpayments.

The agency has also added five additional miscellaneous codes to Appendix B in an effort to better define miscellaneous codes by category. The five new miscellaneous codes will be category specific allowing the agency to evaluate spending for miscellaneous codes by product category.

Changes to service authorization limits and billing unit for incontinence products (12VAC30-50-165)

Currently the agency provides reimbursement for incontinence supplies by the case. The agency will convert the billing unit from "case" to "each" for incontinence supplies. Based on research conducted by the agency and CGI, Virginia is the only state still reimbursing for such products by the case and not by an "each" unit system. As a result of this change in the billing unit, the agency will allow providers to break cases of diapers while still leaving intact the sealed inner packages to preserve the product's sanitation. Breaking cases will allow providers tighter control on the amount of overage given to members every month.

Based on post payment audits and appeals conducted over the last several years, DMAS has determined that changes are needed to the incontinence supplies program to strengthen the quality of services, to ensure services are delivered in a cost-effective manner, and to prevent or reduce fraudulent activities. Incontinence products should be provided to recipients on an individual basis related to the recipients' medical condition and degree of incontinence. Greater oversight via the prior authorization process on the part of DMAS and providers should decrease the amount of overuse that has been experienced as this category of supplies represents DMAS' highest DME expenditure per year.

Currently the agency allows providers 2-3 cases of incontinence products per month, based on the HCPCS code, prior to the provider being required to seek service authorization. Along with the change from "case" to "each," the agency will change the service authorization limit on incontinence products (diapers/pullups/liners) to 100 each month. The allowable limit per month will be posted in Appendix B of the DME manual. These changes will also provide the Commonwealth and the agency a cost savings and increase the oversight of providers who supply incontinence products. This action will affect 12VAC30-80-30 and 12VAC30-50-165.

The agency will also now require providers to make affirmative contact with the Medicaid member receiving incontinence products prior to the monthly refill to confirm that the member still needs incontinence products, the products are appropriate, the number of products continue to be accurate and the amount of overage. These additions to the policy will allow the agency and the provider to better manage the amount of inappropriate supplies delivered, increase oversight, and increase the quality of services being provided.

Discontinuation of the DMAS-116

Discontinuation of the DMAS-116 (Nutritional Status Evaluation Form) will decrease the documentation burden of providers since the information contained on this form can now be included on the Certificate of Medical Necessity (CMN).

Providers have asked for this change due to the difficulty of getting two forms completed by the ordering practitioner. Clinical requirements will remain intact, however; the CMN will be revised to better capture these requirements. Providers will also be allowed to use supporting documentation to meet these requirements if not contained on the CMN.

Coverage of enteral nutrition products

DMAS began covering enteral nutrition products for all eligible, appropriate Medicaid individuals in March 2000. At that time, for this change the agency relied on its enteral nutrition regulations as set out for the HIV/AIDS waiver (12VAC30-120-195). Since 12VAC30-120 is reserved for the home and community-based waiver programs, the regulations for this service for all approved Medicaid recipients have been established in 12VAC30-50. Therefore, this technical correction is being made in this regulatory action. 12VAC30-50 is being updated to incorporate the reference to the DMAS-352 and to eliminate duplicative text.

Provider recovery of delivered DME (12VAC30-50-165 and 12VAC30-60-75)

The agency is adding language that prohibits a provider from recovering DME from a Medicaid recipient once it has been delivered to the recipient's home. Providers have sought to reclaim delivered DME in response to post-payment audits, wherein findings revealed the provider had not complied with agency regulations and policies.

To permit this to happen would create a significant undue hardship on the Medicaid recipients as the durable medical equipment allows these individuals to function more independently. As DME is a federally mandated service attached to home health services, it is essential to the health, safety, and welfare of Medicaid individuals to meet their medical needs. Providers shall not have a claim of ownership on DME reimbursed by Virginia Medicaid once it has been delivered to the Medicaid individual. The DME provider serves as a conduit for the delivery of the Medicaid member's owned equipment.

The DME provider does not have a claim to equipment that has been delivered to a Medicaid individual and paid for by Medicaid even when a post-payment audit results in payment retractions. Payment retractions are DMAS' primary method to enforce its requirements with providers who fail to comply with agency policies and regulations and have never been intended to penalize Medicaid recipients. Other providers, physicians, dentists, or transportation providers do not have the option of taking back the services that they have rendered to Medicaid recipients; therefore, DME providers cannot be permitted to do so.

Certificate of Medical Necessity requirements (12VAC30-60-75)

Additional changes conform the regulations to agency guidance document policies. The clarification language will apply to the Certificate of Medical Necessity (CMN) (DMAS-352) form, which contains the physician's order and, therefore, must have specific fields completed. Absent the required DMAS-352 information, the CMN will be considered invalid and the DME provider will be at risk for noncoverage. Also, providers are not permitted to bill for dates of service prior to delivery of the DME.

The agency will include the minimum documentation requirements, such as the licensed practitioner's order and the clinical diagnosis, for all DME and supplies. The documentation requirements are required regardless of whether a service authorization is required. A definition of frequency of use and quantity will be included with these documentation requirements to add emphasis to the difference between these two requirements.

Medical necessity requirement for diapers for children (12VAC30-50-165)

The agency does not provide reimbursement for the routine use of diapers for children younger than three years of age who have not yet been toilet trained. Service authorizations for diapers for these young children must be associated with medical conditions. This limitation in services is listed in the incontinence section of the agency guidance documents. The

agency will add this as an additional item under the noncovered services listed in 12VAC30-50-165.

Issues: The changes to the reimbursements rates will not have a direct impact on the Virginia Medicaid member. The change in service authorization requirements for incontinence products does not impact the amount of services that are provided to members as it will only lower the threshold at which the provider must seek service authorization before additional supplies will be provided. The service limit does not represent a restriction as it will be the limit at which the provider is required to obtain authorization for additional quantities.

Providers will be able to open cases of diapers as long as they do not break the inner sealed packages. This change will allow providers to deliver a more accurate amount of incontinence supplies each month and decrease the amount of overage. Less overage delivered each month will decrease the opportunity for overuse or fraudulent activity and will provide increased oversight. Service authorization changes will provide the Commonwealth and the agency a cost savings and increase the oversight of providers who supply incontinence products. This category of medically needed DME supplies represents the DME program's highest annual expenditure.

Based on post-payment audits and appeals conducted over the last several years, DMAS has determined that changes are needed to the policy related to incontinence supplies to strengthen the quality of services and to ensure services are delivered in a cost-effective manner. Incontinence products should be provided to members on an individual basis related to the member's medical condition and degree of incontinence.

The agency has also developed a new guidance document, published on the agency's website, which can be used as an assessment tool. This form will be optional, but may assist the provider with determining the appropriate amount (both frequency and quantity) and type of incontinent supplies. In addition, this form will assist the provider in meeting program policy documentation requirements. The agency does realize these changes will not be well-received by all providers, but the agency believes these changes are greatly needed and justified based on research and audit results.

The discontinuation of the required DMAS-116 form will decrease the documentation burden for providers allowing a better opportunity to meet policy requirements.

Due to the economic downturn, the agency's budget has been reduced. The agency realizes that some of these rate changes will not be well-received by the provider population. However, there have been no changes to the DME payment methodology or July 1, 1996, rates since implementation and Virginia Medicaid has been paying higher than average DME rates for some time.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 874 of the 2010 Acts of Assembly, Items 297 UUU and WWW, the proposed regulations amend the reimbursement rates for durable medical equipment and reduce the service authorization limit for incontinence supplies. These two changes have been already in effect since July 1, 2010, under emergency regulations. The proposed regulations will also discontinue the Nutritional Status Evaluation Form, clarify that specific fields on the Certificate of Medical Necessity must be completed for coverage and that providers are not permitted to bill for dates of service prior to delivery of the DME, add coverage of enteral nutrition products in Chapter 50 of the regulations for clarity, clarify that recovery of delivered durable medical equipment by providers is prohibited, and clarify that routine use of diapers for children is not covered.

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

Estimated Economic Impact. Item 306.OOO of the 2009 Appropriation Act directed DMAS to examine the methodology for reimbursing durable medical equipment and to report findings by November 1, 2009, including the specific strategies recommended to effectuate savings. As required, DMAS submitted a report to the Senate Finance and House Appropriation Committees. The savings recommendations DMAS proposed relied heavily on the study conducted by CGI Technologies Solutions, Inc. Consequently, Chapter 874 of the 2010 Acts of Assembly, Item 297 UUU directed DMAS to modify the reimbursement rates for durable medical equipment as recommended.

There are three categories of DME that DMAS relies on for reimbursement purposes. The DMEs in the first category have a published national Durable Medical Equipment Regional Carrier (DMERC) rate which is utilized by Medicare. Prior to the emergency regulations, DMERC rate was the reimbursement rate utilized. The DMEs in the second category do not have a DMERC rate, but have a DMAS rate that was established in 1996 which has not been changed since. The reimbursement rate for this category was the lower of the 1996 DMAS rate or the provider's actual charge. The third category includes any other DMEs that are not included in the first or the second category. The reimbursement rate on these DMEs was the provider's usual and customary charge.

The proposed regulations reduce the reimbursement rate for the first category by 10% to 90% of the DMERC rate, reduce the 1996 DMAS rate schedule by 5.5%, and reimburse the third category at the provider's net cost, minus shipping and handling, plus a 30% markup. These changes are expected to generate $3,832,075 in total savings. One half of this amount represents savings to the Commonwealth while the rest represents savings to the federal government. On the other

hand, this change will reduce the profits of DME providers by the same amount. In fiscal year 2010, total DME expenditures were about $52 million.

Based on the DMAS 2009 CGI Technologies Solutions' report, the proposed rate changes will make Virginia's reimbursement rates more closely aligned with the rates of other comparable states' Medicaid programs' DME rates. Thus, DMAS does not expect a negative impact on services and recipients since the Commonwealth's rates have been historically higher than most other state Medicaid agencies.

In addition, pursuant to Chapter 874 of the 2010 Acts of Assembly, Item 297 WWW, the proposed regulations reduce the prior service authorization limit on incontinence supplies (diapers/pull-ups/liners) from 2 – 3 cases (depending on the product) to 100 individual units. According to DMAS, prior to the emergency regulations the prior authorization limits were too high and often resulted in overage of incontinence supplies. In fact, DMAS has not seen a significant increase in the service authorization requests since July 2010 when the reduced limit became effective under emergency regulations indicating that the lower limit is sufficient to cover the needs of the recipients. Thus, no negative effect of this service reduction on the recipients is expected. However, the proposed regulations are expected to reduce the overage and provide $2,847,434 in total savings. Similar to the previous change, one half of this amount represents savings to the Commonwealth while the rest represents savings to the federal government. On the other hand, this change will reduce the revenues of DME providers by the same amount. In fiscal year 2010, DMAS reimbursed approximately 250 suppliers $15.3 million for incontinence undergarments.

The proposed reductions in the reimbursement rates and the service authorization limits are expected to generate approximately $6.6 million in total savings. Since the federal government provides matching funds for Medicaid, these proposed changes will reduce the influx of federal funds into the Commonwealth by approximately $3.3 million. A reduction in the federal funds coming into the Commonwealth is expected to have a negative impact on the state's economy.

The proposed changes will also discontinue the use of Nutritional Status Evaluation Form. According to DMAS, the information contained on this form can now be included on the Certificate of Medical Necessity. In fiscal year 2010, there were 2,260 recipients for whom 173 providers were completing the evaluation form. Thus, this change is expected to provide some administrative cost savings to the providers and DMAS.

The remaining proposed changes will clarify that specific fields on the Certificate of Medical Necessity must be completed for coverage and that providers are not permitted to bill for dates of service prior to delivery of the DME, add coverage of enteral nutrition products in Chapter 50 of the regulations for clarity, clarify that recovery of delivered durable medical equipment by providers is prohibited, and clarify that routine use of diapers for children is not covered. None of these changes are expected to have a significant economic impact other than improving the clarity of the regulations and reducing the potential costs due to misunderstandings.

Businesses and Entities Affected. The proposed regulations will primarily affect 1,958 DME providers.

Localities Particularly Affected. The proposed regulations do not affect any locality more than others.

Projected Impact on Employment. The proposed regulations will reduce the reimbursement rates for DME and service authorization for incontinence supplies which in turn may reduce profits of providers. Some providers may reduce their demand for labor in response.

Effects on the Use and Value of Private Property. The proposed regulations do not have a direct impact on the use and value of private property. The proposed reduction in DME reimbursement rates and service authorization for incontinence supplies may reduce the profitability of affected providers and reduce their asset values.

Small Businesses: Costs and Other Effects. While there is no reliable data, majority of the affected providers are believed to be small businesses. The costs and other effects of proposed regulations on small businesses are the same as discussed above.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There is no known alternative method that minimizes adverse impact on small businesses while accomplishing the same goals.

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

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 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 Department of Medical Assistance Services has reviewed the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning Durable Medical Equipment and Supplies Services Update. The agency raises no issues with this analysis.

Summary:

The proposed amendments modify the reimbursement rates for durable medical equipment and reduce the service authorization limit for incontinence supplies. The proposed amendments discontinue the use of the Nutritional Status Evaluation form (DMAS-116), clarify that specific fields on the Certificate of Medical Necessity form (DMAS-352) must be completed for coverage and that providers may not bill for dates of service prior to delivery of the durable medical equipment, add coverage of enteral nutrition products in 12VAC30-50 for clarity, clarify that recovery of delivered durable medical equipment by providers is prohibited, and clarify that routine use of diapers for children is not covered.

12VAC30-50-165. Durable medical equipment (DME) and supplies suitable for use in the home.

A. Definitions. The following ~~word and term~~ words and terms when used in these regulations shall have the following ~~meaning~~ meanings unless the context clearly indicates otherwise:

"Affirmative contact" means speaking, either face-to-face or by phone, with either the individual or caregiver in order to ascertain that the DME and supplies are still needed and appropriate. Such contacts shall be documented in the individual's medical record.

"Certificate of Medical Necessity" or "CMN" means the DMAS-352 form required to be completed and submitted in order for DMAS to provide reimbursement.

"Designated agent" means an entity with whom DMAS has contracted to perform contracted functions such as provider audits and prior authorizations of services.

"DME provider" means those entities enrolled with DMAS to render DME services.

"Durable medical equipment" or "DME" means medical equipment, supplies, and appliances suitable for use in the home consistent with 42 CFR 440.70(b)(3) that treat a diagnosed condition or assist the individual with functional limitations.

"Expendable supply" means an item that is used and then disposed of.

"Frequency of use" means the rate of use by the individual as documented by the number of times per day/week/month, as appropriate, a supply is used by the individual. Frequency of use must be recorded on the face of the CMN in such a way that reflects whether a supply is used by the individual on a daily, weekly, or monthly basis. Frequency of use may be documented on the CMN as a range of the rate of use. By way of example and not limitation, the frequency of use of a supply may be expressed as a range, such as four to six adult diapers per day. However, large ranges shall not be acceptable documentation of frequency of use (for example, the range of one to six adult diapers per day shall not be acceptable.) The frequency of use provides the justification for the total quantity of supplies ordered on the CMN.

"Functional limitation" means the inability to perform a normal activity.

"Practitioner" means a licensed provider of physician services as defined in 42 CFR 440.50 ~~or a provider of nurse practitioner services as defined in 42 CFR 440.166~~.

"Prior authorization" or "PA" (also "service authorization") means the process of approving either by DMAS or its prior authorization (or service authorization) contractor for the purposes of DMAS reimbursement for the service for the individual before it is rendered or reimbursed.

"Quantity" means the total number of supplies ordered on a monthly basis as reflected on the CMN. The monthly quantity of supplies ordered for the individual shall be dependent upon the individual's frequency of use.

"Sole source of nutrition" means that the individual is unable to tolerate (swallow or absorb) any other form of oral nutrition in instances when more than 75% of the individual's daily caloric intake is received from nutritional supplements.

B. General requirements and conditions.

1. a. All medically necessary supplies and equipment shall be covered. Unusual amounts, types, and duration of usage must be authorized by DMAS in accordance with published policies and procedures. When determined to be cost effective by DMAS, payment may be made for rental of the equipment in lieu of purchase.

b. No provider shall have a claim of ownership on DME reimbursed by Virginia Medicaid once it has been delivered to the Medicaid individual. Providers shall only be permitted to recover DME, for example, when DMAS determines that it does not fulfill the required medically necessary purpose as set out in the Certificate of Medical

Necessity, when there is an error in the ordering practitioner's CMN, or when the equipment was rented.

2. DME providers shall adhere to all applicable federal and state laws and regulations and DMAS policies~~, laws, and regulations~~ for ~~durable medical equipment~~ DME and supplies. DME providers shall ~~also~~ comply with all other applicable Virginia laws and regulations requiring licensing, registration, or permitting. Failure to comply with such laws and regulations that are required by such licensing agency or agencies shall result in denial of coverage for ~~durable medical equipment~~ DME or supplies ~~that are regulated by such licensing agency or agencies~~.

3. DME ~~and~~ products or supplies must be furnished pursuant to a properly completed Certificate of Medical Necessity (CMN) (DMAS-352). In order to obtain Medicaid reimbursement, specific fields of the DMAS-352 form shall be completed as specified in 12VAC30-60-75.

4. ~~A CMN shall contain a practitioner's diagnosis of a recipient's medical condition and an order for the durable medical equipment and supplies that are medically necessary to treat the diagnosed condition and the recipient's functional limitation. The order for DME or supplies must be justified in the written documentation either on the CMN or attached thereto~~ DME and supplies shall be ordered by the licensed practitioner and shall be related to medical treatment of the Medicaid individual. The complete DME order shall be recorded on the CMN for Medicaid individuals to receive such services. In the absence of a different effective period determined by DMAS or its designated agent, ~~The~~ the CMN shall be valid for a maximum period of six months for Medicaid ~~recipients 21 years of age and younger~~ individuals younger than 21 years of age. ~~The~~ In the absence of a different effective period determined by DMAS or its designated agent, the maximum valid time period for CMNs for Medicaid ~~recipients older than~~ individuals 21 years of age ~~is~~ and older shall be 12 months. The validity of the CMN shall terminate when the ~~recipient's~~ individual's medical need for the prescribed DME or supplies ~~ends~~ no longer exists as determined by the licensed practitioner.

5. DME ~~must~~ shall be furnished exactly as ordered by the ~~attending~~ licensed practitioner ~~on~~ who signed the CMN. The CMN and any supporting verifiable documentation ~~must be complete (signed and dated by the practitioner)~~ shall be fully completed, signed, and dated by the licensed practitioner, and in the DME provider's possession within 60 days from the time the ordered DME and supplies are initially furnished by the DME provider. Each component of the DME ~~must~~ items shall be specifically ordered on the CMN by the licensed practitioner.

6. The CMN shall not be changed, altered, or amended after the ~~attending~~ licensed practitioner has signed it. ~~If changes are necessary, as indicated by the recipient's condition, in the ordered DME or supplies, the DME provider must obtain a new CMN.~~ If the individual's condition indicates that changes in the ordered DME or supplies are necessary, the DME provider shall obtain a new CMN. ~~New~~ All new CMNs ~~must~~ shall be signed and dated by the ~~attending~~ licensed practitioner within 60 days from the time the ordered supplies are furnished by the DME provider.

7. DMAS or its designated agent shall have the authority to determine a different (from those specified above) length of time a CMN may be valid based on medical documentation submitted on the CMN. The CMN may be completed by the DME provider or other appropriate health care professionals, but it ~~must~~ shall be signed and dated by the ~~attending~~ licensed practitioner, as specified in subdivision 5 of this subsection. Supporting documentation may be attached to the CMN but the ~~attending~~ licensed practitioner's entire order ~~must~~ for DME and supplies shall be on the CMN.

8. The DME provider shall retain a copy of the CMN and all supporting verifiable documentation on file for DMAS' post payment audit review purposes. DME providers shall not create or revise CMNs or supporting documentation for this service after the initiation of the post payment review audit process. ~~Attending~~ Licensed practitioners shall not complete, ~~or~~ sign ~~and~~, or date~~,~~ CMNs once the post payment audit review has begun.

9. The DME provider shall be responsible for knowledge of items requiring prior authorization and the limitation on the provision of certain items as described in the Virginia Medicaid Durable Medical Equipment and Supplies Manual, Appendix B. The Appendix B shall be the official listing of all items covered through the Virginia Medicaid DME program and lists the service limits, items that require prior authorization, billing units, and reimbursement rates.

10. The DME provider shall be required to make affirmative contact with the individual or caregiver and document the interaction prior to the next month's delivery and prior to the recertification CMN to assure that the appropriate quantity, frequency, and product are provided to the individual.

11. Supporting documentation, added to a completed CMN, shall be allowed to further justify the medical need for DME. Supporting documentation shall not replace the requirement for a properly completed CMN. The dates of the supporting documentation shall coincide with the dates of service on the CMN, and the supporting documentation shall be fully signed and dated by the licensed practitioner.

C. ~~Preauthorization is required for incontinence supplies provided in quantities greater than two cases per month.~~ Effective July 1, 2010, the billing unit for incontinence

supplies (such as diapers, pull-ups, and panty liners) shall be by each product. For example, if the incontinence supply being provided is diapers, the billing unit would be by individual diaper, rather than a case of diapers. Prior authorization shall be required for incontinence supplies provided in quantities greater than the allowable service limit per month.

D. Supplies, equipment, or appliances that are not covered include, but ~~are~~ shall not be limited to, the following:

1. Space conditioning equipment, such as room humidifiers, air cleaners, and air conditioners;

2. ~~Durable medical equipment~~ DME and supplies for any hospital or nursing facility resident, except ventilators and associated supplies or specialty beds for the treatment of wounds consistent with DME criteria for nursing facility residents that have been prior approved by the DMAS central office or designated agent;

3. Furniture or appliances not defined as medical equipment (such as blenders, bedside tables, mattresses other than for a hospital bed, pillows, blankets or other bedding, special reading lamps, chairs with special lift seats, hand-held shower devices, exercise bicycles, and bathroom scales);

4. Items that are only for the ~~recipient's~~ individual's comfort and convenience or for the convenience of those caring for the ~~recipient~~ individual (e.g., a hospital bed or mattress because the ~~recipient~~ individual does not have a ~~decent~~ bed; wheelchair trays used as a desk surface); mobility items used in addition to primary assistive mobility aide for caregiver's or ~~recipient's~~ individual's convenience (e.g., electric wheelchair plus a manual chair); cleansing wipes;

5. Prosthesis, except for artificial arms, legs, and their supportive devices, which ~~must~~ shall be ~~preauthorized~~ prior authorized by the DMAS central office ~~(effective July 1, 1989)~~ or designated agent;

6. Items and services that are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member (e.g., dentifrices; toilet articles; shampoos that do not require a licensed practitioner's prescription; dental adhesives; electric toothbrushes; cosmetic items, soaps, and lotions that do not require a licensed practitioner's prescription; sugar and salt substitutes; and support stockings);

7. Orthotics, including braces, diabetic shoe inserts, splints, and supports;

8. Home or vehicle modifications;

9. Items not suitable for or not used primarily in the home setting (e.g., car seats, equipment to be used while at school, etc.); ~~and~~

10. Equipment for which the primary function is vocationally or educationally related (e.g., computers, environmental control devices, speech devices, etc.)~~.~~;

11. Diapers for routine use by children younger than three years of age who have not yet been toilet trained;

12. Equipment or items that are not suitable for use in the home; and

13. Equipment or items that the Medicaid individual or caregiver is unwilling or unable to use in the home.

E. For coverage of blood glucose meters for pregnant women, refer to 12VAC30-50-510.

F. Coverage of home infusion therapy.

1. Home infusion therapy shall be defined as the intravenous (I.V.) administration of fluids, drugs, chemical agents, or nutritional substances to recipients in the home setting. DMAS shall reimburse for these services, supplies, and drugs on a service day rate methodology established in 12VAC30-80-30. The therapies to be covered under this policy shall be: hydration therapy, chemotherapy, pain management therapy, drug therapy, and total parenteral nutrition (TPN). All the therapies that meet criteria ~~will~~ shall be covered ~~for three months~~ and do not require prior authorization. ~~If any therapy service is required for longer than the original three months, prior authorization shall be required for the DME component for its continuation.~~ The established service day rate shall reimburse for all services delivered in a single day. There shall be no additional reimbursement for special or extraordinary services. In the event of incompatible drug administration, a separate HCPCS code shall be used to allow for rental of a second infusion pump and purchase of an extra administration tubing. When applicable, this code may be billed in addition to the other service day rate codes. There ~~must~~ shall be documentation to support the use of this code on the I.V. Implementation Form. Proper documentation shall include the need for pump administration of the medications ordered, frequency of administration to support that they are ordered simultaneously, and indication of incompatibility.

2. The service day rate payment methodology shall be mandatory for reimbursement of all I.V. therapy services except for the ~~recipient~~ individual who is enrolled in the Technology Assisted ~~waiver program~~ Waiver.

3. The following limitations shall apply to this service:

~~1.~~ a. This service must be medically necessary to treat ~~a recipient's~~ an individual's medical condition. The service must be ordered and provided in accordance with

accepted medical practice. The service must not be desired solely for the convenience of the ~~recipient~~ individual or the ~~recipient's~~ individual's caregiver.

~~2.~~ b. In order for Medicaid to reimburse for this service, the ~~recipient must~~ individual shall:

~~a.~~ (1) Reside in either a private home or a domiciliary care facility, such as an ~~adult care residence~~ assisted living facility. Because the reimbursement for DME is already provided under institutional reimbursement, ~~recipients~~ individuals in hospitals, nursing facilities, rehabilitation centers, and other institutional settings shall not be covered for this service;

~~b.~~ (2) Be under the care of a licensed practitioner who prescribes the home infusion therapy and monitors the progress of the therapy;

~~c.~~ (3) Have body sites available for peripheral intravenous catheter or needle placement or have a central venous access; and

~~d.~~ (4) Be capable of either self-administering such therapy or have a caregiver who can be adequately trained, is capable of administering the therapy, and is willing to safely and efficiently administer and monitor the home infusion therapy. The caregiver must be willing to and be capable of following appropriate teaching and adequate monitoring. In ~~those~~ cases where the ~~recipient~~ individual is incapable of administering or monitoring the prescribed therapy and there is no adequate or trained caregiver, it may be appropriate for a home health agency to administer the therapy.

G. The ~~medical equipment~~ DME and supply vendor ~~must~~ shall provide the equipment and supplies as prescribed by the licensed practitioner on the ~~certificate of medical necessity~~ CMN. Orders shall not be changed unless the vendor obtains a new ~~certificate of medical necessity~~ CMN, which includes the licensed practitioner's signature, prior to ordering the equipment or supplies or providing the equipment or supplies to the ~~patient~~ individual.

H. Medicaid shall not provide reimbursement to the ~~medical equipment~~ DME and supply vendor for services that are provided either: (i) prior to the date prescribed by the licensed practitioner; ~~or~~ (ii) prior to the date of the delivery; or (iii) when services are not provided in accordance with DMAS' published ~~policies and procedures~~ regulations and guidance documents. If reimbursement is denied for one or all of these reasons, the ~~medical equipment~~ DME and supply vendor ~~may~~ shall not bill the Medicaid ~~recipient~~ individual for the service that was provided.

I. The following criteria ~~must~~ shall be satisfied through the submission of adequate and verifiable documentation on the CMN satisfactory to ~~the department~~ DMAS. Medically necessary DME and supplies shall be:

1. Ordered by the licensed practitioner on the CMN;

2. A reasonable and necessary part of the ~~recipient's~~ individual's treatment plan;

3. Consistent with the ~~recipient's~~ individual's diagnosis and medical condition, particularly the functional limitations and symptoms exhibited by the ~~recipient~~ individual;

4. Not furnished solely for the convenience, safety, or restraint of the ~~recipient~~ individual, the family or caregiver, ~~attending~~ the licensed practitioner, or other licensed practitioner or supplier;

5. Consistent with generally accepted professional medical standards (i.e., not experimental or investigational); and

6. Furnished at a safe, effective, and cost-effective level suitable for use in the ~~recipient's~~ individual's home environment.

J. ~~Coverage of enteral nutrition (EN) which does not include a legend drug shall be limited to when the nutritional supplement is the sole source form of nutrition, is administered orally or through a nasogastric or gastrostomy tube, and is necessary to treat a medical condition. Coverage of EN shall not include the provision of routine infant formula. A nutritional assessment shall be required for all recipients receiving nutritional supplements.~~ Medical documentation shall provide DMAS or the designated agent with evidence of the individual's DME needs. Medical documentation may be recorded on the CMN or evidenced in the supporting documentation attached to the CMN. The following applies to the medical justification necessary for all DME services regardless of whether prior authorization is required. The documentation is necessary to identify:

1. The medical need for the requested DME;

2. The diagnosis related to the reason for the DME request;

3. The individual's functional limitation and its relationship to the requested DME;

4. How the DME service will treat the individual's medical condition;

5. For expendable supplies, the quantity needed and the medical reason the requested amount is needed;

6. The frequency of use to describe how often the DME is used by the individual;

7. The estimated duration of use of the equipment (rental and purchased);

8. Any other treatment being rendered to the individual relative to the use of DME or supplies;

9. How the needs were previously met identifying changes that have occurred that necessitate the DME;

10. Other alternatives tried or explored and a description of the success or failure of these alternatives;

11. How the DME service is required in the individual's home environment; and

12. The individual's or caregiver's ability, willingness, and motivation to use the DME.

K. DME provider responsibilities. To receive reimbursement, the DME provider shall, at a minimum, perform the following:

1. Verify the individual's current Medicaid eligibility;

2. Determine whether the ordered item or items are a covered service and require prior authorization;

3. Deliver all of the item or items ordered by the licensed practitioner;

4. Deliver only the quantities ordered by the licensed practitioner on the CMN and prior authorized by DMAS if required;

5. Deliver only the item or items for the periods of service covered by the licensed practitioner's order and prior authorized, if required, by DMAS;

6. Maintain a copy of the licensed practitioner's signed CMN and all verifiable supporting documentation for all DME and supplies ordered;

7. Document and justify the description of services (i.e., labor, repairs, maintenance of equipment);

8. Document and justify the medical necessity, frequency and duration for all items and supplies as set out in the Medicaid DME guidance documents;

9. Document all DME and supplies provided to an individual in accordance with the licensed practitioner's orders. The delivery ticket/proof of delivery shall document the requirements as stated in subsection L of this section.

10. Documentation requirements for the use of DME billing codes that have Individual Consideration (IC) indicated as the reimbursement fee shall include a complete description of the item or items, a copy of the supply invoice or supplies invoices or the manufacturer's cost information, and all discounts that were received by the DME provider. Additional information regarding requirements for the IC reimbursement process can be found in the relevant agency guidance document.

L. Proof of delivery.

1. The delivery ticket shall contain the following information:

a. The Medicaid individual's name and Medicaid number or date of birth;

b. A detailed description of the item or items being delivered, including the product name or names and brand or brands;

c. The serial number or numbers or the product numbers of the DME or supplies;

d. The quantity delivered; and

e. The dated signature of either the individual or caregiver.

2. If a commercial shipping service is used, the DME provider's records shall reference, in addition to the information required in subdivision 1 of this subsection, the delivery service's package identification number or numbers with a copy of the delivery service's delivery ticket, which may be printed from the online record on the delivery service's website.

a. The delivery service's ticket identification number or numbers shall be recorded on the DME provider's delivery documentation.

b. The service delivery documentation may be substituted for the individual's signature as proof of delivery.

c. In the absence of a delivery service's ticket, the DME provider shall obtain the individual's or caregiver's dated signature on the DME provider's delivery ticket as proof of delivery.

3. Providers may use a postage-paid delivery invoice from the individual or caregiver as a form of proof of delivery. The descriptive information concerning the item or items delivered, as described in subdivisions 1 and 2 of this subsection, as well as the required signature and date from either the individual or caregiver shall be included on this invoice.

4. DME providers shall make affirmative contact with the individual or caregiver and document the interaction prior to dispensing repeat orders or refills to ensure that:

a. The item is still needed;

b. The quantity, frequency, and product are still appropriate; and

c. The individual still resides at the address in the provider's records.

5. The DME provider shall contact the individual prior to each delivery. This contact shall not occur any sooner than seven days prior to the delivery or shipping date and shall be documented in the individual's record.

6. DME providers shall not deliver refill orders sooner than five days prior to the end of the usage period.

7. Providers shall not bill for dates of service prior to delivery. The provider shall confirm receipt of the DME or supplies via the shipping service record showing the item

was delivered prior to billing. Claims for refill orders shall be the start of the new usage period and shall not overlap with the previous usage period.

8. The purchase prices listed in the Virginia Medicaid Durable Medical Equipment and Supplies Manual, Appendix B, represent the amount DMAS shall pay for newly purchased equipment. Unless otherwise approved by DMAS or its designated agent, documentation on the delivery ticket shall reflect that the purchased equipment is new upon the date of the service billed. Any warranties associated with new equipment shall be effective from the date of the service billed. Since Medicaid is the payer of last resort, the DME provider shall explore coverage available under the warranty prior to requesting coverage of repairs from DMAS.

9. DME and supplies for home use for an individual being discharged from a hospital or nursing facility may be delivered to the hospital or nursing facility one day prior to the discharge. However, the DME provider's claim date of service shall not begin prior to the date of the individual's discharge from the hospital or nursing facility.

M. Enteral nutrition products. Coverage of enteral nutrition (EN) that does not include a legend drug shall be limited to when the nutritional supplement is the sole source form of nutrition, is administered orally or through a nasogastric or gastrostomy tube, and is necessary to treat a medical condition. Coverage of EN shall not include the provision of routine infant formula. A nutritional assessment shall be required for all recipients for whom nutritional supplements are ordered.

1. General requirements and conditions.

a. Enteral nutrition products shall only be provided by enrolled DME providers.

b. DME providers shall adhere to all applicable DMAS policies, laws, and regulations. DME providers shall also comply with all other applicable Virginia laws and regulations requiring licensing, registration, or permitting. Failure to comply with such laws and regulations shall result in denial of coverage for enteral nutrition that is regulated by such licensing agency or agencies.

2. Service units and service limitations.

a. DME and supplies shall be furnished pursuant to the Certificate of Medical Necessity (CMN) (DMAS-352).

b. The DME provider shall include documentation related to the nutritional evaluation findings on the CMN and may include supplemental information on any supportive documentation submitted with the CMN.

c. DMAS shall reimburse for medically necessary formulae and medical foods when used under a licensed practitioner's direction to augment dietary limitations or provide primary nutrition to individuals via enteral or oral feeding methods.

d. The CMN shall contain a licensed practitioner's order for the enteral nutrition products that are medically necessary to treat the diagnosed condition and the individual's functional limitation. The justification for enteral nutrition products shall be demonstrated in the written documentation either on the CMN or on the attached supporting documentation. The CMN shall be valid for a maximum period of six months.

e. Regardless of the amount of time that may be left on a six-month approval period, the validity of the CMN shall terminate when the individual's medical need for the prescribed enteral nutrition products either ends, as determined by the licensed practitioner, or when the enteral nutrition products are no longer the primary source of nutrition.

f. A face-to-face nutritional assessment completed by trained clinicians (e.g., physician, physician assistant, nurse practitioner, registered nurse, or a registered dietitian) shall be completed as required documentation of the need for enteral nutrition products.

g. The CMN shall not be changed, altered, or amended after the licensed practitioner has signed it. As indicated by the individual's condition, if changes are necessary in the ordered enteral nutrition products, the DME provider shall obtain a new CMN.

(1) New CMNs shall be signed and dated by the licensed practitioner within 60 days from the time the ordered enteral nutrition products are furnished by the DME provider.

(2) The order shall not be backdated to cover prior dispensing of enteral nutrition products. If the order is not signed within 60 days of the service initiation, then the date the order is signed becomes the effective date.

h. Prior authorization of enteral nutrition products shall not be required. The DME provider shall assure that there is a valid CMN (i) completed every six months in accordance with subsection B of this section and (ii) on file for all Medicaid individuals for whom enteral nutrition products are provided.

(1) The DME provider is further responsible for assuring that enteral nutrition products are provided in accordance with DMAS reimbursement criteria in 12VAC30-80-30 A 6.

(2) Upon post payment review, DMAS or its designated contractor may deny reimbursement for any enteral nutrition products that have not been provided and billed in accordance with these regulations and DMAS policies.

i. DMAS shall have the authority to determine that the CMN is valid for less than six months based on medical documentation submitted.

3. Provider responsibilities.

a. The DME provider shall provide the enteral nutrition products as prescribed by the licensed practitioner on the CMN. Physician orders shall not be changed unless the DME provider obtains a new CMN prior to ordering or providing the enteral nutrition products to the individual.

b. The licensed practitioner's order (CMN) shall state that the enteral nutrition products are the sole source of nutrition for the individual and specify either a brand name of the enteral nutrition product being ordered or the category of enteral nutrition products that must be provided. If a licensed practitioner orders a specific brand of enteral nutrition product, the DME provider shall supply the brand prescribed. The licensed practitioner order shall include the daily caloric intake and the route of administration for the enteral nutrition product. Additional supporting documentation may be attached to the CMN, but the entire licensed practitioner's order shall be on the CMN.

c. The CMN shall be signed and dated by the licensed practitioner within 60 days of the CMN begin service date. If the CMN is not signed and dated by the licensed practitioner within 60 days of the CMN begin service date, the CMN shall not become valid until the date of the licensed practitioner's signature.

d. The CMN shall include all of the following elements:

(1) Height of individual (or length for pediatric patients);

(2) Weight of individual. For initial assessments, indicate the individual's weight loss over time;

(3) Tolerance of enteral nutrition product (e.g., is the individual experiencing diarrhea, vomiting, constipation). This element is only required if the individual is already receiving enteral nutrition products;

(4) Indication of whether or not the enteral nutrition product is the primary or sole source of nutrition;

(5) Route of administration;

(6) The daily caloric order and the number of calories per package or can; and

(7) Extent to which the quantity of the enteral nutrition product is available through WIC, the Special Supplemental Nutrition Program for Women, Infants and Children.

e. The DME provider shall retain a copy of the CMN and all supporting verifiable documentation on file for DMAS' post payment review purposes. DME providers shall not create or revise CMNs or supporting documentation for this service after the initiation of the post payment review process. Licensed practitioners shall not complete or sign and date CMNs once the post payment review has begun.

f. Medicaid reimbursement shall be recovered when the enteral nutrition products have not been ordered on the CMN. Supporting documentation is allowed to justify the medical need for enteral nutrition products. Supporting documentation shall not replace the requirement for a properly completed CMN. The dates of the supporting documentation shall coincide with the dates of service on the CMN, and the supporting documentation shall be fully signed and dated by the licensed practitioner.

g. To receive reimbursement, the DME provider shall:

(1) Deliver only the item or items and quantity or quantities ordered by the licensed practitioner and approved by DMAS or the designated prior or service authorization contractor;

(2) Deliver only the item or items for the periods of service covered by the licensed practitioner's order and approved by DMAS or the designated prior or service authorization contractor;

(3) Maintain a copy of the licensed practitioner's order and all verifiable supporting documentation for all DME ordered; and

(4) Document all supplies provided to an individual in accordance with the licensed practitioner's orders. The delivery ticket must document the individual's name and Medicaid number, the date of delivery, the item or items that were delivered, and the quantity delivered.

h. DMAS shall deny payment to the DME provider if any of the following occur:

(1) Absence of a current, fully completed CMN appropriately signed and dated by the licensed practitioner;

(2) Documentation does not verify that the item was provided to the individual;

(3) Lack of medical documentation, signed by the licensed practitioner to justify the enteral nutrition products; or

(4) Item is noncovered or does not meet DMAS criteria for reimbursement.

i. If reimbursement is denied by Medicaid, the DME provider shall not bill the Medicaid individual for the service that was provided.

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 from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (12VAC30-50)

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

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

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

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

Certificate of Medical Necessity-Durable Medical Equipment and Supplies, DMAS-352 (rev. 7/10).

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

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

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

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

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

DOCUMENTS INCORPORATED BY REFERENCE (12VAC30-50)

Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition DSM-IV-TR, copyright 2000, American Psychiatric Association.

Length of Stay by Diagnosis and Operation, Southern Region, 1996, HCIA, Inc.

Guidelines for Perinatal Care, 4th Edition, August 1997, American Academy of Pediatrics and the American College of Obstetricians and Gynecologists.

Virginia Supplemental Drug Rebate Agreement Contract and Addenda.

Office Reference Manual (Smiles for Children), prepared by DMAS' Dental Benefits Administrator, copyright 2005 (www.dmas.virginia.gov/downloads/pdfs/dental-office_reference_manual_0 6-09-05.pdf).

Patient Placement Criteria for the Treatment of Substance-Related Disorders ASAM PPC-2R, Second Edition, copyright 2001, American Society of Addiction Medicine.

Virginia Medicaid Durable Medical Equipment and Supplies Provider Manual, Appendix B (rev. 1/11), Department of Medical Assistance Services.

12VAC30-60-75. Durable medical equipment (DME) and supplies.

A. No provider shall have a claim of ownership on DME reimbursed by Virginia Medicaid once it has been delivered to the Medicaid individual. Providers shall only be permitted to recover DME, for example, when DMAS determines that it does not fulfill the required medically necessary purpose as set out in the Certificate of Medical Necessity (CMN), when there is an error in the ordering practitioner's CMN, or when the equipment was rented. DMAS shall not reimburse the DME and supply provider for services that are provided either: (i) prior to the date prescribed by the licensed practitioner; (ii) prior to the date of the delivery; or (iii) when services are not provided in accordance with DMAS' published regulations and guidance documents. In instances when the DME or supply is shipped directly to the Medicaid individual, the DME provider shall confirm that the DME or supplies have been received by the individual before submitting his claim for payment to DMAS.

~~A.~~ B. DME providers, as defined in 12VAC30-50-165, shall retain copies on file of the ~~CMN~~ fully completed CMN and all applicable supporting documentation ~~on file~~ for post payment audit reviews. ~~Durable medical equipment and supplies that are not ordered on the CMN for which reimbursement has been made by Medicaid will be retracted.~~ Reimbursement that has been made by Medicaid shall be retracted if the DME and supplies have not been ordered on the CMN. ~~Supporting~~ Additional supporting documentation is allowed to justify the medical need for durable medical equipment and supplies. Supporting documentation ~~does~~ shall not replace the requirement for a properly completed CMN. The dates of the supporting documentation ~~must~~ shall coincide with the dates of service on the CMN. ~~and the~~ The ~~medical~~ licensed practitioner providing the supporting documentation ~~must~~ shall be identified by name and title. DME providers shall not create or revise CMNs or supporting documentation for durable medical equipment and supplies that have been provided ~~after~~ once the post payment audit review has been initiated.

~~B. Persons needing~~ C. Individuals requiring only ~~DME/supplies~~ DME or supplies may obtain such services directly from the DME provider without having to consult or obtain services from a home health service or home health provider. ~~DME/supplies must be ordered by the practitioner (physician or nurse practitioner) be related to the medical treatment of the patient, and the complete order must be on the CMN for persons receiving DME/supplies.~~ Supplies used for treatment during ~~the~~ a home health visit ~~are~~ shall be included in the visit rate of the home health provider.

Treatment supplies left in the home to maintain treatment after the visits shall be charged separately.

D. CMN requirements. The CMN shall have two required components: (i) the licensed practitioner's order and (ii) the clinical diagnosis. Failure to have a complete CMN may result in nonpayment of services rendered or retraction of payments made subsequent to post payment audits.

1. Licensed practitioner's order.

a. The licensed practitioners' complete order shall appear on the face of the CMN. A complete order on the CMN shall consist of the item's complete description, the quantity ordered, the frequency of use, and the licensed practitioner's signature and complete date of signing as defined in 12VAC30-50-165. If the DME provider determines that the prescribing licensed practitioner's signature and complete date of signing are missing, he shall consider the CMN to be invalid and he shall request a new CMN.

b. The following CMN fields (as indicated by an asterisk on the CMN) shall be required for reimbursement:

(1) The ordered item's description. If the item is an E1399 (miscellaneous), the description of the item shall not be "miscellaneous DME," but the provider shall specify the DME item or supply.

(2) The quantity ordered as found in the licensed practitioner's order. For expendable supplies the provider shall designate supplies needed for one month. If an item is not needed every month, the provider may designate an alternate time frame.

(3) The frequency of use of the DME item or supply.

(4) The licensed practitioner's signature and full date. If either the licensed practitioner's signature or full date, or both, are missing, then the entire CMN shall be deemed to be invalid and a new CMN shall be obtained. The licensed practitioner's signature certifies that the ordered DME and supplies are a part of the treatment plan and are medically necessary for the Medicaid individual.

c. The begin service date on the CMN is optional.

(1) If the provider enters a begin service date, the CMN must be signed and dated by the licensed practitioner within 60 days of the begin service date in order for the CMN to start from the begin date.

(2) If no begin service date is documented on the CMN, the date of the practitioner's signature shall be the start date of the CMN.

2. The clinical diagnosis.

a. The narrative description of the clinical diagnosis shall be recorded on the face of the CMN.

b. The recording on the face of the CMN of the relevant ICD-9 diagnosis code shall be optional.

3. Supporting documentation.

a. Supporting documentation may be included in the additional information attached to the CMN.

b. The attachment of supporting documentation shall not replace the requirement for a properly completed CMN.

12VAC30-80-30. Fee-for-service providers.

A. Payment for the following services, except for physician services, shall be the lower of the state agency fee schedule (12VAC30-80-190 has information about the state agency fee schedule) or actual charge (charge to the general public):

1. Physicians' services. Payment for physician services shall be the lower of the state agency fee schedule or actual charge (charge to the general public). The following limitations shall apply to emergency physician services.

a. Definitions. The following words and terms, when used in this subdivision 1 shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

"All-inclusive" means all emergency service and ancillary service charges claimed in association with the emergency department visit, with the exception of laboratory services.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"Emergency physician services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"Recent injury" means an injury that has occurred less than 72 hours prior to the emergency department visit.

b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency departments and reimburse physicians for nonemergency care rendered in emergency departments at a reduced rate.

(1) DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all physician services, including those obstetric and pediatric procedures contained in 12VAC30-80-160, rendered in emergency departments that DMAS determines are nonemergency care.

(2) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(3) Services determined by the attending physician that may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology in subdivision 1 b (2) of this subsection. Services not meeting certain criteria shall be paid under the methodology in subdivision 1 b (1) of this subsection. Such criteria shall include, but not be limited to:

(a) The initial treatment following a recent obvious injury.

(b) Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

(c) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.

(d) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.

(e) Services provided for acute vital sign changes as specified in the provider manual.

(f) Services provided for severe pain when combined with one or more of the other guidelines.

(4) Payment shall be determined based on ICD-9-CM diagnosis codes and necessary supporting documentation.

(5) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent objectives, the accuracy and effectiveness of the ICD-9-CM code designations, and the impact on recipients and providers.

2. Dentists' services.

3. Mental health services including: (i) community mental health services; (ii) services of a licensed clinical psychologist; or (iii) mental health services provided by a physician.

a. Services provided by licensed clinical psychologists shall be reimbursed at 90% of the reimbursement rate for psychiatrists.

b. Services provided by independently enrolled licensed clinical social workers, licensed professional counselors or licensed clinical nurse specialists-psychiatric shall be reimbursed at 75% of the reimbursement rate for licensed clinical psychologists.

4. Podiatry.

5. Nurse-midwife services.

6. Durable medical equipment (DME) and supplies.

~~a. For those items that have a national Healthcare Common Procedure Coding System (HCPCS) code, the rate for durable medical equipment shall be set at the Durable Medical Equipment Regional Carrier (DMERC) reimbursement level.~~

~~b. The rate paid for all items of durable medical equipment except nutritional supplements shall be the lower of the state agency fee schedule that existed prior to July 1, 1996, less 4.5%, or the actual charge.~~

~~c. The rate paid for nutritional supplements shall be the lower of the state agency fee schedule or the actual charge.~~

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

"DMERC" means the Durable Medical Equipment Regional Carrier rate as published by the Centers for Medicare and Medicaid Services at www.cms.gov/DMEPOSFeeSched/LSDMEPOSFEE/list.asp?filterType=none&filterByDID=99&sortByDID=3&sortOrder=descending&intNumPerPage=10.

"HCPCS" means the Healthcare Common Procedure Coding System, Medicare's National Level II Codes, HCPCS 2006 (Eighteenth edition), as published by Ingenix, as may be periodically updated.

a. Obtaining prior authorization shall not guarantee Medicaid reimbursement for DME.

b. The following shall be the reimbursement method used for DME services:

(1) If the DME item has a DMERC rate, the reimbursement rate shall be the DMERC rate minus 10%.

(2) For DME items with no DMERC rate, the agency shall use the agency fee schedule amount.The reimbursement rates for DME and supplies shall be listed in the DMAS Medicaid Durable Medical Equipment (DME) and Supplies Listing and updated periodically. The agency fee schedule shall be available on the agency website at www.dmas.virginia.gov.

(3) If a DME item has no DMERC rate or agency fee schedule rate, the reimbursement rate shall be the manufacturer's net charge to the provider, less shipping and handling, plus 30%. The manufacturer's net charge to the provider shall be the cost to the provider minus all available discounts to the provider. Additional information specific to how DME providers, including manufacturers who are enrolled as providers, establish

and document their cost or costs for DME codes that do not have established rates can be found in the relevant agency guidance document.

c. DMAS shall have the authority to amend the agency fee schedule as it deems appropriate and with notice to providers. DMAS shall have the authority to determine alternate pricing, based on agency research, for any code that does not have a rate.

d. The reimbursement for incontinence supplies shall be by selective contract. Pursuant to § 1915(a)(1)(B) of the Social Security Act and 42 CFR 431.54(d), the Commonwealth assures that adequate services/devices shall be available under such arrangements.

e. Certain durable medical equipment used for intravenous therapy and oxygen therapy shall be bundled under specified procedure codes and reimbursed as determined by the agency. Certain services/durable medical equipment such as service maintenance agreements shall be bundled under specified procedure codes and reimbursed as determined by the agency.

(1) Intravenous therapies. The DME for a single therapy, administered in one day, shall be reimbursed at the established service day rate for the bundled durable medical equipment and the standard pharmacy payment, consistent with the ingredient cost as described in 12VAC30-80-40, plus the pharmacy service day and dispensing fee. Multiple applications of the same therapy shall be included in one service day rate of reimbursement. Multiple applications of different therapies administered in one day shall be reimbursed for the bundled durable medical equipment service day rate as follows: the most expensive therapy shall be reimbursed at 100% of cost; the second and all subsequent most expensive therapies shall be reimbursed at 50% of cost. Multiple therapies administered in one day shall be reimbursed at the pharmacy service day rate plus 100% of every active therapeutic ingredient in the compound (at the lowest ingredient cost methodology) plus the appropriate pharmacy dispensing fee.

(2) Respiratory therapies. The DME for oxygen therapy shall have supplies or components bundled under a service day rate based on oxygen liter flow rate or blood gas levels. Equipment associated with respiratory therapy may have ancillary components bundled with the main component for reimbursement. The reimbursement shall be a service day per diem rate for rental of equipment or a total amount of purchase for the purchase of equipment. Such respiratory equipment shall include, but not be limited to, oxygen tanks and tubing, ventilators, noncontinuous ventilators, and suction machines. Ventilators, noncontinuous ventilators, and suction machines may be purchased based on the individual patient's medical necessity and length of need.

(3) Service maintenance agreements. Provision shall be made for a combination of services, routine maintenance, and supplies, to be known as agreements, under a single reimbursement code only for equipment that is recipient owned. Such bundled agreements shall be reimbursed either monthly or in units per year based on the individual agreement between the DME provider and DMAS. Such bundled agreements may apply to, but not necessarily be limited to, either respiratory equipment or apnea monitors.

7. Local health services.

8. Laboratory services (other than inpatient hospital).

9. Payments to physicians who handle laboratory specimens, but do not perform laboratory analysis (limited to payment for handling).

10. X-Ray services.

11. Optometry services.

12. Medical supplies and equipment.

13. Home health services. Effective June 30, 1991, cost reimbursement for home health services is eliminated. A rate per visit by discipline shall be established as set forth by 12VAC30-80-180.

14. Physical therapy; occupational therapy; and speech, hearing, language disorders services when rendered to noninstitutionalized recipients.

15. Clinic services, as defined under 42 CFR 440.90.

16. Supplemental payments for services provided by Type I physicians.

a. In addition to payments for physician services specified elsewhere in this State Plan, DMAS provides supplemental payments to Type I physicians for furnished services provided on or after July 2, 2002. A Type I physician is a member of a practice group organized by or under the control of a state academic health system or an academic health system that operates under a state authority and includes a hospital, who has entered into contractual agreements for the assignment of payments in accordance with 42 CFR 447.10.

b. Effective July 2, 2002, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for Type I physician services and Medicare rates. Effective August 13, 2002, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for physician services and 143% of Medicare rates. This percentage was determined by dividing the total commercial allowed amounts for Type I physicians for at least the top five commercial insurers in CY 2004 by

what Medicare would have allowed. The average commercial allowed amount was determined by multiplying the relative value units times the conversion factor for RBRVS procedures and by multiplying the unit cost times anesthesia units for anesthesia procedures for each insurer and practice group with Type I physicians and summing for all insurers and practice groups. The Medicare equivalent amount was determined by multiplying the total commercial relative value units for Type I physicians times the Medicare conversion factor for RBRVS procedures and by multiplying the Medicare unit cost times total commercial anesthesia units for anesthesia procedures for all Type I physicians and summing.

c. Supplemental payments shall be made quarterly.

d. Payment will not be made to the extent that this would duplicate payments based on physician costs covered by the supplemental payments.

17. Supplemental payments for services provided by physicians at Virginia freestanding children's hospitals.

a. In addition to payments for physician services specified elsewhere in this State Plan, DMAS provides supplemental payments to Virginia freestanding children's hospital physicians providing services at freestanding children's hospitals with greater than 50% Medicaid inpatient utilization in state fiscal year 2009 for furnished services provided on or after July 1, 2011. A freestanding children's hospital physician is a member of a practice group (i) organized by or under control of a qualifying Virginia freestanding children's hospital, or (ii) who has entered into contractual agreements for provision of physician services at the qualifying Virginia freestanding children's hospital and that is designated in writing by the Virginia freestanding children's hospital as a practice plan for the quarter for which the supplemental payment is made subject to DMAS approval. The freestanding children's hospital physicians also must have entered into contractual agreements with the practice plan for the assignment of payments in accordance with 42 CFR 447.10.

b. Effective July 1, 2011, the supplemental payment amount for freestanding children's hospital physician services shall be the difference between the Medicaid payments otherwise made for freestanding children's hospital physician services and 143% of Medicare rates as defined in the supplemental payment calculation for Type I physician services subject to the following reduction. Final payments shall be reduced on a pro-rated basis so that total payments for freestanding children's hospital physician services are $400,000 less annually than would be calculated based on the formula in the previous sentence. Payments shall be made on the same schedule as Type I physicians.

18. Supplemental payments to nonstate government-owned or operated clinics.

a. In addition to payments for clinic services specified elsewhere in the regulations, DMAS provides supplemental payments to qualifying nonstate government-owned or operated clinics for outpatient services provided to Medicaid patients on or after July 2, 2002. Clinic means a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients. Outpatient services include those furnished by or under the direction of a physician, dentist or other medical professional acting within the scope of his license to an eligible individual. Effective July 1, 2005, a qualifying clinic is a clinic operated by a community services board. The state share for supplemental clinic payments will be funded by general fund appropriations.

b. The amount of the supplemental payment made to each qualifying nonstate government-owned or operated clinic is determined by:

(1) Calculating for each clinic the annual difference between the upper payment limit attributed to each clinic according to subdivision 18 d and the amount otherwise actually paid for the services by the Medicaid program;

(2) Dividing the difference determined in subdivision 18 b (1) for each qualifying clinic by the aggregate difference for all such qualifying clinics; and

(3) Multiplying the proportion determined in subdivision 18 b (2) by the aggregate upper payment limit amount for all such clinics as determined in accordance with 42 CFR 447.321 less all payments made to such clinics other than under this section.

c. Payments for furnished services made under this section may be made in one or more installments at such times, within the fiscal year or thereafter, as is determined by DMAS.

d. To determine the aggregate upper payment limit referred to in subdivision 18 b (3), Medicaid payments to nonstate government-owned or operated clinics will be divided by the "additional factor" whose calculation is described in Attachment 4.19-B, Supplement 4 (12VAC30-80-190 B 2) in regard to the state agency fee schedule for RBRVS. Medicaid payments will be estimated using payments for dates of service from the prior fiscal year adjusted for expected claim payments. Additional adjustments will be made for any program changes in Medicare or Medicaid payments.

19. Personal Assistance Services (PAS) for individuals enrolled in the Medicaid Buy-In program described in 12VAC30-60-200. These services are reimbursed in accordance with the state agency fee schedule described in

12VAC30-80-190. The state agency fee schedule is published on the Single State Agency Website.

B. Hospice services payments must be no lower than the amounts using the same methodology used under Part A of Title XVIII, and take into account the room and board furnished by the facility, equal to at least 95% of the rate that would have been paid by the state under the plan for facility services in that facility for that individual. Hospice services shall be paid according to the location of the service delivery and not the location of the agency's home office.

DOCUMENTS INCORPORATED BY REFERENCE (12VAC30-80)

Approved Drug Products with Therapeutic Equivalence Evaluations, 25th Edition, 2005, U.S. Department of Health and Human Services.

~~Healthcare Common Procedure Coding System (HCPCS), National Level II Codes, 2001, Medicode.~~

International Classification of Diseases, ICD-9-CM 2007, Physician, Volumes 1 and 2, 9th Revision-Clinical Modification, American Medical Association.

Durable Medical Equipment, Prosthetics/Orthotics & Supplies Fee Schedules, http://www.cms.gov/DMEPOSFeeSched/LSDMEPOSFEE/list.asp?filterType=none&filterByDID=-99&sortByDID=3&sortOrder=descending&intNumPerPage=10, Jan. 2012, Centers for Medicare & Medicaid Services, U.S. Department of Health and Human Services.

Virginia Medicaid Durable Medical Equipment and Supplies Provider Manual Appendix B (rev. 1/11), Department of Medical Assistance Services.

VA.R. Doc. No. R10-2333; Filed December 12, 2011, 10:35 a.m.

Notice of Extension of Emergency Regulation

Titles of Regulations: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-165).**

12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-80).

Statutory Authority: § 32.1-325 of the Code of Virginia; Title XIX of the Social Security Act (42 USC § 1396).

Effective Dates: July 1, 2010, through December 31, 2011.

On December 8, 2011, the Governor approved the request of the Department of Medical Assistance Services to extend the expiration date of the emergency regulation as provided in § 2.2-4011 D of the Code of Virginia. The emergency regulation was published in 26:23 VA.R. 2744-2750 July 19, 2010.

Agency Contact: Brian McCormick, Regulatory Supervisor, Department of Medical Assistance Services, 600 E. 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. R10-2333; Filed December 8, 2011, 3:14 p.m.

EXECUTIVE ORDER NUMBER 43 (2011)

Continuing the Statewide Agencies Radio System (STARS)

I. Importance of the Initiative

It is essential that a statewide system of integrated radio and wireless data communication be maintained for state agencies engaged in public protection and safety and for the mutual aid needs of state and local law enforcement agencies.

The management structure of a statewide radio system that is shared between numerous agencies that provide public protection and safety services poses considerable challenges. To meet the needs of all potential users, the managing entity must establish and provide formal communication avenues for users of the system to report system problems and to provide valuable input to the design of the system and its efficient operations and troubleshooting.

In order to be effective, a statewide radio system must meet the needs of a diverse group of agencies and localities. Therefore, appropriate entities, composed of Secretarial representation for each of the participating agencies, must be established and empowered to oversee policy and direction for the system. Also, a maintenance and operation unit has been established to manage, maintain, and operate the reliable integrated radio communications system.

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Section 2.2-103 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby continue the initiative to accomplish the goals of the Statewide Agencies Radio System (STARS).

Pursuant to Chapter 3, Title 52, of the Code of Virginia, I hereby continue the initiatives associated with the Statewide Agencies Radio System (STARS) to meet the need for an integrated radio and wireless data communications system for state agencies engaged in public protection and safety and for interconnection between state and local police communication systems at the city and county level. As part of this initiative, I hereby continue the STARS Management Group (hereinafter called the "Management Group"), and STARS Project Management Team (hereinafter called the "Management Team"), and the User Agency Requirements Committee (hereinafter called "UARC").

II. STARS Membership

The STARS membership shall be composed of the following state agencies, and any other state agencies or institutions and local government agencies or institutions that the Management Group approves:

Chesapeake Bay Bridge and Tunnel Police,
Department of Agriculture and Consumer Services,
Division of Charitable Gaming,
Department of Alcoholic Beverage Control,
Division of Capitol Police,
Department of Conservation and Recreation,
Department of Corrections,
Department of Emergency Management,
Department of Environmental Quality,
Department of Fire Programs,
Department of Forestry,
Department of Game and Inland Fisheries,
Department of Health,
Department of Juvenile Justice,
Department of Military Affairs,
Department of Mines, Minerals, and Energy,
Department of Motor Vehicles,
Department of State Police,
Department of Transportation,
Virginia Information Technologies Agency,
Virginia Marine Resources Commission, and
Virginia Port Authority.

Withdrawal by state agencies and institutions from STARS shall be only upon approval of the Management Group.

III. STARS Management Group

The Management Group shall provide overall direction and governance for the development, implementation, and ongoing operation of STARS.

A. Composition of the Management Group

The Secretaries of Public Safety, Technology, Transportation, Natural Resources, Commerce and Trade, Health and Human Resources, Agriculture and Forestry, Finance and Veterans Affairs and Homeland Security shall serve as members of the Management Group.

The Secretary of Public Safety shall serve as chair of the Management Group. The chair of the Management Group shall have the power to set meetings and make assignments to members of the user group established below.

B. Duties of the Management Group:

The specific duties of the Management Group are to:

- Provide direction and overall governance for the STARS, including communications privacy and security,
- Review all procurements and contracts relating to the STARS,
- Coordinate and assign radio frequency licenses granted by the federal government to agencies of the Commonwealth, and
- Promote interagency cooperation and coordination in the use of communications resources.

The Management Group shall also designate and oversee the Management Team.

IV. STARS Project Management Team

The Management Team shall provide staff for overall direction and governance for the development, implementation, and ongoing operation of STARS.

A. Composition of the Management Team:

The Management Team shall consist of persons with project management, electrical engineering, civil engineering, communications technology, procurement, contract administration, and accounting expertise.

B. Duties of the Management Team:

The Management Team shall be responsible for maintaining a comprehensive management plan and procedures for the use and operation of STARS. It shall also be responsible for resolving general operating issues between STARS users. Any issues that can not be resolved by the Management Team shall be addressed by the Management Group.

V. STARS User Agency Requirements Committee (UARC)

A user group called the User Agency Requirements Committee (UARC), consisting of representatives from each member agency and institution, shall assist the Management Team. The Management Group shall select the chairman. The STARS Program Director serves as the co-chairman of UARC.

A. Composition of UARC:

The head of each member agency and institution shall appoint one member of their respective staffs and a designated alternate to serve on UARC.

B. Duties of UARC:

The User Group shall assist the Management Team by establishing such operating procedures, executive committee, and subcommittees, as it deems appropriate to carry out its work. UARC shall meet as necessary, but at least quarterly.

The specific duties of UARC are to:

• Advise of the needs of member agencies for the maintenance and operation of STARS,

• Provide advice on proposals for other federal, state, or local agencies to join STARS and on any proposals for third party use of any STARS infrastructure or component, and

• Assist the Management Team with the maintenance of a comprehensive management plan and procedures for the use and operation of STARS. The management plan and any changes thereto shall be subject to review and approval by the Management Group.

VI. STARS Procurement

As provided in Item 457 of the 2002 Appropriation Act (Chapter 899 of the 2002 Acts of Assembly), the Commonwealth entered into a Contract with Motorola on July 13, 2004, for the design, construction, and implementation of STARS with the approval of the Governor and the General Assembly.

The Secretary of Public Safety, with the assistance of the Secretary of Finance, the Secretary of Technology, the Department of Planning and Budget, and the Treasurer, continues the oversight for the financing of STARS.

The Management Group shall report on the status of STARS, including the status of any contract negotiations within the limitations of the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia) to the Governor and General Assembly by January 1 of each year.

VII. Effective Date of this Executive Order

This Executive Order shall become effective upon its signing and shall remain in full force and effect unless amended or rescinded by further Executive Order.

Given under my hand and the Seal of the Commonwealth of Virginia on this 9th day of December 2011.

/s/ Robert F. McDonnell
Governor

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Proposed Consent Special Order - Neff Enterprises

Purpose of notice: To seek public comment on the terms of a proposed consent special order issued to Neff Enterprises (Neff).

Public comment period: January 16, 2012, through February 15, 2012.

Summary of proposal: The proposed consent special order describes a settlement between the Virginia Soil and Water Conservation Board and Neff to resolve alleged past violations of the Virginia Stormwater Management Act and Regulations at Neff's South Harrisonburg Commercial Park construction project located at South Main Street in the City of Harrisonburg, Virginia.

How to comment: The Virginia Department of Conservation and Recreation accepts written comments from the public by mail, email, or facsimile. All comments must include the name, address, and telephone number of the person commenting. Comments must be received during the comment period. A copy of the proposed consent special order is available on request from the person identified directly below as the contact.

Contact for public documents, documents, and additional information: Edward A. Liggett, Virginia Department of Conservation and Recreation, 900 Natural Resources Drive, Suite 800-DCR, Charlottesville, VA 22903, telephone (434) 220-9067, FAX (804) 786-1798, or email ed.liggett@dcr.virginia.gov.

Contact Information: David C. Dowling, Policy and Planning Director, 203 Governor Street, Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, or email david.dowling@dcr.virginia.gov.

Proposed Consent Special Order - The City of Petersburg

Purpose of notice: To seek public comment on the terms of a proposed consent special order issued to the City of Petersburg regarding the city's municipal separate storm sewer system.

Public comment period: January 16, 2012, through February 15, 2012.

Summary of proposal: The proposed consent special order describes a settlement with the City of Petersburg to resolve deficiencies in Petersburg's municipal separate storm sewer system as regulated under the Virginia Stormwater Management Act and Regulations.

How to comment: The Virginia Department of Conservation and Recreation accepts written comments from the public by mail, email, or facsimile. All comments must include the name, address, and telephone number of the person commenting. Comments must be received during the comment period. A copy of the proposed consent special order is available on request from the person identified directly below as the contact.

Contact for public documents, documents, and additional information: Edward A. Liggett, Virginia Department of Conservation and Recreation, 900 Natural Resources Drive, Suite 800-DCR, Charlottesville, VA 22903, telephone (434) 220-9067, FAX (804) 786-1798, or email ed.liggett@dcr.virginia.gov.

Contact Information: David C. Dowling, Policy and Planning Director, 203 Governor Street, Suite 302, Richmond, VA 23219, telephone (804) 786-2291 FAX (804) 786-6141, or email david.dowling@dcr.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Small Renewable Energy (Water Related) Permit By Rule Regulation, 9VAC15-80

Pursuant to the Small Renewable Energy Projects Act of 2009 (§ 10.1-1197.5 et seq., of the Code of Virginia), the department is directed to develop one or more permits by rule "if it is determined by the department that one or more such permits by rule are necessary for the construction and operation of small renewable energy projects." The Department of Environmental Quality (DEQ) filed a Notice of Intended Regulatory Action (NOIRA) for each renewable energy resource (or group of related resources).

The Water Related Regulatory Advisory Panel (RAP) was established in September 2011 to consider a potential permit by rule (PBR) regulation for the water related renewable resources that are listed in the 2009 statute; i.e., falling water, wave motion, tides, and geothermal power.

After careful consideration of the issues, it was the consensus recommendation of the Water Related RAP that it is not necessary or appropriate, under current conditions, for DEQ to develop a PBR regulation for renewable energy projects that generate electricity from falling water, wave motion, tides, or geothermal power. The RAP further recommended that DEQ reevaluate the potential need for a PBR regulation concerning these water related renewable energy resources in 2014, or sooner if circumstances or public requests so indicate.

The department, with concurrence of the RAP, determined that it would be appropriate to conduct a 30-day informal public comment period concerning the RAP's recommendations.

The informal public comment period ended on November 28, 2011, and no comments were received.

On December 2, 2011, the Director of DEQ determined that it is not necessary or appropriate, under current conditions, for DEQ to develop a PBR regulation for renewable energy projects that generate electricity from falling water, wave motion, tides, or geothermal power. Further, the director decided that DEQ will reevaluate the potential need for a PBR regulation concerning these water related renewable energy resources in 2014, or sooner if circumstances or public requests so indicate.

The full documentation for the basis of the director's actions can be found at www.deq.virginia.gove/renewable_energy/water_related.html.

Contact Information: Carol C. Wampler, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4579, FAX (804) 698-4346, or email carol.wampler@deq.virginia.gov.

Total Maximum Daily Load Studies to Restore Water Quality in Bacteria Impaired Waters of Powells Creek, Quantico Creek, South Fork Quantico Creek, North Branch Chopawamsic Creek, Austin Run, Accokeek Creek, Potomac Creek, Potomac Run, and an Unnamed Tributary to the Potomac River

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) and the Virginia Department of Conservation and Recreation (DCR) announce the final Technical Advisory Committee (TAC) meeting to address the development of total maximum daily loads (TMDLS) for several tributaries to the Potomac River.

The meeting is scheduled on Wednesday, January 4, 2012, 2 p.m. to 3:30 p.m., at John M. Porter Memorial Library, Meeting Room B, 2001 Parkway Blvd., Stafford, VA 22554. In case of inclement weather please contact Katie Conaway for an alternate meeting date/time, email katie.conaway@deq.virginia.gov, or telephone (703) 583-3804.

Meeting description: This is the final TAC meeting to address the bacteria TMDL studies for Powells Creek, Quantico Creek, South Fork Quantico Creek, North Branch Chopawamsic Creek, Austin Run, Accokeek Creek, Potomac Creek, Potomac Run, and an Unnamed Tributary to the Potomac River. The purpose of the TAC is to provide technical input and insight for the project and to assist with stakeholder and public participation.

Description of study: Portions of the following streams have been identified as impaired on the Clean Water Act § 303(d) list for not supporting Virginia's water quality recreational use standard due to exceedances of the bacteria criterion:

Waterbody Name	Watershed Location	Segment Size	Cause	Segment Description
Powells Creek	Prince William County	4.62 miles	Escherichia coli	Segment begins approximately 0.2 rivermiles below Lake Montclair and continues downstream until the end of the free-flowing waters of Powells Creek.
Quantico Creek	Prince William County Town of Dumfries	1.45 miles	Escherichia coli	Segment begins at the confluence with South Fork Quantico Creek, approximately 0.75 rivermile upstream from I-95, and continues downstream until the start of the tidal waters of Quantico Bay.
South Fork Quantico Creek	Prince William County Town of Dumfries	4.63 miles	Escherichia coli	Segment begins at the headwaters of the South Fork Quantico Creek and continues downstream until the start of the impounded waters, adjacent to what is labeled as Mawavi Camp No 2 on the Joplin quad.
North Branch Chopawamsic Creek	Stafford County Prince William County	6.9 miles	Escherichia coli	Segment begins at the headwaters of North Branch Chopawamsic Creek and continues downstream until the confluence with Middle Branch.

Austin Run	Fauquier County Stafford County	0.79 miles	Fecal Coliform	Segment begins at the confluence with an unnamed tributary to Austin Run (streamcode XGQ) and continues downstream until the confluence with Aquia Creek.
Accokeek Creek	Stafford County	4.21 miles	Escherichia coli	Segment begins at the confluence with an unnamed tributary to Accokeek Creek (rivermile 8.62), approximately 0.33 rivermile downstream from Route 1, and continues downstream until the end of the free-flowing waters.
Potomac Creek	Stafford County	2.18 miles	Escherichia coli	Segment begins at the railroad crossing at the west end of swamp, upstream from Route 608, and continues downstream until the east end of swamp.
Potomac Run	Stafford County	6.13 miles	Escherichia coli	Segment begins at the headwaters of Potomac Run and continues downstream until the confluence with Long Branch.
Unnamed Tributary to the Potomac River	Stafford County	2.9 miles	Escherichia coli	Segment begins at the headwaters of the unnamed tributary and continues downstream until its confluence with the Potomac River.

Virginia agencies are working to identify sources of bacteria contamination in these stream segments. During this study, DEQ will develop a total maximum daily load, or a TMDL, for each of the impaired stream segments. A TMDL is the total amount of a pollutant a water body can receive and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL allocated amount.

How to comment: The public comment period on the materials presented at the TAC meeting will extend from January 4, 2012, to February 3, 2012. DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting and be received by DEQ during the comment period. Please send all comments to the contact listed below.

Contact for additional information: Katie Conaway, Virginia Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3804, or email katie.conaway@deq.virginia.gov.

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on December 12, 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 One Hundred Three (11)

Virginia's Instant Game Lottery 1270; "Triple Tripler" Final Rules for Game Operation (effective December 8, 2011)

Director's Order Number One Hundred Five (11)

Virginia's Instant Game Lottery 1307; "Red Hot 5'S Doubler" Final Rules for Game Operation (effective December 8, 2011)

Director's Order Number One Hundred Ten (11)

Virginia's Instant Game Lottery 1325; "Super Lucky 8'S" Final Rules for Game Operation (effective December 8, 2011)

Director's Order Number One Hundred Twenty -Three (11)

Virginia Lottery's "2012 Super Teacher Awards Contest" Final Rules for Game Operation (effective December 8, 2011)

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Increase Supplemental Payments for Physician Practices Affiliated with Type 1 Hospitals - Notice of Intent to Amend the Virginia State Plan for Medical Assistance (Pursuant to § 1902(a)(13) of the Act (42 USC § 1396a(a)(13))

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Methods and Standards for Establishing Payment Rates - Other Types of Care, 12VAC30-80. 12VAC30-80-30 is being amended to increase supplemental payments for physician practices affiliated with Type 1 hospitals. DMAS intends to revise the percent of Medicare, which represents the average commercial rate. The current percent of Medicare is 143%. The proposed percent of Medicare is 220%. Using the revised percent of Medicare will result in an increase in supplemental payments of approximately $21.8 million total funds.

This notice is intended to satisfy the requirements of 42 CFR § 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review from William Lessard, Provider Reimbursement Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, and this notice is available for public review on the Regulatory Town Hall (www.townhall.com). Comments or inquiries may be submitted, in writing, within 30 days of this notice publication to Mr. Lessard and such comments are available for review at the same address.

Contact Information: William Lessard, Provider Reimbursement Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4593, FAX (804) 786-1680, or email william.lessard@dmas.virginia.gov.

STATE WATER CONTROL BOARD

Consent Special Order for Advanced Flooring Technologies of Virginia, Inc.

An enforcement action has been proposed for Advanced Flooring Technologies of Virginia, Inc., for alleged violations that occurred at the Forest Ridge Apartments in Richmond, Virginia. The State Water Control Board proposes to issue a consent special order to Advanced Flooring Technologies of Virginia, Inc., to address noncompliance with State Water Control Board law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Cynthia Akers will accept comments from January 2, 2012, to February 1, 2012, by email to cynthia.akers@deq.virginia.gov, FAX (804) 527-5106, or postal mail sent to Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060.

VIRGINIA CODE COMMISSION

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.