VIRGINIA REGISTER OF REGULATIONS

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THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

FAST-TRACK RULEMAKING PROCESS

Section 2.2-4012.1 of the Code of Virginia provides an exemption from certain provisions of the Administrative Process Act for agency regulations deemed by the Governor to be noncontroversial. To use this process, Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations will become effective on the date noted in the regulatory action if no objections to using the process are filed in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 12 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*.

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

STATEMENT

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

CITATION TO THE *VIRGINIA REGISTER*

The *Virginia Register* is cited by volume, issue, page number, and date. **29:5 VA.R. 1075-1192 November 5, 2012,** refers to Volume 29, Issue 5, pages 1075 through 1192 of the *Virginia Register* issued on November 5, 2012.

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).

February 2013 through January 2014

Volume: Issue	Material Submitted By Noon*	Will Be Published On
29:12	January 23, 2013	February 11, 2013
29:13	February 6, 2013	February 25, 2013
29:14	February 20, 2013	March 11, 2013
29:150	March 6, 2013	March 25, 2013
29:16	March 20, 2013	April 8, 2013
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30:7	November 13, 2013	December 2, 2013
30:8	November 26, 2013 **(Tuesday)**	December 16, 2013
30:9	December 11, 2013	December 30, 2013
30:10	December 23, 2013 **(Tuesday)**	January 13, 2014
30:11	January 8, 2014	January 27, 2014

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

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 Health intends to consider amending **12VAC5-71, Regulations Governing Virginia Newborn Screening Services.** The purpose of the proposed action is to add severe combined immunodeficiency to the Virginia panel of screened disorders at the recommendation of the Virginia Genetics Advisory Committee.

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

Statutory Authority: §§ 32.1-12 and 32.1-67 of the Code of Virginia.

Public Comment Deadline: March 13, 2013.

Agency Contact: Susan Tlusty, Division of Child and Adolescent Health, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7686, FAX (804) 864-7647, or email susan.tlusty@vdh.virginia.gov.

VA.R. Doc. No. R13-3569; Filed January 18, 2013, 4:22 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF OPTOMETRY

Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the Board of Optometry has **WITHDRAWN** the Notice of Intended Regulatory Action to amend **18VAC105-20, Regulations Governing the Practice of Optometry,** which was published in 26:25 VA.R. 2816 August 16, 2010. The board has revised the projected need for an increase in fees.

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

Agency Contact: Leslie L. Knachel, Executive Director, Board of Optometry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4508, FAX (804) 527-4466, or email leslie.knachel@dhp.virginia.gov.

VA.R. Doc. No. R10-2523; Filed January 15, 2013, 9:32 a.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

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

Title of Regulation: **4VAC20-260. Pertaining to Designation of Seed Areas and Clean Cull Areas (amending 4VAC20-260-30, 4VAC20-260-50).**

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

Effective Date: February 1, 2013.

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

Summary:

The amendments provide an alternate culling and inspection process that makes it lawful for oysters harvested by hand from seaside of the Eastern Shore to be maintained in bags, sacks, or baskets from time of harvest to time of sale without those oysters having to be placed in a loose pile aboard a vessel.

4VAC20-260-30. Minimum cull size.

In order to encourage a continued supply of marketable oysters, minimum size limits are hereby established. Undersized oysters or shells shall be returned immediately to their natural beds, rocks, or shoals where taken. When small oysters are adhering so closely to the shell of the marketable oyster as to render removal impossible without destroying the young oyster, then it shall not be necessary to remove it. Allowances for undersized oysters and shells incidentally retained during culling are found in 4VAC20-260-40.

1. Oysters taken from clean cull areas shall not have shells less than three inches in length, except as described in subdivision 5 of this section.

2. In the James River seed areas, there shall be no size limit on oysters harvested for replanting as seed oysters and seed oysters shall not be marketed for direct consumption.

3. In the James River seed areas, the shells of oysters harvested for direct consumption shall not be less than three inches in length.

4. ~~On~~ From the seaside of the Eastern Shore, the shells of oysters marketed for direct consumption shall not be less than three inches in length. The provisions of this subdivision shall not apply to oysters raised in aquaculture cages by licensed aquaculture facilities.

5. In the Rappahannock River, the shells of oysters harvested for direct consumption from the areas known as Russ' Rock and Carter's Rock shall not be less than 2-1/2 inches in length.

4VAC20-260-50. Culling and inspection procedures.

A. All oysters taken from natural public beds, rocks, or shoals shall be placed on the culling board and culled by hand to the inside open part of the boat in a loose pile; however, when oysters are taken by hand and held in baskets or other containers they shall be culled as taken and transferred from the container to the inside open part of the boat in a loose pile, except as described in subsection B of this section, and subject to inspection by any Marine Resources Commission law-enforcement officer.

B. Any oysters taken lawfully by hand from natural public beds, rocks, or shoals from the seaside of the Eastern Shore, and held in sacks, bags, or containers, shall be culled when taken and placed in those sacks, bags, or containers for inspection by any Marine Resources Commission law-enforcement officer as described in subsection G of this section.

~~B.~~ C. If oysters from leased grounds and oysters from public grounds are mixed in the same cargo on a boat or motor vehicle, the entire cargo shall be subject to inspection under this chapter.

~~C.~~ D. All oysters taken from public grounds shall be sold or purchased in the regular oyster one-half bushel or one bushel measure as described in § 28.2-526 of the Code of Virginia, or the alternate container described in subsection ~~D~~ E of this section; except that on the seaside of the Eastern Shore oysters may be sold without being measured if both the buyer and the seller agree to the number of bushels of oysters in the transaction.

~~D.~~ E. An alternate container produced by North Machine Shop in Mathews, Virginia, may be used for measuring oysters to be sold or purchased. The dimensions of this metallic cylindrical container shall be 18.5 inches inside diameter and 11 inches inside height.

~~E.~~ F. In the inspection of oysters the law-enforcement officer shall, with a shovel, take at least one bushel of oysters at random, provided that the entire bushel shall be taken at one place in the open pile of oysters, except as described in subsection G of this section.

G. In the inspection of oysters harvested by hand from waters of the seaside of the Eastern Shore, the law-enforcement officer may select any sacks, bags, or containers at random to establish a full metallic measuring bushel for purposes of inspection.

VA.R. Doc. No. R13-3561; Filed January 24, 2013, 8:58 a.m.

Emergency Regulation

Title of Regulation: **4VAC20-950. Pertaining to Black Sea Bass (amending 4VAC20-950-45).**

Statutory Authority: §§ 28.2-201, 28.2-204.1, and 28.2-210 of the Code of Virginia.

Effective Dates: January 28, 2013, through February 26, 2013.

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

Preamble:

The emergency amendments lower the recreational black sea bass fishery possession limit of 25 fish to 15 fish through the end of February 2013 to comply with interstate fishery management plan requirements.

4VAC20-950-45. Recreational possession limits and seasons.

A. It shall be unlawful for any person fishing with hook and line, rod and reel, spear, gig, or other recreational gear to possess more than 25 black sea bass. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for that boat or vessel and shall be equal to the number of persons on board legally eligible to fish, multiplied by 25 during any open season described in subsection D of this section, except January 1 through the last day of February 2013 open season. The captain or operator of the boat or vessel shall be responsible for that boat or vessel possession limit. Any black sea bass taken after the possession limit has been reached shall be returned to the water immediately.

B. It shall be unlawful for any person fishing with hook and line, rod and reel, spear, gig, or other recreational gear to possess more than 15 black sea bass from January 1 through the last day of February 2013. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for that boat or vessel and shall be equal to the number of persons on board legally eligible to fish, multiplied by 15, from January 1 through the last day of February 2013. The captain or operator of the boat or vessel shall be responsible for that boat or vessel possession limit. Any black sea bass taken after the possession limit has been reached shall be returned to the water immediately.

~~B.~~ C. Possession of any quantity of black sea bass that exceeds the possession limit described in ~~subsection~~ subsections A and B of this section shall be presumed to be for commercial purposes.

~~C.~~ D. The open recreational fishing seasons, in 2013, shall be from January 1 through the last day of February, May 19 through October 14 and from November 1 through December 31, except as provided in subsection ~~D~~ E of this section.

~~D. Only if the Atlantic States Marine Fisheries Commission authorizes an open recreational fishing season of January 1 through the end of February 2013 shall Virginia establish an open season of January 1 through the end of February in 2013.~~

E. It shall be unlawful for any person fishing recreationally to take, catch, or possess any black sea bass, except during an open recreational season.

VA.R. Doc. No. R13-3560; Filed January 24, 2013, 9:05 a.m.

TITLE 8. EDUCATION

STATE BOARD FOR COMMUNITY COLLEGES

Final Regulation

REGISTRAR'S NOTICE: The State Board for Community Colleges is claiming an exemption 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: **8VAC95-10. Regulation of Weapons (adding 8VAC95-10-10 through 8VAC95-10-40).**

Statutory Authority: § 23-217 of the Code of Virginia.

Effective Date: January 30, 2013.

Agency Contact: Donna Swiney, Executive Assistant and Records Officer, Office of Vice Chancellor for Administrative Services, Virginia Community College System, 101 N. 14th Street, 15th Floor, Richmond, VA 23219, telephone (804) 819-4910, or email dswiney@vccs.edu.

Summary:

This action establishes the weapons limitation regulation at the member colleges and the administrative office of the Virginia Community College System.

CHAPTER 10
REGULATION OF WEAPONS

8VAC95-10-10. 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.

"College property" means any property owned, leased, or controlled by a member college of the Virginia Community College System and the administrative office of the Virginia Community College System.

"Weapon" means (i) any pistol, revolver, or other weapon designed or intended to propel a missile of any kind by action of an explosion of any combustible material; (ii) any dirk, bowie knife, switchblade knife, ballistic knife, machete, razor, slingshot, spring stick, metal knucks, or blackjack; (iii) any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nun chahka, nun chuck, nunchaku, shuriken, or fighting chain; (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 a throwing star or oriental dart; or (v) any weapon of like kind, to include but not limited to, tasers.

"Weapon" does not mean knives or razors used for domestic purposes, pen or folding knives with blades less than three inches in length, or knives of like kind carried for use in accordance with the purpose intended by the original seller.

8VAC95-10-20. Possession of weapons prohibited.

A. Possession or carrying of any weapon by any person, except a police officer, is prohibited on college property in academic buildings, administrative office buildings, student centers, child care centers, dining facilities and places of like kind where people congregate, or while attending any sporting, entertainment, or educational events. Entry upon the aforementioned college property in violation of this prohibition is expressly forbidden.

B. Any individual in violation of this prohibition will be asked to remove the weapon immediately. Failure to comply may result in a student conduct referral, an employee disciplinary action, or arrest.

8VAC95-10-30. Exceptions to prohibition.

A. The prohibition in 8VAC95-10-20 shall not apply to current sworn and certified local, state, and federal law-enforcement officers with proper identification, nor shall it apply to possession of a weapon when stored securely inside the vehicle of properly permitted students and employees.

B. The chief of the college police department or head of security department, or his designee, may authorize in writing a person to possess, store, or use a weapon: (i) when used for educational or artistic instruction, display, parade, or ceremony sponsored or approved by the college (unloaded or disabled only and with other specified safeguards, if appropriate); or (ii) for any college-approved training, course, or class.

8VAC95-10-40. Person lawfully in charge.

Campus police officers or security, and other police officers acting pursuant to a mutual aid agreement or by concurrent jurisdiction, 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 chapter.

VA.R. Doc. No. R13-3574; Filed January 28, 2013, 3:00 p.m.

TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

STATE CORPORATION COMMISSION

Final Regulation

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

Title of Regulation: **10VAC5-160. Rules Governing Mortgage Lenders and Brokers (amending 10VAC5-160-10, 10VAC5-160-20, 10VAC5-160-50, 10VAC5-160-60, 10VAC5-160-90, 10VAC5-160-100; adding 10VAC5-160-110).**

Statutory Authority: §§ 6.2-1613 and 12.1-13 of the Code of Virginia.

Effective Date: January 28, 2013.

Agency Contact: E.J. Face, Jr., Bureau of Financial Institutions Commissioner, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 371-9659, FAX (804) 371-9416, or email joe.face@scc.virginia.gov.

Summary:

The final regulations (i) clarify that a person engaged solely in the business of a loan processor or underwriter is not a mortgage broker subject to licensure under Chapter 16 of Title 6.2 of the Code of Virginia; (ii) set forth the requirements for a licensee's use of third party loan processors and underwriters; (iii) define the term "refinancing"; (iv) prohibit licensees from making any

false, deceptive, or misleading statement to borrowers or the bureau; and (v) require licensees to use mortgage loan originators who are licensed, covered by the licensee's surety bond, sponsored by the licensee in the Nationwide Mortgage Licensing System and Registry ("Registry"), and are either an employee or an exclusive agent of the licensee. In addition, the regulations amend provisions pertaining to the retention of records; providing notices and written reports through the Registry; updating of records within the Registry; advertising; and other matters.

AT RICHMOND, JANUARY 22, 2013

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2012-00068

Ex Parte: In re: Mortgage Lenders and Mortgage Brokers

ORDER ADOPTING REGULATIONS

On October 18, 2012, the State Corporation Commission ("Commission") entered an Order to Take Notice ("Order") of a proposal by the Bureau of Financial Institutions to amend Chapter 160 of Title 10 of the Virginia Administrative Code, which governs licensed mortgage lenders and mortgage brokers ("licensees"). The Order and proposed regulations were published in the Virginia Register of Regulations on November 19, 2012, posted on the Commission's website, and mailed to all licensees and other interested parties. Licensees and other interested parties were afforded the opportunity to file written comments or request a hearing on or before December 7, 2012. No comments or requests for a hearing were filed.

NOW THE COMMISSION, having considered the proposed regulations, the record herein, and applicable law, concludes that the proposed regulations should be adopted with an effective date of January 28, 2013.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulations, as attached hereto, are adopted effective January 28, 2013.

(2) This Order and the attached regulations shall be posted on the Commission's website at http://www.scc.virginia.gov/case.

(3) The Commission's Division of Information Resources shall send a copy of this Order, including a copy of the attached regulations, to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.

(4) This case is dismissed from the Commission's docket of active cases.

AN ATTESTED COPY hereof, together with a copy of the attached regulations, shall be sent by the Clerk of the Commission to the Commission's Office of General Counsel and the Commissioner of Financial Institutions, who shall forthwith send by e-mail or U.S. mail a copy of this Order and the attached regulations to all licensed mortgage lenders, licensed mortgage brokers, and such other interested parties as he may designate.

10VAC5-160-10. Definitions.

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

"Advertisement" means a commercial message in any medium that promotes, directly or indirectly, a mortgage loan. The term includes a communication sent to a consumer as part of a solicitation of business, but excludes messages on promotional items such as pens, pencils, notepads, hats, calendars, etc., as well as rate sheets or other information distributed or made available solely to other businesses.

"Affiliate" for purposes of subdivision 3 of § 6.2-1602 of the Code of Virginia means an entity of which 25% or more of the voting shares or ownership interest is held, directly or indirectly, by a company that also owns a bank, savings institution, or credit union.

"Bureau," "commission," and "commissioner" shall have the meanings ascribed to them in § 6.2-100 of the Code of Virginia.

"Chapter 16" means Chapter 16 (§ 6.2-1600 et seq.) of Title 6.2 of the Code of Virginia.

~~"Commission" and "commissioner" shall have the meanings ascribed to them in § 6.2-100 of the Code of Virginia.~~

"Chapter 17" means Chapter 17 (§ 6.2-1700 et seq.) of Title 6.2 of the Code of Virginia.

"Commitment" means a written offer to make a mortgage loan signed by a person authorized to sign such offers on behalf of a mortgage lender.

"Commitment agreement" means a commitment accepted by an applicant for a mortgage loan, as evidenced by the applicant's signature thereon.

"Commitment fee" means any fee or charge accepted by a mortgage lender, or by a mortgage broker for transmittal to a mortgage lender, as consideration for binding the mortgage lender to make a mortgage loan in accordance with the terms of a commitment or as a requirement for acceptance by the applicant of a commitment, but the term does not include fees paid to third persons or interest.

"Dwelling" means one- to four-family residential property located in the Commonwealth.

"Fees paid to third persons" means the bona fide fees or charges paid by the applicant for a mortgage loan to third persons other than the mortgage lender or mortgage broker, or paid by the applicant to, or retained by, the mortgage lender or mortgage broker for transmittal to such third persons in connection with the mortgage loan, including, but not limited to, recording taxes and fees, reconveyance or releasing fees, appraisal fees, credit report fees, attorney fees, fees for title reports and title searches, title insurance premiums, surveys and similar charges.

"Licensee" means a person licensed under Chapter 16.

"Loan processor or underwriter" means a person who, with respect to the origination of a residential mortgage loan, performs the following duties at the direction of and subject to the supervision and instruction of a licensed or exempt mortgage lender or mortgage broker: (i) receiving, collecting, distributing, or analyzing information common for the processing or underwriting of a residential mortgage loan or (ii) communicating with a consumer to obtain the information necessary for the processing or underwriting of a residential mortgage loan. A loan processor or underwriter does not include a person who (i) communicates with a consumer regarding a prospective residential mortgage loan prior to the consumer submitting a residential mortgage loan application, (ii) takes an application for or offers or negotiates the terms of a residential mortgage loan, or (iii) counsels consumers about residential mortgage loan terms. For purposes of this definition, the phrase "takes an application for or offers or negotiates the terms of a residential mortgage loan" shall be construed in accordance with subdivisions B 1 and 2 of 10VAC5-161-20.

"Lock-in agreement" means a written agreement between a mortgage lender, or a mortgage broker acting on behalf of a mortgage lender, and an applicant for a mortgage loan that establishes and sets an interest rate and the points to be charged in connection with a mortgage loan that is closed within the time period specified in the agreement. A lock-in agreement can be entered into before mortgage loan approval, subject to the mortgage loan being approved and closed, or after such approval. A commitment agreement that establishes and sets an interest rate and the points to be charged in connection with a mortgage loan that is closed within the time period specified in the agreement is also a lock-in agreement. The interest rate that is established and set by the agreement may be either a fixed rate or an adjustable rate.

"Lock-in fee" means any fee or charge accepted by a mortgage lender, or by a mortgage broker for transmittal to a mortgage lender, as consideration for making a lock-in agreement, but the term does not include fees paid to third persons or interest.

"Mortgage lender," "mortgage broker," and "mortgage loan" shall have the meanings ascribed to them in § 6.2-1600 of the Code of Virginia. For purposes of Chapter 16 and this chapter, the term "mortgage broker" does not include a person engaged in the business of a loan processor or underwriter provided that such person is not engaged in any other activities for which a mortgage broker license is required.

"Mortgage loan originator," "Nationwide Mortgage Licensing System and Registry," ~~and~~ "Registry," and "residential mortgage loan" shall have the meanings ascribed to them in § 6.2-1700 of the Code of Virginia.

"Personal, family or household purposes" for purposes of § 6.2-1600 of the Code of Virginia means that the individual obtaining the loan intends to use the proceeds to build or purchase a dwelling that will be occupied by such individual or another individual as their temporary or permanent residence. The term includes a loan used to build or purchase a dwelling that will be (i) improved or rehabilitated by or on behalf of the purchaser for subsequent sale to one or more other individuals who will reside in the dwelling on a temporary or permanent basis, or (ii) leased by the purchaser to one or more other individuals who will reside in the dwelling on a temporary or permanent basis.

"Points" means any fee or charge retained or received by a mortgage lender or mortgage broker stated or calculated as a percentage or fraction of the principal amount of the loan, other than or in addition to fees paid to third persons or interest.

"Reasonable period of time" means that period of time, determined by a mortgage lender in good faith on the basis of its most recent relevant experience and other facts and circumstances known to it, within which the mortgage loan will be closed.

"Refinancing" for purposes of Chapter 16 and this chapter means an exchange of an old debt for a new debt, as by negotiating a different interest rate or term or by repaying an existing loan with money acquired from a new loan. "Refinancing" includes any loan modification.

"Senior officer" for purposes of §§ 6.2-1605, 6.2-1606, 6.2-1607, and 6.2-1608 of the Code of Virginia means an individual who has significant management responsibility within an organization or otherwise has the authority to influence or control the conduct of the organization's affairs, including but not limited to its compliance with applicable laws and regulations.

"Subsidiary" for purposes of subdivision 3 of § 6.2-1602 of the Code of Virginia means an entity of which 25% or more of the voting shares or ownership interest is held, directly or indirectly, by a bank, savings institution, or credit union.

10VAC5-160-20. Operating rules.

A licensee shall conduct its business in accordance with the following rules:

1. No licensee shall (i) misrepresent the qualification requirements for a mortgage loan or any material loan terms ~~or~~; (ii) make false or misleading statements to induce an applicant to apply for a mortgage loan ~~or to induce an applicant to,~~ enter into any commitment agreement or lock-in agreement ~~or to induce an applicant to~~, or pay any commitment fee or lock-in fee in connection therewith; or (iii) provide any other information to a borrower or prospective borrower that is false, misleading, or deceptive. A "material loan term" means the loan terms required to be disclosed to a consumer pursuant to (i) the Truth in Lending Act (15 USC § 1601 et seq.), and regulations and official commentary issued thereunder, as amended from time to time, (ii) § 6.2-406 of the Code of

Virginia, and (iii) 10VAC5-160-30. A misrepresentation or false or misleading statement resulting directly from incorrect information furnished to a licensee by a third party, or a good-faith misunderstanding of information furnished by a third party, shall not be considered a violation of this section if the licensee has supporting documentation thereof and the licensee's reliance thereon was reasonable.

2. No licensee shall retain any portion of any fees or charges imposed upon consumers for goods or services provided by third parties. All moneys received by a licensee from an applicant for fees paid to third persons shall be accounted for separately, and all disbursements for fees paid to third persons shall be supported by adequate documentation of the services for which such fees were or are to be paid. All such moneys shall be deposited in an escrow account in a bank, savings institution, or credit union segregated from other funds of the licensee.

3. The mortgagor who obtains a mortgage loan shall be entitled to continue to make payments to the transferor of the servicing rights under a mortgage loan until the mortgagor is given written notice of the transfer of the servicing rights by the transferor. The notice shall specify the name and address to which future payments are to be made and shall be mailed or delivered to the mortgagor at least 10 calendar days before the first payment affected by the notice.

4. If a person has been or is engaged in business as a mortgage lender or mortgage broker and has filed a bond with the commissioner, as required by § 6.2-1604 of the Code of Virginia, such bond shall be retained by the commissioner notwithstanding the occurrence of any of the following events:

a. The person's application for a license is withdrawn or denied;

b. The person's license is surrendered, suspended, or revoked; or

c. The person ceases engaging in business as a mortgage lender or mortgage broker.

5. ~~Within~~ Pursuant to § 6.2-1621 of the Code of Virginia, within 15 days of becoming aware of the occurrence of any of the ~~following~~ events enumerated in this subdivision, a licensed mortgage lender or mortgage broker shall file a written report with the commissioner describing such event and its expected impact, if any, on the activities of the licensee in the Commonwealth. If the Registry enables licensees to submit the information required by this subdivision, then submission of this information through the Registry shall satisfy the requirement for a written report:

a. The licensee files for bankruptcy or reorganization.

b. Any governmental authority institutes revocation or suspension proceedings against the licensee, or revokes or suspends a mortgage-related license held or formerly held by the licensee.

c. Any governmental authority takes (i) formal regulatory or enforcement action against the licensee relating to its mortgage business or (ii) any other action against the licensee relating to its mortgage business where the total amount of restitution or other payment from the licensee exceeds $20,000. A licensee shall not be required to provide the commissioner with information about such event to the extent that such disclosure is prohibited by the laws of another state.

d. Based on allegations by any governmental authority that the licensee violated any law or regulation applicable to the conduct of its licensed mortgage business, the licensee enters into, or otherwise agrees to the entry of, a settlement or consent order, decree, or agreement with or by such governmental authority.

e. The licensee surrenders its license to engage in any mortgage-related business in another state in lieu of threatened or pending license revocation, license suspension, or other regulatory or enforcement action.

f. The licensee is denied a license to engage in any mortgage-related business in another state.

g. The licensee or any of its employees, officers, directors, ~~or~~ principals, or exclusive agents is indicted for a felony.

h. The licensee or any of its employees, officers, directors, ~~or~~ principals, or exclusive agents is convicted of a felony.

i. The licensee or any of its employees, officers, directors, principals, or exclusive agents is convicted of a misdemeanor involving fraud, misrepresentation, or deceit.

6. No licensee shall inform a consumer that such consumer has been or will be "preapproved" or "pre-approved" for a mortgage loan unless the licensee contemporaneously provides the consumer with a separate written disclosure (in at least 10-point type) that (i) explains what preapproved means; (ii) informs the consumer that the consumer's loan application has not yet been approved; (iii) states that a written commitment to make a mortgage loan has not yet been issued; and (iv) advises the consumer what needs to occur before the consumer's loan application can be approved. This provision shall not apply to advertisements subject to 10VAC5-160-60. In the case of a preapproval initially communicated to a consumer by telephone, the licensee shall provide the written disclosure to the consumer within three business days.

7. ~~No~~ A licensee shall not permit any individual ~~who is not licensed as a mortgage loan originator pursuant to Chapter 17 (§ 6.2-1700 et seq.) of Title 6.2 of the Code of Virginia to, on behalf of the licensee,~~ to take an application for or offer or negotiate the terms of a residential mortgage loan

~~as defined in § 1503(8) of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (P.L. 110-289), that is secured by real property located in the Commonwealth~~ on behalf of the licensee unless: (i) the individual is licensed as a mortgage loan originator pursuant to Chapter 17; (ii) the individual is covered by the licensee's surety bond; (iii) the licensee has submitted a sponsorship request for such individual through the Registry; and (iv) the individual is either (a) a bona fide employee of the licensee, or (b) an exclusive agent of the licensee pursuant to a written agreement with the licensee and the licensee has agreed to such conditions relating to its use of exclusive agents as may be prescribed by the bureau. The phrase "take an application for or offer or negotiate the terms of a residential mortgage loan" shall be construed in accordance with subdivisions B 1 and 2 of 10VAC5-161-20.

8. ~~Beginning April 1, 2011, every~~ Every licensee shall disclose on any application provided to the borrower associated with a Virginia residential mortgage loan: (i) the ~~licensee's~~ unique identifier assigned by the Registry to the licensed mortgage lender or mortgage broker that took the initial mortgage loan application; and (ii) the unique identifier assigned by the Registry to ~~any~~ the licensed mortgage loan originator who took the initial mortgage loan application ~~for the loan~~.

9. A licensee may outsource its loan processing or underwriting activities to a third party loan processor or underwriter pursuant to a written agreement with the loan processor or underwriter. Prior to entering into an agreement, the licensee shall conduct a due diligence review of the third party loan processor or underwriter. The agreement shall (i) require the loan processor or underwriter to comply with all applicable state and federal laws and regulations; (ii) require the loan processor or underwriter to permit the commission to investigate or examine its business pursuant to § 6.2-1611 of the Code of Virginia; and (iii) prohibit the loan processor or underwriter from subcontracting to another person, other than its bona fide employees, any of the services specified in the agreement to be performed on behalf of the licensee. A copy of the written agreement shall be retained by the licensee for at least three years after the agreement has been terminated by either party. The licensee shall be responsible for implementing and maintaining a reasonable program to monitor any third party loan processor or underwriter performing services on its behalf.

10. If a licensee disposes of records containing a consumer's personal financial information following the expiration of any applicable record retention periods, such records shall be shredded, incinerated, or otherwise disposed of in a secure manner. Licensees may arrange for service from a business record destruction vendor.

11. Every licensee shall comply with Chapter 16, this chapter, and all other state and federal laws and regulations applicable to the conduct of its business.

10VAC5-160-50. Responding to requests from Bureau of Financial Institutions; providing false, misleading, or deceptive information; record retention.

A. If the bureau requests information from an applicant to complete a deficient application filed under §§ 6.2-1603, 6.2-1607, or 6.2-1608 of the Code of Virginia and the information is not received within 60 days of the request, the application shall be deemed abandoned unless a request for an extension of time is received and approved by the bureau prior to the expiration of the 60-day period.

B. When the ~~Bureau of Financial Institutions (bureau)~~ bureau requests a written response, books, records, documentation, or other information from a ~~mortgage lender or mortgage broker (licensee)~~ licensee in connection with the bureau's investigation, enforcement, or examination of compliance with applicable laws, the licensee shall deliver a written response as well as any requested books, records, documentation, or information within the time period specified in the bureau's request. If no time period is specified, a written response as well as any requested books, records, documentation, or information shall be delivered by the licensee to the bureau not later than 30 days from the date of such request. In determining the specified time period for responding to the bureau and when considering a request for an extension of time to respond, the bureau shall take into consideration the volume and complexity of the requested written response, books, records, documentation or information and such other factors as the bureau determines to be relevant under the circumstances.

~~B.~~ Requests made by the bureau pursuant to this subsection ~~A~~ are deemed to be in furtherance of the bureau's investigation and examination authority provided for in § 6.2-1611 of the Code of Virginia. ~~Failure to comply with subsection A may result in civil penalties, license suspension, or license revocation.~~

C. A licensee shall not provide any information to the bureau, either directly or through the Registry, that is false, misleading, or deceptive.

D. A licensee shall maintain in its licensed offices all books, accounts, and records required by Chapter 16 and this chapter.

10VAC5-160-60. Advertising.

A. Every advertisement used by, or published on behalf of, a licensed mortgage lender or mortgage broker shall clearly and conspicuously disclose the following information:

1. The name of the mortgage lender or mortgage broker as set forth in the license issued by the commission.

~~2. A statement that the mortgage lender or mortgage broker is licensed by the "Virginia State Corporation Commission."~~

~~3.~~ 2. The ~~license number~~ abbreviation "NMLS ID #" followed immediately by both the unique identifier assigned by the ~~commission~~ Registry to the mortgage lender or mortgage broker ~~(i.e., MB XXX, ML XXX, or MLB XXX)~~ and the address for the NMLS Consumer Access website in parenthesis. For example: NMLS ID # 999999 (www.nmlsconsumeraccess.org).

~~4.~~ 3. If an advertisement contains a rate of interest, a statement that the stated rate may change or not be available at the time of loan commitment or lock-in.

~~5.~~ 4. If an advertisement contains specific information about a consumer's existing mortgage loan and such information was not obtained from the consumer, a statement identifying the source of such information (e.g., public court records, credit reporting agency, etc.).

B. No mortgage lender or mortgage broker shall deceptively advertise a mortgage loan, make false or misleading statements or representations, or misrepresent the terms, conditions, or charges incident to obtaining a mortgage loan.

C. No mortgage lender or mortgage broker shall use or cause to be published an advertisement that states or implies the following:

1.The mortgage lender or mortgage broker is affiliated with, or an agent or division of, a governmental agency, depository institution, or other entity with which no such relationship exists; or

2. A consumer has been or will be "preapproved " or "pre-approved" for a mortgage loan, unless the mortgage lender or mortgage broker (i) discloses on the face of the advertisement in at least 14-point bold type that "THIS IS NOT A LOAN APPROVAL" and (ii) clearly and conspicuously discloses the conditions and/or qualifications associated with such preapproval. This provision is intended to supplement the requirements of the Fair Credit Reporting Act, 15 USC § 1681 et seq., relating to firm offers of credit.

D. A mortgage lender or mortgage broker shall not use or cause to be published any advertisement that gives a consumer the false impression that the advertisement is being sent by the consumer's current noteholder or lienholder. If an advertisement contains the name of the consumer's current noteholder or lienholder, it shall not be more conspicuous than the name of the mortgage lender or mortgage broker using the advertisement.

E. A mortgage lender or mortgage broker shall not deliver or cause to be delivered to a consumer any envelope or other written material that gives the false impression that the mailing or written material is an official communication from a governmental entity, unless required by the United States Postal Service.

F. If an advertisement states or implies that a consumer can reduce his monthly payment by refinancing his current mortgage loan, but as a result of such refinancing, the consumer's total finance charges may be higher over the life of the loan, a mortgage lender or mortgage broker shall clearly and conspicuously disclose to the consumer that by refinancing the consumer's existing loan, the consumer's total finance charges may be higher over the life of the loan.

G. Every advertisement used by, or published on behalf of, a mortgage lender or mortgage broker shall comply with the disclosure requirements for advertisements contained in the Truth in Lending Act and Regulation Z, 12 CFR Part 226.

H. For purposes of this section, the term "clearly and conspicuously" means that a required disclosure is reasonably understandable, prominently located, and readily noticeable by a potential borrower of ordinary intelligence.

I. Every mortgage lender and mortgage broker shall retain for at least three years after it is last published, delivered, transmitted, or made available, an example of every advertisement used, including but not limited to solicitation letters, commercial scripts, and recordings of all radio and television broadcasts, but excluding copies of Internet web pages.

10VAC5-160-90. ~~National~~ Nationwide Mortgage Licensing System and Registry.

A. ~~Beginning January 3, 2011, applications~~ Applications for a mortgage lender or mortgage broker license shall be made through the Registry in accordance with instructions provided by the [~~Commissioner~~ commissioner]. The [~~Commissioner~~ commissioner] may provide these instructions through the Registry, on the [~~Commission's~~ commission's] Internet web site, or by any other means the [~~Commissioner~~ commissioner] deems appropriate.

B. The [~~Commissioner~~ commissioner] shall notify all licensees no later than January 1 of each calendar year of the information required to be included in the annual report to be submitted by each licensee pursuant to § 6.2-1610 of the Code of Virginia.

C. Entities exempt from the requirement for licensure under Chapter 16 that supervise mortgage loan originators licensed pursuant to Chapter 17 ~~(§ 6.2-1700 et seq.) of Title 6.2 of the Code of Virginia~~ may obtain a unique identifier through the Registry.

~~D. All licensees holding a license under Chapter 16 prior to January 1, 2011, shall obtain such unique identifier and provide all required information to the Registry no later than April 1, 2011.~~

~~E.~~ D. Every licensee shall maintain current information in its records with the Registry. ~~Any~~ Except as provided in subsection E of this section, changes to the licensee's address, principal officers, or any other information in the Registry shall be updated by the licensee as soon as is practicable, but in no event later than five business days from when the change takes effect.

E. A licensee shall update its sponsorship information in the Registry within five days after the occurrence of either of the

following events: (i) a mortgage loan originator becomes a bona fide employee or exclusive agent of the licensee or (ii) a mortgage loan originator ceases to be a bona fide employee or exclusive agent of the licensee.

F. If (i) any provision of Chapter 16 or this chapter requires a licensee to provide the bureau or commissioner with a written notice and (ii) the Registry enables licensees to submit such notice through the Registry, then a licensee shall be deemed to have complied with the written notice requirement if the licensee timely submits the required notice through the Registry.

10VAC5-160-100. Enforcement.

A. Failure to comply with any provision of Chapter 16 or this chapter may result in civil penalties, license suspension, ~~or~~ license revocation, the entry of a cease and desist order, or other appropriate enforcement action.

B. Pursuant to § 6.2-1624 of the Code of Virginia, a ~~licensee~~ person required to be licensed under Chapter 16 shall be subject to a civil penalty of up to $2,500 for every violation of Chapter 16, this chapter, or other law or regulation applicable to the conduct of the ~~licensee's~~ person's business. Furthermore, if a ~~licensee~~ person violates any provision of Chapter 16, this chapter, or other law or regulation applicable to the conduct of the ~~licensee's~~ person's business in connection with multiple borrowers, loans, or prospective loans, the ~~licensee~~ person shall be subject to a separate civil penalty for each borrower, loan, or prospective loan. For example, if a ~~licensee~~ person makes five loans and the ~~licensee~~ person violates two provisions of this chapter in connection with each of the five loans, there would be a total of 10 violations and the ~~licensee~~ person would be subject to a maximum civil penalty of $25,000.

10VAC5-160-110. Commission authority.

The commission may, at its discretion, waive or grant exceptions to any provision of this chapter for good cause shown.

VA.R. Doc. No. R13-3440; Filed January 22, 2013, 3:34 p.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Final Regulation

REGISTRAR'S NOTICE: The State Board of Health is claiming an exemption from the Administrative Process Act pursuant to Item 295 B of Chapter 3 of Special Session I of the 2012 Acts of Assembly, which exempts the Special Supplemental Nutrition Program for Women, Infants, and Children from the requirements of the Administrative Process Act.

Title of Regulation: **12VAC5-195. Virginia WIC Program (amending 12VAC5-195-10, 12VAC5-195-20, 12VAC5-195-30, 12VAC5-195-70, 12VAC5-195-110, 12VAC5-195-140, 12VAC5-195-150, 12VAC5-195-200, 12VAC5-195-210, 12VAC5-195-230, 12VAC5-195-280 through 12VAC5-195-370, 12VAC5-195-390 through 12VAC5-195-670; adding 12VAC5-195-680).**

Statutory Authority: § 32.1-12 of the Code of Virginia; 7 CFR Part 246.

Effective Date: March 13, 2013.

Agency Contact: Anne Massey, Policy Analyst, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7797, or email anne.massey@vdh.virginia.gov.

Summary:

Amendments were made to the Virginia WIC Program state regulations, the majority of which were made to Part III pertaining to vendor requirements. Many of the amendments reflect the Virginia WIC Program's change in the retailer peer group structure, which was the result of an independent analysis of the existing peer group structure conducted by Mikelson and Associates. The analysis included a recommendation to change the structure to define geographic areas based on a rural or urban designation according to the Isserman model instead of Business Economic Areas, the criteria in use at the time of the report. The Isserman model includes a definition of rural and urban that integrates the 2000 census tract population into the U.S. Office of Management and Budget (OMB) county based definition and the census rural/urban continuum codes.

In addition, the retailer slotting system, which had been the basis for retailer selection decisions and was tied into the peer group structure, was eliminated. The Virginia WIC Program had committed to this change during discussions with the Joint Commission on Administrative Rules. The following sections were amended due to these changes in the peer group structure and retailer slotting system: 12VAC5-195-330, Adequate Participant Access; 12VAC5-195-340, Competitive Pricing; 12VAC5-195-360, Selection Decisions; and 12VAC5-195-370, Authorization Exception Decisions.

A new section, 12VAC5-195-680, Food Application Process, was added to formalize the process used by the Virginia WIC Program to solicit, evaluate, and select products for inclusion in the WIC Approved Food List. The content of this section details the application process in which prospective manufacturers, distributors, and suppliers participate to have their products considered for the WIC Approved Food List as well as the process to implement any changes to the list.

Additional amendments were made to remain consistent with current WIC Program policies including:

1. 12VAC5-195-30, Definitions. Removes terms that were no longer used such as "Business Economic Areas," adds terms from new sections including "formula flyer," and adds terms that had been in use but needed clarification including "WIC sales" and "relative." The term "vendor" was removed and replaced solely with "retailer" for consistency.

2. 12VAC5-195-110, Caretaker. Reflects policy changes that make the caretaker option more accessible to those caring for WIC eligible infants and children in the absence of a parent or legal guardian.

3. 12VAC5-195-150, Alternative office hours. Adds the requirement of local agencies to offer a minimum of 16 alternative office hours a month.

4. 12VAC5-195-350, Price verification. Reduces the number of retailers negatively affected by rejected food instruments due to noncompetitive prices; the variance of the peer group pricing average was increased by 10%.

5. 12VAC5-195-460, Conflict of interest. Adds clarification regarding conflict of interest requirements for WIC authorized retail management and employees.

6. 12VAC5-195-600, Sanctions and administrative actions. Updated to reflect the most current sanction descriptions and related administrative actions.

General language and wording changes were also made for consistency and clarity.

Part I
General Provisions

12VAC5-195-10. General authority.

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) was authorized as part of the Child Nutrition Act of 1966, Section 17 (42 USC § 1786), to provide supplemental foods and nutrition education to pregnant, postpartum and breastfeeding women, infants and young children from families with inadequate income. The Virginia WIC Program is regulated by federal regulations published in the Code of Federal Regulations, 7 CFR Part 246, Special Supplemental Nutrition Program for Women, Infants and Children. The state regulations shall serve as a supplement to 7 CFR Part 246.

~~The WIC Farmers' Market Nutrition Program was established in 1992 as P. L. 102-314 to provide resources in the form of fresh, nutritious, unprepared foods (fruits, vegetables and cut herbs) from farmers' markets to WIC participants and to expand the awareness, use of and sales at farmers' markets. The Virginia WIC Farmers' Market Nutrition Program is regulated by federal regulations published in the Code of Federal Regulations, 7 CFR Part 248.~~

12VAC5-195-20. Purpose.

A. The Virginia WIC Program serves women who are breastfeeding, pregnant, or have just given birth; infants less than one year old; and children less than five years old. WIC participants must be Virginia residents and meet the financial and nutritional requirements.

B. The Virginia WIC Program provides special supplemental foods to eligible participants through a retailer delivery system (7 CFR 246.12). Food benefits are issued by local agencies to eligible participants using food instruments (7 CFR 246.10). Participants redeem their food instruments at any authorized retailer or entity. The state agency enters into an agreement with authorized ~~stores~~ retailers (7 CFR 246.12). This agreement identifies the obligations, rights and responsibilities of both the authorized ~~retail store~~ retailers and the state agency. Retailers deposit these food instruments into their bank account. The state agency pays authorized retailers a reasonable dollar amount for the foods purchased, as listed on the deposited food instruments (7 CFR 246.12).

C. The state agency shall promulgate policies, guidelines, manuals and training resources to facilitate operations of the Virginia WIC Program in accordance with its contractual agreement with Food Nutrition Service (FNS) (7 CFR 246.3); the guidelines and instructions issued by FNS in policy letters; and management evaluations and audits and the WIC Program State Plan of Operations.

12VAC5-195-30. Definitions.

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

"Administrative ~~appeal~~ review" means the procedure through which applicants and/or ~~retail stores~~ retailers may appeal a state agency's administrative action, including program disqualification, denied authorization and other ~~termination reasons~~ adverse actions.

"Agency representative" means staff from the state agency, a local agency, a contractor, or other designated individuals trained to conduct WIC functions and monitor retailers.

"Approved food list" means a brochure or method used by the WIC Program to communicate to eligible participants, retailers, local agencies and other interested parties which authorized supplemental foods may be purchased using WIC food instruments. The approved food list is a guide and must be used with the printed food instrument, which may identify specific brands or additional products not stated on the approved food list that may be purchased by participants.

"Authorization" means the process by which the state agency assesses, selects and enters into an agreement with ~~stores~~ retailers that apply or subsequently reapply to be authorized.

~~"Automated clearinghouse" or "ACH credit" or "direct deposit" means a method used to reimburse stores for certain types of processed food instruments (i.e., "Over FI Max."). A credit is made to the store's designated bank account and routing number using the automated clearinghouse process.~~

~~"Business economic areas" or "BEAs" mean a categorization method established by the United States Department of Commerce – Bureau of Economic Analysis and used by the state agency to identify geographically similar trade and economic communities. Some more populated BEAs are further broken down into smaller subsets or peer groupings, based upon number of unique participants served by authorized stores.~~

"Caretaker" means a person 18 years of age or older, unless approved at the discretion of a competent professional authority, designated by a parent or legal guardian to certify an infant/child, obtain and redeem food instruments and attend nutrition education. A caretaker may be any person who has detailed knowledge of the nutritional needs and eating habits of the infant/child. A parent or legal guardian may designate one caretaker per family ID number.

~~"Caseload" means the number of WIC participants assigned to a local agency by the state agency.~~

"Cash value food benefits" means a special food instrument that has been issued to eligible participants for a specific dollar amount that must be used to purchase fruits and vegetables. Unless stated otherwise, all references to food instruments include cash value food benefits, as well as food and formula food instruments.

"Civil monetary penalty" or "CMP" means an administrative fine offered to a retailer in lieu of disqualification if inadequate participant access exists as determined by the state agency.

"Direct deposit ACH" means a method used to reimburse retailers for certain types of processed food instruments (i.e., "Over FI Max"). A credit is made to the retailer's designated bank account and routing number using the automated clearinghouse process.

"Enrollment" means the process all applicants and authorized ~~stores~~ retailers must complete in order for a ~~store~~ retailer to be eligible to accept WIC food instruments.

"Food instrument" means a voucher, check, electronic benefits transfer card (EBT), coupon, or other document that is used by a participant to obtain supplemental foods.

"Formula flyer" means a handout or method used by the state agency to communicate to eligible participants, retailers, local agencies, and other interested parties that formulas may be purchased at authorized retailers.

"Image replacement document" or "IRD" means a legal copy of a deposited food instrument that is created and transmitted by a ~~store's~~ retailer's depository bank to the WIC Program's backend processor for payment consideration.

"Informal settlement meeting" means a meeting held with an authorized ~~store~~ retailer or applicant representative and the state WIC director whose purpose is to review and clarify outstanding WIC Program administrative issues.

"Legal guardian" means an individual who has been appointed by a court of law or the Department of Social Services, or other legal means, to have primary, physical custody of a minor. A legal guardian shall be authorized to provide eligibility information for an applicant, consent to medical treatment of the applicant, and shall be held legally bound if sanctions are imposed.

"Peer group" means a classification of applicants and authorized ~~stores~~ retailers into groups based on common characteristics or criteria that affect food prices for the purpose of applying appropriate competitive price criteria to ~~stores~~ retailers at authorization and limiting payments for foods at competitive pricing levels. A retailer's peer group is used to determine competitive pricing levels at initial authorization and establish the reimbursement maximums paid by the state agency.

"Postpayment review" means an analysis of paid food instruments redeemed by authorized retailers in order to determine if pricing and redemption discrepancies exist. Based upon this analysis, a ~~vendor~~ retailer claim against the ~~retail store~~ retailer may be established by the state agency.

"Prepayment edit" means a price adjustment made to the reimbursement level given to retailers. This editing process can be either automated or a manual screening of deposited food instruments done by an independent banking contractor, prior to releasing payment to authorized ~~retail stores~~ retailers.

"Relatives" means spouses, parents, children, brothers, sisters, aunts, uncles, nephews, nieces, grandparents, and grandchildren.

"Retailer" means a vendor, retail store, commissary, or entity authorized by the Virginia WIC Program to accept WIC food instruments for the various types of foods listed on food instruments. The term "retailer" is equivalent to the term "vendor" used in federal regulations (7 CFR 246.12).

"Retailer agreement" means a written agreement that establishes the respective roles and responsibilities of the ~~program~~ state agency and authorized retailers in complying with federal and state requirements.

"Retailer claim" means the state agency has determined an authorized retailer committed a violation of the retailer agreement that affects the payment status of one or several food instruments.

"Retailer manual" means a series of written documents that communicate administrative procedures for the Virginia WIC Program that regulate both authorized retailers and applicants. The Retailer Manual is part of the WIC Program State Plan that must be submitted and approved by USDA.

"Sanctions" mean a penalty imposed by the state agency upon an authorized retailer for a specific violation outlined in the ~~vendor~~ retailer manual or retailer agreement.

"State agency" means the Virginia Department of Health and the delegated authority to the Division of ~~WIC and Community Nutrition Services that~~ Community Nutrition, which has the administrative responsibility for managing the Virginia WIC Program.

"Termination" means the act of ending a ~~retail store's~~ retailer's WIC Program authorization for administrative reasons that include ~~but are not limited to~~ a change of ownership, closed ~~store~~ retailer location, voluntary withdrawal, and noncompetitive prices.

"Unique participant" means the number of unduplicated individuals who have redeemed one or more food instruments at a retail store during a specific period.

"United States Department of Agriculture" or "USDA" means the federal agency that provides funding for the WIC Program on behalf of Congress.

~~"Vendor claim" means the state agency has determined an authorized store committed a violation of the retailer agreement that affects the payment status of one or several food instruments. The state agency may delay payment or establish a claim in the amount of the full purchase price of each food instrument that contained the overcharge or other error. The state agency will bill and recoup the funds paid against these improperly redeemed food instruments.~~

~~"Vendor manual" means a series of written documents that communicate administrative policies and procedures for the Virginia WIC Program that affect both authorized retailers and applicants. The Vendor Manual is part of the WIC Program State Plan that must be submitted and approved by USDA.~~

~~"Virginia Department of Health" or "VDH" means the state agency that oversees the Virginia WIC Program.~~

"Waiting list" means a list implemented by the state agency for individual participants when the maximum caseload is reached.

~~"Warning" means one or more incidents of noncompliance with program requirements were documented. The state agency sends a written warning letter to the owner or store manager to advise him of any documented violations. A warning letter is not sent to the owner or store manager for selective documented violations that affect the integrity of the investigative process, including but not limited to overcharges, fraud, and forgery.~~

"WIC sales" means annual sales based on WIC redemption paid by the state agency to an authorized retailer.

Part II
Participant Requirements

12VAC5-195-70. Eligibility requirements.

A. Adjunctive financial eligibility requirements. Adjunctive, or automatic ~~income~~ financial eligibility is determined pursuant to 7 CFR 246.7. Documentation is required as proof of participation in programs that qualify an applicant for adjunctive financial eligibility. The state agency also allows ~~the following state-administered programs~~ Family Access to Medical Insurance Security Plan (FAMIS) and a $2.00 co-pay level to be used in determining adjunctive ~~income~~ financial eligibility~~:~~.

~~1. Family Access to Medical Insurance Security Plan (FAMIS) and a $2.00 co-pay level; and.~~

~~2. FAMIS MOMS program.~~

B. Local agencies shall serve institutionalized applicants if they meet all eligibility requirements.

C. For determining income eligibility, local agency personnel shall use the applicant's current or annualized income, whichever is the best indication of circumstances.

D. In determining income eligibility, the state agency ~~utilizes~~ shall utilize all income exclusions listed in 7 CFR 246.7.

E. Applicants who are not adjunctively financially eligible shall have financial eligibility determined using income guidelines equaling the income guidelines established under § 9 of the National School Lunch Act for reduced price school meals per 7 CFR 246.7.

F. An applicant claiming multiple fetuses shall have the stated number used at the time of certification, but ~~is required to~~ shall be required to provide written verification by a physician or nurse practitioner working under the supervision of a physician within 90 days of certification.

12VAC5-195-110. Caretaker.

A. A parent or legal guardian may have the privilege, but not the right, to designate one caretaker per family ID number to certify an infant or child~~, to~~ who may obtain and redeem food instruments~~,~~ and ~~to~~ attend nutrition education. The caretaker assumes all of the rights and responsibilities of the parent or legal guardian who designates ~~them~~ him. A caretaker shall be designated only when the local agency cannot accommodate the needs of the parent to attend the local agency to obtain WIC benefits. In the absence of a parent or legal guardian, a caregiver shall provide reasonable documentation of his status as a primary caregiver. Reasons supporting the designation of a caretaker shall be documented and become part of the participant's record. The authority to implement the caretaker policy will be granted individually to local agencies by the state WIC director. The parent is always encouraged to be the primary recipient of all WIC benefits.

B. A caretaker may be designated in two situations:

1. A parent or legal guardian's declaration of hardship or

2. The caretaker providing reasonable documentation of his role in the absence of a parent or legal guardian.

~~B.~~ C. Local agency personnel shall ~~only~~ discuss the option of designating a caretaker if the participant, parent, or legal guardian ~~indicates one of the following situations~~ declares hardship that prevents him from coming to the local agency during established regular and alternative hours due to:

1. ~~The participant, parent or legal guardian expresses difficulty with attending the local agency for nutrition education WIC benefits~~ Conflict of schedules due to work, school, or some other valid reason;

2. ~~The local agency determines difficulty with the participant, parent or legal guardian attending the local agency through objective methods such as the no show reports, missed appointments, or frequently rescheduled appointments~~ Lack of transportation; or

3. ~~The local agency determines difficulty with the participant, parent or legal guardian attending the local agency during established alternative hours~~ An infant or child residing with a family member or caretaker.

D. The caretaker shall provide reasonable documentation to substantiate his relationship with the infant or child and his role as primary caretaker. Reasonable documentation may include:

1. Signed caretaker designation form, WIC-311, indicating the designation of caretaker that may be obtained prior to the first local agency visit;

2. Signed and witnessed letter from the legal guardian or parent designating a caretaker and reason for the legal guardian's or parent's inability to certify an infant or child, obtain and redeem food instruments, and attend nutrition education; and

3. Documentation of the parent or legal guardian's enrollment, residence, or confinement in a hospital treatment program, shelter, penal institution, or other institution.

12VAC5-195-140. Food instruments.

A. Food instrument issuance**.** All food instruments shall be issued through the automated system only after eligibility has been documented and ~~only~~ when the participant, parent or legal guardian, caretaker, or proxy is physically present at the local agency to pick up ~~their~~ the food instrument. Failure by the participant, parent, legal guardian, caretaker, or proxy to attend the initial nutrition education appointment may result in reduced WIC benefits for that month.

B. Lost food instruments. Replacement of lost, valid, not redeemed food instruments shall only occur once within the entire duration of the participant, parent, caretaker, or legal guardian's receipt of WIC services, unless approval is obtained from the state agency. Lost food instruments shall only be replaced for one of the following situations:

1. A participant leaving home because of ~~family~~ domestic violence;

2. A change in full legal custody, including when infants/children are removed from home and placed in foster care or parental custody is changed; or

3. An event out of the control of participant, such as a fire or natural disaster that is publicly documented.

C. Stolen food instruments. Food instruments reported as stolen shall only be replaced when a police report is provided that states that the valid, not redeemed, WIC food instruments were ~~the~~ stolen ~~items~~. Stolen food instruments shall not be replaced without a police report, unless costs are associated with the police report and a waiver is granted by the state agency. Stolen food instruments shall only be replaced once within the entire duration of the participant, parent, caretaker, or legal guardian's receipt of WIC services, unless approval is obtained from the state agency.

D. Mailing WIC food instruments. Food instruments shall only be mailed with prior approval from the competent professional authority for individual participants if the participant has already received the required secondary nutrition education contact or if the participant will be able to receive nutrition education at the next visit within the certification period. Justification for mailing food instruments to individuals, families and groups includes:

1. Illness or disability resulting in the participant being physically unable to be present as documented by medical records ~~and meeting the Americans with Disabilities Act criteria (28 CFR Part 35) for physically unable to be present~~;

2. Imminent childbirth as documented by medical records;

3. Distance to travel, especially in rural areas with a minimum 60-mile roundtrip travel distance between home and the local WIC clinic, as ~~approved~~ confirmed by the local WIC coordinator;

4. Other travel distance for participants with unique transportation challenges;

5. Computer failure at the local agency site;

6. Natural disasters;

7. Complete systemwide failure of automated system; and

8. Difficulty obtaining complete prescription for a special formula ~~as~~ that has been approved by a local WIC coordinator.

Food instruments shall only be mailed for a ~~one-month~~ three-month period. Requests beyond the ~~one-month~~ three-month period shall require approval by the state agency.

12VAC5-195-150. Alternative office hours.

Alternative office hours shall be offered outside of the regular operating hours of Monday through Friday, between 8 a.m. and ~~5~~ 4:30 p.m. to address barriers in accessing WIC services for current and potential applicants and participants. The local agency shall offer a minimum of 16 alternative office hours per month and provide documentation to the state agency that the alternative hours accommodate the needs of the current client caseload.

12VAC5-195-200. Program abuse and sanctions.

A. The state agency determines program abuse and sanctions that may be issued to applicants and participants. When more than one abuse is involved at a time, the sanction shall be based on the more serious abuse.

B. If an abuse occurs more than 12 months after the last abuse, the local agency shall process the abuse as a first offense.

C. When more than three abuses in a 12-month period occur, the local agency shall issue a three-month temporary disqualification.

D. Program abuses and assigned sanctions are as follows:

Abuse	Number of Offenses	Sanction
Class I		
Any deliberate misrepresentation of income, name, residence, family size, medical data, or date of birth to obtain WIC benefits	All	Three-month disqualification
Dual participation – redeeming food instruments from two programs/agencies in same month	All	One-year disqualification
Assessed claim for $100 or more	All	One-year disqualification
Assessed second or subsequent claim for any amount	2nd or subsequent	One-year disqualification
Attempting to steal or actually stealing food instruments from the local agency or another participant, if under $100	All	Three-month disqualification
Selling, exchanging or giving away food instruments, food, or formula	All	Three-month disqualification
Redeeming WIC food instruments reported as lost or stolen, if under $100	All	Three-month disqualification
Attempting to redeem or redeeming WIC food instruments for nonfood items (i.e., diapers, wine, cigarettes)	All	Three-month disqualification
Physically abusing the WIC or store retailer staff (An incidence of physical abuse of WIC or store retailer staff/property should be reported to the police)	All	Three-month disqualification
Accepting cash or credit from a store retailer in connection with a WIC transaction	1st 2nd 3rd	One-month disqualification Two-month disqualification Three-month disqualification
Alteration of WIC food instruments (includes date, quantities, types of food)	1st 2nd 3rd	One-month disqualification Two-month disqualification Three-month disqualification
Class II		
Creating a public nuisance at the local agency or the store retailer (i.e., verbally abusing, harassing, or threatening WIC or store retailer staff, destroying store retailer merchandise, or disrupting normal local agency or store retailer activities)	1st 2nd 3rd	Warning letter Two-month disqualification Three-month disqualification
Attempting to redeem or redeeming WIC food instruments for unauthorized food, formula or food amounts	1st 2nd 3rd	Warning letter Two-month disqualification Three-month disqualification
Allowing unauthorized person(s) to use the WIC ID Folder to pick-up and/or redeem WIC food instruments	1st 2nd 3rd	Warning letter Two-month disqualification Three-month disqualification
Deliberately damaging or destroying WIC food instruments	1st 2nd 3rd	Warning letter Two-month disqualification Three-month disqualification
Redeeming WIC food instruments before or after valid spend dates	1st 2nd 3rd	Warning letter One-month disqualification Two-month disqualification
Attempting to redeem or redeeming food instruments at unauthorized stores retailers	1st 2nd 3rd	Warning letter One-month disqualification Two-month disqualification

12VAC5-195-210. Collection of improperly issued instruments/claims against participants.

The state agency ~~may~~ shall establish a claim against a participant for the full value of benefits improperly obtained or disposed of ~~and any fees or additional expenses incurred~~ as a result of a participant violation. ~~These improper acts include, but are not limited to:~~ Participant violations include:

1. Inaccurate certification information;

2. Dual participation violations;

3. ~~Proxy abuses~~ Violation of the WIC guidelines or rules by the proxy or caretaker; or

4. Retention of future food instruments after disqualification.

12VAC5-195-230. Conflict of interest.

A. Individuals involved in administering the WIC Program may not, without prior written approval from the WIC Director or his designee or the director of the local health district:

1. Act as a proxy for a participant; ~~or~~

2. Have a direct financial interest in an authorized WIC ~~retail store.~~ retailer; or

3. Complete an onsite stocking visit of an authorized retailer at which they or a relative is employed.

B. Individuals involved in administering the WIC Program shall not certify or issue food instruments to themselves or relatives. ~~Relatives include spouses, parents, children, brothers, sisters, aunts, uncles, nephews, nieces, grandparents and grandchildren.~~

C. Additional conflict of interest regulation may be found in 12VAC5-195-460.

D. This section is not meant to replace or abrogate the Virginia State and Local Government Conflict of Interests Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2 of the Code of Virginia.

Part III
~~Vendor~~ Retailer Requirements

12VAC5-195-280. Enrollment procedures.

A. The state agency ~~accepts~~ shall accept applications from new ~~store~~ retailer applicants year round.

B. ~~Stores~~ Retailers seeking authorization shall comply with 7 CFR 246.12 and sell a range and variety of staple foods and WIC-approved formulas at a permanent fixed location, as specified in the retailer agreement and application package. Only one authorization approval will be granted by the state agency to each eligible location selected for program authorization. Stand-alone pharmacies and any other types of entities that cannot meet all of the general requirements outlined in this section ~~will~~ shall be denied WIC Program authorization.

C. ~~Store~~ Retailer applicants shall complete the following requirements to become authorized for WIC Program participation:

1. Submit all applications, including pricing updates, using an electronic, Internet-based method that has been approved by the WIC Program;

2. Submit prices for all mandatory food and formula items, a signed retailer agreement, supplemental informational form, direct deposit ACH form, and other required forms as deemed necessary to evaluate ~~a retailer's or~~ an applicant's qualifications;

3. Pass a competitiveness price assessment completed by the WIC Program. The state agency shall determine ~~that~~ whether the prices submitted as part of the new ~~store~~ retailer application process are price competitive when compared to other ~~stores~~ retailers located in the ~~store's~~ retailer's assigned peer group;

4. Provide documentation to the state agency, upon request, that a satisfactory business integrity record exists. None of the ~~store's~~ retailer's current owners, officers, or managers shall have been convicted of or had a civil judgment entered against them for conduct demonstrating a lack of business integrity, within the past six years;

5. Pass an unannounced onsite visit to determine if the ~~store~~ retailer has met the minimum stocking requirement, has available for sale the variety and selection of foods as stated on the supplemental informational form, and has posted prices that are not higher than prices submitted as part of the application process. The visit shall also verify that the ~~store's~~ retailer's hours of operation and number of cash registers were accurately reported;

6. Pass an onsite visit to determine if the type and variety of foods sold would qualify the ~~store~~ retailer to earn more than 50% of its annual sales solely from the WIC Program. If the ~~store~~ retailer is likely to be an above 50% ~~vendor~~ retailer, then it shall be denied authorization;

7. Attend a mandatory new ~~store~~ retailer training session conducted by either state agency staff or a certified corporate trainer within 30 calendar days after the ~~retail store~~ retailer passes ~~a~~ an unannounced stocking and price verification visit. Provide documentation to the state agency ~~that this mandatory training has been completed. Store applicants shall provide to the state agency this documentation~~ within 30 calendar days after meeting all other enrollment requirements that this mandatory training has been completed;

8. Provide training to ~~store~~ retailer personnel and cashiers on proper WIC food instrument handling procedures;

9. Return to the state agency all required paperwork within 14 days after receipt including~~, but not limited to,~~ a signed retailer agreement, if applicable; supplemental informational form; direct deposit ACH form; and other

information deemed necessary to evaluate a retailer's or applicant's qualifications; and

10. Receive from the state agency a packet containing an authorization acknowledgement letter granting WIC Program authorization, a ~~Vendor~~ Retailer Manual for the Virginia WIC Program, a WIC window decal, and an authorization stamp.

D. Newly authorized ~~stores~~ retailers shall begin accepting WIC food instruments within 15 calendar days after receiving their program authorization stamp and final acknowledgment letter. Authorized ~~stores~~ retailers are required to contact the state agency in writing if the ~~store will be~~ retailer is unable to meet this program requirement. Failure to begin accepting WIC food instruments within the established time frame may lead to the state agency withdrawing its authorization decision.

E. ~~Store~~ Retailer applicants that fail to meet any of the enrollment requirements outlined in this section ~~will~~ shall be denied authorization unless the state agency determines that inadequate participant access would exist if the authorization were terminated.

12VAC5-195-290. Communications.

A. Authorized ~~stores~~ retailers shall contact the state agency or their assigned agency representative rather than local WIC agency staff for all questions related to WIC Program participation including, ~~but not limited to, retail store~~ retailer selection and authorization requirements and decisions, reimbursement questions, participant's food instrument prescriptions, and complaints.

B. Authorized ~~stores~~ retailers shall provide at least 15 calendar days written notice if the retailer ~~desires~~ decides to terminate its participation in the WIC Program or ~~when~~ if the retailer ceases operation, changes ownership, or for any other circumstances that impacts service delivery including~~, but not limited to,~~ relocations, renovations, ~~permanent~~ or temporary closures.

C. The state agency shall regularly ~~communicates~~ communicate policy and procedural changes, training issues, WIC food instrument processing tips, cashier reminders and alerts affecting ~~retail stores~~ retailers in an informational newsletter. ~~Annually, a~~ A newsletter ~~is~~ shall be published annually and sent to all authorized ~~retail stores~~ retailers to update ~~store~~ retailer personnel on major program changes. The ~~program posts, if applicable,~~ state agency shall post approved policy changes, if applicable, on its external webpage. Authorized ~~stores~~ retailers shall ~~be held accountable for complying~~ comply with all policy changes communicated in writing by the state agency.

D. Written correspondence retained in the state agency's centralized files located in Richmond, Virginia, pertaining to~~, but not limited to,~~ a ~~store's~~ retailer's authorization status, application documentation, or WIC and ~~food stamps~~ Supplemental Nutrition Assistance Program compliance history is confidential and is protected ~~under~~ by federal regulations (7 CFR 246.26). The state agency shall maintain ~~stores'~~ retailers' compliance history and background information for at least a three-year period or the contract period, whichever is longer. For civil judgments and ~~food stamp~~ Supplemental Nutrition Assistance Program administrative documentation issued against a specific authorized retailer, the state agency ~~will~~ shall retain this documentation for six years.

E. In order to utilize the WIC-approved, Internet-based application for submission of prices, ~~stores~~ retailers shall ~~give~~ consent to be monitored by the ~~state agency~~ Virginia Department of Health or its information technology agency to ensure that this application is ~~being~~ used for its intended purpose. If ~~such~~ monitoring reveals possible evidence of unauthorized or criminal activity, this evidence may be provided to ~~appropriate~~ local, state, or federal authorities for disciplinary action and prosecution to the fullest extent permitted by law.

12VAC5-195-300. General requirements and conditions for authorization.

A. Once enrolled, a ~~store~~ retailer or applicant shall obtain authorization from the state agency to operate as a WIC-authorized ~~store from the state agency~~ retailer before accepting or redeeming food instruments.

B. To obtain and retain authorization ~~and remain authorized~~, retailers shall:

1. Be ~~food stamp~~ Supplemental Nutrition Assistance Program authorized at the time of application or reauthorization and remain in good standing;

2. ~~Be currently WIC-authorized or eligible for authorization after meeting a~~ If applicable, fulfill the WIC disqualification requirement~~, if applicable~~;

3. Be in operation as a business at the time of application or within 45 calendar days of application;

4. ~~Meet~~ Comply with all local, state and federal ~~requirements~~ statutes, regulations, and rules, including sanitation and building code regulations;

~~5. Be necessary as determined by the state agency to ensure adequate participant access;~~

~~6.~~ 5. Submit prices ~~to the WIC Program~~ using an electronic, Internet-based method at least twice a year ~~or as~~ and when requested by the state agency;

~~7.~~ 6. Remain price competitive when compared to other authorized ~~stores~~ retailers that are located in the same peer group;

~~8.~~ 7. Meet the mandatory minimum stocking requirement at all times and keep such stock immediately available in the customer shopping area or ~~immediately available~~ onsite;

~~9.~~ 8. ~~Be located~~ Operate at the ~~store~~ retailer address indicated in the state agency's application or authorization

record; this address shall be the sole location at which WIC customers purchase supplemental foods and formulas;

~~10.~~ 9. Be open for business at least 50 hours per week;

~~11.~~ 10. Meet all business integrity criteria as defined in 7 CFR 246.12;

~~12.~~ 11. Provide supporting documentation to the state agency including~~, but not limited to,~~ annual food sales information or tax records that will be used to ensure that ~~not~~ no more than 50% of the ~~store's~~ retailer's total food sales were derived from WIC sales;

~~13.~~ 12. Comply with all ~~financial and~~ corrective actions identified ~~from~~ during prior WIC ~~authorization~~ authorizations and pay all civil monetary penalties, if applicable;

~~14.~~ 13. Purchase contract and special formula from a distributor, supplier, wholesaler, or ~~retail store whose name~~ retailer who is ~~listed~~ approved by the Virginia WIC Program ~~as approved~~ to sell formula; and

~~15.~~ 14. Participate in the WIC Program's direct deposit ~~(ACH)~~ ACH process used for reimbursement purposes.

C. ~~Stores~~ Retailers shall not offer drive-through window or home delivery services for ~~making~~ WIC purchases. The participant must take physical possession of purchased food and formula items at the time of transaction when the WIC food instrument is signed.

12VAC5-195-310. Above 50% ~~vendor~~ retailer screening.

A. The state agency shall not authorize any applicant or ~~retail store~~ retailer that is likely to derive 50% or more of its annual food sales from the sale of supplemental foods to WIC participants. ~~Stores~~ Retailers already authorized by the program whose annual WIC food sales rise to 50% or more of their total food sales will have their authorization status terminated. ~~Stores~~ Retailers must submit documentation that permits the state agency to complete its evaluation and identification of above 50% ~~vendors~~ retailers. Failure to submit the requested documentation may lead to the ~~store's~~ retailer's authorization being terminated.

B. Newly authorized ~~stores~~ retailers with six months of redemption history shall have their status reviewed to determine if they qualify as an above 50% ~~vendor~~ retailer (7 CFR 246.12). If the state agency's assessment determines the ~~store~~ retailer qualifies as an above 50% ~~vendor~~ retailer, the ~~store's~~ retailer's WIC Program authorization status shall be terminated.

12VAC5-195-320. Retailer agreement.

A. The retailer agreement does not constitute a license or a property right. If an authorized ~~store~~ retailer wishes to continue to be authorized beyond the current agreement period, the ~~store~~ retailer must reapply for authorization. All ~~stores~~ retailers must be selected under the current selection and authorization criteria being used by the state agency (7 CFR 246.12).

B. Authorized ~~retail stores and military commissaries~~ retailers shall use a single uniform retailer agreement. The maximum duration of the retailer agreement shall not exceed three years. The duration of the retailer agreement may be for a period that is less than three years, depending upon ~~when~~ whether a county or location is selected to undergo the regional authorization and selection process.

C. A fully executed retailer agreement ~~shall~~ must be signed by both ~~an~~ the authorized ~~store~~ retailer representative and ~~state agency~~ a WIC program management representative to be enforceable. The state agency shall provide the ~~store~~ retailer or its designated contact person a copy of ~~its~~ the signed retailer agreement or authorization acknowledgement letter ~~once~~ after all selection and authorization requirements have been met.

D. ~~A~~ An authorized retailer must have a signed copy of the retailer agreement ~~must be on file~~ for any ~~store~~ retailer to be paid for a redeemed WIC food instrument.

E. Revisions, amendments, or modifications to the provisions of the retailer agreement shall be made in writing. The retailer agreement shall be automatically amended upon written notice from the state agency ~~should~~ if federal~~,~~ or state laws~~,~~ or regulations require amendments.

F. Authorized ~~stores~~ retailers shall keep a copy of the updated ~~Vendor~~ Retailer Manual, including a copy of the WIC Approved ~~Food~~ food list, formula flyer, and Cashier Training Guide, at the ~~store~~ authorized retailer location ~~authorized to accept WIC food instruments~~.

~~G. The state agency reserves the right to extend the current retailer agreement up to six months during the reauthorization evaluation process. If the state agency uses this option, it shall provide written notice to authorized stores affected by this administrative decision.~~

~~H.~~ G. If the ~~state agency takes~~ retailer appeals an administrative action by the state agency against a retailer ~~and the retailer appeals~~ and the retailer agreement would otherwise expire during the appeal process, then the state agency shall grant an extension of that ~~store's~~ retailer's retailer agreement during the pendency of the appeal process ~~if the retailer agreement would otherwise expire during that time~~. Once an appeal decision has been made, the state agency will proceed with either terminating the existing agreement or issuing a new agreement.

12VAC5-195-330. Adequate participant access.

~~A.~~ The state agency shall ensure that adequate participant access exists so that eligible participants may redeem the food instruments issued to them. ~~The state agency uses a retailer limiting criteria to determine adequate participant access (7 CFR 246.12).~~ The state agency has the sole authority to ~~define~~ establish adequate participant access criteria, which are described in 12VAC5-195-370.

~~B. The number of authorized stores or retailer slots available is based on two factors:~~

~~1. Number of WIC participants living in a specific city or county in which the retail store is physically located; and~~

~~2. Population density of the community where the store is physically located.~~

~~C. Population density is calculated by identifying the population that resides in a specific city or county. Population density serves as a proxy indicator used by the program to project how close together retailers and participants are located next to each other. Thus densely populated areas where stores are located closer together require fewer stores to provide adequate participant access.~~

~~D. In sparsely populated areas, both population and stores are dispersed over a wider geographical area that directly impacts participant access. More sparsely populated areas require more authorized stores to adequately serve eligible participants.~~

~~E. Participation is managed and monitored by the WIC Program on a monthly basis. For this reason the number of available slots for authorized stores may change frequently. This change will not impact stores already authorized, but may impact a new store applying for authorization in a given area.~~

~~F. The number of authorized retailers or retailer slots available is calculated by a store to participant ratio, which is higher for densely populated communities, and lower for sparsely populated counties. Population density data is updated annually by the state agency and is obtained from the United States Census Bureau. The WIC Program uses a single population density indicator to identify which communities have the higher retailer to participant ratio.~~

~~G. A specific number of retailer slots will be allocated to each city/county. A listing of retailer slots available and allocated to each city and county will not be published and distributed to authorized stores, since this figure may change frequently.~~

12VAC5-195-340. Competitive pricing.

A. Authorized ~~stores~~ retailers and applicants shall submit pricing information to the state agency. Item pricing data is obtained from authorized ~~stores~~ retailers and applicants ~~from~~ using prices that have been entered into a WIC-approved Internet-based application.

B. The state agency ~~collects~~ shall collect pricing information for specific food items at least twice a year (7 CFR 246.12). Prices may be collected more frequently from authorized ~~stores including, but not limited to, the following~~ retailers for reasons including:

1. A ~~store's~~ retailer's prices are determined to be noncompetitive;

2. A ~~store~~ retailer is designated a high risk retailer;

~~3. A competitive pricing analysis is needed in order to consider an applicant's qualifications;~~

~~4.~~ 3. An administrative review is being conducted as part of a compliance investigation, onsite monitoring visit, participant access analysis, inventory audit, or post payment analysis; or

~~5.~~ 4. Other operational considerations that may occur including~~, but not limited to,~~ a change ~~in~~ of contract formula company, a change ~~in~~ of infant food company, food industry price fluctuations, and manufacturer's price increases for selected WIC-approved products, such as baby foods, contract formula, and infant cereal.

C. ~~Stores~~ Retailers and applicants must submit the highest shelf price for all mandatory foods and formula brands, unless stated otherwise, that are available and eligible to be sold to participants. For milk items only, ~~stores~~ retailers must submit the price for their ~~store~~ WIC designated brand ~~or least expensive brand available~~. ~~Prices for optional foods approved for purchase submitted via the Internet-based application~~ All prices submitted via the Internet-based application shall be used for calculating the reimbursement maximums. Retailers must use the approved food list and the minimum stocking requirement to identify all eligible brands and foods.

D. ~~Stores~~ Retailers failing to submit their prices within 14 days of the ~~stated~~ due date stated in the ~~Vendor~~ Retailer Manual ~~will~~ shall receive one warning letter. After receiving this letter, ~~stores~~ retailers that fail to respond within the time period stated in the letter may have their WIC Program authorization terminated unless the state agency determines that inadequate participant access would exist if the retailer's authorization were terminated.

E. Applicants whose prices are determined to be noncompetitive when compared with other authorized ~~stores assigned to~~ retailers in the same peer group shall be denied WIC Program authorization. These applicants shall not be given a second opportunity to resubmit their prices~~,~~ unless the state agency determines that inadequate participant access would exist if the application was not considered.

F. Authorized ~~stores~~ retailers whose prices are determined to be noncompetitive when compared with other ~~stores~~ retailers assigned to the same peer group shall be given one opportunity to resubmit their prices. After analyzing the prices submitted from this second submission, the state agency shall determine if the ~~store~~ retailer qualifies to remain authorized. The state agency shall terminate the ~~store's~~ retailer's authorization if its prices are noncompetitive unless the state agency determines that inadequate participant access would exist if the retailer's authorization were terminated.

G. ~~The state agency uses nine business economic areas (BEAs) to initially define peer groups based on location and economic variations. For more densely populated BEAs, a second criterion used to further define peer groups is the number of unique participants served (7 CFR 246.12). Each authorized store or applicant is assigned to a single peer group.~~ The applicant's physical retailer address shall be classified as being located either in an urban or rural location

based on the county or city where the retailer is located. Retailer applicants located outside of Virginia shall be assigned to the rural category.

~~Business Economic Areas (ID) (# of Unique Participants Served, if applicable)~~	~~Peer Group~~	~~Cities & Counties Located in each BEA~~
~~49~~	~~10~~	~~Accomack & Northampton Counties~~
~~66~~	~~11~~	~~Cities: Danville, Galax City, & Martinsville and Counties: Carroll, Grayson, Henry, Patrick & Pittsylvania~~
~~71~~	~~12~~	~~Cities: Buena Vista, Harrisonburg, Lexington, Staunton & Waynesboro and Counties: Augusta, Bath, Highland, Page, Rockbridge & Rockingham~~
~~81~~	~~13~~	~~Cities: Bristol & Norton and Counties: Buchanan, Dickerson, Lee, Russell, Scott, Smyth, Tazewell, Washington & Wise~~
~~133~~	~~14~~	~~Halifax County~~
~~137 (0 – 100 participants)~~	~~15~~	~~Cities: Charlottesville, Colonial Heights, Emporia, Hopewell, Petersburg, & Richmond and Counties: Albemarle, Amelia, Brunswick, Buckingham, Caroline, Charles City, Charlotte, Chesterfield, Cumberland, Dinwiddie, Essex, Fluvanna, Goochland, Greene, Greensville, Hanover, Henrico, King and Queen, King William, Lancaster, Louisa, Lunenburg, Mecklenburg, Middlesex, Nelson, New Kent, Northumberland, Nottoway, Powhatan, Prince Edward, Prince George, Richmond & Sussex~~
~~137 (101 – 250 participants)~~	~~16~~	
~~137 (251 and up participants)~~	~~17~~	
~~138 (0 – 100 participants)~~	~~25~~	~~Cities: Bedford, Clifton Forge, Covington, Lynchburg, Radford, Roanoke & Salem and Counties: Alleghany, Amherst, Appomattox, Bedford, Bland, Botetourt, Campbell, Craig, Floyd, Franklin, Giles, Montgomery, Pulaski, Roanoke & Wythe~~
~~138 (101 – 250 participants)~~	~~26~~	
~~138 (251 and up participants)~~	~~27~~	
~~173 (0 – 100 participants)~~	~~35~~	~~Cities: Chesapeake, Franklin, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach & Williamsburg and Counties: Gloucester, Isle of Wight, James City, Mathews, Southampton, Surry & York~~
~~173 (101 – 250 participants)~~	~~36~~	
~~173 (251 and up participants)~~	~~37~~	
~~174 (0 – 100 participants)~~	~~45~~	~~Cities: Alexandria, Fairfax, Falls Church, Fredericksburg, Manassas, Manassas Park &~~
~~174 (101 – 250 participants)~~	~~46~~	
~~174~~	~~47~~	

~~(251 and up participants)~~		~~Winchester and Counties: Arlington, Clarke, Culpeper, Fairfax, Fauquier, Frederick, King George, Loudoun, Madison, Orange, Prince William, Rappahannock, Shenandoah, Spotsylvania, Stafford, Warren & Westmoreland~~
Rural Areas[1]	Cities: Norton, Suffolk Counties: Accomack, Albemarle, Alleghany, Amelia, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Brunswick, Buchanan, Buckingham, Campbell, Caroline, Carroll, Charles City, Charlotte, Clarke, Craig, Culpeper, Cumberland, Dickenson, Dinwiddie, Essex, Fauquier, Floyd, Fluvanna, Franklin, Frederick, Giles, Gloucester, Goochland, Grayson, Greene, Greensville, Halifax, Hanover, Henry, Highland, Isle of Wight, King and Queen, King George, King William, Lancaster, Lee, Louisa, Lunenburg, Madison, Mathews, Mecklenburg, Middlesex, Montgomery, Nelson, New Kent, Northampton, Northumberland, Nottoway, Orange, Page, Patrick, Powhatan, Pittsylvania, Prince Edward, Prince George, Pulaski, Rappahannock, Richmond, Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Southampton, Spotsylvania, Surry, Sussex, Tazewell, Warren, Washington, Westmoreland, Wise, Wythe	
Urban Areas[1]	Cities: Alexandria, Bedford, Bristol, Buena Vista, Charlottesville, Chesapeake, Clifton Forge, Colonial Heights, Covington, Danville, Emporia, Fairfax, Falls Church, Franklin, Fredericksburg, Galax, Hampton, Harrisonburg, Hopewell, Lexington, Lynchburg, Manassas, Manassas Park, Martinsville, Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Radford, Richmond, Roanoke, Salem, Staunton, Virginia Beach, Waynesboro, Williamsburg, Winchester Counties: Arlington, Chesterfield, Fairfax, Henrico, James City, Loudoun, Prince William, Roanoke, Stafford, York	

[1]The state agency uses the Isserman model for determining what cities and counties are considered urban and rural settings. This model was created for the United States Department of Agriculture and was published in "In the National Interest: Defining Rural and Urban Correctly in Public Policy" (International Regional Science Review, 28, 4:465 - 499 (2005))

Authorized retailers are assigned to a peer group based on their designation of rural or urban and the number of cash registers located in the retailer. Peer groups are defined as follows:

Peer Group	Description	Location
06	Special formula contractor	Other
50	One to four cash registers	Rural
51	Five to nine cash registers	Rural and under $100,000 in annual WIC sales
52	Five to nine cash registers	Rural and over $100,000 in annual WIC sales
53	10 and above cash registers	Rural
60	One to four cash registers	Urban
61	Five to nine cash registers	Urban and under $100,000 in annual WIC sales
62	Five to nine cash registers	Urban and over $100,000 in annual WIC sales
63	10 and above cash registers	Urban

H. For newly authorized ~~stores~~ retailers and applicants the peer group designation assigned during the first three months ~~is~~ shall be determined by the ~~first criterion only; specifically the store's BEA default location~~ retailer's location and number of cash registers. ~~This default location, if applicable, is the peer group that services 0-100 unique participants. Authorized stores' peer group designation may change, based upon increases or decreases in the monthly average number of unique WIC participants being served by the store.~~ For the

peer group designation of newly authorized retailers that have five to nine cash registers, the state agency shall assume the retailer had less than $100,000 in annual WIC sales.

I. All retailers that have five to nine cash registers shall have their WIC sales data calculated by the state agency every six months to determine if the retailer's annual WIC sales are projected to be under or over $100,000. If the retailer's WIC sales have changed, then the retailer's assigned peer group shall change to reflect its redemption status.

J. Retailers that increase or decrease their number of cash registers must notify the state agency in writing within 15 calendar days. An onsite visit may be conducted by the state agency to confirm the number of operational cash registers. Retailers that knowingly misrepresent their number of cash registers may have their authorization status terminated unless the state agency determines that inadequate participant access would exist if the retailer's authorization were terminated.

12VAC5-195-350. Price verification.

A. Authorized ~~stores~~ retailers and applicants must submit prices for all mandatory foods and formulas as defined by the state agency. Once prices have been submitted to the WIC Program, they must remain ~~valid~~ in effect for at least a 30-day period and are subject to random onsite verification by the state agency. Posted prices that are significantly ~~above what was~~ higher than the prices submitted to the state agency may affect the ~~store's~~ retailer's or applicant's authorization selection status.

B. A ~~store~~ retailer or applicant's submitted price shall be compared by the state agency to other authorized ~~stores assigned to~~ retailer in the same peer group ~~in order~~ to determine if the prices submitted are competitive. Prices shall be submitted and validated as competitive for specific food items and formulas ~~eligible for payment to the authorized store location~~ as specified in the Retailer Manual.

C. Authorized ~~stores~~ retailers and applicants shall have a pricing point value that is 40 or higher in order to remain eligible for program authorization.

Description	Price Comparison Range	Pricing Point Value
Best Pricing	Peer Group Average, minus 10% or more	100
Highly Competitive	Peer Group Average, minus 5.1 - 9.9%	80
More Competitive Pricing	Peer Group Pricing Average, plus or minus 5.0%	60
Competitive	Peer Group Pricing Average, plus 5.1 – ~~9.9%~~ 19.9%	40
Noncompetitive	Peer Group Pricing Average, plus ~~10.0~~ 20% or higher	20

D. Authorized ~~stores~~ retailers whose prices are identified as noncompetitive when compared with other authorized ~~stores assigned to~~ retailers in the same peer group ~~within a BEA~~ may have their WIC Program authorization terminated~~,~~ unless the state agency determines that inadequate participant access would exist if the retailer's authorization were terminated.

E. Authorized ~~stores~~ retailers that fail to submit a price for optional food and formula items may have redeemed food instruments selected as ineligible for payment as part of the postpayment review process. These improperly redeemed food instruments may be identified as a ~~vendor~~ retailer claim and be subject to repayment of the full amount paid for all of the items prescribed on the food instrument.

12VAC5-195-360. Selection decisions.

A. ~~All retailers and applicants will compete equally for available slots located within a specific city/county or zip code, if applicable. The state agency reviews the qualifications of authorized stores and applicants located in a specific BEA or city/county within a BEA to make authorization selection decisions. Retail stores' and applicants' mandatory women and infant food and formula items used for pricing analysis purposes must qualify under the price competitive category of 40 or higher in order to be selected for authorization (7 CFR 246.12).~~

~~The state agency shall rank all stores that have a pricing point value of 40 or higher in ascending order, or lowest price to highest price. The stores that have the lowest total prices are considered the best qualified stores. Applicant's and store's ranking will be used to select applicants and stores for all available slots located within a specific BEA or city/county within a BEA.~~

Every three years, currently authorized retailers shall reapply for WIC program authorization. Retailers must meet all general requirements for authorization as established in 12VAC5-195-300.

B. ~~When multiple stores have equal rankings and there are not enough slots to authorize all such stores, rankings will be further differentiated based on the following criteria in order of their application:~~

~~1. When equal rankings occur, stores with the lowest prices for selective special formulas that are eligible to be sold to WIC participants will be offered any available slots.~~

~~2. If rankings continue to be equal, the state agency shall offer available slots to the authorized store or applicant with the highest number of unique participants who reside in the zip code where the store is located.~~

~~3. If rankings continue to be equal, the state agency shall offer available slots to the authorized store or applicant~~

~~with the highest square footage, excluding storage space, to determine which stores will be offered available slots.~~

~~4. If rankings continue to be equal and the stores or applicants are owned by the same corporate entity, then the corporate representative will be allowed to decide which corporate sponsored store shall be offered the available slot.~~

~~5. If rankings continue to be equal and the stores or applicants are not owned by the same corporate entity, then the store or applicant that has the highest food stamp sales for the previous six months will be offered the available slot.~~

The state agency shall review the qualifications of retailer applicants before making authorization selection decisions. Mandatory women and infant food and formula items sold at authorized retailers and retailer applicants shall be used for pricing analysis purposes. Authorized retailers and applicants must qualify under the price competitive category of 40 or higher in order to be selected for authorization.

C. If a ~~retail store~~ retailer or applicant is not ~~competitively~~ selected for program authorization, then the ~~store~~ retailer may not apply again ~~no sooner than~~ during the six months after being denied authorization. ~~Any exception to the six month requirement shall be determined at the discretion of the state WIC director.~~ The state WIC director or designee may grant exceptions to the six month requirement if inadequate participation would exist if the retailer's authorization was not considered.

~~D. If a newly opened store is considered to be a best qualified store and is offered a slot, then the previously authorized store in that slot will be offered an extension to its retailer agreement to remain authorized for one year from the start of the new authorization period.~~

~~E.~~ D. The state agency shall send all authorized ~~stores~~ retailers and applicants a written notice ~~pertaining to~~ of their selection status. All ~~stores~~ retailers and applicants ~~being~~ denied WIC Program authorization shall also receive information that explains their right to appeal the state agency's administrative decision.

~~F.~~ E. The state agency ~~does~~ shall not maintain an applicant waiting list.

12VAC5-195-370. Authorization exception decisions.

~~The state agency may adjust the number of retail stores authorized to ensure that adequate participant access exists. Only the state agency shall determine what constitutes adequate participant access.~~ The state agency may make authorization exceptions to ensure that adequate access exists based on ~~one or several of~~ at least one of the following criteria:

1. Provide reasonable access;

2. Provide safe access due to a physical barrier or impediment including~~, but not limited to,~~ a multilane highway, river, bridge; physical terrain (i.e., mountains);

3. Provide a best pricing or highly competitive alternative ~~store~~ retailer location to eligible participants to purchase WIC-approved ~~food~~ foods, when compared to other available ~~stores~~ retailers located within a given city and/or county;

4. Promote competition in a trade area previously identified as not having a price competitive authorized ~~retail store~~ retailer location available;

5. Improve customer service or remove an existing service barrier, i.e., language, cultural;

6. Improve WIC customer access ~~due to the fact that~~ because the ~~store~~ retailer is within a safe and reasonable walking distance and is located in close proximity to one or several low income housing units where WIC participants reside;

7. ~~Provide supporting documentation that the store's~~ The retailer's draw area is broader than the ~~store's~~ retailer's immediate trade area. The ~~store's~~ retailer's draw area includes cities and counties that cross geographical boundaries; or

8. ~~Provide supporting documentation that the specific BEA or city/county within a BEA in which the store is located is experiencing, or based on recognized projected economic indicators, is likely to experience disproportionate economic hardship.~~ Expand access to WIC eligible foods that are purchased by a specific ethnic population.

12VAC5-195-390. Approved food list.

A. A copy of the current Virginia WIC Program's Approved Food List ~~(effective January 1, 2007)~~ and formula flyer must be stored at each cash register where WIC transactions are handled. A copy of the approved food list and formula flyer must also be stored in the ~~Vendor~~ Retailer Manual ~~that shall be~~ kept onsite at the authorized ~~store~~ retailer location.

B. The approved food list ~~is~~ shall be used in conjunction with the WIC food instrument to identify foods that are eligible for purchase ~~by WIC participants~~ using WIC food instruments. The food instrument may state specific manufacturers or brands ~~that must be purchased by program participants~~ that are not covered by the general description used in the approved food list that must be purchased by program participants.

C. The formula flyer shall be used in conjunction with the WIC food instrument to identify formula and medical foods that are eligible for purchase using WIC food instruments. The food instrument shall state the specific manufacturer, type, and quantity of formula that must be purchased by program participants.

~~C.~~ D. Authorized retailers shall sell WIC-designated brands for food categories identified in the approved food list. Authorized retailers shall use shelf labels approved by the state agency to identify the WIC-designated brands that ~~they select and declare~~ are declared using the state agency's Internet-based application.

12VAC5-195-400. Authorization stamp – assignment and usage.

A. The state agency ~~assigns~~ shall assign a unique stamp number to ~~stores that are authorized and eligible to receive reimbursement for deposited food instruments~~ each authorized retailer. The ~~store's~~ retailer's authorization number ~~is~~ shall be imprinted on a rubber stamp, which shall be used on every food instrument deposited by the authorized ~~store~~ retailer location. Failure by the ~~retail store~~ retailer to use the issued authorization stamp may result in ~~denied~~ payment being denied for redeemed WIC food instruments or ~~a store's disqualification,~~ if a pattern of noncompliance is documented, the termination of a retailer's authorization unless the state agency determines that inadequate participant access would exist if the authorization were terminated.

B. Authorized ~~stores~~ retailers must obtain any needed replacement stamps from the stamp supplier approved by the state agency. The state agency ~~will~~ shall provide a maximum of three stamps to an authorized ~~store~~ retailer per contract period at no charge. Failure to purchase an approved stamp from the designated stamp supplier may lead to deposited food instruments being rejected and returned unpaid by the state agency.

C. If a stamp overlay process is requested by an authorized retailer, the state agency may waive the requirement to use a rubber stamp on deposited food instruments. The stamp overlay process shall result in the assignment of a unique identification number that must be tested and approved by all affected parties. Retailers must submit a written request to the state agency at least 60 days prior to implementing the stamp overlay. If the request is approved, the state agency shall send written approval to the corporate office of the retailer requesting the stamp overlay. Failure to obtain written approval may lead to food instruments being returned unpaid by the banking contractor.

12VAC5-195-410. Change of ownership.

A. Authorized ~~retail stores~~ retailers shall provide the state agency with advance written notice ~~of~~ at least 15 calendar days prior to any change of ownership as outlined in 7 CFR 246.12.

B. A change of ownership occurs ~~for reasons including, but not limited to,~~ when the principal owner, ~~or~~ owners, or corporate officers of the business or corporation ~~have~~ are legally or permanently changed.

C. A ~~store's~~ retailer's authorization ~~will become null and void~~ shall be terminated by the state agency upon a change of ownership. The rights and obligations established under a signed retailer's agreement with the WIC Program may not be transferred or assigned by the ~~retail store~~ retailer or corporate owner to any other third party.

D. The new owner or ~~store~~ retailer manager of the ~~business/corporation~~ business or corporation shall apply for WIC Program authorization and submit ~~their~~ his qualifications and a new application for evaluation based on the most current retailer selection and authorization criteria.

E. The state agency shall terminate the authorization status of any ~~store~~ retailer that has undergone a change of ownership and failed to notify the state agency in accordance with the requirements outlined in the signed Retailer Agreement~~, effective July 1, 2008~~.

12VAC5-195-420. Change of location.

A. Authorized WIC ~~retail stores~~ retailers shall provide the state agency with written notice of a ~~store's~~ retailer's relocation plans within 15 calendar days prior to scheduled move date. Failure to notify the state agency in writing of such actions may result in the state agency taking administrative action, including terminating for cause the ~~store's~~ retailer's program authorization, unless the state agency determines that inadequate participant access would exist if the authorization were terminated.

B. Relocation of a ~~retail store~~ retailer is defined as:

1. The ~~store's~~ retailer's physical location changes within the same geographical area or county/city and there is no change in ownership or pricing structure. The ~~store meets~~ retailer must meet one of the following criteria:

a. New ~~store~~ retailer location is two miles or less from the former location; or

b. Majority of management and ~~store~~ retailer personnel will move to the new location. If the new location is greater than two miles, the WIC Program will evaluate on a case-by-case basis to determine whether the new location is an alternative location and qualifies as a relocation versus a new ~~store~~ retailer authorization;

2. The ~~store will~~ retailer shall be open for business within 15 calendar days or less after moving to a different physical location; and

3. The former ~~store~~ retailer location ~~will~~ under the existing owner shall be permanently closed for business.

C. The state agency shall ensure that the new location still meets the selection criteria as outlined in 12VAC5-195-340 and 12VAC5-195-360 including being price competitive. Failure to meet all selection criteria may lead to the ~~store's~~ retailer's authorization being terminated~~,~~ unless the state agency determines that inadequate participant access ~~exists~~ would exist if the authorization were terminated. Authorized ~~stores~~ retailers that meet all selection criteria will be permitted by the state agency to continue their authorization without experiencing any disruption in their authorization status. The state agency must assign a new WIC authorization ID to the new ~~store~~ retailer location if a new ~~food stamp~~ Supplemental Nutrition Assistance Program ID has been issued to the ~~store~~ retailer.

12VAC5-195-430. Change due to closure.

A. Authorized ~~retail stores~~ retailers shall give the state agency written notice of a ~~store's~~ retailer's permanent or

temporary closure within 15 calendar days before the actual closing date. A temporary closure is defined as a ~~store~~ retailer location being closed to the public for more than 15 consecutive calendar days. ~~Stores~~ Retailers closed to the public for any reason greater than 30 consecutive calendar days will have their WIC Program authorization terminated.

B. Failure to notify the state agency in writing of either permanent or temporary closure may result in the state agency taking administrative action, including terminating for cause the ~~store's~~ retailer's WIC authorization status.

12VAC5-195-440. Voluntary withdrawal.

Authorized ~~retail stores~~ retailers shall give the state agency at least 15 calendar days written notice if the ~~store~~ retailer owner or manager decides to discontinue participation in the Virginia WIC Program.

12VAC5-195-450. Complaints.

A. The state agency shall maintain a system of receiving, documenting and investigating all complaints submitted by ~~retail stores~~ retailers, participants, proxies, caretakers, parents, and the general public. ~~From submitted complaints, the~~ On the basis of a written complaint, the state agency may ~~issue a written warning to~~ take action against participants and ~~retail stores~~ retailers that abuse or misuse program benefits as outlined in the State Plan and ~~Vendor~~ Retailer Manual ~~(effective August 1, 2008)~~.

B. The state agency shall forward complaints of both alleged discrimination and civil rights violations to the Secretary of Agriculture as required by federal regulations.

12VAC5-195-460. Conflict of interest.

A. Authorized ~~retail store~~ retailer management shall seek to ensure that no conflict of interest exists between any ~~store~~ retailer personnel employed by the retailer and any local, state, or federal WIC agency. ~~This includes, but may not be limited to, store~~ The prohibition against conflict of interest applies to retailer employees ~~or spouses of store owners,~~ retailer owners, or relatives of retail employees or owners who are also employees of a local, state, or federal WIC agency.

~~B. Retail stores shall identify and report any member of the store's ownership, management, or operations staff who are directly associated with the WIC Program to the state agency. To ensure that all potential conflicts of interest are identified and reported, the retail store must complete and submit a potential conflict of interest reporting form to the state agency upon request or as deemed necessary by the state agency. Failure by the store to submit this form in the time frame designated by the state agency may result in the store's authorization status being terminated unless inadequate participant access would exist.~~

~~C.~~ B. WIC participants, caretakers, or proxies who are employed at an authorized ~~retail store may~~ retailer shall not accept or transact food instruments issued to themselves or ~~a member of their immediate family~~ relatives as a function of their duties at the retail location. Authorized ~~retail store~~ retailer management shall ensure all ~~store~~ retailer employees adhere to this integrity requirement.

C. Authorized retailer management shall notify the state agency in writing when a conflict of interest exists.

D. When an employee of an authorized retailer or an employee's relative is employed by a local, state, or federal WIC agency, the employee shall:

1. Notify retailer ownership or management of his or his relative's employment; and

2. Not show favoritism towards any authorized retailer including the retailer where he is employed.

E. Employees of an authorized retailer shall not in their professional capacity provide any gratuities, including cash, food, coupons, or gift cards, to employees of local, state, or federal WIC agencies.

F. Authorized retailer management shall seek to ensure its employees comply with the conflict of interest requirements listed in this section and review them with retailer personnel annually.

G. Additional conflict of interest regulations may be found in 12VAC5-195-230.

H. This section is not meant to replace or abrogate the Virginia State and Local Government Conflict of Interests Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2 of the Code of Virginia.

12VAC5-195-470. Incentives.

Authorized ~~stores~~ retailers may not provide incentives to local agency staff or participants to entice or promote shopping at a specific ~~store~~ retailer location, unless approved in writing by the state agency.

12VAC5-195-480. Participant confidentiality.

A. Participant information shall remain confidential to ensure compliance with federal regulations and to protect the right to privacy of WIC participants (7 CFR 246.26).

B. Confidentiality requirements apply to information provided by a participant and that is based on direct observation by ~~store~~ retailer personnel. Confidentiality requirements include, but are not limited to:

1. The prohibition of retailers from collecting personal information from WIC participants;

2. Making personal contacts with WIC participants after the WIC transaction has occurred; or

3. Sharing information on participant identification with third parties. Third parties do not include WIC Program state, local and federal agency representatives who have a legitimate business interest in the services provided to participants.

12VAC5-195-490. Retailer confidentiality.

A. Background and pricing information collected by the state agency related to evaluating the authorization status of a

~~store~~ retailer or collected from food instruments redeemed by an authorized ~~store is~~ retailer are confidential ~~(7 CFR 246.26)~~ and ~~can~~ may be released only ~~to:~~ as provided in 7 CFR 246.26.

~~1. The store retailer itself;~~

~~2. The parent corporation; or~~

~~3. Other governmental agencies responsible for ensuring program integrity, i.e., Food Stamp~~ SNAP ~~Program, Office of Inspector General, United States Department of Agriculture.~~

B. In accordance with federal regulations, 7 CFR 246.26, confidential ~~vendor~~ retailer information is any information about a ~~vendor~~ retailer, whether it is obtained from the ~~vendor~~ retailer or another source, that individually identifies the ~~vendor~~ retailer, except for the following: ~~store~~ retailer name, physical mailing address, telephone number, website, email address, ~~store~~ retailer type, ~~or~~ and authorization status. All other ~~vendor~~ retailer specific information is restricted from disclosure ~~to the public~~ by the state agency.

C. Upon receiving a written request from a ~~store~~ retailer or ~~their~~ its parent corporation, the state agency shall only release background and pricing information that has been provided by or that pertains to the requestor. Under no circumstances ~~will~~ may the state agency release confidential information about the redemption revenue paid to ~~stores~~ retailers owned by other corporations.

D. Authorized ~~stores'~~ retailers' peer group designation is confidential and is restricted from disclosure to persons and entities not directly associated with the authorized ~~store~~ retailer location.

E. The state agency's inadequate participant access results completed for administrative purposes are considered confidential and not subject to review by the ~~retail store~~ retailer or its agent, since this profile contains information protected by WIC Program regulations. Upon request, a copy of this work document ~~can~~ may be released with ~~any~~ all confidential information removed. This document in its entirety ~~will~~ shall be made available to appropriate governmental bodies that are responsible to ensure that the state agency has fully complied with any mandated WIC Program requirements.

12VAC5-195-500. Sales tax and coupons.

A. Authorized ~~retail stores~~ retailers shall ensure that no sales tax is charged to the WIC Program. ~~Store~~ Retailer coupons, manufacturer coupons and loyalty card discounts may be used for WIC-approved purchases. When a WIC participant uses a coupon or discount card in conjunction with a food instrument and an item is provided free, then sales tax shall be collected directly from the participant.

B. No sales tax can be applied to the printed value of cash value food benefits. Any tax associated with the dollar amount purchased above the printed value of the cash value food benefit must be collected directly from the participant.

12VAC5-195-510. Solicitation.

A. Authorized ~~stores~~ retailers shall not:

1. Initiate behavior that may be deemed aggressive or intimidating by a reasonable person in approaching potential WIC participants in order to promote that participant's shop at a specific ~~store~~ retailer location; or

2. Use any state or local agency facilities and property to post or distribute materials advertising their ~~store~~ retailer location.

B. If the state agency documents that an authorized ~~store~~ retailer violates either of these prohibitions, then the ~~store's~~ retailer's authorization may be subject to termination by the program.

C. Authorized ~~stores~~ retailers shall not use any advertisement practices or procedures that may give the public or participants the impression that a special or exclusive business relationship exists between the state agency and any authorized ~~store~~ retailer.

D. It is the ~~store~~ retailer owner's or designated agent's responsibility to ensure all employees understand and adhere to all prohibitions and restrictions related to solicitation.

12VAC5-195-520. Training and education.

A. Training of applicants or authorized ~~stores~~ retailers may be conducted by state agency staff. The state agency may also delegate ~~full~~ authority to trained individuals who have been certified as corporate trainers. Certified corporate trainers shall attend at least one mandatory WIC training class annually in order to remain certified.

B. The state agency shall provide mandatory annual training for previously authorized ~~stores~~ retailers. The annual training requirement may be met by the previously authorized retailers:

1. Submitting a newsletter training acknowledgement form;

2. Successfully completing an agency-sponsored Internet training course offered by the WIC Program; or

3. Attending an approved instructor-led, interactive training class.

C. Reauthorization training shall be required for previously authorized ~~stores~~ retailers that have been selected under a new contract period.

D. Authorized ~~stores can~~ retailers may request remedial training at any time by contacting the state agency.

E. All authorized ~~stores~~ retailers are required to have at least one ~~store~~ representative participate in annual training provided by either the state agency or a certified corporate trainer (7 CFR 246.12).

F. Failure of an authorized ~~store~~ retailer to meet ~~any~~ the mandatory training ~~requirement~~ requirements shall result in sanctions being imposed and the possible termination of the ~~store's~~ retailer's program authorization, unless the state

agency determines that inadequate participant access would exist if the authorization were terminated.

12VAC5-195-530. Use of acronym and logo.

A. Authorized ~~stores~~ retailers shall post a state-issued "WIC Accepted Here" window decal in the ~~store's~~ retailer's front entrance or in a conspicuously visible location that identifies to the general public that the ~~store~~ retailer location participates in the WIC Program. Authorized ~~stores~~ retailers may use alternative signage if approved by the state agency prior to being used.

B. ~~Retail stores~~ Retailers, food manufacturers, distributors and suppliers shall receive written approval from the state agency prior to producing or distributing window decals, channel strips, shelf talkers, or other promotional items that use either the WIC acronym or logo. ~~Stores~~ Retailers that elect to use point-of-sale channel strips, shelf labels, or other promotional materials for a specific food category must ensure that all eligible items are consistently promoted as WIC approved. ~~Stores~~ Retailers are prohibited from promoting a specific manufacturer's product over another eligible WIC-approved product within the same food category (USDA Memo SFP 09-020).

C. ~~Retail stores~~ Retailers or applicants shall not use either the acronym "WIC," "W.I.C." or the WIC logo, including close facsimiles thereof, in total or in part, either in their official name in which the ~~store~~ retailer is registered or in the name under which it does business, if different (USDA Memo SFP 09-020).

D. ~~Retail stores~~ Retailers, food manufacturers, distributors and suppliers shall not use the WIC acronym or logo in the packaging of their products. ~~Retail stores~~ Retailers, food manufacturers, distributors and suppliers shall receive written approval from the state agency before using either the WIC acronym or logo for any business or public relations purpose (USDA Memo SFP 09-020).

12VAC5-195-540. ~~Vendor~~ Retailer manual for the Virginia WIC Program.

~~All authorized stores must keep a current copy of the Vendor Manual for the Virginia WIC Program, Cashier Training Guide, and an Approved Food List at the store location authorized to participate in the program. A current copy of the Virginia Approved Food List must be kept at each cash register used to process WIC transactions.~~ Periodically, individual sections of the ~~Vendor~~ Retailer Manual may be updated to reflect federally mandated regulatory changes and other WIC Program requirements. The most current version of the ~~Vendor~~ Retailer Manual is located on the state agency's website, which ~~stores~~ retailers must access to obtain updated copies of procedures and forms.

12VAC5-195-550. High risk ~~stores~~ retailers.

A. The state agency ~~classifies~~ shall classify each authorized ~~store~~ retailer as either high risk, probationary, or nonhigh risk. In accordance with federal regulations (7 CFR 246.12), high risk ~~stores~~ retailers have demonstrated from prior authorization history a pattern of noncompliance with documented ~~vendor~~ retailer management policies or violations documented from covert, undercover buys. The state agency may also change a ~~store's~~ retailer's designation to high risk based upon noncompliance documented from onsite monitoring visits or inventory audits. All of these overt and covert visits shall be conducted during hours the retailer is open to the general public, including weekdays, weekends, and holidays.

The state agency may select ~~stores~~ retailers for compliance monitoring based on statistical trends documented from ~~a retail store's~~ retailers' redemption ~~pattern~~ patterns. A ~~store's~~ retailer's designation ~~being~~ will only be changed to high risk ~~will only occur~~ as result of documented violations identified ~~from~~ by compliance investigations or other types of objective monitoring practices used by the state agency. ~~Stores~~ Retailers shall also be changed to high risk if:

1. The ~~store~~ retailer has been the subject of a compliance investigation by the state agency and has been cited for five or more chargeable violations within 12 consecutive months;

2. The ~~store~~ retailer has received a ~~Food Stamp Program~~ Supplemental Nutrition Assistance Program civil monetary penalty or WIC program civil monetary penalty and is being retained in lieu of disqualification; ~~or~~

3. The ~~store's~~ retailer's authorization status is under consideration for possible disqualification during the administrative review or appeal process~~.~~; or

4. The retailer has been the subject of an inventory audit and the documented results identify a significant discrepancy between the retailer's inventory, purchasing records, and WIC redemption sales.

All ~~stores~~ retailers classified as high risk ~~will~~ shall receive written notification from the state WIC Program to advise them of the ~~store's~~ retailer's status change prior to the change becoming effective. ~~Stores~~ Retailers shall be designated high risk for a minimum one-year period and will have their status periodically evaluated by the state agency.

B. If a retailer is retained in lieu of disqualification or its status is changed to high risk, a written assurance letter must be submitted to the state agency within 30 calendar days after being notified of this requirement. The retailer's assurance letter must ~~identify specific steps detailing~~ detail the actions the ~~store~~ retailer will take to improve its performance.

C. Authorized ~~stores~~ retailers designated as high risk ~~will~~ shall be selected for more frequent onsite and covert monitoring investigations.

12VAC5-195-560. Nonhigh risk ~~stores~~ retailers.

Authorized ~~stores~~ retailers that have participated in the WIC Program for more than one continuous year and have demonstrated an acceptable level of compliance in meeting

program requirements are considered nonhigh risk ~~stores~~ retailers.

12VAC5-195-570. Probationary ~~stores~~ retailers.

Newly authorized ~~stores~~ retailers with less than one year of continuous program authorization shall be designated a probationary retailer. During a probationary ~~store's~~ retailer's first year it will be more frequently monitored through both unannounced and onsite monitoring visits, as well as being selected for at least one compliance investigation.

12VAC5-195-580. Performance and administrative monitoring.

A. All applicants must successfully pass an unannounced stocking visit prior to being authorized. Applicants ~~will~~ shall receive a written letter from the state agency advising them ~~the store~~ that their retailer has been selected for further authorization consideration. The applicant ~~will~~ shall receive a copy of the minimum stocking requirement and the letter sent to the ~~store will~~ retailer shall identify the consequences ~~associated with~~ of failing to meet this program standard.

B. The state agency ~~monitors~~ shall monitor authorized ~~store's~~ retailers' performance throughout the contract period in order to ensure the best qualified ~~stores~~ retailers are authorized. The type and level of monitoring conducted by the state agency ~~depends~~ shall depend upon the ~~store's~~ retailer's authorization status. Trained local agency staff, state agency staff, and other specially trained contractors may conduct onsite visits to ensure compliance with basic stocking requirements and administrative program requirements. ~~Stores~~ Retailers designated as ~~high volume retailers,~~ high risk retailers~~,~~ and probationary ~~stores~~ retailers are more likely to be selected for unannounced monitoring visits by the WIC Program.

C. Authorized ~~stores~~ retailers that fail to consistently ~~meet~~ comply with any of the general requirements and conditions for authorization may be terminated. ~~Specific areas the~~ The state agency ~~monitors include, but are not limited to~~ shall monitor:

1. Number of paid and rejected food instruments;

2. Prices charged for WIC-approved foods and formula;

3. Level of compliance ~~in following~~ with program requirements; ~~and~~

4. Use of approved wholesalers and suppliers ~~in~~ for purchasing WIC-approved foods and formulas~~.~~; and

5. Compliance with retaining purchasing records for WIC-approved foods and formulas.

D. The state agency shall establish and communicate the minimum stocking requirement to all authorized ~~stores~~ retailers and applicants ~~the minimum stocking requirement~~.

E. Each federal fiscal year, a sample of authorized ~~stores~~ retailers shall be selected for one or more unannounced onsite monitoring visits.

F. ~~State agency personnel~~ Agency representatives may conduct an unannounced monitoring visit to ensure that authorized ~~stores~~ retailers or applicants meet all program requirements. Authorized ~~stores~~ retailers and applicants shall have ~~available onsite~~ the minimum stocking requirement available onsite at all times ~~as established by the state agency~~. The required specific foods, contract formulas, and administrative procedures ~~associated with meeting this requirement~~ are outlined in the Minimum Stocking Requirement~~, which is included~~ in the ~~Vendor~~ Retailer Manual.

G. Agency representatives shall conduct unannounced monitoring visits during hours the retailer is open to the public. Authorized retailers must submit any changes to their normal hours of operation to the state agency in writing.

~~G.~~ H. Authorized ~~stores~~ retailers with more than one year of continuous participation in the program may request in writing to the state agency that a waiver be granted for one or more items that are part of the minimum stocking requirement. The state agency shall provide a written decision ~~to~~ regarding the ~~store's~~ retailer's waiver request within 30 calendar days after receipt. The waiver to the minimum stocking requirement for a required item shall expire upon the presentation to the ~~store~~ retailer, on behalf of a participant, of a WIC food instrument for the purchase of that required food item. The authorized ~~store~~ retailer shall provide the food item within 48 hours, excluding weekends and holidays, after presentation of the WIC food instrument.

~~H.~~ I. The state agency may conduct other types of unannounced onsite monitoring visits to a ~~retail store's~~ retailer's location including~~, but not limited to,~~ random, price verification, ~~high volume,~~ formula audits, purchased formula records review, and high risk.

~~I.~~ J. During ~~the~~ an unannounced onsite monitoring visit, the state agency representative may ~~perform, but not be limited, to the following~~:

1. Observe and document the level of compliance with general program requirements;

2. Validate if the minimum stocking requirement has been met;

3. Collect and confirm prices submitted by ~~retail stores~~ retailers;

4. Confirm prices are posted on or in close proximity to WIC-approved foods;

5. Review purchase or invoice records;

6. Conduct formula inventory analysis;

7. Educate the retailer about program changes;

8. Provide educational materials and supplies;

9. Provide technical consultation; ~~and~~

10. Confirm WIC-approved shelf labels are being used correctly to ~~correctly~~ identify WIC-designated brands; and

11. Confirm the number of reported cash registers.

~~J.~~ K. During the unannounced onsite monitoring visits, ~~store~~ retailer management may receive ~~the following~~:

1. Answers to technical or procedural questions;

2. Updated program information;

3. Additional training materials and supplies;

4. Opportunity to correct documented deficiencies, if needed;

5. Opportunity to provide shelf prices of WIC-approved items, if applicable; and

6. Opportunity to confirm results documented by the state agency representative during the monitoring visit.

~~K.~~ L. The results from these onsite visits are documented and kept on file at the ~~Richmond, Virginia,~~ state agency office in Richmond, Virginia.

~~L.~~ M. Each federal fiscal year, a sample of authorized ~~stores~~ retailers shall be selected for one or more announced onsite formula monitoring visits. The state agency shall ensure that authorized ~~stores~~ retailers sell formulas that have been purchased from a WIC-approved supplier, distributor, wholesaler, or ~~an~~ authorized resource. A listing of WIC-approved suppliers, distributors, wholesalers, and authorized resources is located on the state agency's website. ~~This outcome is accomplished by state~~ State agency personnel ~~reviewing~~ shall review formula purchasing records and invoices, ~~comparing~~ compare formula redemption data from WIC sales, and ~~completing~~ complete a ~~pre-~~ prephysical and postphysical inventory of formula available at the ~~store~~ retailer location during a specific analysis period. ~~Stores~~ Retailers whose purchase records do not support the quantity of WIC sales volume for a selective formula item based upon redeemed food instruments may be issued sanctions, fined, or disqualified from the WIC Program. The results from a formula monitoring visit ~~are~~ shall be documented and a written assessment ~~is~~ shall be sent to the ~~store~~ retailer once the state agency has completed its analysis.

~~M.~~ N. Authorized ~~stores~~ retailers that do not remain price competitive, fail to maintain the minimum stocking requirement, or fail to adhere to the retailer agreement may be fined or have their authorization terminated unless the state agency determines that inadequate participant access ~~exists~~ would exist if the authorization were terminated. Depending upon the service delivery impact, the state agency may temporarily waive terminating a ~~store~~ retailer that fails to comply with any of these requirements until an alternative ~~store~~ retailer located in the same area can be authorized. The state agency ~~will evaluate and~~ shall document the reasons for making any authorization exception decisions.

12VAC5-195-590. Reimbursement and payments.

A. The state agency shall use a prepayment edit process to screen all deposited food instruments. For each processed food instrument, the state agency shall either:

1. Pay as submitted;

2. Make a price adjustment, if applicable; or

3. Deny payment of the deposited food instrument.

B. The state agency's reimbursement responsibilities in making payments against deposited and undeposited food instruments include, but are not limited to:

1. Ensuring payments are made to authorized ~~stores~~ retailers that have a signed retailer agreement with the Virginia WIC Program. Unauthorized ~~stores~~ retailers will not be paid for any mistakenly accepted and deposited food instruments;

2. Ensuring the maximum reimbursement levels used by its banking contractor, based upon peer groups, are reasonable for the food and formula items prescribed for purchase by participants;

3. Reconsidering for payment WIC food instruments not paid or partially paid provided the food instruments are submitted to the state agency within 50 calendar days of the first date printed on the food instrument;

4. Making price adjustments to the reimbursement amount paid to ~~retail stores~~ retailers in order to ensure individual ~~store's~~ retailer's reimbursement levels remain eligible for authorization, based upon competitive prices charged by similar ~~stores~~ retailers;

5. Collecting bank account and routing numbers from applicants and authorized ~~stores~~ retailers in order to process direct deposit ACH payments ~~using an Automated Clearinghouse (ACH)~~;

6. Ensuring prompt ACH credits are made to the retailer's bank account when appropriate;

7. Collecting retailer's prices using an electronic, Internet-based application;

8. Identifying retailers whose prices are noncompetitive and take administrative actions including possible termination of the retailer's authorization;

9. Complying with all federal regulations and guidelines that require administrative approval by USDA prior to making payments, as applicable;

10. Providing written communications to all authorized ~~stores~~ retailers containing the procedures used by the program to pay or deny payments for all deposited food instruments; and

11. Recouping overpayments due to banking or procedural errors, if applicable, from authorized ~~stores~~ retailers.

C. Authorized ~~stores~~ retailers must deposit food instruments within 14 calendar days of the last date printed on the food instrument.

D. Food instruments or image replacement documents (IRDs) rejected for payment due to "unreadable ~~vendor~~ authorization stamp" or "no ~~vendor~~ authorization stamp" error messages must be corrected and redeposited within 30 calendar days of the last date printed on the food instrument.

E. All food instruments or IRDs rejected for payment or undeposited food instruments require WIC Program review for exception payment consideration and must be submitted by the authorized ~~store~~ retailer to the state agency. The state agency reserves the right to deny a submitted request for payment depending on the explanation provided by the ~~store~~ retailer or bank of first deposit. Approved exception payments will only be made to an authorized ~~retail store~~ retailer.

1. ~~Stores~~ Retailers must submit their undeposited or rejected food instruments or IRDs and justifications to the state agency within 30 calendar days of the last date printed on the food instrument. A ~~store~~ retailer must also simultaneously submit a written request and justification for payments on undeposited or rejected food instruments or IRDs.

2. Undeposited or rejected food instruments or IRDs sent to the state agency that are greater than 30 calendar days from the last date printed on the food instrument may not be eligible for payment and may require USDA approval.

3. Food instruments or IRDs rejected for payment due to a processing error that originates either at the federal reserve or bank of first deposit may be considered for an exception payment. The food instruments or IRDs must be submitted to the state agency within 120 calendar days from the first date to spend printed on the food instrument. A bank representative must submit a written request with the unpaid food instruments or IRDs.

F. A maximum allowable reimbursement amount for each peer group and food item combination is established using pricing data (7 CFR 246.12). Each food item combination is identified by a unique food instrument type identifier. More than 4,000 unique food combinations exist with different reimbursement maximum amounts. Authorized ~~stores~~ retailers that submit prices determined to be noncompetitive will not have their prices used when the state agency computes the maximum allowable reimbursement amount used for making price adjustments.

G. ~~Stores~~ Retailers may only get reimbursed for mandatory and optional foods and formula products they have submitted prices for prior to redeeming food instruments for those products. Redeemed food instruments may be subject to repayment as a ~~vendor~~ retailer claim if they include optional items for which a ~~store~~ retailer has failed to submit prices. ~~Stores~~ Retailers must ensure that the most current shelf prices have been submitted to the WIC Program for all mandatory items. Failure to submit prices or providing inaccurate prices for any mandatory food items may lead to a ~~store's~~ retailer's authorization being terminated unless inadequate participant access would exist.

H. Contract and special formulas where pricing information is collected via the Internet-based application by the state agency are eligible for payment to authorized ~~stores~~. Prices are purposely not collected by the state agency for formulas that should not be redeemed at ~~retail stores~~ retailers. Food instruments redeemed for these types of special formulas are subject to repayment by the ~~store~~ retailer.

I. A maximum reimbursement amount will be established for cash value food benefits used by participants to purchase fruits and vegetables. The amount written on the food instrument must not exceed the maximum reimbursement amount printed on it. For cash value food benefits only, the ~~store~~ retailer must offer one of the following options to the participant if the total dollar amount being purchased exceeds the printed cash value:

1. The participant shall be allowed to pay the amount over the printed cash value; or

2. The participant shall be allowed to reduce the quantity of eligible fruits and vegetables being purchased.

~~Stores~~ Retailers must notify the state agency in writing which of these options they provide to WIC participants.

J. The food instrument type/peer group pricing maximum amount may be adjusted monthly by the state agency, depending upon external factors including, but not limited to, wholesale price increases. The reimbursement maximum used for the various food instrument types peer group combinations are not distributed to authorized ~~stores~~ retailers prior to being used by the banking contractor.

K. Food instruments or IRDs that are ineligible for payment and are rejected will be returned to the ~~store's~~ retailer's depository bank by the state agency's banking contractor. These returned food instruments will be stamped with a descriptive error message.

L. The state agency may make payment exceptions for food instruments that would normally be denied payment by its banking services contractor. The authorized ~~store~~ retailer shall submit all such requests in writing, including a justification, within 30 calendar days from the last date printed on the food instrument. The state agency will send a payment disposition decision to the requestor within 30 calendar days, after receipt.

M. The state agency shall use a postpayment review process to prospectively evaluate the reimbursement amount paid against redeemed food instruments in order to identify excessive or improperly redeemed food instruments in accordance with federal regulations (7 CFR 246.12). From the postpayment review process, the state agency may determine that one or more payments already made to a ~~retail store~~ retailer were ineligible for payment as a result of a ~~store~~ retailer failing to submit pricing data for the purchased item or items. The state agency reserves the right to bill and recoup payments of these ineligible payments, which will be referred to as a ~~vendor~~ retailer claim (7 CFR 246.12). The state agency shall not bill an authorized ~~store~~ retailer if the ~~vendor~~ retailer claim amount is less than $10.

N. A ~~retail store~~ retailer that is not authorized to participate in the Virginia WIC Program that accepts a food instrument

will not be reimbursed for any food instruments redeemed by a WIC participant.

O. A ~~store~~ retailer must submit a direct deposit ACH form to the state agency that identifies any bank changes to its routing or account number. A direct deposit ACH form must be submitted at least 14 days prior to the change effective date. If the state agency's banking contractor identifies that the ~~store's~~ retailer's bank account or routing number is not valid, then the ~~store~~ retailer will receive one written notice from the state agency. Failure by the ~~store~~ retailer to resolve any reported discrepancies within 30 days after a written notice has been sent by the state agency may lead to the ~~store~~ retailer being ineligible to receive payments for rejected ~~FIs~~ food instruments.

P. ~~Retail stores~~ Retailers are responsible for all bank handling fees and charges associated with doing business with the WIC Program.

12VAC5-195-600. Sanctions and administrative actions.

A. Each federal fiscal year, the state agency shall conduct compliance investigations on a minimum of 5.0% of authorized ~~stores~~ retailers (7 CFR 246.12), including completing investigations of all high risk ~~stores~~ retailers, all probationary ~~stores~~ retailers, and selective nonhigh risk ~~stores~~ retailers. The state agency will conduct at least two compliance buys at each ~~store~~ retailer selected for an investigation.

B. The state agency ~~will~~ shall provide written notification to the authorized ~~store~~ retailer of the investigation results, including the ~~store's~~ retailer's violation of any statutes or regulations governing its participation in the WIC Program ~~unless fraudulent activities have been documented~~. Once an investigation has been closed, ~~stores~~ retailers with documented violations ~~will~~ shall receive a final written report of the agency's findings. The final report will identify what administrative action ~~will~~ shall be taken by the state agency against the authorized ~~store~~ retailer.

C. Violations ~~are~~ shall be categorized as either state agency or federally mandated. For federally mandated violations, a pattern consisting of four documented incidents of the same violation must occur during a single investigation unless a pattern requirement is not required by federal regulations.

D. For federally mandated violations ~~that include, but are not limited to,~~ including overcharge, fraud, trafficking in food instruments, selling firearms, ammunition, explosives, controlled substances, ~~sale of~~ alcohol or alcoholic beverages, or tobacco products, the state agency ~~will~~ may not provide the ~~store~~ retailer with prior written notice that a violation or violations were documented before imposing administrative sanctions. This notification decision will be made on a case-by-case basis, depending on the type of federally mandated violation documented and if it is determined that notification would compromise the investigation.

~~E. For selective state agency violations, the state agency shall not provide prior written notice that the violation has occurred, in order to ensure the integrity of the investigative process.~~

~~F.~~ E. The type of documented violation dictates the administrative action taken including~~, but not limited to~~:

1. Provision of a written warning;

2. Imposition of a technical penalty fine;

3. Assessment of a civil monetary penalty (CMP) in lieu of disqualification; or

4. Disqualification of an authorized ~~store~~ retailer.

The total period of disqualification imposed for state agency violations identified as part of a single investigation may not exceed one year. The state agency reserves the right to waive a disqualification requirement if the state agency determines that inadequate participant access would exist if the authorization were terminated.

~~G.~~ F. The state agency ~~uses~~ shall use a multitier sanction schedule that consists of:

Class:	Description:	Description:	Administrative Actions:
A	Technical program violations	Represents procedural and food instrument handling errors.	$100 fine assessed per documented incident, as outlined in the Sanction/Violation schedule ~~(effective March 9, 2009)~~, including repeat incidents of the same violation, plus a written warning sent to the ~~store~~ retailer.
B	Serious program violations	Represents noncompliance errors documented ~~either from~~ by compliance investigations, inventory audits, or noncompliance with provisions outlined in the retailer agreement.	~~Eight~~ One-year disqualification for eight or more technical program violations, as outlined in the Sanction/Violation schedule, within a consecutive 12-month period of time; or One-year disqualification, if a pattern of noncompliance ~~is required and met~~ exists, as outlined in the Sanction/Violation schedule~~; or~~. ~~One-year disqualification if a pattern of~~

			~~noncompliance is not required and the violation has been documented as outlined in the Sanction/Violation schedule.~~
C	Critical program violations	Represents mandatory federal sanctions that require a pattern of noncompliance, i.e., overcharging.	Four documented incidents during a single investigation as outlined in the Sanction/Violation schedule – Three-year disqualification; or One documented incident as outlined in the Sanction/Violation schedule during a single investigation if a pattern is not required – Three year disqualification.
D	Major program violations	Represents mandatory federal sanctions, i.e., administrative finding of trafficking	Six-year disqualification – only one documented incident is required as outlined in the Sanction/Violation schedule; or Permanent disqualification – only one documented incident is required, as outlined in the Sanction/Violation schedule.
E	Warning	Represents a documented violation, but does not warrant points being assessed and/or a fine being charged.	Written warning sent to the ~~retail store~~ retailer.

The date on which violations become effective is determined by the ~~documented~~ date indicated on the final compliance investigation letter. Class A, B, and E violations have an active life of one year, a Class C violation has an active life of three years, and a Class D violation has an active life of six years or permanent disqualification.

~~H.~~ G. If, within a 12-month period, a retailer has ~~a pattern of~~ three documented incidents ~~within a 12 month period~~ of failure to meet the minimum stocking requirement or failure to properly stamp 50 or more deposited food instruments, then the ~~store will~~ retailer shall be disqualified for a one-year period unless the state agency determines that inadequate participant access would exist if the authorization were terminated.

~~I.~~ H. All documented overcharges or payments for ineligible food items identified during a compliance investigation ~~will~~ shall be considered a ~~vendor~~ retailer claim and be subject to repayment.

~~J.~~ I. Copies of any investigative evidence collected by the state agency ~~from an open~~ during a compliance investigation ~~will~~ shall be available to the authorized ~~store~~ retailer, upon request, ~~once~~ after the investigation has been closed and the ~~store~~ retailer is notified in writing of the final compliance investigation results.

~~K.~~ J. A retailer may apply for WIC authorization after the ~~store~~ retailer has ~~met any~~ finished the disqualification period ~~imposed upon it~~. There is no automatic reinstatement of a retailer once the disqualification period has ~~been met~~ ended.

~~L.~~ K. The state agency shall not issue sanctions solely as a result of complaints submitted by participants.

12VAC5-195-610. Participant access.

A. Prior to taking disqualification actions against an authorized ~~store~~ retailer, the state agency shall complete a participant access assessment (7 CFR 246.12). This type of assessment is completed for denied authorizations if an informal settlement meeting or full administrative review is requested by a ~~store~~ retailer applicant. Participant convenience is not a valid consideration for the state agencies in making any adequate access decisions.

B. Participant access will be a factor considered by the state agency in deciding if a ~~store~~ retailer shall be assessed a civil monetary penalty in lieu of disqualification or when a ~~store~~ retailer applicant is eligible as an authorization exception.

C. The state agency shall use the same criteria established for making authorization exceptions in deciding if adequate participant access exists.

D. The participant access analysis completed by the state agency contains confidential information. A copy of this internal work document shall not be given to ~~retail stores~~ retailers or their representatives.

12VAC5-195-620. Participant impact.

Participant impact may be an additional factor considered by the state agency in deciding if a ~~store~~ retailer shall be assessed a civil monetary penalty in lieu of disqualification. For ~~stores~~ retailers whose average number of unique participants is deemed high may be retained in lieu of disqualification. The state agency will take into consideration customer service impact and competitive pricing issues in making any administrative exception decisions.

12VAC5-195-630. Retained in lieu of disqualification.

A. An authorized ~~store~~ retailer with documented administrative findings that warrant WIC Program

disqualification actions may be retained in lieu of disqualification if the state agency determines that inadequate participant access would exist. The state agency will evaluate the impact on participants and the preventive procedures the ~~store~~ retailer intends to take in order to decide if the ~~store~~ retailer will be allowed to pay a civil monetary penalty ~~fine~~ rather than being disqualified.

B. The state agency shall notify the authorized ~~store~~ retailer in writing if it will be retained in lieu of disqualification and the civil monetary penalty ~~fine~~ that has been assessed (7 CFR 246.12).

C. If a retailer fails to pay a civil monetary penalty that has been assessed, ~~then~~ the state agency shall disqualify the retailer for a period equal to the sanction for which the civil monetary penalty was originally assessed.

12VAC5-195-640. Civil monetary ~~penalty (CMP) fines~~ penalties.

A. A ~~civil monetary penalty (CMP) fine~~ CMP may be assessed for documented state agency and federally mandated violations (7 CFR 246.12).

B. The state agency uses a federally mandated formula to calculate both state and federally mandated CMPs that are assessed. The maximum civil monetary penalty assessed shall comply with federal requirements as outlined in 7 CFR 246.12. The state agency ~~is unable to~~ cannot make any reductions ~~in~~ to the maximum CMP amount due ~~since~~ for federally mandated violations because this formula is defined in federal regulations.

C. The same formula ~~is~~ shall be used to calculate the civil monetary penalty ~~fine~~ for ~~stores~~ retailers retained in lieu of disqualification due to documented state agency sanctions. ~~The state agency~~ For state agency violations only, the state WIC director of his designee has the authority to reduce or waive the ~~fine~~ penalty amount being assessed against the ~~store by no more than 50%~~ retailer. The state agency must document in its records the specific factors supporting this administrative decision.

D. A CMP ~~shall~~ may be paid in ~~full~~ a lump sum or ~~based upon~~ through an agreed installment plan. Failure of the authorized ~~store~~ retailer to pay any scheduled installments in a timely manner ~~will~~ shall lead to the ~~store's~~ retailer's disqualification for the original disqualification period.

E. Payments shall be made by certified check, cashier check, or money order. Payments shall be made out to the Virginia WIC Program and mailed to the address identified on the penalty fine statement.

F. The state agency ~~will~~ shall process all past due obligations ~~for any of the following~~ including ~~penalty~~ administrative fines, ~~vendor~~ retailer claims, civil monetary ~~penalty fines~~ penalties, or ~~overcharges~~ overcharge repayments assessed against authorized ~~stores~~ retailers in accordance with the Office of the Comptroller's Policies and Procedures, Section Number 205000 (Accounts Receivable), dated June 2004. The state agency ~~will~~ shall also process all past due financial obligations in accordance with the Virginia Debt Collection Act (§ 2.2-4800 et seq. of the Code of Virginia).

G. The state agency shall notify the ~~Food Stamp Program~~ Supplemental Nutrition Assistance Program in writing within 15 calendar days after assessing a CMP against an authorized ~~store~~ retailer being retained in lieu of disqualification.

12VAC5-195-650. Disqualification administrative actions.

A. Voluntary withdrawal or nonrenewal in lieu of disqualification is not permitted for documented mandatory federal violations. The state agency may ~~use~~ only allow voluntary withdrawal or nonrenewal for state agency sanctions ~~only~~.

B. The state agency shall disqualify an authorized ~~store~~ retailer for any of the following reasons:

1. Failure to comply with general requirements and conditions as established in the retailer agreement;

2. Failure to meet program requirements as documented ~~from~~ during the compliance investigation process;

3. Reciprocal administrative action due to the ~~store~~ retailer being disqualified from the ~~Food Stamp Program (FSP)~~ Supplemental Nutrition Assistance Program;

4. Failure to pay a CMP or ~~vendor~~ retailer claim within ~~30~~ 20 calendar days after ~~being assessed~~ it is due or failure to pay an installment plan payment when due;

5. Provision of false, incomplete, inaccurate, or misleading information that affects the ~~store's~~ retailer's selection status;

6. Repeated failure to maintain the minimum stocking requirement; or

7. Failure to take documented remedial corrective actions.

C. The state agency shall notify the ~~food stamp~~ Supplemental Nutrition Assistance Program office of any WIC Program disqualifications ~~and termination actions~~ taken against an authorized ~~store~~ retailer location.

D. ~~Authorized stores that are being~~ If an authorized retailer is disqualified primarily due ~~primarily~~ to documented overcharges, ~~that have participated~~ participates in a full administrative review, and the adjudication officer's findings confirm that the disqualification actions ~~being~~ taken by the state agency are appropriate, then a fine ~~will~~ shall be assessed. A maximum administrative fine of $999 shall be assessed for two or more documented overcharges during a single investigation. If only one overcharge incident was documented during a single investigation, then a maximum fine of $500 shall be assessed. If the disqualification action does not involve any documented overcharges, then no fine ~~will~~ shall be assessed.

12VAC5-195-660. Informal settlement meetings.

A. If an authorized ~~store~~ retailer is being considered for possible adverse action, including but not limited to authorization denial and program disqualification, the state

agency shall offer an optional informal settlement meeting with ~~store~~ retailer management prior to taking administrative action. The state WIC director or designee shall be in attendance. The purpose of the informal settlement meeting is to:

1. Identify areas of noncompliance;

2. Provide a forum for the ~~store~~ retailer to submit information about the impact of the adverse action on WIC participants;

3. Review criteria for authorization exception decisions pursuant to 12VAC5-195-370;

4. Review the inadequate participant access results, if applicable;

5. Review the civil monetary penalty ~~fine~~ for ~~stores~~ retailers being retained in lieu of disqualification, if applicable; and

6. Provide information to the ~~store~~ retailer regarding its appeal rights, if applicable.

B. The ~~retail store~~ retailer or applicant has 15 calendar days from the date of receipt of the state agency correspondence to postmark a written request for an informal settlement meeting.

C. The request for the informal settlement meeting can be hand delivered, mailed by US mail, UPS, or FedEx, sent by facsimile transmission or sent via email to the ~~vendor manager~~ state agency.

D. Upon receipt of the ~~retail store's~~ retailer's or applicant's request for an informal settlement meeting, the state agency will confirm a date, time, place and method for the informal settlement meeting.

E. All requests to reschedule the meeting must be submitted in writing at least 24 hours before the scheduled meeting date, unless an emergency occurs, as determined at the discretion of the state WIC director or designee.

F. If the ~~retail store~~ retailer representative is more than 45 minutes late from the agreed upon meeting start time, then this will be considered a "no show" unless he can provide documentation that the state WIC director or designee determines justifies his tardiness or failure to appear. The state agency will proceed with administrative decisions without the input of the ~~retail store~~ retailer should the representative either fail to schedule, fail to appear, or fail to reschedule the informal settlement meeting.

G. Informal settlement meetings are either conducted through face-to-face meetings in Richmond, Virginia, or via video conference. For informal settlement meetings that are held via video conference, the authorized ~~store~~ retailer or applicant would be required to travel to a local agency that has videoconferencing equipment available.

H. After the informal settlement meeting is held and all supporting documentation is received by the state agency, the state agency shall send within 15 days a written summary of the meeting's results to a designated ~~store~~ retailer representative. If the resolution offered from the informal settlement meeting is unacceptable to the ~~retail store~~ retailer, then the ~~retail store~~ retailer or applicant may request a full administrative review in writing. This written request must be submitted to the ~~vendor manager~~ state agency and postmarked within 15 calendar days from the date of receipt of the informal settlement meeting summary. The ~~vendor manager~~ state agency will identify if the ~~store's~~ retailer's request qualifies under federal regulations for a full administrative review. If the ~~store's~~ retailer's request is not eligible, then the ~~store~~ retailer will receive a written response from the ~~vendor manager~~ state agency of this decision.

12VAC5-195-670. Full administrative review.

A. Authorized ~~retail stores~~ retailers and applicants shall be offered an opportunity to request a full administrative review only for ~~only~~ the adverse action cited in subsection O of this section.

B. The ~~retail store~~ retailer or applicant has 15 calendar days from the date of receipt of the denial notice~~, either by letter or an electronic format,~~ or the disqualification letter, either by letter or an electronic format, to request a full administrative review.

C. The request for the full administrative review ~~can~~ may be mailed by US mail, sent by facsimile transmission or sent via email to the ~~vendor manager~~ state agency. If the request is mailed, it must be postmarked within 15 calendar days from the date of receipt of letter or electronic notification from the state agency, whichever comes first.

D. The ~~retail store~~ retailer or applicant ~~must~~ should indicate whether ~~or not~~ he ~~will~~ intends to be represented by an attorney when the full administrative review request is made. ~~The retail store~~ This does not preclude the retailer or applicant from seeking legal counsel at any time. At least five days prior to the scheduled full administrative review, the retailer or applicant must ~~also~~ provide the state agency with copies of any written information ~~to be used~~ that it wishes to use during the review and names of witnesses that ~~will be called at least five days prior to the scheduled full administrative review~~ it will call. Failure to ~~notify~~ provide the state agency ~~of~~ with these items may result in ~~a rescheduled date and time for~~ rescheduling the full administrative review or the exclusion of documents and witnesses from the full administrative review.

E. ~~Upon~~ Within 30 days of receipt of the ~~retail store's~~ retailer's or applicant's request for a full administrative review, after consulting with the retailer or applicant and the adjudication officer, the state agency ~~will~~ shall confirm a date, time, and place for the review ~~within 30 days~~. For authorized ~~stores~~ retailers and applicants, the review ~~must~~ shall be scheduled to take place within 60 calendar days after the written request is received by the state agency, unless otherwise agreed to by the parties ~~involved~~.

F. Failure to attend the scheduled review ~~on the agreed upon date and time will~~ shall lead to the ~~retail store~~ retailer forfeiting its rights to any further administrative reviews.

G. The ~~retail store~~ retailer or applicant will have one opportunity to reschedule the full administrative review's date or time. All requests to reschedule the review date or time must be submitted in writing at least 24 hours before the scheduled review date~~,~~ unless ~~an emergency occurs, as determined at the discretion of the state WIC director or designee~~ good cause can be shown as determined by the adjudication officer. Rescheduled reviews shall take place within four weeks of the originally scheduled date unless ~~the parties mutually agree on a later date~~ otherwise agreed to by the parties.

H. If the ~~retail store~~ retailer representative is more than 45 minutes late ~~from the agreed upon~~ to the review, ~~start time, then~~ this ~~will~~ shall be considered a "no show" unless he can ~~provide documentation that the WIC director or designee determines justifies his tardiness or failure to appear~~ show good cause as determined by the adjudication officer. ~~This outcome means that the retail store has forfeited its rights to a full administrative review.~~

I. A full administrative review ~~is~~ shall be conducted by an adjudication officer who is employed by the Virginia Department of Health. The adjudication officer shall ensure that administrative actions taken by the WIC Program are consistently and fairly applied and that those administrative actions comply with established policies, procedures, and federal and state statutes and regulations. A representative from the state agency ~~will~~ shall present its case to the adjudication officer and ~~retail store~~ retailer or applicant representative. Conversely, the ~~storeowner~~ retailer owner or designated representative, which may include legal counsel, ~~will~~ shall present its case to the adjudication officer.

J. All full administrative reviews ~~are~~ shall be held in Richmond, Virginia.

K. After a full administrative review is held, the state WIC director shall provide written notification of the adjudication officer's decision, including the basis for the decision, to the applicant or authorized retailer within 90 calendar days of the date of receipt of the full administrative appeal review request, unless otherwise agreed to by the parties involved. This notification will also be sent to the appropriate USDA Food and Nutrition Services office.

L. Authorized ~~retail stores~~ retailers being disqualified may continue to deposit WIC food instruments until a decision has been rendered ~~from the full administrative review~~ by the adjudication officer. The adverse action effective date shall be postponed by the state agency pending the outcome of the review.

M. In accordance with 7 CFR 246.18, if an authorized ~~store~~ retailer does not request a full administrative review, then disqualification becomes effective 15 calendar days after the retailer receives the state agency's written disqualification letter.

N. An authorized retailer being retained in lieu of disqualification for a state agency violation may elect to voluntarily withdraw from the WIC Program rather than pay a mandated civil monetary penalty ~~fine~~. If the retailer voluntarily withdraws and does not pay ~~a~~ the civil monetary penalty ~~fine that previously had been imposed by the program~~, then a disqualification status ~~will~~ shall be documented in the state agency's records. The disqualification period may range from one to six years, depending on the type of sanctions and violations documented by the state agency.

O. The state agency shall provide a full administrative review to ~~retail stores~~ retailers or applicants, upon request, for the following adverse actions pursuant to 7 CFR 246.18:

1. Denial of authorization based on the ~~vendor~~ application of the retailer selection criteria ~~for competitive price or~~ for minimum variety and quantity of authorized supplemental foods or on a determination that the ~~vendor~~ retailer is attempting to circumvent a sanction (7 CFR 246.12);

2. Denial of authorization based upon the ~~vendor~~ retailer selection criteria for business integrity or for a current ~~Food Stamp~~ Supplemental Nutrition Assistance Program disqualification or civil money penalty for hardship (7 CFR 246.12);

3. Denial of authorization based on a state agency established ~~vendor~~ retailer selection criteria if the basis of the denial is a ~~vendor~~ WIC retailer sanction or a ~~Food Stamp~~ Supplemental Nutrition Assistance Program withdrawal of authorization or disqualification;

4. Denial of authorization based on the state agency's retailer limiting criteria (7 CFR 246.12);

5. Denial of authorization because a ~~vendor~~ retailer submitted its application outside the timeframes during which applications are accepted or processed as established by the state agency under ~~(7 CFR 246.12)~~ 7 CFR 246.12;

6. Termination of a retailer agreement because of a change in ownership, ~~or~~ location, or cessation of operations (7 CFR 246.12);

7. Termination of a retailer agreement for cause;

~~8. Disqualification based on documented WIC Program violations;~~

~~9.~~ 8. Disqualification based on a trafficking conviction (7 CFR 246.12);

~~10.~~ 9. Disqualification based on the imposition of a ~~Food Stamp~~ Supplemental Nutrition Assistance Program civil monetary penalty for hardship (7 CFR 246.12);

~~11.~~ 10. Disqualification or civil monetary penalty imposed in lieu of disqualification based on a mandatory sanction imposed by another WIC state agency (7 CFR 246.12); ~~or~~

~~12.~~ 11. Imposition of a fine or a civil monetary penalty in lieu of disqualification;

12. Denial of authorization based on the application of the retailer selection criteria for competitive price;

13. The application of the state agency's retailer peer group criteria and the criteria used to identify retailers that are above 50% retailers or comparable to above 50% retailers;

14. Denial of an application based on a determination of whether an applicant retailer is currently authorized by the Supplemental Nutrition Assistance Program;

15. A civil monetary penalty imposed in lieu of disqualification based on a Supplemental Nutrition Assistance Program disqualification under 7 CFR 246.12; and

16. Disqualification unless listed in subsection P of this section.

P. The state agency shall not provide a full administrative review to ~~retail stores~~ retailers that appeal the following actions, pursuant to 7 CFR 246.18:

1. The validity or appropriateness of the state agency's ~~vendor~~ retailer limiting or selection criteria or retailer selection criteria for minimum variety and quantity of supplemental foods, business integrity, and current Supplemental Nutrition Assistance Program disqualification or civil monetary penalty for hardship (7 CFR 246.12);

2. The validity or appropriateness of the state agency's ~~vendor peer group criteria and the~~ criteria for competitive price, including peer group criteria and the criteria used to identify ~~vendors~~ retailers that are above 50% ~~vendors~~ retailers or comparable to above 50% ~~vendors~~ retailers;

3. The validity or appropriateness of the state agency's participant access criteria and the state agency's participant access determinations;

4. The state agency's determination whether a ~~vendor~~ retailer had an effective policy and program in effect to prevent trafficking and that the ownership of the ~~vendor~~ retailer was not aware of, did not approve of, and was not involved in the conduct of the violation (7 CFR 246.12);

5. Denial of authorization if the state agency's ~~vendor~~ retailer authorization is subject to the procurement procedures applicable to the state agency;

6. The expiration of the retailer's agreement;

7. Disputes regarding food instrument payments and ~~vendor~~ retailer claims other than the opportunity to justify or correct a ~~vendor~~ retailer overcharge or other error as permitted by (7 CFR 246.12);

8. Disqualification of a ~~vendor~~ retailer as a result of disqualification from the ~~Food Stamp~~ Supplemental Nutrition Assistance Program (7 CFR 246.12);

9. The state agency's determination to include or exclude an infant formula ~~source from the state agency's list of state licensed wholesalers, distributors, and retailers and infant formula manufacturers registered with the Food and Drug Administration~~ manufacturer, wholesaler, distributor, or retailer from the list required pursuant to 7 CFR 246.12; ~~and~~

10. The state agency's determination whether to notify a ~~vendor~~ retailer in writing when an investigation reveals an initial violation for which a pattern of violations must be established in order to impose a sanction~~.~~; and

11. The validity or appropriateness of the state agency's prohibition of incentive items and the state agency's denial of an above 50% retailer's request to provide an incentive item to customers pursuant to 7 CFR 246.12.

Q. A full administrative review request shall not be denied or dismissed unless:

1. The request to the state agency is not postmarked or received within 15 calendar days of the applicant or authorized ~~store's~~ retailer's receipt of the notice of disqualification or adverse action;

2. The request to the state agency ~~was~~ is submitted by an individual who does not have the legal or delegated authority to represent the ~~owner~~ applicant or authorized retailer;

3. The retailer or authorized representative withdraws the request in writing;

4. The retailer or authorized representative fails ~~without good cause~~ to appear at the scheduled review date and time without good cause as determined by the adjudication officer; or

5. The request for a full administrative review is not eligible for this consideration based on the specific exclusion criteria outlined in subsection P of this section.

12VAC5-195-680. Food application process.

A. Food items that are approved for purchase by eligible WIC participants must have a food application submitted and approved by the state agency. The food application process does not apply to WIC approved formulas.

B. The state agency shall conduct a review of the approved foods every two years. Food applications shall be accepted and processed during a two-month period.

C. The state agency shall notify prospective manufacturers, suppliers, and distributors when food applications will be accepted by sending them an announcement letter. The state agency shall also post the food application announcement letter on the state agency website.

D. The state agency shall maintain a database with the contact names and companies who previously submitted food applications or expressed an interest in having their products considered for WIC approval. Individuals may request to be added to the database on behalf of manufacturers by completing a food application contact form, which is an

online form located on the state agency's website at http://www.vahealth.org/DCN/Publications/pubswic.htm.

E. Incomplete food applications shall not be eligible for selection and inclusion on the WIC approved food list.

F. The state agency is responsible for evaluating all completed food applications to ensure each product meets both federal and state nutritional and administrative guidelines.

G. After the food application evaluation and selection process has been completed, a new food list will be printed and distributed to local agencies, WIC participants, and retailers by the state agency. The state agency shall pay all costs associated with producing, printing, and distributing the WIC approved food list. Funds from manufacturers, suppliers, distributors, or other sources shall not be used to reprint the approved food list.

H. If a manufacturer, supplier, or distributor changes the name of an approved product whose trade name appears on the approved food list, the new product shall not be automatically eligible for purchase under the current food list. The manufacturer, supplier, or distributor must submit a written request to the state agency, a sample nutritional label for the new product, and documentation outlining the product availability at authorized retailers to have the new product considered for approval. Once this information is received, the state agency shall decide on a case-by-case basis if the new product can be transitioned under the current food list or must wait for the next food list submission cycle. A new product shall not be approved prior to it being available at retailer locations. If the new product is not eligible for inclusion under the current food list, the manufacturer, supplier, or distributor may submit a new food application using the new product name when food applications are being accepted.

I. If a manufacturer, supplier, or distributor changes the nutritional formulation of an approved product, the new product shall not be eligible for purchase under the current food list. The manufacturer, supplier, or distributor must submit a new food application for the new product when food applications are being accepted.

J. Manufacturers, suppliers, or distributors shall not send product samples to the state agency at any time.

K. Changes to the approved food list made during the scheduled two-year period may be made on a case-by-case basis as determined by the state agency based on federal guidance if applicable.

NOTICE: The following form used in administering the regulation was filed by the agency. The form is an online form and is not being published. The form may be found at the web address listed after the form. A copy of the form is 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 (12VAC5-195)

Food application contact form, an online form available at http://www.vahealth.org/DCN/Publications/pubswic.htm.

DOCUMENTS INCORPORATED BY REFERENCE (12VAC5-195)

~~Vendor Manual for the Virginia WIC Program, August 2008, Virginia Department of Health.~~

~~Virginia WIC Program Approved Food List, effective January 1, 2007, Virginia Department of Health.~~

~~Retailer Agreement, effective July 1, 2008, Virginia Department of Health.~~

~~Volume No. 1 Policies & Procedures, Function No. 20000 General Accounting, Section No. 20500 Accounts Receivable, dated June 2004, Office of the Comptroller, Commonwealth of Virginia.~~

~~Virginia WIC Program Sanction Violation Schedule, March 2009, Virginia Department of Health.~~

~~USDA Memo SFP 09-020 Clarification on the use of the WIC acronym and logo, January 2009, United States Department of Agriculture, Food and Nutrition Service.~~

Vendor Manual for the Virginia WIC Program, January 2011, Virginia Department of Health.

WIC Approved Food List, April 2012, Virginia Department of Health.

Virginia WIC Program's Retailer Agreement, effective November 2011(dated August 2011), Virginia Department of Health.

CAPP Manual, Volume No. 1 - Policies & Procedures, Function No. 2000 - General Accounting, Section 20500 - Accounts Receivable, June 2004, Office of the Comptroller, Commonwealth of Virginia.

Virginia WIC Program - Sanction Violation Schedule, December 1, 2011, Virginia Department of Health.

USDA Memo – SFP 09-020 Clarification on Use of the WIC Acronym and Logo, January 9, 2009, United States Department of Agriculture, Food and Nutrition Service.

Virginia WIC Program, Infant Formula Flyer, effective April 1, 2012 (dated January 1, 2012), Virginia Department of Health.

VA.R. Doc. No. R13-2983; Filed January 17, 2013, 12:13 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Proposed Regulation

Titles of Regulations: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-130, 12VAC30-50-226).**

12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (amending 12VAC30-60-61, 12VAC30-60-143; adding 12VAC30-60-5).

12VAC30-130. Amount, Duration and Scope of Selected Services (adding 12VAC30-130-2000, 12VAC30-130-3000, 12VAC30-130-3010, 12VAC30-130-3020, 12VAC30-130-3030).

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: April 12, 2013.

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

Item 297 YY of Chapter 890 of the 2011 Acts of Assembly gives DMAS authority to make programmatic changes in the provision of intensive in-home (IIH) services and community mental health services (CMHS) in order to ensure appropriate utilization, cost efficiency, and improved provider qualifications.

The proposed utilization control requirements are recommended consistent with the federal requirements at 42 CFR Part 456 Utilization Control. Specifically, 42 CFR 456.3, Statewide surveillance and utilization control program, provides: "The Medicaid agency must implement a statewide surveillance and utilization control program that—

(a) Safeguards against unnecessary or inappropriate use of Medicaid services and against excess payments;

(b) Assesses the quality of those services;

(c) Provides for the control of the utilization of all services provided under the plan in accordance with subpart B of this part; and

(d) Provides for the control of the utilization of inpatient services in accordance with subparts C through I of this part."

The 2011 Acts of Assembly also authorized DMAS to implement a coordinated care model for individuals in need of behavioral health services that are not currently provided through a managed care organization (Item 297 MMMM of Chapter 890).

The Code of Federal Regulations also provides, at 42 CFR 430.10, "…The State plan contains all information necessary for CMS to determine whether the plan can be approved to serve as a basis for Federal financial participation (FFP) in the State program." FFP is the federal matching funds that DMAS receives from the Centers for Medicare and Medicaid Services. Not performing utilization control of the services affected by these proposed regulations, as well as all Medicaid covered services, could subject DMAS' federal matching funds to a CMS recovery action.

Purpose: The agency proposes this regulatory action to comply with Item 297 YY of Chapter 890 of the 2011 Acts of Assembly. In recent years, the utilization of certain community-based mental health services has substantially increased. These changes are part of an agency review of the services being rendered and reimbursed to ensure that they are appropriately utilized and medically necessary.

Another purpose of this proposed regulatory action is to comply with Item 297 MMMM of Chapter 890 of the 2011 Acts of Assembly regarding coordination of care. The overall goals of this care coordination model are twofold: 1) improve the coordination of care for individuals who are receiving behavioral health services with acute and primary services and 2) improve the value of behavioral health services purchased by the Commonwealth without compromising access to these services for vulnerable populations. Pursuant to this directive, DMAS is soliciting a proposal for a behavioral health services administrator (BHSA) for members enrolled in Virginia's Medicaid/FAMIS Plus/FAMIS programs who are receiving behavioral health services not currently provided through a managed care organization but through the fee for service system. The selected BHSA will only provide administrative services including, but not limited to, care coordination activities, authorizing, monitoring, and encouraging appropriate behavioral health service utilization. The implementation of the new care coordination model will occur approximately six months after the BHSA contract is awarded.

This regulatory action is not essential to protect the health, safety, or welfare of all citizens. It is essential to protect the health, safety, and welfare of Medicaid individuals who require behavioral health services. In addition, these proposed changes are intended to promote improved quality of Medicaid-covered behavioral health services provided to individuals.

This regulatory action is also essential, based upon DMAS' anecdotal knowledge, to ensure that Medicaid individuals and their families are well informed about their behavioral health condition and service options prior to receiving these services. This ensures the services are medically necessary for the individual and are rendered by providers who do not engage in questionable patient recruitment and sales tactics.

The proposed changes are expected to improve the quality of the community-based mental health services provided to Medicaid participants while enabling DMAS to better control its expenditures in this rapidly expanding service area.

Substance: The regulations affected by this action are the Amount, Duration and Scope of Services (12VAC30-50-130 (skilled nursing facility services, EPSDT, and family planning) and 12VAC30-50-226 (community mental health services for children and adults)); Standards Established and Methods Used to Assure High Quality of Care (12VAC30-60-61 (utilization review of services related to the EPSDT program) and 12VAC30-60-143 (community mental health services for children and adults and mental health services utilization)). New regulations entitled Marketing Requirements and Restrictions (12VAC30-130-2000) and Behavioral Health Services (12VAC30-130-3000 et seq.) are being proposed.

DMAS has covered certain residential and community mental health services (including intensive in-home services to children and adolescents under age 21, therapeutic day treatment, community-based services for children and adolescents under 21 (Level A), therapeutic behavioral services (Level B), day treatment/partial hospitalization, psychosocial rehabilitation, crisis intervention, intensive community treatment, crisis stabilization, and mental health support services) for a number of years. These services are nontraditional mental health services and are typically only covered by Medicaid.

Since state fiscal year (SFY) 2007, the use of these services has grown dramatically with their related expenditures. For example, reimbursements for intensive in-home services grew one and a half times to $129,337,031 in SFY 2010. Therapeutic day treatment reimbursement increased more than three and one half times to $166,079,326 over the same time. Reimbursement for mental health support services (12VAC30-50-226) grew four and one half times to $138,190,634 over the same time period.

Some of the growth in service usage has been due to more community-based services being provided. The proposed changes included in this action are intended to improve the quality of rendered services, by requiring that providers meet specified licensing and qualification standards to be paid by Medicaid.

The proposed changes are also intended to better ensure the appropriate utilization of services by requiring the completion of the new independent clinical assessments (ICA) by the community service boards (CSBs). DMAS believes that this new ICA step will significantly reduce, if not eliminate, the provision of these community mental health services by providers to individuals whose circumstances do not warrant such serious mental illness diagnoses. Having such serious mental illness diagnoses can negatively affect individuals' future access to educational and employment opportunities. For the application of this new ICA requirement, DMAS is proposing new regulations beginning with 12VAC30-130-3000.

These affected sections also set forth rules and penalties related to the marketing of Medicaid mental health services that are set out in 12VAC30-130-2000 (Part XVII of 12VAC30-130). This action also implements the results of a federal review of residential and community mental health services for children and adults. After reviewing records, the Centers for Medicare and Medicaid Services (CMS) expressed concern about recipients not meeting the established criteria for children's mental health services. This federal review also cited the issue of providers merely copying individuals' progress notes across multiple dates of service and not providing any differentiation across different dates of service. The elements that will be required for service-specific provider assessments are being enumerated so that providers' documentation about individuals' problems and issues adequately supports the providers' reimbursement claims. Provider documentation that does not support reimbursement claims have been subject to payment recoveries.

This action also makes technical corrections such as changing the name of the Department of Mental Health, Mental Retardation, and Substance Abuse Services to the Department of Behavioral Health and Developmental Services (DBHDS).

12VAC30-50-130 B contains the Medicaid requirements for the coverage of services under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program. Pursuant to 42 CFR 440.40(b) and 441.50 et seq., these controlling federal regulations set out the requirements for this program of well-child preventive health services for Medicaid individuals from birth through the age of 21 years. In 1989, in the context of the federal Omnibus Budget Reconciliation Act of 1989 (§ 6403), Congress established that Medicaid programs were required to provide all medically necessary services, identified as needed as a result of an EPSDT screening, without regard to whether or not the needed services were otherwise covered under that state's State Plan for Medical Assistance. Services provided under the authority of this regulation can only be covered for children.

The changes proposed for this regulation remove the coverage of a week of intensive in-home services without prior authorization and instead require service authorization at the onset of this service. This is intended to eliminate claims processing issues that have delayed payments to providers. Requirements for service-specific provider assessments and individual service plans are also proposed. The categories of licensed professionals who will be reimbursed for these services are specified.

Service (prior) authorization is proposed for therapeutic day treatment for children and adolescents to reflect the current policies.

A new provision is added that services rendered that are based on old (more than a year old) information, or missing or incomplete assessments/individual service plans will be denied payments. A new Definition section is proposed.

DMAS is incorporating by reference several professional definitions from regulations of DBHDS.

Providers that are appropriate to render specific services are listed.

12VAC30-50-226 provides for community mental health services, including day treatment/partial hospitalization, psychosocial rehabilitation, crisis intervention, intensive community treatment, crisis stabilization, and mental health support services. These services are covered for both children/adolescents and adults. In this proposed action, DMAS is specifying the types of licensed professionals, consistent with DBHDS' licensing standards, who will be permitted to render these services for purposes of claiming Medicaid reimbursement. The Definition section is expanded to provide for terms used in this section, such as individual service plan and service authorization. This section requires that service-specific provider assessments (as defined in 12VAC30-50-130) be prepared to document how the individual to be treated meets the criteria for this service. Absent such documentation, DMAS cannot determine if the rendered services were appropriate for the individual's diagnosed medical needs and therefore retracts payments to providers. References to case management are changed to care coordination, as part of the intensive community treatment package of services, in response to comments from CMS. A few nonsubstantive, technical edits are proposed for purposes of regulatory parallel construction across subsections.

12VAC30-60-5 is newly created to contain several overarching requirements that will be applied to utilization reviews of all Medicaid covered services. This new section specifically reiterates the general applicability of the Chapter 60 utilization review requirements to all Medicaid covered services without regard to whether these requirements are repeated for each specific covered service.

12VAC30-60-61 provides the utilization review requirements for EPSDT services (as set out in 12VAC30-50-130) that must be met by providers to claim reimbursement from Medicaid. These proposed changes require: (i) enhanced provider documentation and supervision requirements; (ii) completion of an individual service plan within a specified time period; (iii) individual-specific provider progress notes; (iv) provider licensure by DBHDS; (v) provider enrollment with DMAS; (vi) maintaining currency of the individual service plan; (vii) provider compliance with DMAS' marketing requirements; and (viii) provider collaboration with the individual's primary care provider. A new Definition subsection is created.

This proposed action also sets out the elements that must be included, for purposes of Medicaid reimbursement, in the service-specific provider assessments to justify why and how a Medicaid individual requires these covered mental health services. This proposed action requires that the initial service-specific provider assessment for intensive in-home (IIH) services be conducted in the home and that they be appropriately reviewed and signed and dated. IIH service providers must be licensed by DBHDS as well as being enrolled with DMAS. Claims for services based on outdated or incomplete provider assessments will not be paid. If there is a lapse in services for an individual of more than 31 consecutive calendar days, the provider must discharge the individual from his care. If this discharged individual continues to need these services, then the provider must conduct a new assessment for readmission and must obtain a new service authorization. Providers of IIH services will be required to document coordination of services with case management service providers. Providers of IIH services will be required to adhere to DMAS marketing requirements and limitations.

Providers of therapeutic day treatment (TDT) services will be required to be licensed by DBHDS as well as being enrolled with DMAS. TDT providers must prepare service-specific provider assessments, before the onset of services, which must also be appropriately reviewed and signed/dated. This proposed action requires documented coordination with providers of case management services. Providers are required to adhere to DMAS' marketing requirements set out in 12VAC30-130-2000 for the purpose of receiving Medicaid reimbursement for services rendered. Provision is made for how lapses in services are to be handled.

Providers of Level A residential treatment services, called community-based services for children and adolescents, must be licensed by the Department of Social Services or the Department of Juvenile Justice. Service authorization is required for all Level A services before the services will be reimbursed. Service-specific provider assessments and individual service plans must be developed, appropriately reviewed, signed/dated, and kept up to date as the individual's condition changes over time. Services based upon incomplete, missing, or outdated assessments or individual service plans shall be denied reimbursement. Coordination with case managers and primary care providers is also required.

Providers of Level B residential treatment services, called therapeutic behavioral services for children and adolescents, must be licensed by DBHDS. Service authorization is required for all Level B services before the services will be reimbursed. Service-specific provider assessments and individual service plans must be developed, appropriately reviewed, signed/dated, and kept up to date as the individual's condition changes over time. Services based upon incomplete, missing, or outdated assessments or individual service plans shall be denied reimbursement. Coordination with case managers and primary care providers is also required.

12VAC30-60-143 sets out the utilization review requirements, for the purpose of claiming Medicaid reimbursement, applicable to day treatment/partial hospitalization, psychosocial rehabilitation, crisis intervention, case management (relative to the populations

reflected at 12VAC30-50-420 and 12VAC30-50-430), intensive community treatment for adults, crisis stabilization, and mental health support services (the services defined in 12VAC30-50-226). Providers of all services are required to secure and maintain a DMAS provider enrollment agreement. Providers of these community mental health services must collaborate with case management providers, if any, in sharing individual status information. Types of licensed professionals who may perform these services, for purposes of Medicaid reimbursement, are specified. To improve the quality of service delivery, provider documentation and supervision requirements are detailed. Providers are restricted by 12VAC30-130-2000 marketing limitations to protect Medicaid individuals and their families from inappropriate provider marketing activities. Outdated references to the Department of Mental Health, Mental Retardation, and Substances Abuse Services are changed to the current DBHDS.

12VAC30-130-2000 contains requirements and limits for providers' marketing plans and activities. These provisions are required to limit the frequency and manner in which providers approach potential clients and seek to engage such clients in their services. DMAS has been made aware that some providers may have engaged in questionable and inappropriate marketing tactics to boost their Medicaid patient load thereby increasing their Medicaid reimbursements. DMAS must, pursuant to the 42 CFR 431.51 guarantee of freedom of choice of providers, protect Medicaid individuals and their families from potential coercion to sign up for treatment with certain providers.

12VAC30-130-3000 contains requirements for independent clinical assessments (ICA) and establishes the entities that will be responsible for completing them as the ICA applies to intensive in-home services, therapeutic day treatment, and mental health support services for children and adolescents. After the ICA is conducted, the individual or the parent/legal guardian must be given free choice in selecting a provider of the needed services in conformance with the federal freedom of provider choice requirements of 42 CFR 431.52. Recommendations for services contained in these new ICAs will not be subject to appeal actions. Such recommendations will be issued by independent assessors as employees or subcontractors with CSBs/behavioral health authority (BHAs) or the behavioral health services administrator (BHSA) and are akin to physician diagnoses that are also not subject to appeal.

In instances when parents/legal guardians want their children/adolescents to receive certain mental health services that are not supported by the results of the ICA, a process is created for the service provider to provide additional documentation, beyond the ICA, to DMAS' service authorization designee for further consideration. Should the parentally requested service be denied, then the parent/legal guardian will have the right to appeal this service denial via the existing client appeals process at 12VAC30-110.

This proposed action also allows for a BHSA, a new contractor for DMAS, to manage and administer these services. DMAS is currently undergoing a procurement action to permit the contracting out of this function.

Issues: The proposed regulations increase provider qualifications, set out assessment components, require an independent assessment, and require providers to be licensed by the appropriate licensing agency. These actions will ensure that providers are qualified and employ qualified staff to work with children, adults, and families. Also, assessments and recommendations for services are standardized. Services will be provided that are appropriate to clinical needs.

The disadvantages of these changes are that some persons who previously qualified to provide services and receive Medicaid reimbursement may no longer qualify for Medicaid payments. If this occurs, there may be possible delays in access to care due to the need for a referral to alternative treatment resources. The number of children receiving certain services may decrease as they are expected to be referred to less intensive services, which may reduce the demand for the more intensive and more highly reimbursed services.

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

Summary of the Proposed Amendments to Regulation. The proposed regulations implement programmatic changes in the provision of various community mental health services, such as intensive in-home services, therapeutic day treatment services, psychosocial rehabilitation services, crisis intervention services, mental health support services, crisis stabilization services, intensive community treatment services, and early and periodic screening, diagnosis, and treatment services to ensure appropriate utilization and cost efficiency.

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

Estimated Economic Impact. Chapter 890, Item 297 YY, of the 2011 Acts of Assembly directed the Department of Medical Assistance Services to implement programmatic changes in the provision of certain community mental health services to ensure appropriate utilization and cost efficiency. These services include intensive in-home services, therapeutic day treatment services, psychosocial rehabilitation services, crisis intervention services, mental health support services, crisis stabilization services, intensive community treatment services, and early and periodic screening, diagnosis, and treatment services.

According to data provided by DMAS, since fiscal year (FY) 2007, the use of some of these services has grown dramatically with their related expenditures. For example, reimbursements for intensive in-home services grew over two times to $177 million in FY 2010. Therapeutic day treatment reimbursements increased more than three times to $145

million over the same time. Reimbursement for mental health support services grew two and one half times to $79 million over the same time period.

Pursuant to the statutory mandate, DMAS implemented emergency regulations in July 2011. The proposed changes will make the emergency regulations permanent.

One of the proposed utilization and cost efficiency measures is the requirement for an Independent Clinical Assessment (ICA) to authorize the use of intensive in-home, therapeutic day treatment, and mental health support services for children and adolescents. ICAs are currently performed by the Community Services Boards (CSBs) for $250 per assessment. In 2011, before the implementation of the ICA program, DMAS estimated the total cost of assessments to be about $8 million per year and total savings of averted services to be about $13.7 million per year, producing an estimated net savings of about $5.7 million annually. However, actual net savings appear to be much higher. Recent data suggest that the total assessment fee paid to CSBs was approximately $5.6 million and a preliminary estimate of the actual savings from averted services in FY 2012 is in the range of $50 million.

The main economic effect of the ICA is reducing expenditures for intensive in-home, therapeutic day treatment, and mental health support services by curbing demand for such services. Thus, providers of these services are expected to experience some revenue losses while the Virginia Medicaid program realizes savings. Also, the CSBs are likely to see an increase in their revenues for conducting ICAs and the Medicaid program will see a corresponding increase in expenditures for such assessments. Since the Virginia Medicaid program is financed 50% by the state and 50% by the federal government, one half of any savings and new costs will accrue to or be borne by the Commonwealth.

Another significant economic effect of ICA has to do with improving allocative efficiency of limited Medicaid funds. ICA is expected to ensure that utilization of services is clinically justified. By reducing the consumption of services that cannot be supported by the clinical assessment, these proposed changes help reallocate the limited state and federal funds to uses with greater need.

While separate fiscal estimates are not available for each of the remaining proposed changes, two of them aim to limit utilization by reducing demand. One of these changes is removing the coverage of a week of intensive in-home services without prior authorization and instead requiring service authorization at the onset of this service. The second change is establishing various marketing limitations to prevent inappropriate advertising practices. The likely economic impact of these two changes is a reduction in the demand for related services. In addition, these measures are expected to help achieve more appropriate utilization of these services. Thus, the providers of these services are likely to experience some revenue losses while the Virginia Medicaid program is likely to realize savings.

Two other proposed changes seem to target reduction in utilization through supply side restrictions. One change establishes more stringent staff qualifications and another improves the clarity of regulations to help enforce utilization reviews and licensing standards. The likely impact of these two changes is a reduction in the supply of related services. Some providers may incur additional compliance costs to meet new staff qualifications and enforcement of clearer standards and/or be subject to payment retractions. These changes are also expected to improve the quality of services offered.

Finally, the proposed changes also update the regulatory language to be compatible with the functions of the Behavioral Health Services Administrator if and when this position is filled or contracted out by DMAS. This position is authorized by Chapter 890, Item 297 MMMM, of the 2011 Acts of Assembly.

Businesses and Entities Affected. In FY 2012, approximately 772 providers of community mental health rehabilitative services provided services to approximately 28,000 recipients. Also, there are 40 CSBs currently performing ICAs.

Localities Particularly Affected. The proposed regulations are not expected to affect any particular locality more than others.

Projected Impact on Employment. The proposed demand and supply side restrictions are expected to reduce the consumption of behavioral health services provided; consequently, reducing the demand for labor. However, savings are anticipated to stem from the more appropriate use of services and improved allocation of economic resources among alternative uses. One exception is the proposed ICA requirement which is expected to increase the labor demand by CSBs.

Effects on the Use and Value of Private Property. The proposed regulations do not have direct effects on the use and value of private property. However, proposed changes may reduce provider revenues or add to their compliance costs both of which would have a negative impact on their asset values.

Small Businesses: Costs and Other Effects. Most of the providers are expected to be small businesses. Thus, the costs and other effects to them are the same as discussed above.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There is no known alternative that minimizes the adverse impact while achieving the same results.

Real Estate Development Costs. No effects on real estate development costs are 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 agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning 2011 Mental Health Services Program Changes for Appropriate Utilization and Provider Qualifications. The agency concurs with this analysis.

Summary:

The department is proposing amendments to comply with items in the budget bill that require changes in the provisions of intensive in-home services and community mental health services to ensure appropriate utilization, cost efficiency, and provider qualifications appropriate to render these services. This action includes: (i) changes to provider qualifications including meeting licensing standards; (ii) marketing requirements and restrictions; (iii) new assessment requirements; and (iv) language enhancements for utilization review requirements to help providers avoid payment retractions. New independent clinical assessments, conducted by local community services boards or behavioral health authorities, are required prior to the onset of specified services until the department's behavioral health services administrator contractor can assume this responsibility. Providers that are permitted to claim Medicaid reimbursement for specific services are specified by license type.

12VAC30-50-130. Skilled nursing facility services, EPSDT, school health services, and family planning.

A. Skilled nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older.

Service must be ordered or prescribed and directed or performed within the scope of a license of the practitioner of the healing arts.

B. Early and periodic screening and diagnosis of individuals under 21 years of age, and treatment of conditions found.

1. Payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities, and the accompanying attendant physician care, in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination.

2. Routine physicals and immunizations (except as provided through EPSDT) are not covered except that well-child examinations in a private physician's office are covered for foster children of the local social services departments on specific referral from those departments.

3. Orthoptics services shall only be reimbursed if medically necessary to correct a visual defect identified by an EPSDT examination or evaluation. The department shall place appropriate utilization controls upon this service.

4. Consistent with the Omnibus Budget Reconciliation Act of 1989 § 6403, early and periodic screening, diagnostic, and treatment services means the following services: screening services, vision services, dental services, hearing services, and such other necessary health care, diagnostic services, treatment, and other measures described in Social Security Act § 1905(a) to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services and which are medically necessary, whether or not such services are covered under the State Plan and notwithstanding the limitations, applicable to recipients ages 21 and over, provided for by the Act § 1905(a).

5. Community mental health services.

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

"Activities of daily living" means personal care activities and includes bathing, dressing, transferring, toileting, feeding, and eating.

"Adolescent or child" means the individual receiving the services described in this section.

"Behavioral health services administrator" or "BHSA" means an entity that manages or directs a behavioral health benefits program under contract with DMAS.

"Care coordination" means collaboration and sharing of information among health care providers, who are involved with an individual's health care, to improve the care.

"Certified pre-screener" means an employee of either DMAS, a BHSA, or the local community services board or behavioral health authority, or its designee, who is skilled in the assessment and treatment of mental illness

and has completed a certification program approved by the Department of Behavioral Health and Developmental Services.

"Clinical experience" means, for the purpose of Medicaid reimbursement of (i) intensive in-home services, (ii) day treatment for children and adolescents, (iii) community-based residential services for children and adolescents who are younger than 21 (Level A), and (iv) therapeutic behavioral services (Level B), providing direct behavioral health services to children and adolescents who have diagnoses of mental illness and includes supervised internships, supervised practicums, and supervised field experience. Experience shall not include unsupervised internships, unsupervised practicums, and unsupervised field experience.

"DBHDS" means the Department of Behavioral Health and Developmental Services.

"DMAS" means the Department of Medical Assistance Services and its contractor or contractors.

"Human services field" means, for the purpose of (i) intensive in-home, (ii) day treatment for children and adolescents, (iii) community-based residential services for children and adolescents younger than 21 (Level A), and (iv) therapeutic behavioral services (Level B), social work, psychology, sociology, counseling, special education, human child or family development, cognitive or behavioral sciences, marriage and family therapy, or art or music therapy.

"Individual service plan" or "ISP" means the same as the term is defined in 12VAC30-50-226.

"Licensed mental health professional" or "LMHP" means the same as the term is defined in 12VAC35-105-20.

"Progress notes" means individual-specific documentation that contains the unique differences particular to the individual's circumstances, treatment, and progress that is also signed and contemporaneously dated by the provider's professional staff who have prepared the notes. Individualized and member-specific progress notes are part of the minimum documentation requirements and shall convey the individual's status, staff interventions, and, as appropriate, progress toward goals and objectives in the ISP. The progress notes shall also include, as a minimum, the name of the service rendered, the date of the service rendered, the signature and credentials of the person who rendered the service, the setting in which the service was rendered, and the amount of time or units/hours required to deliver the service. The content of each progress note shall corroborate the time/units billed. Progress notes shall be documented for each service that is billed.

"Qualified mental health professional-child" or "QMHP-C" means the same as the term is defined in 12VAC35-105-20.

"Qualified paraprofessional in mental health" or "QPPMH" means the same as the term is defined in 12VAC35-105-20.

"Service-specific provider assessment" means the face-to-face interaction in which the provider obtains information from the child or adolescent, and parent or other family member or members, as appropriate, about health status. It includes documented history of the severity, intensity, and duration of health care problems and issues and shall contain all of the following elements: (i) the presenting issue/reason for referral, (ii) mental health history/hospitalizations, (iii) previous interventions by providers and timeframes and response to treatment, (iv) medical profile, (v) developmental history including history of abuse, if appropriate, (vi) educational/vocational status, (vii) current living situation and family history and relationships, (viii) legal status, (ix) drug and alcohol profile, (x) resources and strengths, (xi) mental status exam and profile, (xii) diagnosis, (xiii) professional assessment summary and clinical formulation, (xiv) recommended care and treatment goals, and (xv) the dated signature of the LMHP.

~~a.~~ b. Intensive in-home services to children and adolescents under age 21 shall be time-limited interventions provided typically but not solely in the residence of ~~a child~~ an individual who is at risk of being moved into an out-of-home placement or who is being transitioned to home from an out-of-home placement due to a documented medical need of the ~~child~~ individual. These services provide crisis treatment; individual and family counseling; ~~and~~ communication skills (e.g., counseling to assist the ~~child~~ individual and his parents or guardians, as appropriate, to understand and practice appropriate problem solving, anger management, and interpersonal interaction, etc.); ~~case management activities and~~ care coordination with other required services; and 24-hour emergency response.

(1) These services shall be limited annually to 26 weeks. ~~After an initial period, prior authorization is required for Medicaid reimbursement.~~ Service authorization shall be required for Medicaid reimbursement prior to the onset of services. Services rendered before the date of authorization shall not be reimbursed.

(2) Service authorization shall be required for services to continue beyond the initial 26 weeks.

(3) Service-specific provider assessments shall be required at the onset of services and ISPs shall be required during the entire duration of services. Services based upon incomplete, missing, or outdated service-specific provider assessments or ISPs shall be denied reimbursement. Requirements for service-specific provider assessments and ISPs are set out in 12VAC30-50-130.

(4) These services may only be rendered by an LMHP or a QMHP-C.

~~b.~~ c. Therapeutic day treatment shall be provided two or more hours per day in order to provide therapeutic interventions. Day treatment programs, limited annually to 780 units, provide evaluation; medication~~;~~ education and management; opportunities to learn and use daily living skills and to enhance social and interpersonal skills (e.g., problem solving, anger management, community responsibility, increased impulse control, and appropriate peer relations, etc.); and individual, group and family psychotherapy.

(1) Service authorization shall be required for Medicaid reimbursement.

(2) Service-specific provider assessments shall be required at the onset of services and ISPs shall be required during the entire duration of services. Services based upon incomplete, missing, or outdated service-specific provider assessments or ISPs shall be denied reimbursement. Requirements for service-specific provider assessments and ISPs are set out in 12VAC30-50-130.

(3) These services may be rendered only by an LMHP or a QMHP-C.

~~c.~~ d. Community-Based Services for Children and Adolescents under 21 (Level A).

(1) Such services shall be a combination of therapeutic services rendered in a residential setting. The residential services will provide structure for daily activities, psychoeducation, therapeutic supervision, care coordination, and psychiatric treatment to ensure the attainment of therapeutic mental health goals as identified in the individual service plan (plan of care). Individuals qualifying for this service must demonstrate medical necessity for the service arising from a condition due to mental, behavioral or emotional illness that results in significant functional impairments in major life activities in the home, school, at work, or in the community. The service must reasonably be expected to improve the child's condition or prevent regression so that the services will no longer be needed. ~~DMAS will reimburse only for services provided in facilities or programs with no more than 16 beds.~~ The application of a national standardized set of medical necessity criteria in use in the industry, such as McKesson InterQual ® Criteria, or an equivalent standard authorized in advance by DMAS shall be required for this service.

(2) In addition to the residential services, the child must receive, at least weekly, individual psychotherapy that is provided by ~~a licensed mental health professional~~ an LMHP.

(3) Individuals ~~must~~ shall be discharged from this service when other less intensive services may achieve stabilization.

(4) Authorization ~~is~~ shall be required for Medicaid reimbursement. Services that were rendered before the date of service authorization shall not be reimbursed.

(5) Room and board costs ~~are~~ shall not be reimbursed. ~~Facilities that only provide independent living services are not reimbursed.~~ DMAS shall reimburse only for services provided in facilities or programs with no more than 16 beds.

(6) ~~Providers~~ These residential providers must be licensed by the Department of Social Services, Department of Juvenile Justice, or ~~Department of Education~~ Department of Behavioral Health Developmental Services under the Standards for ~~Interdepartmental Regulation of~~ Licensed Children's Residential Facilities (22VAC40-151), Standards for Interim Regulation of Children's Residential Facilities (6VAC35-51), or Regulations for Children's Residential Facilities ~~(22VAC42-10)~~ (12VAC35-46).

(7) Daily progress notes shall document a minimum of seven psychoeducational activities per week. Psychoeducational programming must include, but is not limited to, development or maintenance of daily living skills, anger management, social skills, family living skills, communication skills, and stress management.

(8) The facility/group home must coordinate services with other providers. Such care coordination shall be documented in the individual's medical record. The documentation shall include who was contacted, when the contact occurred, and what information was transmitted.

(9) Service-specific provider assessments shall be required at the onset of services and ISPs shall be required during the entire duration of services. Services based upon incomplete, missing, or outdated service-specific provider assessments or ISPs shall be denied reimbursement. Requirements for assessments and ISPs are set out in 12VAC30-60-61.

(10) These services may only be rendered by an LMHP, a QMHP-C, or a QPPMH.

~~d.~~ e. Therapeutic Behavioral Services (Level B).

(1) Such services must be therapeutic services rendered in a residential setting that provides structure for daily activities, psychoeducation, therapeutic supervision, care coordination, and psychiatric treatment to ensure the attainment of therapeutic mental health goals as identified in the individual service plan (plan of care). Individuals qualifying for this service must demonstrate medical necessity for the service arising from a condition due to mental, behavioral or emotional illness that results in significant functional impairments in major life

activities in the home, school, at work, or in the community. The service must reasonably be expected to improve the child's condition or prevent regression so that the services will no longer be needed. ~~DMAS will reimburse only for services provided in facilities or programs with no more than 16 beds.~~ The application of a national standardized set of medical necessity criteria in use in the industry, such as McKesson InterQual ® Criteria, or an equivalent standard authorized in advance by DMAS shall be required for this service.

(2) Authorization is required for Medicaid reimbursement. Services that are rendered before the date of service authorization shall not be reimbursed.

(3) Room and board costs ~~are~~ shall not be reimbursed. Facilities that only provide independent living services are not reimbursed. DMAS shall reimburse only for services provided in facilities or programs with no more than 16 beds.

(4) ~~Providers~~ These residential providers must be licensed by the Department of ~~Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS)~~ Behavioral Health and Developmental Services (DBHDS) under the ~~Standards~~ Regulations for ~~Interdepartmental Regulation of~~ Children's Residential Facilities ~~(22VAC42-10)~~ (12VAC35-46).

(5) Daily progress notes shall document that a minimum of seven psychoeducational activities per week occurs. Psychoeducational programming must include, but is not limited to, development or maintenance of daily living skills, anger management, social skills, family living skills, communication skills, and stress management. This service may be provided in a program setting or a community-based group home.

(6) The ~~child~~ individual must receive, at least weekly, individual psychotherapy and, at least weekly, group psychotherapy that is provided as part of the program.

(7) Individuals ~~must~~ shall be discharged from this service when other less intensive services may achieve stabilization.

(8) Service-specific provider assessments shall be required at the onset of services and ISPs shall be required during the entire duration of services. Services that are based upon incomplete, missing, or outdated service-specific provider assessments or ISPs shall be denied reimbursement. Requirements for assessments and ISPs are set out in 12VAC30-60-61.

(9) These services may only be rendered by an LMHP, a QMHP-C, or a QPPMH.

(10) The facility/group home shall coordinate necessary services with other providers. Documentation of this care coordination shall be maintained by the facility/group home in the individual's record. The documentation shall include who was contacted, when the contact occurred, and what information was transmitted.

6. Inpatient psychiatric services shall be covered for individuals younger than age 21 for medically necessary stays for the purpose of diagnosis and treatment of mental health and behavioral disorders identified under EPSDT when such services are rendered by:

a. A psychiatric hospital or an inpatient psychiatric program in a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations; or a psychiatric facility that is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and Children or the Council on Quality and Leadership.

b. Inpatient psychiatric hospital admissions at general acute care hospitals and freestanding psychiatric hospitals shall also be subject to the requirements of 12VAC30-50-100, 12VAC30-50-105, and 12VAC30-60-25. Inpatient psychiatric admissions to residential treatment facilities shall also be subject to the requirements of Part XIV (12VAC30-130-850 et seq.) of this chapter.

c. Inpatient psychiatric services are reimbursable only when the treatment program is fully in compliance with 42 CFR Part 441 Subpart D, as contained in 42 CFR 441.151 (a) and (b) and 441.152 through 441.156. Each admission must be preauthorized and the treatment must meet DMAS requirements for clinical necessity.

7. Hearing aids shall be reimbursed for individuals younger than 21 years of age according to medical necessity when provided by practitioners licensed to engage in the practice of fitting or dealing in hearing aids under the Code of Virginia.

C. School health services.

1. School health assistant services are repealed effective July 1, 2006.

2. School divisions may provide routine well-child screening services under the State Plan. Diagnostic and treatment services that are otherwise covered under early and periodic screening, diagnosis and treatment services, shall not be covered for school divisions. School divisions to receive reimbursement for the screenings shall be enrolled with DMAS as clinic providers.

a. Children enrolled in managed care organizations shall receive screenings from those organizations. School divisions shall not receive reimbursement for screenings from DMAS for these children.

b. School-based services are listed in a recipient's Individualized Education Program (IEP) and covered under one or more of the service categories described in § 1905(a) of the Social Security Act. These services are

necessary to correct or ameliorate defects of physical or mental illnesses or conditions.

3. Service providers shall be licensed under the applicable state practice act or comparable licensing criteria by the Virginia Department of Education, and shall meet applicable qualifications under 42 CFR Part 440. Identification of defects, illnesses or conditions and services necessary to correct or ameliorate them shall be performed by practitioners qualified to make those determinations within their licensed scope of practice, either as a member of the IEP team or by a qualified practitioner outside the IEP team.

a. Service providers shall be employed by the school division or under contract to the school division.

b. Supervision of services by providers recognized in subdivision 4 of this subsection shall occur as allowed under federal regulations and consistent with Virginia law, regulations, and DMAS provider manuals.

c. The services described in subdivision 4 of this subsection shall be delivered by school providers, but may also be available in the community from other providers.

d. Services in this subsection are subject to utilization control as provided under 42 CFR Parts 455 and 456.

e. The IEP shall determine whether or not the services described in subdivision 4 of this subsection are medically necessary and that the treatment prescribed is in accordance with standards of medical practice. Medical necessity is defined as services ordered by IEP providers. The IEP providers are qualified Medicaid providers to make the medical necessity determination in accordance with their scope of practice. The services must be described as to the amount, duration and scope.

4. Covered services include:

a. Physical therapy, occupational therapy and services for individuals with speech, hearing, and language disorders, performed by, or under the direction of, providers who meet the qualifications set forth at 42 CFR 440.110. This coverage includes audiology services;.

b. Skilled nursing services are covered under 42 CFR 440.60. These services are to be rendered in accordance to the licensing standards and criteria of the Virginia Board of Nursing. Nursing services are to be provided by licensed registered nurses or licensed practical nurses but may be delegated by licensed registered nurses in accordance with the regulations of the Virginia Board of Nursing, especially the section on delegation of nursing tasks and procedures. the licensed practical nurse is under the supervision of a registered nurse.

(1) The coverage of skilled nursing services shall be of a level of complexity and sophistication (based on assessment, planning, implementation and evaluation) that is consistent with skilled nursing services when performed by a licensed registered nurse or a licensed practical nurse. These skilled nursing services shall include, but not necessarily be limited to dressing changes, maintaining patent airways, medication administration/monitoring and urinary catheterizations.

(2) Skilled nursing services shall be directly and specifically related to an active, written plan of care developed by a registered nurse that is based on a written order from a physician, physician assistant or nurse practitioner for skilled nursing services. This order shall be recertified on an annual basis.

c. Psychiatric and psychological services performed by licensed practitioners within the scope of practice are defined under state law or regulations and covered as physicians' services under 42 CFR 440.50 or medical or other remedial care under 42 CFR 440.60. These outpatient services include individual medical psychotherapy, group medical psychotherapy coverage, and family medical psychotherapy. Psychological and neuropsychological testing are allowed when done for purposes other than educational diagnosis, school admission, evaluation of an individual with mental retardation prior to admission to a nursing facility, or any placement issue. These services are covered in the nonschool settings also. School providers who may render these services when licensed by the state include psychiatrists, licensed clinical psychologists, school psychologists, licensed clinical social workers, professional counselors, psychiatric clinical nurse specialist, marriage and family therapists, and school social workers.

d. Personal care services are covered under 42 CFR 440.167 and performed by persons qualified under this subsection. The personal care assistant is supervised by a DMAS recognized school-based health professional who is acting within the scope of licensure. This practitioner develops a written plan for meeting the needs of the child, which is implemented by the assistant. The assistant must have qualifications comparable to those for other personal care aides recognized by the Virginia Department of Medical Assistance Services. The assistant performs services such as assisting with toileting, ambulation, and eating. The assistant may serve as an aide on a specially adapted school vehicle that enables transportation to or from the school or school contracted provider on days when the student is receiving a Medicaid-covered service under the IEP. Children requiring an aide during transportation on a specially adapted vehicle shall have this stated in the IEP.

e. Medical evaluation services are covered as physicians' services under 42 CFR 440.50 or as medical or other remedial care under 42 CFR 440.60. Persons performing these services shall be licensed physicians, physician assistants, or nurse practitioners. These practitioners shall

identify the nature or extent of a child's medical or other health related condition.

f. Transportation is covered as allowed under 42 CFR 431.53 and described at State Plan Attachment 3.1-D. Transportation shall be rendered only by school division personnel or contractors. Transportation is covered for a child who requires transportation on a specially adapted school vehicle that enables transportation to or from the school or school contracted provider on days when the student is receiving a Medicaid-covered service under the IEP. Transportation shall be listed in the child's IEP. Children requiring an aide during transportation on a specially adapted vehicle shall have this stated in the IEP.

g. Assessments are covered as necessary to assess or reassess the need for medical services in a child's IEP and shall be performed by any of the above licensed practitioners within the scope of practice. Assessments and reassessments not tied to medical needs of the child shall not be covered.

5. DMAS will ensure through quality management review that duplication of services will be monitored. School divisions have a responsibility to ensure that if a child is receiving additional therapy outside of the school, that there will be coordination of services to avoid duplication of service.

D. Family planning services and supplies for individuals of child-bearing age.

1. Service must be ordered or prescribed and directed or performed within the scope of the license of a practitioner of the healing arts.

2. Family planning services shall be defined as those services that delay or prevent pregnancy. Coverage of such services shall not include services to treat infertility nor services to promote fertility.

12VAC30-50-226. Community mental health services.

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

"Certified prescreener" means an employee of either the local ~~community services board~~ community services board/behavioral health authority, behavioral health service administrator or its designee who is skilled in the assessment and treatment of mental illness and who has completed a certification program approved by DBHDS.

"Clinical experience" means, for the purpose of rendering (i) mental health day treatment/partial hospitalization, (ii) intensive community treatment, (iii) psychosocial rehabilitation, (iv) mental health support, (v) crisis stabilization, and (vi) crisis intervention services, practical experience in providing direct services on a full-time basis to individuals with medically-documented diagnoses of mental illness or ~~mental retardation~~ intellectual/developmental disability or the provision of direct geriatric services or full-time special education services. Experience ~~may~~ shall include supervised internships, supervised practicums, ~~and~~ or supervised field experience. Experience shall not include unsupervised internships, unsupervised practicums, and unsupervised field experience. This required clinical experience shall be calculated as set forth in 12VAC35-105-20.

"Code" means the Code of Virginia.

"DBHDS" means the Department of Behavioral Health and Developmental Services consistent with Chapter 3 (§ 37.2-300 et seq.) of Title 37.2 of the Code of Virginia.

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

"Human services field" means for the purpose of (i) mental health day treatment/partial hospitalization, (ii) intensive community treatment, (iii) psychosocial rehabilitation, (iv) mental health support, (v) crisis stabilization, and (vi) crisis intervention services, social work, gerontology, psychology, psychiatric rehabilitation, special education, sociology, counseling, vocational rehabilitation, behavioral sciences, marriage and family therapy, art or music therapy, and human services counseling ~~or other degrees deemed equivalent by DMAS~~.

"Individual" means the ~~patient,~~ client~~,~~ or recipient of services ~~set out herein~~ described in this section.

"Individual service plan" or "ISP" means a comprehensive and regularly updated ~~statement~~ treatment plan specific to the ~~individual being treated containing, but not necessarily limited to, his treatment or training needs, his goals and measurable objectives to meet the identified needs, services to be provided with the recommended frequency to accomplish the measurable goals and objectives, and estimated timetable for achieving the goals and objectives. The provider shall include the individual in the development of the ISP. To the extent that the individual's condition requires assistance for participation, assistance shall be provided. The ISP shall be updated as the needs and progress of the individual changes.~~ individual's unique treatment needs as identified in the clinical assessment. The ISP contains his treatment or training needs, his goals and measurable objectives to meet the identified needs, services to be provided with the recommended frequency to accomplish the measurable goals and objectives, the estimated timetable for achieving the goals and objectives, and an individualized discharge plan that describes transition to other appropriate services. The ISP shall be signed by the individual. If the individual is a minor child, the ISP shall also be signed by the individual's parent/legal guardian. Documentation shall be provided if the individual, who is a minor child, is unable or unwilling to sign the ISP.

"Licensed Mental Health Professional" or "LMHP" means ~~an individual licensed in Virginia as a physician, a clinical~~

~~psychologist, a professional counselor, a clinical social worker, or a psychiatric clinical nurse specialist~~ the same as defined in 12VAC35-105-20.

~~"Qualified mental health professional" or "QMHP" means a clinician in the human services field who is trained and experienced in providing psychiatric or mental health services to individuals who have a psychiatric diagnosis. If the QMHP is also one of the defined licensed mental health professionals, the QMHP may perform the services designated for the Licensed Mental Health Professionals unless it is specifically prohibited by their licenses. These QMHPs may be either a:~~

~~1. Physician who is a doctor of medicine or osteopathy and is licensed in Virginia;~~

~~2. Psychiatrist who is a doctor of medicine or osteopathy, specializing in psychiatry and is licensed in Virginia;~~

~~3. Psychologist who has a master's degree in psychology from an accredited college or university with at least one year of clinical experience;~~

~~4. Social worker who has a master's or bachelor's degree from a school of social work accredited or approved by the Council on Social Work Education and has at least one year of clinical experience;~~

~~5. Registered nurse who is licensed as a registered nurse in the Commonwealth and has at least one year of clinical experience; or~~

~~6. Mental health worker who has at least:~~

~~a. A bachelor's degree in human services or a related field from an accredited college and who has at least one year of clinical experience;~~

~~b. Registered Psychiatric Rehabilitation Provider (RPRP) registered with the International Association of Psychosocial Rehabilitation Services (IAPSRS) as of January 1, 2001;~~

~~c. A bachelor's degree from an accredited college in an unrelated field with an associate's degree in a human services field. The individual must also have three years clinical experience;~~

~~d. A bachelor's degree from an accredited college and certification by the International Association of Psychosocial Rehabilitation Services (IAPSRS) as a Certified Psychiatric Rehabilitation Practitioner (CPRP);~~

~~e. A bachelor's degree from an accredited college in an unrelated field that includes at least 15 semester credits (or equivalent) in a human services field. The individual must also have three years clinical experience; or~~

~~f. Four years clinical experience.~~

"Qualified mental health professional-adult" or "QMHP-A" means the same as defined in 12VAC35-105-20.

"Qualified mental health professional-child" or "QMHP-C" means the same as defined in 12VAC35-105-20.

"Qualified paraprofessional in mental health" or "QPPMH" means ~~an individual who meets at least one of the following criteria:~~ the same as defined in 12VAC35-105-20.

~~1. Registered with the International Association of Psychosocial Rehabilitation Services (IAPSRS) as an Associate Psychiatric Rehabilitation Provider (APRP), as of January 1, 2001;~~

~~2. Has an associate's degree in one of the following related fields (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling) and has at least one year of experience providing direct services to persons with a diagnosis of mental illness;~~

~~3. An associate's or higher degree, in an unrelated field and at least three years experience providing direct services to persons with a diagnosis of mental illness, gerontology clients, or special education clients. The experience may include supervised internships, practicums and field experience.~~

~~4. A minimum of 90 hours classroom training in behavioral health and 12 weeks of experience under the direct personal supervision of a QMHP providing services to persons with mental illness and at least one year of clinical experience (including the 12 weeks of supervised experience).~~

~~5. College credits (from an accredited college) earned toward a bachelor's degree in a human service field that is equivalent to an associate's degree and one year's clinical experience.~~

~~6. Licensure by the Commonwealth as a practical nurse with at least one year of clinical experience.~~

"Register" or "registration" means notifying DMAS or its contractor that an individual will be receiving either crisis stabilization or crisis intervention.

"Service authorization" means the final determination of Medicaid reimbursement made by either DMAS or its service authorization contractor for specified medical services for a specified individual to be rendered by a specified provider.

B. Mental health services. The following services, with their definitions, shall be covered: day treatment/partial hospitalization, psychosocial rehabilitation, crisis services, intensive community treatment (ICT), and mental health supports. Staff travel time shall not be included in billable time for reimbursement.

1. Day treatment/partial hospitalization services shall be provided in sessions of two or more consecutive hours per day, which may be scheduled multiple times per week, to groups of individuals in a nonresidential setting. These services, limited annually to 780 units, include the major diagnostic, medical, psychiatric, psychosocial, and psychoeducational treatment modalities designed for individuals who require coordinated, intensive, comprehensive, and multidisciplinary treatment but who

do not require inpatient treatment. One unit of service shall be defined as a minimum of two but less than four hours on a given day. Two units of service shall be defined as at least four but less than seven hours in a given day. Three units of service shall be defined as seven or more hours in a given day. Authorization is required for Medicaid reimbursement.

a. Day treatment/partial hospitalization services shall be time limited interventions that are more intensive than outpatient services and are required to stabilize an individual's psychiatric condition. The services are delivered when the individual is at risk of psychiatric hospitalization or is transitioning from a psychiatric hospitalization to the community. The service-specific provider assessment, as defined at 12VAC30-50-130, shall document the individual's behavior and describe how the individual is at risk of psychiatric hospitalization or is transitioning from a psychiatric hospitalization to the community.

b. Individuals qualifying for this service must demonstrate a clinical necessity for the service arising from mental, behavioral, or emotional illness that results in significant functional impairments in major life activities. Individuals must meet at least two of the following criteria on a continuing or intermittent basis:

(1) Experience difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they are at risk of hospitalization or homelessness or isolation from social supports;

(2) Experience difficulty in activities of daily living such as maintaining personal hygiene, preparing food and maintaining adequate nutrition, or managing finances to such a degree that health or safety is jeopardized;

(3) Exhibit such inappropriate behavior that ~~requires~~ the individual requires repeated interventions or monitoring by the mental health, social services, or judicial system that have been documented; or

(4) Exhibit difficulty in cognitive ability such that they are unable to recognize personal danger or recognize significantly inappropriate social behavior.

c. Individuals shall be discharged from this service when they are no longer in an acute psychiatric state and other less intensive services may achieve psychiatric stabilization.

d. Admission and services for time periods longer than 90 calendar days must be authorized based upon a face-to-face evaluation by a physician, psychiatrist, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, or psychiatric clinical nurse specialist.

e. These services may only be rendered by either an LMHP, QMHP-A, QMHP-C, or a QPPMH.

2. Psychosocial rehabilitation shall be provided at least two or more hours per day to groups of individuals in a nonresidential setting. These services, limited annually to 936 units, include assessment, education to teach the patient about the diagnosed mental illness and appropriate medications to avoid complication and relapse, opportunities to learn and use independent living skills and to enhance social and interpersonal skills within a supportive and normalizing program structure and environment. One unit of service is defined as a minimum of two but less than four hours on a given day. Two units are defined as at least four but less than seven hours in a given day. Three units of service shall be defined as seven or more hours in a given day. Authorization is required for Medicaid reimbursement. The service-specific provider assessment, as defined at 12VAC30-50-130, shall document the individual's behavior and describe how the individual meets criteria for this service.

a. Individuals qualifying for this service must demonstrate a clinical necessity for the service arising from mental, behavioral, or emotional illness that results in significant functional impairments in major life activities. Services are provided to individuals: (i) who without these services would be unable to remain in the community or (ii) who meet at least two of the following criteria on a continuing or intermittent basis:

~~a.~~ (1) Experience difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they are at risk of psychiatric hospitalization, homelessness, or isolation from social supports;

~~b.~~ (2) Experience difficulty in activities of daily living such as maintaining personal hygiene, preparing food and maintaining adequate nutrition, or managing finances to such a degree that health or safety is jeopardized;

~~c.~~ (3) Exhibit such inappropriate behavior that repeated interventions documented by the mental health, social services, or judicial system are or have been necessary; or

~~d.~~ (4) Exhibit difficulty in cognitive ability such that they are unable to recognize personal danger or significantly inappropriate social behavior.

b. These services may only be rendered by an LMHP, QMHP-A, QMHP-C, or QPPMH.

3. Crisis intervention shall provide immediate mental health care, available 24 hours a day, seven days per week, to assist individuals who are experiencing acute psychiatric dysfunction requiring immediate clinical attention. This service's objectives shall be to prevent exacerbation of a condition, to prevent injury to the client or others, and to provide treatment in the context of the least restrictive setting. Crisis intervention activities shall include assessing the crisis situation, providing short-term counseling designed to stabilize the individual, providing access to further immediate assessment and follow-up, and linking

the individual and family with ongoing care to prevent future crises. Crisis intervention services may include office visits, home visits, preadmission screenings, telephone contacts, and other client-related activities for the prevention of institutionalization. The service-specific provider assessment, as defined at 12VAC30-50-130, shall document the individual's behavior and describe how the individual meets criteria for this service. The provision of this service to an individual shall be registered with either DMAS or the BHSA to avoid duplication of services and to ensure informed care coordination. This registration shall transmit to DMAS or its contractor: (i) the individual's name and Medicaid identification number; (ii) the specific service to be provided, the relevant procedure code, begin date of the service, and the amount of the service that will be provided; and (iii) the provider's name and NPI, a provider contact name and phone number, and email address.

a. Individuals qualifying for this service must demonstrate a clinical necessity for the service arising from an acute crisis of a psychiatric nature that puts the individual at risk of psychiatric hospitalization. Individuals must meet at least two of the following criteria at the time of admission to the service:

(1) Experience difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they are at risk of psychiatric hospitalization, homelessness, or isolation from social supports;

(2) Experience difficulty in activities of daily living such as maintaining personal hygiene, preparing food and maintaining adequate nutrition, or managing finances to such a degree that health or safety is jeopardized;

(3) Exhibit such inappropriate behavior that immediate interventions documented by mental health, social services, or the judicial system are or have been necessary; or

(4) Exhibit difficulty in cognitive ability such that they are unable to recognize personal danger or significantly inappropriate social behavior.

b. The annual limit for crisis intervention is 720 units per year. A unit shall equal 15 minutes.

c. These services may only be rendered by an LMHP, QMHP-A, or QMHP-C and a certified pre-screener.

4. Intensive community treatment (ICT), initially covered for a maximum of 26 weeks based on an initial service-specific provider assessment with continuation reauthorized for an additional 26 weeks annually based on written assessment and certification of need by a qualified mental health provider (QMHP), shall be defined as medical psychotherapy, psychiatric assessment, medication management, and ~~case management~~ care coordination activities offered to outpatients outside the clinic, hospital, or office setting for individuals who are best served in the community. ~~The annual unit limit shall be 130 units with a unit equaling one hour.~~ Authorization is required for Medicaid reimbursement.

a. To qualify for ICT, the individual must meet at least one of the following criteria:

~~a.~~ (1) The individual must be at high risk for psychiatric hospitalization or becoming or remaining homeless due to mental illness or require intervention by the mental health or criminal justice system due to inappropriate social behavior.

~~b.~~ (2) The individual has a history (three months or more) of a need for intensive mental health treatment or treatment for co-occurring serious mental illness and substance use disorder and demonstrates a resistance to seek out and utilize appropriate treatment options.

~~(1) An~~ b. A written, service-specific provider assessment, as defined at 12VAC30-50-130, that documents the individual's eligibility and the need for this service must be completed prior to the initiation of services. This assessment must be maintained in the individual's records.

~~(2) A service plan must~~ c. An individual service plan shall be initiated at the time of admission and must be fully developed, as defined in 12VAC30-50-226, within 30 days of the initiation of services.

d. The annual unit limit shall be 130 units with a unit equaling one hour.

e. These services may only be rendered by an LMHP, QMHP-A, QMHP-C, and QPPMH.

5. Crisis stabilization services for nonhospitalized individuals shall provide direct mental health care to individuals experiencing an acute psychiatric crisis which may jeopardize their current community living situation. ~~Authorization~~ Services may be authorized for up to a 15-day period per crisis episode following a ~~documented~~ face-to-face service-specific provider assessment by a ~~QMHP which~~ QMHP-A or QMHP-C that is reviewed and approved by an LMHP within 72 hours of the assessment. ~~The maximum limit on this service is up to eight hours (with a unit being one hour) per day up to 60 days annually.~~ Only one unit of service shall be reimbursed for this assessment. The provision of this service to an individual shall be registered with either DMAS or the BHSA to avoid duplication of services and to ensure informed care coordination. This registration shall transmit to DMAS or its contractor: (i) the individual's name and Medicaid identification number; (ii) the specific service to be provided, the relevant procedure code, begin date of the service, and the amount of the service that will be provided; and (iii) the provider's name and NPI, a provider contact name and phone number, and email address.

a. The goals of crisis stabilization programs shall be to avert hospitalization or rehospitalization, provide

normative environments with a high assurance of safety and security for crisis intervention, stabilize individuals in psychiatric crisis, and mobilize the resources of the community support system and family members and others for on-going maintenance and rehabilitation. The services must be documented in the individual's records as having been provided consistent with the ISP in order to receive Medicaid reimbursement.

b. The crisis stabilization program shall provide to ~~recipients~~ individuals, as appropriate, psychiatric assessment including medication evaluation, treatment planning, symptom and behavior management, and individual and group counseling.

c. This service may be provided in any of the following settings, but shall not be limited to: (i) the home of ~~a recipient~~ an individual who lives with family or other primary caregiver; (ii) the home of ~~a recipient~~ an individual who lives independently; or (iii) community-based programs licensed by DBHDS to provide residential services but which are not institutions for mental disease (IMDs).

d. This service shall not be reimbursed for (i) ~~recipients~~ individuals with medical conditions that require hospital care; (ii) ~~recipients~~ individuals with primary diagnosis of substance abuse; or (iii) ~~recipients~~ individuals with psychiatric conditions that cannot be managed in the community (i.e., ~~recipients~~ individuals who are of imminent danger to themselves or others).

e. The maximum limit on this service is 60 days annually.

f. Services must be documented through daily notes and a daily log of times spent in the delivery of services. The service-specific provider assessment, as defined at 12VAC30-50-130, shall document the individual's behavior and describe how the individual meets criteria for this service. Individuals qualifying for this service must demonstrate a clinical necessity for the service arising from an acute crisis of a psychiatric nature that puts the individual at risk of psychiatric hospitalization. Individuals must meet at least two of the following criteria at the time of admission to the service:

~~a.~~ (1) Experience difficulty in establishing and maintaining normal interpersonal relationships to such a degree that the individual is at risk of psychiatric hospitalization, homelessness, or isolation from social supports;

~~b.~~ (2) Experience difficulty in activities of daily living such as maintaining personal hygiene, preparing food and maintaining adequate nutrition, or managing finances to such a degree that health or safety is jeopardized;

~~c.~~ (3) Exhibit such inappropriate behavior that immediate interventions documented by the mental health, social services, or judicial system are or have been necessary; or

~~d.~~ (4) Exhibit difficulty in cognitive ability such that the individual is unable to recognize personal danger or significantly inappropriate social behavior.

g. These services may only be rendered by an LMHP, QMHP-A, or QMHP-C and a certified pre-screener.

6. Mental health support services (MHSS) shall be defined as training and supports to enable individuals to achieve and maintain community stability and independence in the most appropriate, least restrictive environment. Authorization is required for Medicaid reimbursement. Services that are rendered before the date of service authorization shall not be reimbursed. These services may be authorized ~~for~~ up to six consecutive months as long as the individual meets the coverage criteria for this service. The service-specific provider assessment, as defined at 12VAC30-50-130, shall document the individual's behavior and describe how the individual meets criteria for this service. This program shall provide the following services in order to be reimbursed by Medicaid: training in or reinforcement of functional skills and appropriate behavior related to the individual's health and safety, activities of daily living, and use of community resources; assistance with medication management; and monitoring health, nutrition, and physical condition.

a. Individuals qualifying for this service must demonstrate a clinical necessity for the service arising from a condition due to mental, behavioral, or emotional illness that results in significant functional impairments in major life activities. Services are provided to individuals who without these services would be unable to remain in the community. The individual must ~~have~~ meet at least two of the following criteria on a continuing or intermittent basis:

(1) Have difficulty in establishing or maintaining normal interpersonal relationships to such a degree that the individual is at risk of psychiatric hospitalization or homelessness or isolation from social supports;

(2) Require help in basic living skills such as maintaining personal hygiene, preparing food and maintaining adequate nutrition or managing finances to such a degree that health or safety is jeopardized;

(3) Exhibit such inappropriate behavior that repeated interventions documented by the mental health, social services, or judicial system are or have been necessary; or

(4) Exhibit difficulty in cognitive ability such that they are unable to recognize personal danger or recognize significantly inappropriate social behavior.

b. The individual must demonstrate functional impairments in major life activities. This may include individuals with a dual diagnosis of either mental illness

and mental retardation, or mental illness and substance abuse disorder.

c. Service-specific provider assessments shall be required at the onset of services and Individual Service Plans (ISPs) shall be required during the entire duration of services. Services based upon incomplete, missing, or outdated service-specific provider assessments or ISPs shall be denied reimbursement. Requirements for provider-specific assessments and ISPs are set out in 12VAC30-50-130.

~~c.~~ d. The yearly limit for mental health support services is 372 units. One unit is one hour but less than three hours.

e. These services may only be rendered by an LMHP, QMHP-A, QMHP-C, or QPPMH.

12VAC30-60-5. Applicability of utilization review requirements.

A. These utilization requirements shall apply to all Medicaid covered services unless otherwise specified.

B. Some Medicaid covered services require an approved service authorization prior to service delivery in order for reimbursement to occur.

1. To obtain service authorization, all providers' information supplied to the Department of Medical Assistance Services (DMAS) or the service authorization contractor shall be fully substantiated throughout individuals' medical records.

2. Providers shall be required to maintain documentation detailing all relevant information about the Medicaid individuals who are in providers' care. Such documentation shall fully disclose the extent of services provided in order to support providers' claims for reimbursement for services rendered. This documentation shall be written, signed, and dated at the time the services are rendered unless specified otherwise.

C. DMAS, or its designee, shall perform reviews of the utilization of all Medicaid covered services pursuant to 42 CFR 440.260 and 456.1 et seq.

D. DMAS shall recover expenditures made for covered services when providers' documentation does not comport with standards specified in all applicable regulations.

E. Providers who are determined not to be in compliance with DMAS' requirements shall be subject to 12VAC30-80-130 for the repayment of those overpayments to DMAS.

F. Utilization review requirements specific to community mental health services, as set out in 12VAC30-50-130 and 12VAC30-50-226, shall be as follows:

1. To apply to be reimbursed as a Medicaid provider, the required Department of Behavioral Health and Developmental Services (DBHDS) license shall be either a full annual, triennial, or conditional license. Providers must be enrolled with DMAS to be reimbursed. Once a health care entity has been enrolled as a provider, it shall maintain, and update periodically as DMAS requires, a current Provider Enrollment Agreement for each Medicaid service that the provider offers.

2. Health care entities with provisional licenses shall not be reimbursed as Medicaid providers of community mental health services.

3. Payments shall not be permitted to health care entities who either hold provisional licenses or who fail to enter into a Medicaid Provider Enrollment Agreement for a service prior to rendering that service.

12VAC30-60-61. Services related to the Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT); community mental health services for children.

A. Definitions. The following words and terms shall have the following meanings unless the context indicates otherwise:

"At risk" means one or more of the following: (i) within two weeks after completion of the assessment, the individual shall be screened by an LMHP for escalating behaviors that have put either the individual or others at immediate risk of physical injury; (ii) the parent/guardian is unable to manage the individual's mental, behavioral, or emotional problems in the home and is actively, within the past two to four weeks, seeking an out-of-home placement; (iii) a representative of either a juvenile justice agency, a department of social services (either the state agency or local agency), a community services board/behavioral health authority, the Department of Education, or an LMHP, as defined in 12VAC35-105-20, and who is neither an employee of or consultant to the IIH services or therapeutic day treatment (TDT) provider, has recommended an out-of-home placement absent an immediate change of behaviors and when unsuccessful mental health services are evident; (iv) the individual has a history of unsuccessful services (either crisis intervention, crisis stabilization, outpatient psychotherapy, outpatient substance abuse services, or mental health support) within the past 30 days; (v) the treatment team or family assessment planning team (FAPT) recommends IIH services or TDT for an individual currently who is either: (a) transitioning out of residential treatment facility Level C services, (b) transitioning out of a group home Level A or B services, (c) transitioning out of acute psychiatric hospitalization, or (d) transitioning between foster homes, mental health case management, crisis intervention, crisis stabilization, outpatient psychotherapy, or outpatient substance abuse services.

"Failed services" or "unsuccessful services" means, as measured by ongoing behavioral, mental, or physical distress, that the service or services did not treat or resolve the individual's mental health or behavioral issues.

"Individual" means the Medicaid-eligible person receiving these services and for the purpose of this section is understood to mean children or adolescents.

"New service" means a community mental health rehabilitation service for which the individual does not have a current service authorization in effect as of July 17, 2011.

"Out-of-home placement" means placement in one or more of the following: (i) either a Level A or Level B group home; (ii) regular foster home if the individual is currently residing with his biological family and, due to his behavior problems, is at risk of being placed in the custody of the local department of social services; (iii) treatment foster care if the individual is currently residing with his biological family or a regular foster care family and, due to the individual's behavioral problems, is at risk of removal to a higher level of care; (iv) Level C residential facility; (v) emergency shelter for the individual only due either to his mental health or behavior or both; (vi) psychiatric hospitalization; or (vii) juvenile justice system or incarceration.

"Service-specific provider assessment" means the evaluation that is conducted according to the Department of Medical Assistance Services (DMAS) assessment definition set out in 12VAC30-50-130.

B. These services shall be rendered consistent with the definitions, service limits, and requirements described in this section and in 12VAC30-50-130.

~~A.~~ C. Intensive in-home services for children and adolescents.

1. The service definition for intensive in-home (IIH) services is contained in 12VAC30-50-130.

~~1.~~ 2. Individuals qualifying for this service ~~must~~ shall demonstrate a clinical necessity for the service arising from mental, behavioral or emotional illness which results in significant functional impairments in major life activities. Individuals must meet at least two of the following criteria on a continuing or intermittent basis to be authorized for these services:

a. Have difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they are at risk of hospitalization or out-of-home placement because of conflicts with family or community.

b. Exhibit such inappropriate behavior that documented, repeated interventions by the mental health, social services or judicial system are or have been necessary.

c. Exhibit difficulty in cognitive ability such that they are unable to recognize personal danger or recognize significantly inappropriate social behavior.

~~2. At~~ 3. Prior to admission, an appropriate service-specific provider assessment ~~is made~~, as defined in 12VAC30-50-130, shall be conducted by the ~~LMHP or the QMHP and approved by the LMHP,~~ licensed mental health professional (LMHP), as defined in 12VAC35-105-20, documenting ~~that~~ the individual's diagnosis and describing how service needs can best be met through intervention provided typically but not solely in the ~~client's~~ individual's residence. ~~An Individual Service Plan (ISP) must be fully completed within 30 days of initiation of services.~~ The service-specific provider assessment shall describe how the individual's clinical needs put the individual at risk of out-of-home placement and shall be conducted face-to-face in the individual's residence. Claims for services that are based upon service-specific provider assessments that are incomplete, outdated (more than 12 months old), or missing shall not be reimbursed.

4. An individual service plan (ISP) shall be fully completed, signed, and dated by a QMHP-C, as defined in 12VAC35-105-20, and the individual and individual's parent/guardian within 30 days of initiation of services. The ISP shall meet all of the requirements as defined in 12VAC30-50-226.

5. DMAS shall not reimburse for dates of services in which the progress notes are not individualized and child-specific. Duplicated progress notes shall not constitute the required child-specific individualized progress notes. Each progress note shall demonstrate unique differences particular to the individual's circumstances, treatment, and progress. Claim payments shall be retracted for services that are supported by documentation that does not demonstrate unique differences particular to the individual.

~~3.~~ 6. Services ~~must~~ shall be directed toward the treatment of the eligible ~~child~~ individual and delivered primarily in the family's residence with the ~~child~~ individual present. ~~In some circumstances, such as lack of privacy or unsafe conditions, services may be provided in the community if supported by the needs assessment and ISP.~~ The assessment may be performed and the services rendered in the community if there is documentation, on that date of service, of the necessity of providing services in the community. The documentation shall describe how the alternative community service location supports the identified clinical needs of the individual and describe how it facilitates the implementation of the ISP. For services provided outside of the home, there shall be documentation reflecting therapeutic treatment as set forth in the ISP provided for that date of service in the appropriately signed and dated progress notes.

~~4.~~ 7. These services shall be provided when the clinical needs of the ~~child~~ individual put ~~the child~~ him at risk for out-of-home placement, as these terms are defined in this section:

a. When services that are far more intensive than outpatient clinic care are required to stabilize the ~~child~~ individual in the family situation, or

b. When the ~~child's~~ individual's residence as the setting for services is more likely to be successful than a clinic.

The service-specific provider assessment shall describe how the individual meets either subdivision a or b of this subdivision.

~~5. Services may not be billed when provided to a family while the child is not residing in the home.~~ 8. Services shall not be provided if the individual is no longer a resident of the home.

~~6.~~ 9. Services shall also be used to facilitate the transition to home from an out-of-home placement when services more intensive than outpatient clinic care are required for the transition to be successful. The ~~child~~ individual and responsible parent/guardian ~~must~~ shall be available and in agreement to participate in the transition.

~~7.~~ 10. At least one ~~parent~~ parent/guardian or responsible adult with whom the ~~child~~ individual is living must be willing to participate in the intensive in-home services with the goal of keeping the ~~child~~ individual with the family.

~~8.~~ 11. The enrolled provider ~~must~~ shall be licensed by the Department of ~~Mental Health, Mental Retardation and Substance Abuse Services~~ Behavioral Health and Developmental Services (DBHDS) as a provider of intensive in-home services. The provider shall also have a Provider Enrollment Agreement with DMAS or its contractor in effect prior to the delivery of this service that indicates that the provider will offer intensive in-home services.

~~9.~~ 12. Services must only be provided by an LMHP~~, or a, QMHP~~ or QMHP-C as defined in ~~12VAC30-50-226~~ 12VAC35-105-20. Reimbursement shall not be provided for such services when they have been rendered by a QPPMH as defined in ~~12VAC30-50-226~~ 12VAC35-105-20.

~~10.~~ 13. The billing unit for intensive in-home service ~~is~~ shall be one hour. Although the pattern of service delivery may vary, intensive in-home services is an intensive service provided to individuals for whom there is a ~~plan of care~~ ISP in effect which demonstrates the need for a minimum of three hours a week of intensive in-home service, and includes a plan for service provision of a minimum of three hours of service delivery per ~~client/family~~ individual/family per week in the initial phase of treatment. It is expected that the pattern of service provision may show more intensive services and more frequent contact with the ~~client~~ individual and family initially with a lessening or tapering off of intensity toward the latter weeks of service. Service plans ~~must~~ shall incorporate ~~a~~ an individualized discharge plan ~~which identifies~~ that describes transition from intensive in-home to less intensive or nonhome based services.

14. The ISP, as defined in 12VAC30-50-226, shall be updated as the individual's needs and progress changes and signed by either the parent or legal guardian and the individual. Documentation shall be provided if the individual, who is a minor child, is unable or unwilling to sign the ISP. If there is a lapse in services that is greater than 31 consecutive calendar days, the provider shall discharge the individual. If the individual continues to need services, then a new assessment/admission shall be documented and a new service authorization shall be required.

~~11.~~ 15. The provider ~~must~~ shall ensure that the maximum staff-to-caseload ratio fully meets the needs of the individual.

~~12. Since case management services are an integral and inseparable part of this service, case management services may not be billed separately for periods of time when intensive in-home services are being provided.~~ 16. If an individual receiving services is also receiving case management services pursuant to 12VAC30-50-420 or 12VAC30-50-430, the provider shall contact the case manager and provide notification of the provision of services. In addition, the provider shall send monthly updates to the case manager on the individual's status. A discharge summary shall be sent to the case manager within 30 days of the service discontinuation date.

~~13.~~ 17. Emergency assistance shall be available 24 hours per day, seven days a week.

18. Providers shall comply with DMAS marketing requirements at 12VAC30-130-2000. Providers that DMAS determines violate these marketing requirements shall be terminated as a Medicaid provider pursuant to 12VAC30-130-2000 E.

19. The provider shall determine who the primary care provider is and inform him of the individual's receipt of IIH services. The documentation shall include who was contacted, when the contact occurred, and what information was transmitted.

~~B.~~ D. Therapeutic day treatment for children and adolescents.

1. The service definition for therapeutic day treatment (TDT) for children and adolescents is contained in 12VAC30-50-130.

~~1.~~ 2. Therapeutic day treatment is appropriate for children and adolescents who meet one of the following:

a. Children and adolescents who require year-round treatment in order to sustain behavior or emotional gains.

b. Children and adolescents whose behavior and emotional problems are so severe they cannot be handled in self-contained or resource emotionally disturbed (ED) classrooms without:

(1) This programming during the school day; or

(2) This programming to supplement the school day or school year.

c. Children and adolescents who would otherwise be placed on homebound instruction because of severe emotional/behavior problems that interfere with learning.

d. Children and adolescents who (i) have deficits in social skills, peer relations or dealing with authority; (ii) are hyperactive; (iii) have poor impulse control; (iv) are

extremely depressed or marginally connected with reality.

e. Children in preschool enrichment and early intervention programs when the children's emotional/behavioral problems are so severe that they cannot function in these programs without additional services.

3. The service-specific provider assessment shall document the individual's behavior and describe how the individual meets these specific service criteria in subdivision 2 of this subsection.

4. Prior to admission to this service, a service-specific provider assessment shall be conducted by the LMHP as defined in 12VAC35-105-20.

5. An ISP shall be fully completed, signed, and dated by a QMHP-C, as defined in 12VAC35-105-20, and by the individual or the parent/guardian within 30 days of initiation of services and shall meet all requirements of an ISP as defined in 12VAC30-50-226. Individual progress notes shall be required for each contact with the individual and shall meet all of the requirements as defined in 12VAC30-50-130.

~~2.~~ 6. Such services ~~must~~ shall not duplicate those services provided by the school.

~~3.~~ 7. Individuals qualifying for this service ~~must~~ shall demonstrate a clinical necessity for the service arising from a condition due to mental, behavioral or emotional illness which results in significant functional impairments in major life activities. Individuals ~~must~~ shall meet at least two of the following criteria on a continuing or intermittent basis:

a. Have difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they are at risk of hospitalization or out-of-home placement because of conflicts with family or community.

b. Exhibit such inappropriate behavior that documented, repeated interventions by the mental health, social services, or judicial system are or have been necessary.

c. Exhibit difficulty in cognitive ability such that they are unable to recognize personal danger or recognize significantly inappropriate social behavior.

~~4.~~ 8. The enrolled provider of therapeutic day treatment for child and ~~adolescents~~ adolescent services ~~must~~ shall be licensed by ~~the Department of Mental Health, Mental Retardation and Substance Abuse Services~~ DBHDS to provide day support services. The provider shall also have a provider enrollment agreement in effect with DMAS prior to the delivery of this service that indicates that the provider offers therapeutic day treatment services for children and adolescents.

~~5.~~ 9. Services ~~must~~ shall be provided by an LMHP~~, a QMHP, or a QPPMH who is supervised by a QMHP or LMHP~~ or QMHP-C as defined in 12VAC35-105-20.

~~6.~~ 10. The minimum ~~staff-to-youth~~ staff-to-individual ratio as defined by DBHDS licensing requirements shall ensure that adequate staff is available to meet the needs of the ~~youth~~ individual identified on the ISP.

~~7.~~ 11. The program ~~must~~ shall operate a minimum of two hours per day and may offer flexible program hours (i.e., before or after school or during the summer). One unit of service ~~is~~ shall be defined as a minimum of two hours but less than three hours in a given day. Two units of service shall be defined as a minimum of three but less than five hours in a given day. Three units of service shall be defined as five or more hours of service in a given day.

~~8.~~ 12. Time required for academic instruction when no treatment activity is going on ~~cannot~~ shall not be included in the billing unit.

~~9.~~ 13. Services shall be provided following a ~~diagnostic~~ service-specific provider assessment that is ~~authorized~~ conducted by an LMHP as defined in 12VAC35-105-20. ~~Services must be provided in accordance with an ISP which must be fully completed within 30 days of initiation of the service.~~ An LMHP shall make and document the diagnosis. The service-specific provider assessment shall include the elements specified in subsection A of this section.

14. If an individual receiving services is also receiving case management services pursuant to 12VAC30-50-420 or 12VAC30-50-430, the provider shall collaborate with the case manager and provide notification of the provision of services. In addition, the provider shall send monthly updates to the case manager on the individual's status. A discharge summary shall be sent to the case manager within 30 days of the service discontinuation date.

15. The provider shall determine who the primary care provider is and inform him of the child's receipt of community mental health rehabilitative services. The documentation shall include who was contacted, when the contact occurred, and what information was transmitted.

16. Providers shall comply with DMAS marketing requirements as set out in 12VAC30-130-2000. Providers that DMAS determines have violated these marketing requirements shall be terminated as a Medicaid provider pursuant to 12VAC30-130-2000 E.

17. If there is a lapse in services greater than 31 consecutive calendar days, the provider shall discharge the individual. If the individual continues to need services, a new assessment/admission documentation shall be prepared and a new service authorization shall be required.

~~C.~~ E. Community-Based Services for Children and Adolescents under 21 (Level A)

1. The staff ratio must be at least 1 to 6 during the day and at least 1 to 10 ~~while asleep~~ between 11 p.m. and 7 a.m. The program director supervising the program/group home must be, at minimum, a ~~qualified mental health~~

~~professional~~ QMHP-C, as defined in 12VAC35-105-20 ~~with a bachelor's degree and have at least one year of direct work with mental health clients~~. The program director must be employed full time.

2. ~~At~~ In order for Medicaid reimbursement to be approved, at least 50% of the provider's direct care staff at the group home must meet ~~DMAS~~ DBHDS' paraprofessional staff criteria, defined in ~~12VAC30-50-226~~ 12VAC35-105-20.

3. Authorization is required for Medicaid reimbursement. ~~DMAS shall monitor the services rendered. All Community-Based Services for Children and Adolescents under 21 (Level A) must be authorized prior to reimbursement for these services. Services rendered without such authorization shall not be covered.~~ All community-based services for children and adolescents under 21 (Level A) require authorization prior to reimbursement for these services. Reimbursement shall not be made for this service when other less intensive services may achieve stabilization.

4. Services must be provided in accordance with an Individual Service Plan (ISP) ~~(plan of care)~~, which must be fully completed within 30 days of authorization for Medicaid reimbursement.

5. Prior to admission, a service-specific provider assessment shall be conducted according to DMAS specifications described in 12VAC30-50-130.

6. Such service-specific provider assessments shall be performed by an LMHP as defined in 12VAC35-105-20.

7. If an individual receiving community-based services for children and adolescents under 21 (Level A) is also receiving case management services, the provider shall collaborate with the case manager by notifying the case manager of the provision of Level A services and shall send monthly updates on the individual's progress. When the individual is discharged from Level A services, a discharge summary shall be sent to the case manager within 30 days of the service discontinuation date.

~~D.~~ F. Therapeutic Behavioral Services for Children and Adolescents under 21 (Level B).

1. The staff ratio must be at least 1 to 4 during the day and at least 1 to 8 ~~while asleep~~ between 11 p.m. and 7 a.m. The clinical director must be a licensed mental health professional. The caseload of the clinical director must not exceed 16 ~~clients~~ individuals including all sites for which the clinical director is responsible. ~~The program director must be full time and be a qualified mental health professional with a bachelor's degree and at least one year's clinical experience.~~

2. The program director must be full time and be a qualified mental health professional with a bachelor's degree and at least one year's clinical experience.

~~2. At~~ 3. For Medicaid reimbursement to be approved, at least 50% of the provider's direct care staff ~~must~~ at the group home shall meet DMAS paraprofessional staff criteria, as defined in ~~12VAC30-50-226~~ 12VAC35-105-20. The program/group home must coordinate services with other providers.

~~3.~~ 4. All Therapeutic Behavioral Services (Level B) ~~must~~ shall be authorized prior to reimbursement for these services. Services rendered without such prior authorization shall not be covered.

~~4.~~ 5. Services must be provided in accordance with an ISP ~~(plan of care)~~, which ~~must~~ shall be fully completed within 30 days of authorization for Medicaid reimbursement.

6. Prior to admission, a service-specific provider assessment shall be performed using all elements specified by DMAS in 12VAC30-50-130.

7. Such service-specific provider assessments shall be performed by an LMHP as defined in 12VAC35-105-20.

8. If an individual receiving therapeutic behavioral services for children and adolescents under 21 (Level B) is also receiving case management services, the therapeutic behavioral services provider must collaborate with the care coordinator/case manager by notifying him of the provision of Level B services and the Level B services provider shall send monthly updates on the individual's treatment status. When the individual is discharged from Level B services, a discharge summary shall be sent to the care coordinator/case manager within 30 days of the discontinuation date.

9. The provider shall determine who the primary care provider is and inform him of the individual's receipt of these Level B services. The documentation shall include who was contacted, when the contact occurred, and what information was transmitted.

~~E.~~ G. Utilization review. Utilization reviews for Community-Based Services for Children and Adolescents under 21 (Level A) and Therapeutic Behavioral Services for Children and Adolescents under 21 (Level B) shall include determinations whether providers meet all DMAS requirements, including compliance with DMAS marketing requirements. Providers that violate the DMAS marketing requirements shall be terminated as a Medicaid provider pursuant to 12VAC30-130-2000 E.

12VAC30-60-143. Mental health services utilization criteria; definitions.

A. This section sets out the utilization criteria and standards relative to the community mental health services set out in 12VAC30-50-226. This section also contains definitions for the following words and terms which shall have the following meanings unless the context indicates otherwise:

"Licensed Mental Health Professional" or "LMHP" means the same as defined in 12VAC35-105-20.

"Qualified mental health professional-adult" or "QMHP-A" means the same as defined in 12VAC35-105-20.

"Qualified mental health professional-child" or "QMHP-C" means the same as defined in 12VAC35-105-20.

~~A.~~ B. Utilization reviews shall include determinations that providers meet the following requirements:

1. The provider shall meet the federal and state requirements for administrative and financial management capacity. The provider shall obtain, prior to the delivery of services, and shall maintain and update periodically as the Department of Medical Assistance Services (DMAS) or its contractor requires, a current Provider Enrollment Agreement for each Medicaid service that the provider offers. DMAS shall not reimburse providers who do not enter into a Provider Enrollment Agreement for a service prior to offering that service.

2. The provider shall document and maintain individual case records in accordance with state and federal requirements.

3. The provider shall ensure eligible ~~recipients~~ individuals have free choice of providers of mental health services and other medical care under the Individual Service Plan.

4. Providers shall comply with DMAS marketing requirements as set out in 12VAC30-130-2000. Providers that DMAS determines have violated these marketing requirements shall be terminated as a Medicaid provider pursuant to 12VAC30-130-2000 E. Providers whose contracts are terminated shall be afforded the right of appeal pursuant to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

5. If an individual receiving community mental health rehabilitative services is also receiving case management services pursuant to 12VAC30-50-420 or 12VAC30-50-430, the provider shall collaborate with the case manager by notifying the case manager of the provision of community mental health rehabilitative services and sending monthly updates on the individual's treatment status. A discharge summary shall be sent to the care coordinator/case manager within 30 calendar days of the discontinuation of services.

6. The provider shall determine who the primary care provider is and inform him of the individual's receipt of community mental health rehabilitative services. The documentation shall include who was contacted, when the contact occurred, and what information was transmitted.

7. The provider shall include the individual and the family/caregiver, as may be appropriate, in the development of the ISP. To the extent that the individual's condition requires assistance for participation, assistance shall be provided. The ISP shall be updated annually or as the needs and progress of the individual changes. An ISP that is not updated either annually or as the treatment interventions based on the needs and progress of the individual changes shall be considered outdated. An ISP that does not include all required elements specified in 12VAC30-50-226 shall be considered incomplete. All ISPs shall be completed, signed, and contemporaneously dated by the QMHP-A or QMHP-C, as defined in 12VAC35-105-20, preparing the ISP within a maximum of 30 days of the date of the completed assessment unless otherwise specified. The ISP shall also be signed by the parent/legal guardian and individual. Documentation shall be provided if the individual, who is a minor child, is unable or unwilling to sign the ISP.

C. Direct clinical services provided on a part-time basis will be reviewed by DMAS or its contractor based on the number of hours provided and counted based upon how many full-time (40 hours) weeks of service were provided.

~~B.~~ D. Day treatment/partial hospitalization services shall be provided following a ~~diagnostic~~ service-specific provider assessment and be authorized by the ~~physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, or licensed clinical nurse specialist psychiatric~~ LMHP as defined in 12VAC35-105-20. An ISP, as defined in 12VAC30-50-226, shall be fully completed, signed, and dated by either the LMHP or the ~~QMHP~~ QMHP-A, as defined ~~at 12VAC30-50-226~~ in 12VAC35-105-20, within 30 days of service initiation.

1. The enrolled provider of day treatment/partial hospitalization shall be licensed by ~~DMHMRSAS~~ DBHDS as providers of day treatment services.

2. Services shall only be provided by an LMHP, ~~a QMHP~~ QMHP-A, QMHP-C, or a qualified paraprofessional under the supervision of a ~~QMHP~~ QMHP-A, QMHP-C, or an LMHP as defined ~~at 12VAC30-50-226~~ in 12VAC35-105-20.

3. The program shall operate a minimum of two continuous hours in a 24-hour period.

4. Individuals shall be discharged from this service when other less intensive services may achieve or maintain psychiatric stabilization.

~~C.~~ E. Psychosocial rehabilitation services shall be provided to those individuals who have experienced long-term or repeated psychiatric hospitalization, or who experience difficulty in activities of daily living and interpersonal skills, or whose support system is limited or nonexistent, or who are unable to function in the community without intensive intervention or when long-term services are needed to maintain the individual in the community.

1. Psychosocial rehabilitation services shall be provided following ~~an~~ a service-specific provider assessment which clearly documents the need for services. ~~The~~ This assessment shall be completed by either an LMHP, ~~or a QMHP, and~~ QMHP-A, or QMHP-C. If the service-specific provider assessment is done by a QMHP-A or a QMHP-C, it shall be approved by ~~a~~ an LMHP within 30 calendar days of admission to services. An ISP shall be completed by either the LMHP or the ~~QMHP~~ QMHP-A within 30

calendar days of service initiation. ~~Every~~ At least every three months, the LMHP, ~~or~~ the ~~QMHP~~ QMHP-A, or the QMHP-C must review, modify as appropriate, and update the ISP.

2. Psychosocial rehabilitation services of any individual that continue more than six months ~~must~~ shall be reviewed by an LMHP who ~~must~~ shall document the continued need for the service. The ISP shall be rewritten at least annually.

3. The enrolled provider of psychosocial rehabilitation services shall be licensed by ~~DMHMRSAS~~ DBHDS as a provider of psychosocial rehabilitation or clubhouse services.

4. Psychosocial rehabilitation services may be provided by either an LMHP, ~~a QMHP~~ QMHP-A, or QMHP-C, or a qualified paraprofessional under the supervision of either a ~~QMHP~~ QMHP-A, a QMHP-C, or an LMHP.

5. The program shall operate a minimum of two continuous hours in a 24-hour period.

6. Time allocated for field trips may be used to calculate time and units if the goal is to provide training in an integrated setting, and to increase the ~~client's~~ individual's understanding or ability to access community resources.

~~D. Admission to crisis~~ F. Crisis intervention services ~~is~~ shall be indicated following a marked reduction in the individual's psychiatric, adaptive or behavioral functioning or an extreme increase in personal distress.

1. The crisis intervention services provider shall be licensed as a provider of outpatient services by ~~DMHMRSAS~~ DBHDS.

2. Client-related activities provided in association with a face-to-face contact are reimbursable.

3. An Individual Service Plan (ISP) shall not be required for newly admitted individuals to receive this service. Inclusion of crisis intervention as a service on the ISP shall not be required for the service to be provided on an emergency basis.

4. For individuals receiving scheduled, short-term counseling as part of the crisis intervention service, an ISP ~~must~~ shall be developed or revised by the fourth face-to-face contact to reflect the short-term counseling goals ~~by the fourth face-to-face contact~~.

5. Reimbursement shall be provided for short-term crisis counseling contacts occurring within a 30-day period from the time of the first face-to-face crisis contact. Other than the annual service limits, there are no restrictions (regarding number of contacts or a given time period to be covered) for reimbursement for unscheduled crisis contacts.

6. Crisis intervention services may be provided to eligible individuals outside of the clinic and billed, provided the provision of out-of-clinic services is clinically/programmatically appropriate. Travel by staff to provide out-of-clinic services ~~is~~ shall not be reimbursable. Crisis intervention may involve contacts with the family or significant others. If other clinic services are billed at the same time as crisis intervention, documentation must clearly support the separation of the services with distinct treatment goals.

7. An LMHP, ~~a QMHP~~ QMHP-A, QMHP-C, or a certified prescreener ~~must~~ shall conduct a face-to-face service-specific provider assessment. If the ~~QMHP~~ QMHP-A or QMHP-C performs the service-specific provider assessment, it must be reviewed and approved by an LMHP or a certified prescreener within 72 hours of the face-to-face service-specific provider assessment. The service-specific provider assessment shall document the need for and the anticipated duration of the crisis service. ~~Crisis intervention will be provided by an LMHP, a certified prescreener, or a QMHP.~~

8. Crisis intervention shall be provided by either an LMHP, a certified prescreener, a QMHP-A, or a QMHP-C.

~~8.~~ 9. Crisis intervention shall not require an ISP.

~~9.~~ 10. For an admission to a freestanding inpatient psychiatric facility for individuals younger than age 21, federal regulations (42 CFR 441.152) require certification of the admission by an independent team. The independent team must include mental health professionals, including a physician. ~~Preadmission~~ These preadmission screenings cannot be billed unless the requirement for an independent team certification, with a physician's signature, is met.

~~10.~~ 11. Services ~~must~~ shall be documented through daily notes and a daily log of time spent in the delivery of services.

~~E.~~ G. Case management services ~~(pursuant to 12VAC30-50-226)~~ pursuant to 12VAC30-50-420 (seriously mentally ill adults and emotionally disturbed children) or 12VAC30-50-430 (youth at risk of serious emotional disturbance).

1. Reimbursement shall be provided only for "active" case management clients, as defined. An active client for case management shall mean an individual for whom there is ~~a plan of care~~ an ISP in effect ~~which~~ that requires regular direct or client-related contacts or activity or communication with the ~~client~~ individuals or families, significant others, service providers, and others including a minimum of one face-to-face ~~client~~ individual contact within a 90-day period. Billing can be submitted only for months in which direct or client-related contacts, activity, or communications occur.

2. The Medicaid eligible individual shall meet the ~~DMHMRSAS~~ DBHDS criteria of serious mental illness, serious emotional disturbance in children and adolescents, or youth at risk of serious emotional disturbance.

3. There shall be no maximum service limits for case management services. Case management shall not be billed for persons in institutions for mental disease.

4. The ISP ~~must~~ shall document the need for case management and be fully completed within 30 calendar days of initiation of the service~~, and the~~. The case manager shall review the ISP at least every three months. The review will be due by the last day of the third month following the month in which the last review was completed. A grace period will be granted up to the last day of the fourth month following the month of the last review. When the review was completed in a grace period, the next subsequent review shall be scheduled three months from the month the review was due and not the date of actual review.

5. The ISP shall also be updated at least annually.

6. The provider of case management services shall be licensed by ~~DMHMRSAS~~ DBHDS as a provider of case management services.

~~F.~~ H. Intensive community treatment (ICT) for adults.

1. ~~An~~ A service-specific provider assessment which documents eligibility and the need for this service shall be completed by either the LMHP ~~or the QMHP~~, QMHP-A, or the QMHP-C prior to the initiation of services. This assessment ~~must~~ shall be maintained in the individual's records. Proper completion of the service-specific provider assessment shall comport with the requirements of 12VAC30-50-130.

2. An individual service plan, based on the needs as determined by the service-specific provider assessment, must be initiated at the time of admission and must be fully developed by either the LMHP ~~or the QMHP~~, QMHP-A, or QMHP-C and approved by the LMHP within 30 days of the initiation of services.

3. ICT may be billed if the ~~client~~ individual is brought to the facility by ICT staff to see the psychiatrist. Documentation must be present in the individual's record to support this intervention.

4. The enrolled ICT provider shall be licensed by the ~~DMHMRSAS~~ DBHDS as a provider of intensive community services or as a program of assertive community treatment, and must provide and make available emergency services 24-hours per day, seven days per week, 365 days per year, either directly or on call.

5. ICT services must be documented through a daily log of time spent in the delivery of services and a description of the activities/services provided. There must also be at least a weekly note documenting progress or lack of progress toward goals and objectives as outlined on the ISP.

~~G.~~ I. Crisis stabilization services.

1. This service ~~must~~ shall be authorized following a face-to-face service-specific provider assessment by either an LMHP, a certified prescreener, ~~or~~ a ~~QMHP~~ QMHP-A, or QMHP-C. This assessment must be reviewed and approved by a licensed mental health professional within 72 hours of the assessment.

2. The service-specific provider assessment must document the need for crisis stabilization services and anticipated duration of need.

3. The Individual Service Plan (ISP) must be developed or revised within ~~10 business days of the approved assessment or reassessment~~ 24 hours of admission to this service. The LMHP, certified prescreener, QHMP-A, or ~~QMHP~~ QHMP-C shall develop the ISP.

4. Room and board, custodial care, and general supervision are not components of this service.

5. Clinic option services are not billable at the same time crisis stabilization services are provided with the exception of clinic visits for medication management. Medication management visits may be billed at the same time that crisis stabilization services are provided but documentation must clearly support the separation of the services with distinct treatment goals.

6. Individuals qualifying for this service must demonstrate a clinical necessity for the service arising from a condition due to an acute crisis of a psychiatric nature which puts the individual at risk of psychiatric hospitalization.

7. Providers of crisis stabilization shall be licensed by ~~DMHMRSAS~~ DBHDS as providers of outpatient services.

~~H.~~ J. Mental health support services. Refer to 12VAC30-50-226 for criteria, service authorization requirements, and service-specific provider assessments that shall apply for individuals in order to qualify for this service.

1. ~~At~~ Prior to admission, an appropriate face-to-face service-specific provider assessment must be ~~made~~ completed, signed, and dated, and documented by the LMHP ~~or the QMHP~~ indicating that service needs can best be met through mental health support services. ~~The assessment must be performed by the LMHP or the QMHP and approved by the LMHP within 30 days of the date of admission. The LMHP or the QMHP will complete the ISP within 30 days of the admission to this service.~~

2. The ISP ~~must~~, as defined in 12VAC30-50-226, shall be completed, signed, and dated by a QMHP-A or QMHP-C within 30 calendar days of service initiation, and shall indicate the specific supports and services to be provided and the goals and objectives to be accomplished. The LMHP or ~~QMHP will~~ QMHP-A shall supervise the care if delivered by the qualified paraprofessional.

~~2.~~ 3. Every three months, the LMHP, ~~or the QMHP must~~ QMHP-A, or QMHP-C shall review, modify as appropriate, and update the ISP showing a new signature and date of each revision. The ISP ~~must~~ shall be rewritten, signed, and dated by either a QMHP-A, QMHP-C, or an LMHP at least annually.

~~3.~~ 4. Only direct face-to-face contacts and services to individuals shall be reimbursable.

~~4.~~ 5. Any services provided to the ~~client~~ individual that are strictly academic in nature shall not be billable. These

include, but are not limited to, such basic educational programs as instruction in reading, science, mathematics, or the individual's work towards obtaining a GED.

~~5.~~ 6. Any services provided to ~~clients~~ individuals that are strictly vocational in nature shall not be billable. However, support activities and activities directly related to assisting ~~a client~~ an individual to cope with a mental illness to the degree necessary to develop appropriate behaviors for operating in an overall work environment shall be billable.

~~6.~~ 7. Room and board, custodial care, and general supervision are not components of this service.

~~7.~~ 8. This service is not billable for individuals who reside in facilities where staff are expected to provide such services under facility licensure requirements.

~~8.~~ 9. Provider qualifications. The enrolled provider of mental health support services ~~must~~ shall be licensed by ~~DMHMRSAS~~ DBHDS as a provider of supportive in-home services, intensive community treatment, or as a program of assertive community treatment. Individuals employed or contracted by the provider to provide mental health support services ~~must~~ shall have training in the characteristics of mental illness and appropriate interventions, training strategies, and support methods for persons with mental illness and functional limitations.

~~9.~~ 10. Mental health support services, which continue for six consecutive months, ~~must~~ shall be reviewed and renewed at the end of the six-month period of authorization by an LMHP who ~~must~~ shall document the continued need for the services.

~~10.~~ 11. Mental health support services ~~must~~ shall be documented through a daily log of time involved in the delivery of services and a minimum of a weekly summary note of services provided.

DOCUMENTS INCORPORATED BY REFERENCE (12VAC30-60)

Virginia Medicaid Nursing Home Manual, Department of Medical Assistance Services.

Virginia Medicaid Rehabilitation Manual, Department of Medical Assistance Services.

Virginia Medicaid Hospice Manual, Department of Medical Assistance Services.

Virginia Medicaid School Division Manual, Department of Medical Assistance Services.

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

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

Medicaid Special Memo, Subject: New Service Authorization Requirement for an Independent Clinical Assessment for Medicaid and FAMIS Children's Community Mental Health Rehabilitative Services, dated June 16, 2011, Department of Medical Assistance Services.

Medicaid Special Memo, Subject: Changes to Children Community Mental Health Rehabilitative Services - Children's Services, July 1, 2010 & September 1, 2010, dated July 23, 2010, Department of Medical Assistance Services.

Medicaid Special Memo, Subject: Changes to Community Mental Health Rehabilitative Services - Adult-Oriented Services, July 1, 2010 & September 1, 2010, dated July 23, 2010, Department of Medical Assistance Services.

Part XVII
Marketing of Provider Services

12VAC30-130-2000. Marketing requirements and restrictions.

A. Purpose. The purpose of these rules shall be to define how providers shall be permitted to market their services to potential Medicaid or FAMIS beneficiaries and individuals who may or may not be currently enrolled with the particular provider. This shall apply to providers of community mental health services (12VAC30-50-226) and Early and Periodic Screening, Diagnosis, and Treatment Program (EPSDT) community mental health services (12VAC30-50-130) with the exception of Part C services.

B. Definitions.

"Beneficiaries" means individuals of any age and their families who are using or who may use community mental health rehabilitative services.

"DMAS" means the Department of Medical Assistance Services.

"FAMIS" means Family Access to Medical Insurance Security.

"Provider" means an individual or organizational entity that is appropriately licensed as required and enrolled as a DMAS provider of community mental health and substance abuse services.

C. Requirements.

1. Marketing and promotional activities (including provider promotional activities) shall comply with all relevant federal and state laws.

2. Providers shall provide clearly written materials that completely and accurately describe the Medicaid or FAMIS behavioral health service or services offered, the beneficiary eligibility requirements to receive the service or services, applicable fees and other charges, and all other information required for beneficiaries and their families to make fully informed decisions about enrollment into the service or services offered by the provider that is marketing its services.

3. Providers shall distribute their marketing materials only in the service locations approved within the license issued

by the Licensing Division of the Department of Behavioral Health and Developmental Services.

4. Providers shall receive DMAS' approval of all marketing materials and all changes to prior-approved marketing materials prior to their use or dissemination. Providers shall receive DMAS' marketing plan approval before engaging in any marketing activity.

a. Within 30 calendar days of receipt of providers' submissions, DMAS shall review submitted individual marketing materials and services and either approve them or deny their use or direct that specified modifications be made.

b. Providers failing to implement DMAS' required changes, or those which use disapproved materials, shall be subject to termination of the provider agreement pursuant to 12VAC30-130-2000 E.

D. Limits and prohibitions.

1. Providers shall not offer cash or other noncash incentives to their enrolled or prospective members for the purposes of marketing, retaining beneficiaries within the providers' services, or rewarding behavior changes in compliance with goals and objectives stated in beneficiaries' individual service plans.

2. While engaging in marketing activities, providers shall not:

a. Engage in any marketing activities that could misrepresent the service or DMAS;

b. Assert or state that the beneficiary must enroll with the provider in order to prevent the loss of Medicaid or FAMIS benefits;

c. Conduct door-to-door, telephone, unsolicited school presentations, or other 'cold call' marketing directed at potential or current beneficiaries;

d. Conduct any marketing activities or use marketing materials that are not specifically approved by DMAS;

e. Make home visits for direct or indirect marketing or enrollment activities except when specifically requested by the beneficiary or family;

f. Collect or use Medicaid or FAMIS confidential information or Medicaid or FAMIS protected health information (PHI), as that term is defined in Health Insurance Portability and Accountability Act of 1996 (HIPPA), that may be either provided by another entity or obtained by marketing provider, to identify and market services to prospective beneficiaries;

g. Violate the confidential information or confidentiality of PHI by sharing or selling or sharing lists of information about beneficiaries for any purposes other than the performance of the provider's obligations relative to its DMAS provider agreement;

h. Contact, after the effective date of disenrollment, beneficiaries who choose to disenroll from the provider except as may be specifically required by DMAS;

i. Conduct service assessment or enrollment activities at any marketing or community event; or

j. Assert or state (either orally or in writing) that the provider is endorsed either by the Centers for Medicare and Medicaid Services, DMAS, or any other federal or state governmental entities.

E. Termination. Providers who conduct any marketing activity, that is not specifically approved by DMAS or who violate any of the above prohibitions or requirements shall be subject to termination of their provider agreements for the services affected by the marketing plan/activity.

Part XVIII
Behavioral Health Services

12VAC30-130-3000. Behavioral health services.

A. Behavioral health services that shall be covered only for individuals from birth through 21 years of age are set out in 12VAC30-50-130 B 5 and include: (i) intensive in-home services (IIH), (ii) therapeutic day treatment (TDT), (iii) community based services for children and adolescents (Level A), and (iv) therapeutic behavioral services (Level B).

B. Behavioral health services that shall be covered for individuals regardless of age are set out in 12VAC30-50-226 and include: (i) day treatment/partial hospitalization, (ii) psychosocial rehabilitation, (iii) crisis intervention, (iv) case management as set out in 12VAC30-50-420 and 12VAC30-50-430, (v) intensive community treatment (ICT), (vi) crisis stabilization services, and (vii) mental health support services (MHSS).

12VAC30-130-3010. Definitions.

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

"Behavioral health authority" or "BHA" means the local agency that administers services set out in § 37.2-601 of the Code of Virginia.

"Community services board" or "CSB" means the local agency that administers services set out in § 37.2-500 of the Code of Virginia.

"Behavioral health services administrator" or "BHSA" means an entity that manages or directs a behavioral health benefits program under contract with DMAS.

"DMAS" means the Department of Medical Assistance Services.

"Independent assessor" means a professional who performs the independent clinical assessment who may be employed by either the behavioral health services administrator, community services boards/behavioral health authorities (CSBs/BHAs) or their subcontractors.

"Independent clinical assessment" or "ICA" means the assessment that is performed under contract with DMAS either by the behavioral health services administrator or the CSB/BHA, or its subcontractor, prior to the initiation of (i) intensive in-home (IIH) services or therapeutic day treatment (TDT) as set out in 12VAC30-50-130 and (ii) mental health support services (MHSS) for children and adolescents (MHSS) as set out in 12VAC30-50-226.

"VICAP" means the form entitled Virginia Independent Clinical Assessment Program that is required to record an individual's independent clinical assessment information.

12VAC30-130-3020. Independent clinical assessment requirements.

A. The independent clinical assessment (ICA), as set forth in the Virginia Independent Assessment Program (VICAP-001) form, shall contain the Medicaid individual-specific elements of information and data that shall be required for an individual younger than the age of 21 to be approved for intensive in-home (IIH) services, therapeutic day treatment (TDT), or mental health support services (MHSS) or any combination thereof.

1. The required elements in the ICA shall be specified in the VICAP form with either the BHSA or CSBs/BHAs and DMAS.

2. Service recommendations set out in the ICA shall not be subject to appeal.

B. Independent clinical assessment requirements.

1. Effective July 18, 2011, an ICA shall be required as a part of the service authorization process for Medicaid and Family Access to Medical Insurance Security (FAMIS) intensive in-home (IIH) services, therapeutic day treatment (TDT), or mental health support services (MHSS) for individuals up to the age of 21. This ICA shall be performed prior to the request for service authorization and initiation of treatment for individuals who are not currently receiving or authorized for services. The ICA shall be completed prior to the service provider conducting an assessment or providing treatment.

a. Each individual shall have at least one ICA prior to the initiation of either IIH or TDT, or MHSS for individuals up to the age of 21.

b. For individuals who are already receiving IIH services or TDT, or MHSS, as of July 18, 2011, the requirement for a completed ICA shall be effective for service reauthorizations for dates of services on and after September 1, 2011.

c. Individuals who are being discharged from residential treatment (DMAS service Levels A, B, or C) or inpatient psychiatric hospitalization do not need an ICA prior to receiving community IIH services or TDT, or MHSS. They shall be required, however, to have an ICA as part of the first subsequent service reauthorization for IIH services, TDT, MHSS, or any combination thereof.

2. The ICA shall be completed and submitted to DMAS or its service authorization contractor by the independent assessor prior to the service provider submitting the service authorization or reauthorization request to the DMAS service authorization contractor. Failure to meet these requirements shall result in the provider's service authorization or reauthorization request being returned to the provider.

3. A copy of the ICA shall be retained in the service provider's individual's file.

4. If a service provider receives a request from parents or legal guardians to provide IIH services, TDT, or MHSS for individuals who are younger than 21 years of age, the service provider shall refer the parent or legal guardian to the BHSA or the local CSB/BHA to obtain the ICA prior to providing services.

a. In order to provide services, the service provider shall be required to conduct a service-specific provider assessment as defined in 12VAC30-50-130.

b. If the selected service provider concurs that the child meets criteria for the service recommended by the independent assessor, the selected service provider shall submit a service authorization request to DMAS service authorization contractor. The service-specific provider's assessment for IIH services, TDT, or MHSS shall not occur prior to the completion of the ICA by the BHSA or CSB/BHA, or its subcontractor.

c. If within 30 days after the ICA a service provider identifies the need for services that were not recommended by the ICA, the service provider shall contact the independent assessor and request a modification. The request for a modification shall be based on a significant change in the individual's life that occurred after the ICA was conducted. Examples of a significant change may include, but shall not be limited to, hospitalization; school suspension or expulsion; death of a significant other; or hospitalization or incarceration of a parent or legal guardian.

d. If the independent assessment is greater than 30 days old, a new ICA must be obtained prior to the initiation of IIH services, TDT, or MHSS for individuals younger than 21 years of age.

e. If the parent or legal guardian disagrees with the ICA recommendation, the parent or legal guardian may request that a service provider perform his own evaluation. If after conducting a service-specific provider assessment the service provider identifies additional documentation previously not submitted for the ICA that demonstrates the service is medically necessary and clinically indicated, the service provider may submit the supplemental information with a service authorization request to the DMAS service authorization contractor. The DMAS service authorization contractor will review the service authorization submission and the ICA and

make a determination. If the determination results in a service denial, the individual, parent or legal guardian, and service provider will be notified of the decision and the appeals process.

5. If the individual is in immediate need of treatment, the independent clinical assessor shall refer the individual to the appropriate enrolled Medicaid emergency services providers in accordance with 12VAC30-50-226 and shall also alert the individual's managed care organization.

C. Requirements for behavioral health services administrator and community services boards/behavioral health authorities.

1. When the BHSA, CSB, or BHA has been contacted by the parent or legal guardian, the ICA appointment shall be offered within five business days of a request for IIH services and within 10 business days for a request for TDT or MHSS, or both. The appointment may be scheduled beyond the respective time frame at the documented request of the parent or legal guardian.

2. The independent assessor shall conduct the ICA with the individual and the parent or legal guardian using the VICAP-001 form and make a recommendation for the most appropriate medically necessary services, if indicated. Referring or treating providers shall not be present during the assessment but may submit supporting clinical documentation to the assessor.

3. The ICA shall be effective for a 30-day period.

4. The independent assessor shall enter the findings of the ICA into the DMAS service authorization contractor's web portal within one business day of conducting the assessment. The independent clinical assessment form (VICAP-001) shall be completed by the independent assessor within three business days of completing the ICA.

D. The individual or his parent or legal guardian shall have the right to freedom of choice of service providers.

12VAC30-130-3030. Application to services.

A. Intensive in-home (IIH) services.

1. Prior to the provision of IIH services, an independent clinical assessment shall be conducted by a person who meets the licensed mental health professional definition found at 12VAC35-105-20 and who is either employed by or contracted with a behavioral health services administrator (BHSA), community services board (CSB), behavioral health authority (BHA), or a subcontractor to the BHSA, CSB, or BHA in accordance with DMAS approval.

2. IIH services that are rendered in the absence of the required prior independent clinical assessment shall not be reimbursed.

B. Therapeutic day treatment (TDT).

1. Prior to the provision of TDT services, an independent clinical assessment shall be conducted by a person who meets the licensed mental health professional definition found at 12VAC35-105-20 and who is employed by or contracted with a BHSA, CSB, BHA, or the subcontractor of the BHSA, CSB, or BHA in accordance with DMAS approval.

2. TDT services that are rendered in the absence of the required prior independent clinical assessment shall not be reimbursed.

C. Mental health support services (MHSS).

1. Prior to the provision of MHSS, an independent clinical assessment, as defined in 12VAC30-130-3010, shall be conducted by a person who meets the licensed mental health professional definition found at 12VAC35-105-20 and who is employed by or contracted with a BHSA, CSB or BHA, or a subcontractor of a BHSA, CSB, or BHA in accordance with DMAS approval.

2. MHSS rendered in the absence of the required prior independent clinical assessment shall not be reimbursed.

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 of a form with a hyperlink to access the 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 (12VAC30-130)

Forms accompanying Part II of this chapter:

Virginia Uniform Assessment Instrument.

Forms accompanying Part III of this chapter:

MI/MR Supplement Level I (form and instructions).

MI/MR Supplement Level II.

Forms accompanying Part VII of this chapter:

Request for Hospice Benefits DMAS-420, Revised 5/91.

Forms accompanying Part VIII of this chapter:

Inventory for Client and Agency Planning (ICAP) Response Booklet, D9200/D9210, 1986.

Forms accompanying Part IX of this chapter:

Patient Information form.

Instructions for Completion DMAS-122 form.

Forms accompanying Part XII of this chapter:

Health Insurance Premium Payment (HIPP) Program Insurance Information Request Form.

Health Insurance Premium Payment (HIPP) Program Medical History Form (HIPP Form-7, Rev. 11/92).

Health Insurance Premium Payment (HIPP) Program Employers Insurance Verification Form (HIPP Form-2, Rev. 11/92).

Health Insurance Premium Payment (HIPP) Program Employer Agreement (HIPP Form-3, Rev. 11/92).

Health Insurance Premium Payment (HIPP) Program Notice of HIPP Determination (HIPP Form-4, Rev. 11/92).

Health Insurance Premium Payment (HIPP) Program Notice of HIPP Approval.

Health Insurance Premium Payment (HIPP) Program Notice of HIPP Status (HIPP Form-6, Rev. 11/92).

Inventory for Client and Agency Planning (ICAP) Response Booklet, D9200/D9210, 1986.

Forms accompanying Part XIV of this chapter:

Residential Psychiatric Treatment for Children and Adolescents, FH/REV (eff. 10/20/99).

Forms accompanying Part XV of this chapter:

Treatment Foster Care Case Management Agreement, TFC CM Provider Agreement DMAS-345, FH/REV (eff. 10/20/99).

Forms accompanying Part XVIII of this chapter:

Virginia Independent Clinical Assessment Program (VICAP) (eff. 06/11).

VA.R. Doc. No. R11-2790; Filed January 14, 2013, 2:26 p.m.

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

Final Regulation

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

Title of Regulation: **20VAC5-201. Rules Governing Utility Rate Applications and Annual Informational Filings (amending 20VAC5-201-10, 20VAC5-201-20, 20VAC5-201-50, 20VAC5-201-90).**

Statutory Authority: §§ 12.1-13 and 56-585.1 of the Code of Virginia.

Effective Date: February 1, 2013.

Agency Contact: Tim Lough, Special Projects Engineer, Division of Energy Regulation, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9590, FAX (804) 371-9350, or email tim.lough@scc.virginia.gov.

Summary:

Section 56-585.1 A 2 c of the Code of Virginia establishes a performance incentive for investor-owned incumbent electric utilities, which authorizes the State Corporation Commission to increase or decrease a utility's combined rate of return on common equity by up to 100 basis points for generating plant performance, customer service, and operating efficiency as compared to nationally recognized standards determined by the commission to be appropriate for such purposes. The proposed amendments implement the performance incentives by requiring investor-owned incumbent electric utilities to file data pertaining to their generating plant performance, customer service, and operating efficiency with their biennial review applications.

Changes to the proposed regulations include (i) exempting those investor-owned electric utilities who are receiving a Renewable Portfolio Standard Performance Incentive under § 56-585.2 C of the Code of Virginia from filing the information if they are not seeking more than a 50 basis point increase in their combined rate of return on common equity pursuant to § 56-585.1 A 2 c of the Code of Virginia, (ii) eliminating the requirement that investor-owned electric utilities file J.D. Power and Associates' surveys, and (iii) modifying the filing requirements to give investor-owned electric utilities greater discretion when filing information describing the specific actions, costs, and benefits of actions undertaken to improve generating plant performance, customer service, and operating efficiency.

AT RICHMOND, JANUARY 11, 2013

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE-2012-00021

Ex Parte: In re: In the matter of adopting rules and regulations for consideration of the Performance Incentive authorized by § 56-585.1 A 2 c of the Code of Virginia

ORDER ADOPTING RULES AND REGULATIONS

On March 5, 2012, the State Corporation Commission ("Commission") issued an Order Initiating Rulemaking Proceeding ("Initial Order") to develop rules and regulations to implement the Performance Incentive authorized by § 56-585.1 A 2 c of the Code of Virginia ("Code"). This statute, enacted in 2007 as part of the Virginia Electric Utility Regulation Act,[1] establishes a Performance Incentive for investor-owned incumbent electric utilities which authorizes the Commission to increase or decrease a utility's combined rate of return on common equity by up to 100 basis points based on a utility's generating plant performance, customer service, and operating efficiency, as compared to nationally recognized standards determined by the Commission to be appropriate for such purposes. The Initial Order directed the Commission's Staff ("Staff") to develop proposed rules and regulations to implement the Performance Incentive statute; to solicit input from stakeholders and other interested persons when developing the proposed rules and regulations; and to

file the proposed rules and regulations with the Commission no later than September 5, 2012. Further, when developing the proposed rules and regulations, the Commission directed its Staff not to propose rules and regulations that included a "mechanical" or "formulaic" approach that would limit the Commission's discretion when considering whether to implement a positive or negative Performance Incentive in future cases.

On September 5, 2012, the Staff filed its report ("Staff Report") with the Commission. The Staff Report, among other things, described the collaborative process undertaken by the Staff to develop the proposed rules and regulations; summarized the comments of the various stakeholders and interested persons made during the course of the collaborative process; and contained the Staff's proposed rules and regulations to implement the Performance Incentive authorized by § 56-585.1 A 2 c of the Code.

On September 14, 2012, the Commission issued an Order for Notice and Hearing, which, among other things, revised the proposed rules and regulations to require investor-owned incumbent electric utilities to file additional data with their biennial review applications detailing: (i) the proposed basis point increase in the combined rate of return on common equity and the revenue requirement impact of the utility's proposed Performance Incentive, if applicable; (ii) the specific actions undertaken by the utility to improve generating plant performance, customer service, and operating efficiency; (iii) the incremental costs of any such actions undertaken by the utility to improve performance; and (iv) the specific benefits, financial or otherwise, that customers receive as a result of such actions to improve the utility's generating plant performance, customer service, and operating efficiency. The Commission's Order for Notice and Hearing further directed that public notice of the proposed rules and regulations, as revised by the Commission, be published in newspapers of general circulation in Virginia and in the Virginia Register of Regulations; allowed interested persons to file written comments on the proposed rules and regulations on or before November 9, 2012; and scheduled a hearing on November 19, 2012, to receive and consider oral comments on the proposed rules and regulations.

On or before November 9, 2012, written comments were filed by Virginia Electric and Power Company ("DVP"), Appalachian Power Company ("APCo"), the Virginia Committee for Fair Utility Rates and the Old Dominion Committee for Fair Utility Rates (collectively, the "Committees"), the Southern Environmental Law Center ("SELC"), the Fairfax County Board of Supervisors, and AARP Virginia ("AARP").

The public hearing was convened on November 19, 2012, at which time oral comments were received from the following participants, by counsel: DVP, APCo, the Committees, SELC, the Division of Consumer Counsel, Office of the Attorney General ("Consumer Counsel"), and the Staff. Barbara Alexander appeared on behalf of AARP and Whitney Byrd appeared on behalf of the Wise Energy for Virginia Coalition and testified as public witnesses.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that the rules and regulations appended hereto as Attachment A should be adopted effective February 1, 2013.

While the Commission will not respond to each comment relating to the proposed rules and regulations in this Order, it has considered all comments submitted, both in writing and at the public hearing, and will address certain of those comments as follows.

Initially, the Commission notes that § 56-585.2 C of the Code prevents it from implementing a Performance Incentive lower than 50 basis points when a utility has achieved its renewable portfolio standard ("RPS") goals. That is, if a utility has received a 50 basis point RPS performance incentive as required by statute, then the Commission cannot reduce it by approving a Performance Incentive below 50 basis points. In such instance, the only action the Commission can take is to increase the Performance Incentive to something greater than 50 basis points. Thus, if a utility has received an applicable RPS performance incentive, it only shall be required to file Schedule 49 if it seeks a Performance Incentive higher than 50 basis points. This provision should not, however, be viewed as a determination that information related to generating plant performance, customer service, and operating efficiency is necessarily irrelevant for discovery and evidentiary purposes in a biennial review proceeding.

If a utility does not have an applicable RPS performance incentive, it shall be required to file Schedule 49 regardless of whether it seeks a positive Performance Incentive under § 56-585.1 A 2 c of the Code. Under the statute, this Performance Incentive can be positive or negative. Even if a utility does not seek a positive Performance Incentive, the information in Schedule 49 may be relevant in analyzing whether a negative Performance Incentive is warranted. Indeed, only requiring Schedule 49 when a utility seeks a positive Performance Incentive results in an asymmetrical requirement that is inconsistent with the statutory provisions providing for both positive and negative Performance Incentives. Thus, absent an applicable RPS performance incentive as discussed above, interested parties and the Staff will have access to information in Schedule 49, as it must be filed as part of the utility's biennial review.

The Commission further finds that Schedule 49 should be modified to eliminate the filing requirement for J.D. Power and Associates' surveys. Such surveys, by their very nature, are too subjective to rely upon when determining whether an incumbent electric utility should be awarded a positive or negative Performance Incentive. In many cases, the results of such surveys are based more on customer perceptions rather

than objective, quantifiable data indicating superior or inferior customer service by a utility. The best example of the subjective nature of such surveys relates to a utility's level of rates and/or frequency of rate increase applications. Customers may be more likely to give negative responses in such surveys if they believe that a utility's rates are too high or that a utility's requests for rate relief are too frequent, even though a utility's customer service may be good or even excellent based upon objective, quantifiable data measuring the level of customer service. The Commission agrees with AARP and finds that J.D. Power and Associates' surveys are too subjective to use when measuring a utility's customer service and determining whether a positive or negative Performance Incentive should be applied.[2] Accordingly, we will remove the filing requirements imposed under Schedule 49 (a), Customer service, subsections (4-5).[3]

DVP opposed certain additions the Commission made to the Staff's proposed rules and regulations requiring incumbent electric utilities to file information on the actions undertaken by a utility to improve generating plant performance, customer service, and operating efficiency; specifically, DVP objected to the information required under Schedule 49 (a), Additional data, subsections (2-4). DVP asserted that the Commission should focus on the Company's overall performance — not on the specific individual actions undertaken and the incremental costs of such actions — and further questioned how a utility could determine which specific costs were for incremental improvement and which were for maintaining existing service levels. DVP also asserted that the Performance Incentive statute does not require the Commission to perform any cost/benefit analyses when evaluating whether a Performance Incentive should be applied and believes such an approach should not be utilized. Unlike DVP, APCo did not object to Schedule 49 (a), Additional data, subsections (2-4) in toto. Rather, APCo asserted that it may be difficult to quantify specific customer benefits, as proposed in Schedule 49 (a), Additional data, subsection (3), resulting from its incremental expenditures to improve performance. In this regard, we clarify that the purpose of the Additional data is not to "establish a second rate case" as part of the Performance Incentive evaluation (contrary to DVP's concern).[4] The reasonableness and prudence of any costs, as well as whether any expenditures were exorbitant, unnecessary, wasteful, or extravagant,[5] will be addressed for rate purposes as part of the biennial review and/or rate case. Rather, for the specific purpose of the Performance Incentive, the Additional data may be relevant to the Commission's determination of whether to exercise our discretion under the statute to institute any Performance Incentive (positive or negative) at all.[6]

As the Staff noted during the hearing, a 100 basis point Performance Incentive could increase DVP's base rates by approximately $76 million and APCo's base rates by approximately $15.5 million. Thus, for example, the Additional data addresses, among other things, whether the costs incurred by a utility to improve its generating plant performance, customer service, and operating efficiency primarily benefit the utility's customers. The Commission also recognizes, however, the open-ended nature of the potential data that may be responsive to and required by Schedule 49 (a), Additional data, subsections (2-3). Accordingly, the Commission has modified these two filing requirements explicitly to allow the utility to choose the extent of such data that it includes in its filing for the exercise of our discretion under the Performance Incentive statute.

APCo also requested that its generating plant performance, customer service, and operating efficiency only be compared with its own historic performance levels when determining whether a Performance Incentive should be applied and not be compared with peer group data. DVP requested a similar approach when measuring customer service using, for example, the System Average Interruption Duration Index ("SAIDI") and the System Average Interruption Frequency Index ("SAIFI"). The primary reasons cited in support of these recommendations are the differences between utility service territories, generation mix, and reporting for SAIDI and SAIFI, which may render direct comparisons with DVP and APCo to peer group data unreliable or meaningless.

The Commission finds, however, that the benchmarking analyses included in the proposed rules and regulations should be retained. Such information may, on a case-by-case basis, be relevant in exercising the Commission's discretion under this statute. A utility's generating plant performance, for example, may be trending upward over time but may fall well below the performance levels of its peers. Conversely, a utility's generating plant performance may be trending downward over time, but such performance may be far superior to the generating plant performance of a utility's peers. The Commission finds that the filing requirements for peer group data, which can be used for benchmarking purposes, should be retained in Schedule 49.

The Commission further recognizes that differences in service territories, generation mix, and methods of reporting exist among utilities. However, the solution to this problem is not to entirely eliminate the filing requirement for peer group data, which can be used for benchmarking purposes. Rather, differences between a utility's data and peer group data can be addressed and litigated in the context of a utility's biennial review proceeding. If comparisons are not appropriate based upon these differences, the peer group data can be given little, if any, weight when exercising the Commission's discretion under the Performance Incentive statute.

The SELC recommended that the proposed rules and regulations be modified to include an energy efficiency performance metric for operating efficiency that benchmarks: (1) energy efficiency savings, as measured as a percentage of electricity saved per megawatthour of retail sales; and (2) energy efficiency expenditures, measured as an incumbent electric utility's spending on qualified energy efficiency

programs per megawatthour of retail sales. While it may be in the public interest to encourage cost-effective energy efficiency programs that save consumers money and that can delay or eliminate the construction or purchase of new generating plants, we do not find it appropriate to adopt SELC's proposal since other provisions of law cover energy efficiency programs. Specifically, under § 56-585.1 A 5 c of the Code, an incumbent electric utility can recover through a rider certain projected and actual costs of approved energy efficiency programs, a margin on its operating expenses equal to the utility's rate of return on common equity, and potentially its lost revenues related to the implementation of energy efficiency programs. We find that it would be inappropriate to consider energy efficiency programs when implementing the Performance Incentive statute because it could have the effect of giving utilities even greater revenues from ratepayers for energy efficiency programs than those envisioned by the General Assembly when it enacted § 56-585.1 A 5 c of the Code. Further, the cost effectiveness of energy efficiency programs is a relevant issue in proceedings under that Code section, where costs and benefits to consumers are thoroughly evaluated and quantified contrary to a Performance Incentive evaluation.

In addition, APCo discussed potential issues in obtaining certain data and the need for waivers resulting therefrom. In this regard, we note that the Instructions to Schedule 49 provide as follows: "In the event the required filing information is not available, the IOU shall note the omission and state the reason." Thus, if the required information is not available to the utility, Schedule 49 requires an explanation, not a request for waiver.

Finally, Consumer Counsel, the Fairfax County Board of Supervisors, and the Committees supported the filing requirements proposed by Schedule 49. The Committees recommended, however, that incumbent utilities be required to file all the peer group data required by Schedule 49 in a utility's first biennial review after the rules and regulations are adopted. Under the Committees' proposal, once the Commission determines the appropriate peer groups for benchmarking purposes, those groups would be used for all future filings until the Commission orders otherwise. We find the Committees' recommendation should not be accepted. If a respondent in a biennial review disagrees with the peer groups recommended by an incumbent electric utility, the respondent may propose different peer groups, which are more closely aligned to the operational characteristics of the utility.

Accordingly, IT IS ORDERED THAT:

(1) The Commission's Rules Governing Utility Rate Applications and Annual Informational Filings, as set forth in 20 VAC 5-201-10 et seq., are hereby revised and adopted as set forth in the attachment to this Order Adopting Rules and Regulations, effective February 1, 2013.

(2) The Commission's Division of Information Resources shall forward this Order Adopting Rules and Regulations and the rules and regulations adopted herein to the Registrar of Virginia for publication in the Virginia Register of Regulations.

(3) This case shall be dismissed from the Commission's docket of active proceedings and the papers filed herein shall be placed in the Commission's file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this proceeding. The Service List is available from the Clerk of the Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219. A copy also shall be sent to the Commission's Office of General Counsel and Divisions of Energy Regulation and Utility Accounting and Finance.

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[1]Section 56-576 et seq. of the Code.

[2]DVP and APCo also recommended against the inclusion of J.D. Power and Associates' surveys in the proposed rules. See APCo Comments at 6; Tr. at 27.

[3]The cites to the proposed rules and regulations in this Order reflect the format of the proposed rules published in the Virginia Register of Regulations on October 8, 2012.

[4]DVP Comments at 16.

[5]See, e.g., § 56-585.1 D of the Code; Norfolk v. Chesapeake and Potomac Tel. Co. of Virginia, 192 Va. 292, 311-12, 64 S.E. 2d 772, 783-84 (1951); and Lake of the Woods Utility Co., etc. v. State Corporation Commission, etc., 223 Va. 100, 110, 286 S.E. 2d 201, 206 (1982).

[6]Moreover, the particular relevancy (if any) of specific information, whether required or not by these rules, in a particular biennial review proceeding may be addressed as part of that proceeding.

20VAC5-201-10. General filing instructions.

A. An applicant shall provide a notice of intent to file an application pursuant to 20VAC5-201-20, 20VAC5-201-40, 20VAC5-201-60 and 20VAC5-201-85 to the commission 60 days prior to the application filing date.

B. Applications pursuant to 20VAC5-201-20 through 20VAC5-201-70 shall include:

1. The name and post office address of the applicant and the name and post office address of its counsel.

2. A full clear statement of the facts that the applicant is prepared to prove by competent evidence.

3. A statement of details of the objective or objectives sought and the legal basis therefore.

4. All direct testimony by which the applicant expects to support the objective or objectives sought.

5. Information or documentation conforming to the following general instructions:

a. Attach a table of contents of the company's application, including exhibits.

b. Each exhibit shall be labeled with the name of the applicant and the initials of the sponsoring witness in the upper right hand corner as shown below:

Exhibit No. (Leave Blank)
Witness: (Initials)
Statement or
Schedule Number

c. The first page of all exhibits shall contain a caption that describes the subject matter of the exhibit.

d. If the accounting and statistical data submitted differ from the books of the applicant, then the applicant shall include in its filing a reconciliation schedule for each account or subaccount that differs, together with an explanation describing the nature of the difference.

e. The required accounting and statistical data shall include all work papers and other information necessary to ensure that the items, statements and schedules are not misleading.

C. These rules do not limit the commission staff or parties from raising issues for commission consideration that have not been addressed in the applicant's filing before the commission. Except for good cause shown, issues specifically decided by commission order entered in the applicant's most recent rate case may not be raised by staff or interested parties in Earnings Test Filings made pursuant to 20VAC5-201-10, 20VAC5-201-30 or 20VAC5-201-50.

D. An application filed pursuant to 20VAC5-201-20, 20VAC5-201-30, 20VAC5-201-40, 20VAC5-201-60, 20VAC5-201-70, 20VAC5-201-80 or 20VAC5-201-85 shall not be deemed filed per Chapter 10 (§ 56-232 et seq.) or Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia unless it is in full compliance with these rules.

E. The commission may waive any or all parts of these rate case rules for good cause shown.

F. Where a filing contains information that the applicant claims to be confidential, the filing may be made under seal provided it is simultaneously accompanied by both a motion for protective order or other confidential treatment and an additional five copies of a redacted version of the filing to be available for public disclosure. Unredacted filings containing the confidential information shall, however, be immediately available to the commission staff for internal use at the commission.

G. Filings containing confidential (or redacted) information shall so state on the cover of the filing, and the precise portions of the filing containing such confidential (or redacted) information, including supporting material, shall be clearly marked within the filing.

H. Applicants shall file electronic media containing an electronic spreadsheet version of Schedules 1-5, 8-28, 36, 40, and ~~49~~ 50, as applicable, with the Division of Public Utility Accounting, the Division of Economics and Finance and the Division of Energy Regulation or the Division of Communications, as appropriate. Such electronic media containing calculations derived from formulas shall be provided in an electronic spreadsheet including all underlying formulas and assumptions. Such electronic spreadsheet shall be commercially available and have common use in the utility industry. Additional versions of such schedules shall be made available to parties upon request.

I. All applications, including direct testimony and Schedules 1-28, 30-39, and ~~41-49~~ 41-50, as applicable, shall be filed in an original and 12 copies with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. One copy of Schedules 29 and 40 shall be filed with the Clerk of the Commission. Applicants may omit filing Schedule 29 with the Clerk of the Commission in Annual Informational Filings. Additional copies of such schedules shall be made available to parties upon request.

Two copies of Schedules 29 and 40 shall be submitted to the Division of Public Utility Accounting or the Division of Communications, as appropriate. Two copies of Schedule 40 shall be submitted to the Division of Energy Regulation.

J. For any application made pursuant to 20VAC5-201-20 and 20VAC5-201-40 through 20VAC5-201-85, the applicant shall serve a copy of the information required in ~~20VAC5-201-10~~ subsection A and subdivisions B 1 through B 3 of this section, upon the attorney and chairman of the board of supervisors of each county (or equivalent officials in the counties having alternate forms of government) in this Commonwealth affected by the proposed increase and upon the mayor or manager and the attorney of every city and town (or equivalent officials in towns and cities having alternate forms of government) in this Commonwealth affected by the proposed increase. The applicant shall also serve each such official with a statement that a copy of the complete application may be obtained at no cost by making a request therefor orally or in writing to a specified company official or location. In addition, the applicant shall serve a copy of its complete application upon the Division of Consumer Counsel of the Office of the Attorney General of Virginia. All such service specified by this rule shall be made either by (i) personal delivery or (ii) first class mail, to the customary place of business or to the residence of the person served.

K. Nothing in these rules shall be interpreted to apply to applications for temporary reductions of rates pursuant to § 56-242 of the Code of Virginia.

20VAC5-201-20. General and expedited rate increase applications.

A. An application for a general or expedited rate increase pursuant to Chapter 10 (§ 56-232 et seq.) of Title 56 of the Code of Virginia for a public utility having annual revenues exceeding $1 million, shall conform to the following requirements:

1. Exhibits consisting of Schedules 1-43 and the utility's direct testimony shall be submitted. Such schedules shall be identified with the appropriate schedule number and

shall be prepared in accordance with the instructions contained in 20VAC5-201-90.

2. An applicant subject to § 56-585.1 of the Code of Virginia shall file Schedules 45 and 47 in addition to the schedules required in ~~20VAC5-201-20~~ subdivision A 1 of this section in accordance with the instructions accompanying such schedules in 20VAC5-201-90.

3. An exhibit consisting of additional schedules may be submitted with the utility's direct testimony. Such exhibit shall be identified as Schedule ~~49~~ 50 (this exhibit may include numerous subschedules labeled ~~49A~~ 50A et seq.).

B. The selection of a historic test period is up to the applicant. However, the use of overlapping test periods will not be allowed.

C. Applicants meeting each of the four following criteria may omit Schedules 9-18 in rate applications: (i) the applicant is not subject to § 56-585.1 of the Code of Virginia, (ii) the applicant is not currently bound by a performance-based regulation plan authorized by the commission pursuant to § 56-235.6 of the Code of Virginia that includes an earnings sharing mechanism or other attribute for which the commission has directed the performance of an Earnings Test, (iii) the applicant has no Virginia jurisdictional regulatory assets on its books, and (iv) the applicant is not seeking to establish a regulatory asset.

D. If not otherwise constrained by law or regulatory requirements, an applicant who has not experienced a substantial change in circumstances may file an expedited rate application as an alternative to a general rate application. Such application need not propose an increase in regulated operating revenues. If, upon timely consideration of the expedited application and supporting evidence, it appears that a substantial change in circumstances has taken place since the applicant's last rate case, then the commission may take appropriate action, such as directing that the expedited application be dismissed or treated as a general rate application. Prior to public hearing, and subject to applicable provisions of law, an application for expedited rate increase may take effect within 30 days after the date the application is filed. Expedited rate increases may also take effect in less than 12 months after the applicant's preceding rate increase so long as rates are not increased as a result thereof more than once in any calendar year. An applicant making an expedited application shall also comply with the following rules:

1. In computing its cost of capital, as prescribed in Schedule 3 in 20VAC5-201-90, the applicant, other than those utilities subject to § 56-585.1 of the Code of Virginia, shall use the equity return rate approved by the commission and used to determine the revenue requirement in the utility's most recent rate proceeding.

2. An applicant, in developing its rate of return statement, shall make adjustments to its test period jurisdictional results only in accordance with the instructions for Schedule 25 in 20VAC5-201-90.

3. The applicant may propose new allocation methodologies, rate designs and new or revised terms and conditions provided such proposals are supported by appropriate cost studies. Such support shall be included in Schedule 40.

E. Rates authorized to take effect 30 days following the filing of any application for an expedited rate increase shall be subject to refund in a manner prescribed by the commission. Whenever rates are subject to refund, the commission may also direct that such refund bear interest at a rate set by the commission.

20VAC5-201-50. Biennial review applications.

A. A biennial review application filed pursuant to § 56-585.1 of the Code of Virginia shall include the following:

1. Exhibits consisting of Schedules 3, 6-7, 9-18, 40a and 44 as identified in 20VAC5-201-90 shall be submitted with the utility's direct testimony for each of the two successive 12-month test periods.

2. Exhibits consisting of Schedules 1-2, 4-5, 8, 19-34, 36-39, 40b-d, 41-43, 45, and 47 as identified in 20VAC5-201-90, shall be submitted with the utility's direct testimony for the second of the two successive 12-month test periods.

3. An exhibit consisting of Schedule 35 shall be filed with the commission no later than April 30 each year.

4. An exhibit consisting of Schedule 49 shall be submitted with the utility's direct testimony [, if required].

~~4.~~ 5. An exhibit consisting of additional schedules may be submitted with the utility's direct testimony. Such exhibit shall be identified as Schedule ~~49~~ 50 (this exhibit may include subschedules as needed labeled ~~49A~~ 50A et seq.).

~~5.~~ 6. A reconciliation of Schedules 19 and 22 to the statement of income and comparative balance sheet contained in FERC Form No. 1.

B. The assumed rate year for purposes of determining ratemaking adjustment in Schedules 21 and 24, as identified in 20VAC5-201-90, shall begin on December 1 of the year following the two successive 12-month test periods.

20VAC5-201-90. Instructions for schedules and exhibits for Chapter 201.

The following instructions for schedules and exhibits including those specifically set forth in 20VAC5-201-95 (Schedules 1-14), 20VAC5-201-100 (Schedules 15-22) and 20VAC5-201-110 (Schedules 23-28, 40 and 44) are to be used in conjunction with this chapter:

EDITOR'S NOTICE: Schedules 1 through 48 of 20VAC5-201-90 are not being amended and are not printed in this issue of the Virginia Register of Regulations.

Schedule 49 - Data Pertaining to Nationally Recognized Standards for Generating Plant Performance, Customer Service, and Operating Efficiency

Instructions: Investor-owned incumbent electric utilities subject to § 56-585.1 A 2 c of the Code of Virginia shall [, unless otherwise exempted from these instructions,] file the information listed in paragraph (a), and paragraph (b) if applicable, of this schedule, using the definitions provided below. Unless otherwise specified, the minimum filing requirements shall include annual weighted averages, separately, for each of the most recent consecutive six years of data including the biennial period under review. Where weighted averages are not available, simple averages are acceptable. Averages shall be identified as weighted or simple. Where six years of data is not available when filed, the reason shall be stated and the data shall be provided as soon as it becomes available, if at all. In the IOU's initial filing under these rules, the IOU may propose and support a different benchmark group for each operating efficiency performance measure. Once the commission establishes a benchmark group for an operating efficiency performance measure, the benchmark group shall apply to the operating efficiency performance measure in all of the IOU's future filings under these rules unless otherwise ordered by the commission. To the extent practical, data should be obtained from publically available sources such as SEC, FERC, EIA, and RTO. In the event the required filing information is not available, the IOU shall note the omission and state the reason. [Investor-owned incumbent electric utilities receiving an RPS Performance Incentive pursuant to § 56-585.2 C of the Code of Virginia and not seeking a Performance Incentive pursuant to § 56-585.1 A 2 c of the Code of Virginia of more than 50 basis points need not submit Schedule 49.]

Definitions for Schedule 49:

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

"Average retail price" or "total average retail rate" means total annual revenues per annual kWh of sales as reported to EEI.

"Average speed of answer" or "ASA" means the average time in seconds that callers experience in a queue to reach an agent or to initiate a transaction through an interactive voice response system.

"Benchmark group" means one of the following groups of investor-owned electric utilities proposed by the IOU for an operating efficiency performance measure: MACRUC, ROE Peer Group, RTO, SEARUC, and SEE. The IOU may propose and support the use of an alternative group of investor-owned electric utilities determined by an independent expert to be a valid comparable group.

"Btu" means British thermal unit.

"EEI" means the Edison Electric Institute.

"EIA" means the United States Energy Information Administration.

"Equivalent availability factor" or "EAF" means the fraction of a given operating period in which a generating unit is available without any outages and equipment or seasonal deratings.

"Equivalent forced outage rate on demand" or "EFORd" means a measure of the probability that a generating unit will not be available due to forced outages or forced deratings when there is demand on the unit to generate. When used as a measure of historical performance, EFORd is calculated as the percentage of total demand time that a unit was unavailable due to forced outages or deratings.

"FERC" means the Federal Energy Regulatory Commission or its successor agency.

"FERC Form 1" means 18 CFR 141.1, FERC Form No. 1, Annual Report of Major Electric Utilities, Licensees, and Others.

"Fleet maintenance cost" means the sum of all plants' maintenance costs from FERC Form 1, pages 402 and 403, lines 29-33.

"Heat rate" or "HR" means how efficiently a generator converts heat energy from fuel into electrical energy. Heat rate is calculated by dividing the thermal energy consumption by the electric energy generated (Btu/kWh).

"IOU" means investor-owned incumbent electric utility.

"Interactive voice response" or "IVR" means a technology that automates the interaction between the utility and its customer.

"ITP" means the NRC's industry trends program.

"kWh" means kilowatt-hour.

"Large coal plant or plants" means a location having coal-fired generation capacity of greater than 400 MW, excluding coal units with capacities of less than 200 MW.

"MACRUC utility" means a regulated investor-owned electric utility having generation, transmission, and distribution business within the member states of the Mid-Atlantic Conference of Regulatory Utilities Commissioners or its successor organization.

"MW" means megawatt.

"MWh" means megawatt-hour.

"NERC" means the North American Electric Reliability Corporation or its successor organization.

"Net capacity factor (nuclear)" or "NCF (nuclear)" means the fraction of net energy generated by a nuclear unit compared to the energy it could have generated if operated at the net maximum dependable capacity for a year.

"NRC" means the United States Nuclear Regulatory Commission or its successor agency.

"O&M" means operations and maintenance.

"O&M efficiency" means total electric O&M expense (from FERC Form 1, page 323, line 198) as a percent of total assets

(from FERC Form 1, page 111, line 85) (or $ per MWh or $ per customer).

"Plant production cost" means total production expense per MWh of net output.

"PWR" means pressurized water reactor.

"ROE peer group" means the investor-owned electric utilities defined under § 56-585.1 A 2 b of the Code of Virginia.

"RTO" means the regional transmission organization of which the IOU is a member.

"SEARUC utility" means a regulated investor-owned electric utility having generation, transmission, and distribution business within the member states of the Southeastern Association of Regulatory Utility Commissioners or its successor organization.

"SEC" means the United States Securities and Exchange Commission.

"SEE utility" means a regulated investor-owned electric utility member of the Southeastern Electric Exchange or its successor organization having generation, transmission, and distribution business.

"Service level" means the percentage of calls that are answered by a call center agent or an IVR within 30 seconds.

"System average interruption duration index" or "SAIDI" means the total duration of interruption for the average customer on an annual basis. SAIDI equals the sum of customer interruption durations divided by the average total number of customers served.

"System average interruption frequency index" or "SAIFI" means the average number of interruptions that a customer would experience on an annual basis, expressed as a number. SAIFI equals the sum of customer interruptions divided by an average total number of customers served.

"XEFORd" means a measure of the probability that a generating unit will not be available due to forced outages or forced deratings when there is demand on the unit to generate which is the same as EFORd, but excludes events that are designated as outside management's control.

Filing Requirements:

(a) IOUs subject to § 56-585.1 A 2 c of the Code of Virginia shall file the following data for the IOU and, separately, for each of the additional listed entities:

Generating plant performance

1. EFORd for the system fleet and nonnuclear fleet for NERC and the RTO, weighted by the IOU's generation capacity per class;

2. EFORd for each of the following generation class categories for NERC and the RTO: fossil all fuel types, fossil coal primary, fossil coal primary 200-599 MW, fossil coal primary 600 MW plus, fluidized bed, combined cycle, gas turbine, and pumped storage;

3. XEFORd for the RTO;

4. EAF for each of the following generation class categories for NERC and the RTO: fossil all fuel types, fossil coal primary, fossil coal primary 200-599 MW, fossil coal primary 600 MW plus, fluidized bed, combined cycle, gas turbine, and pumped storage; and

5. Average heat rates for United States coal (steam turbine) fleet and natural gas (combined cycle) fleet as reported by EIA.

Customer service

1. SAIDI both including and excluding major storms (or major events) for each RTO utility and each MACRUC or SEARUC utility with more than 500,000 customers;

2. SAIFI both including and excluding major storms (or major events) for each RTO utility and each MACRUC or SEARUC utility with more than 500,000 customers; [and]

3. ASA or service level both including and excluding calls handled by an IVR for each RTO utility and each MACRUC or SEARUC utility with greater than 500,000 customers [~~:~~.]

[~~4. J.D. Power and Associates Electric Utility Residential Customer Satisfaction Study index ranking for the IOU's region and segment; and~~

~~5. J.D. Power and Associates Electric Utility Business Customer Satisfaction Study index ranking for the IOU's region and segment.~~]

Operating efficiency

1. Total average retail rates for the South Atlantic (as defined by EEI), the United States, and each utility in the proposed benchmark group;

2. O&M efficiency for each utility in the proposed benchmark group;

3. Large coal plant production costs for each utility in the proposed benchmark group; and

4. Combined cycle plant production costs for each utility in the proposed benchmark group.

Additional data

1. Identify the proposed return on equity basis point increase and the revenue requirement impact associated with the proposed performance incentive award;

2. For the biennial period under review, identify [, to the extent chosen by the IOU,] the specific actions taken by the IOU to improve generating plant performance, customer service, and operating efficiency and the incremental costs associated with such specific actions;

3. Identify, explain, and quantify to the extent [possible chosen by the IOU] the specific benefits (financial and otherwise) that customers received during the previous biennial review period as a result of the specific actions

taken by the IOU to improve generating plant performance, customer service, and operating efficiency;

4. Fleet maintenance costs and total electricity generated;

5. Total distribution reliability improvement expense and distribution circuit miles; and

6. Total routine, tree removal, and hot spot trimming expense and miles of right-of-way managed.

(b) In addition to the information required in paragraph (a) of this schedule, IOUs subject to § 56-585.1 A 2 c of the Code of Virginia that own and operate nuclear power plants shall file the following data for the IOU and, separately, for each of the additional listed entities:

1. NCF (nuclear) for the United States nuclear industry and 800-999 MW PWRs;

2. NCF (nuclear) top quartile, median, and bottom quartile over the most recent three-year period (including the two years of the biennial period under review, if available) for the United States nuclear industry and 800-999 MW PWRs;

3. Most recent three-year average (including the two years of the biennial period under review, if available) and ranking by NCF (nuclear) of the top ranked PWR and each of the IOU's nuclear power plant units;

4. Nuclear plant production cost for 800-999 MW PWRs and each of the IOU's nuclear power stations; and

5. NRC ITP indicators for the IOU and nuclear industry (automatic reactor scrams while critical and significant events).

Schedule ~~49~~ 50 - Additional Schedules

Reserved for additional exhibits presented by the applicant to be labeled Schedule ~~49~~ 50 et seq.

VA.R. Doc. No. R13-3389; Filed January 14, 2013, 2:40 p.m.

STATE AIR POLLUTION CONTROL BOARD AND DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice Seeking Individuals to Serve on the State Advisory Board on Air Pollution

The State Air Pollution Control Board (SAPCB) and the Department of Environmental Quality (DEQ) are seeking individuals who are willing to serve as members of the State Advisory Board on Air Pollution (SAB). It is anticipated that the SAPCB will approve membership on the Advisory Board in the spring of 2013.

The SAB is assigned specific projects related to air quality by the board and DEQ. Such projects are based on informational needs that could provide useful program recommendations, options, or other actions for consideration by the board and DEQ. The SAB has a membership of approximately 20 and members are appointed for a term of three years, with all members' terms expiring on December 31 of the same year. Members may be re-appointed for another three year term. The SAPCB adopted a revised charter for the SAB in November 2012. A copy of the charter for the SAB is available upon request.

DEQ is seeking membership from environmental and health organizations, academia, the legal profession, and industry or trade associations that have a background in air quality technology policies or programs to serve on the Advisory Board. If interested, please submit your name and a brief resume of your qualifications to Michael G. Dowd, Director, Air Division, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4284, FAX (804) 698-4510, or michael.dowd@deq.virginia.gov. Submissions are due by close of business on February 25, 2013.

Contact Information: Michael G. Dowd, Director, Air Division, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4284, FAX (804) 698-4510, or email michael.dowd@deq.virginia.gov.

State Implementation Plan Revision - National Low Emission Vehicle Program

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed revision to the Commonwealth of Virginia State Implementation Plan (SIP). The SIP is a plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act. The Commonwealth intends to submit the regulation to EPA as a revision to the SIP in accordance with the requirements of § 110(a) of the federal Clean Air Act.

Regulations affected: The regulation of the board affected by this action is 9VAC5-200, National Low Emission Vehicle Program.

Purpose of notice: DEQ is seeking comment on the issue of whether the regulation amendments (repeal of the entire chapter) should be submitted as a revision to the SIP; i.e., whether reference to the repealed chapter should be removed from the SIP.

Public comment period: February 11, 2013, to March 13, 2013.

Public hearing: A public hearing may be conducted if a request is made in writing to the contact listed below. In order to be considered, the request must include the full name, address, and telephone number of the person requesting the hearing and be received by DEQ by the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

Public comment stage: Because the regulation amendments have been adopted by the board in accordance with the Administrative Process Act and have subsequently become effective, DEQ is accepting comment only on the issue cited above under "purpose of notice" and not on the content of the regulation amendments.

Description of proposal: This revision consists of removal of a repealed regulation from the Virginia SIP: the regulation for the National Low Emission Vehicle (NLEV) Program (9VAC5-200), which was originally adopted by the State Air Pollution Control Board in 1999 in order to implement an EPA-approved alternative clean fuel fleet standard for mobile sources. On February 10, 2000 (65 FR 6698), the federal NLEV program was superseded by federal Tier 2 standards, which were more restrictive than the NLEV program standards. Additionally, the federal NLEV program became mandatory on a national basis in 2006 and Virginia's participation in the national NLEV program ceased with the 2006 model year. Subsequently, the board repealed the regulation because it is no longer effective and more restrictive federal regulations meet all of the federal statutory and regulatory requirements. Therefore, there is no longer a need for reference to this regulation in Virginia's SIP.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102) and not any provision of state law. The proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104. It is planned to submit all provisions of the proposal as a revision to the Commonwealth of Virginia SIP.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by the last day of the comment period. Commenters submitting faxes are encouraged to provide the signed original by postal mail within one week. All materials received are part of the public record.

To review regulation documents: The proposal and a supporting document are available on the DEQ Air Public Notices for Plans website (http://www.deq.state.va.us/Programs/Air/PublicNotices/airplansandprograms.aspx). The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

1) Main Street Office, 629 East Main Street, 8th Floor, Richmond, VA, telephone (804) 698-4070,

2) Southwest Regional Office, 355 Deadmore Street, Abingdon, VA, telephone (540) 676-4800,

3) Blue Ridge Regional Office, Roanoke Location, 3019 Peters Creek Road, Roanoke, VA, telephone (540) 562-6700,

4) Blue Ridge Regional Office, Lynchburg Location, 7705 Timberlake Road, Lynchburg, VA, telephone (804) 582-5120,

5) Valley Regional Office, 4411 Early Road, Harrisonburg, VA, telephone (540) 574-7800,

6) Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA, telephone (804) 527-5020,

7) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800, and

8) Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA, telephone (757) 518-2000.

Contact Information: Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, TDD (804) 698-4021, or email karen.sabasteanski@deq.virginia.gov.

State Implementation Plan Revision - Ozone Classification and Implementation

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed revision to the Commonwealth of Virginia State Implementation Plan (SIP). The SIP is a plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act. The Commonwealth intends to submit the regulation amendments to EPA as a revision to the SIP in accordance with the requirements of § 110(a) of the federal Clean Air Act.

Regulations affected: The regulations of the board affected by this action are as follows: 9VAC5-20-204 (Nonattainment areas) of Part I of 9VAC5-20 and 9VAC5-30-55 (Ozone) of 9VAC5-30.

Purpose of notice: DEQ is seeking comment on the issue of whether the regulation amendments should be submitted as a revision to the SIP.

Public comment period: February 11, 2013, to March 13, 2013.

Public hearing: A public hearing may be conducted if a request is made in writing to the contact listed below. In order to be considered, the request must include the full name, address, and telephone number of the person requesting the hearing and be received by DEQ by the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice and another 30-day comment period will be conducted.

Public comment stage: The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 4 c of the Administrative Process Act because they are necessary to conform to an order of the court or are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent EPA regulations. Since the amendments are exempt from administrative procedures for the adoption of regulations, DEQ is accepting comment only on the issue cited above under "purpose of notice" and not on the content of the regulation amendments.

Description of proposal: The proposed revision will consist of amendments to existing regulation provisions concerning ozone classification and implementation in accordance with EPA regulations published on May 21, 2012 (77 FR 30088 and 77 FR 30160). The major provisions of the proposal are as follows: (i) the listing for the Northern Virginia 8-hour ozone nonattainment area in 9VAC5-20-204 has been revised in order to indicate the new classification of "marginal" for the 2008 standard, and (ii) a new subsection has been added to 9VAC5-30-55 to indicate that the 1997 8-hour ozone standard will no longer apply to an area for transportation conformity purposes one year after the effective date of the designation of the area.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102) and not any provision of state law. The proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104. It is planned to submit all

provisions of the proposal as a revision to the Commonwealth of Virginia SIP.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by the last day of the comment period. All comments, exhibits, and documents received are part of the public record.

To review regulation documents: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website (http://www.deq.state.va.us/Programs/Air/PublicNotices/airplansandprograms.aspx). The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

1) Main Street Office, 629 East Main Street, 8th Floor, Richmond, VA, telephone (804) 698-4070, and

2) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800.

Contact Information: Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, TDD (804) 698-4021, or email karen.sabasteanski@deq.virginia.gov.

CRIMINAL JUSTICE SERVICES BOARD

Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Criminal Justice Services is conducting a periodic review of 6VAC20-160, Regulations Relating to the Court-Appointed Special Advocate Program (CASA). The review of this regulation will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia.

The purpose of this review is to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins February 11, 2013, and ends on March 4, 2013.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Melissa O'Neill, CASA Program Coordinator, Department of Criminal Justice Services, 1100 Bank Street, 12th Floor, Richmond, VA 23219, telephone (804) 786-6428, FAX (804) 786-3414, or email melissa.o'neill@dcjs.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

DEPARTMENT OF EDUCATION

Notice of Comment Deadline on Regulations for the Governor's Regulatory Reform Initiative

The Virginia Department of Education is seeking public comment on the board's regulations as part of the Governor's Regulatory Reform Initiative. In order for staff to review and incorporate comments and recommendations into a presentation to the board, please submit comments by February 28, 2013.

Regulatory agencies are charged with conducting a comprehensive review of regulations currently in place and repealing regulations that are unnecessary or no longer in use; reducing unnecessary regulatory burdens on individuals, businesses, and other regulated groups; and identifying statutes that require unnecessary or overly burdensome regulations. The goal is to identify regulations that are overly burdensome and where reform is appropriate consistent with protecting the health, safety, and welfare of the people of Virginia.

A current list of the board's regulations is available at http://townhall.virginia.gov/L/ViewBoard.cfm?BoardID=93.

After reviewing the public comments, department staff will present a list of regulations recommended to be deleted or amended to the Board of Education for consideration.

The Department of Education welcomes public comment on this initiative. Comments may be submitted to boe@doe.virginia.gov. Questions regarding the Board of Education's regulations or the Governor's Regulatory Reform Initiative may be addressed to Anne Wescott by email at anne.wescott@doe.virginia.gov or telephone at (804) 225-2403.

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

DEPARTMENT OF ENVIRONMENTAL QUALITY AND DEPARTMENT OF CONSERVATION AND RECREATION

Public Meeting and Public Comment - Implementation Plan for Impaired Shellfish Waters

The Department of Conservation and Recreation (DCR) and the Department of Environmental Quality (DEQ) seek written and oral comments from interested persons on the development of an Implementation Plan (IP) for impaired shellfish waters located in Mathews, Middlesex, and Gloucester Counties, Virginia. The sixteen tidal shellfish waters that feed into the Piankatank River and Milford Haven (Queens, Stutts, Morris, Billups, Edwards, Harper, Wilton, Healy, Cobbs, Lanes, Hudgins, Barn, Frenchs, Ferry, and Dancing Creeks) and a portion of the Upper Piankatank River are on the state's list of dirty or impaired waters. Maps of these watersheds can be found at the following link:

http://www.deq.virginia.gov/Portals/0/DEQ/Water/TMDL/ImplementationPlans/Drafts/piankatanklanduse.pdf

The shellfish harvesting in these waters has been restricted due to excessive bacteria levels. The TMDL studies for most of these waters can be found on the DEQ website under the "Approved TMDL Reports" section as: pianka.pdf, pianharp.pdf and gwynnisl.pdf. (See http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/ApprovedTMDLReports.aspx).

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's 303(d) TMDL Priority List and Report. In addition, § 62.1-44.19:7 C of the Code of Virginia requires the development of an IP for approved TMDLs. The IP should provide measurable goals and the date of expected achievement of water quality objectives. The IP should also include the corrective actions needed and their associated costs, benefits, and environmental impacts.

The content of the draft plan, including corrective actions necessary to reduce bacteria levels and improve water quality in these tidal creeks will be the subject of a public meeting to be held February 27, 2013, from 6 p.m. to 8 p.m. at the Mathews High School, 9889 Buckley Hall Road, Mathews, VA 23109. The implementation plan has been under development for the past nine months, including a series of local meetings and input from local citizens and government agencies. Comments on the draft plan will be accepted through March 27, 2013. A copy of the draft plan can be found the day after the public meeting at: http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDL Implementation/TMDLImplementationPlans.aspx.

Questions or information requests should be addressed to May Sligh, Department of Conservation and Recreation, Tappahannock Regional Office, telephone (804) 443-1494, and email may.sligh@dcr.virginia.gov. Though email comments are preferred, written comments and inquiries can also be submitted and should include the name, address, and telephone number of the person submitting the comments. Please send to May Sligh, Department of Conservation and Recreation, Tappahannock Regional Office, P.O. Box 1425, Tappahannock, VA 22560.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Consent Order for Greensville County Water & Sewer Authority

An enforcement action has been proposed for the Greensville County Water & Sewer Authority for alleged violations at the Three Creek wastewater treatment plant on 428 Moonlight Road, Emporia, VA. The action requires corrective action and payment of a civil charge. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Frank Lupini will accept comments by email at frank.lupini@deq.virginia.gov, FAX (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from February 11, 2013, to March 13, 2013.

Public Meeting and Public Comment - Study to Restore Water Quality in the Little Otter River Watershed and the Buffalo Creek Watershed

Public meeting: Bedford Library, 321 N. Bridge Street, on Wednesday, February 20, 2013, from 6:30 p.m. to 8:30 p.m. Directions: From 460 East: Take Bedford exit and veer right onto Main Street. Continue straight through two stop lights. At the third light, turn right onto N. Bridge Street, turn left at the next light (Bedford Avenue) and right onto Robinson Way. The parking lot is accessed from Bedford Avenue via Robinson Way.

From 460 West: Take the Bedford exit and continue straight on Main Street At the first stop light, turn left onto Bedford Avenue. This road will veer to the right and before the next stop light, turn left onto Robinson Way. The parking lot is accessed from Bedford Avenue via Robinson Way. Address: 321 N. Bridge Street, Bedford, VA 24523.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) announces a public meeting to discuss the results of a study to restore water quality in the Little Otter River watershed and the Buffalo Creek watershed.

Description of study: Virginia agencies are working to identify sources of biological impairment (general standard) in the Little Otter watershed and the Buffalo Creek watershed. The general standard indicates the water quality does not support a natural aquatic invertebrate community.

The following is the "impaired" stream, the length of the impaired segment, the location, and the reason for the impairment: Johns Creek, 2.13 miles, Bedford City and Bedford County, general standard (aquatic invertebrate community); Little Otter River, 21.62 miles, Bedford City and Bedford County, general standard (aquatic invertebrate community); Wells Creek, 3.78 miles, Bedford County, general standard (aquatic invertebrate community); Buffalo Creek, 8.09 miles, Bedford and Campbell Counties, general standard (aquatic invertebrate community).

DEQ, in cooperation with the Virginia Department of Conservation and Recreation and other state and local agencies, developed a total maximum daily load (TMDL) study for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, contamination levels have to be reduced to the TMDL amount.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting and be received by March 22, 2013. DEQ also accepts written and oral comments at the public meeting announced in this notice.

Contact: For additional information or to submit comments, contact Mary Dail in the Virginia Department of Environmental Quality, Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, telephone (540) 562.6715, or email mary.dail@deq.virginia.gov.

Additional information is also available on the DEQ website at http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment.aspx.

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 January 16, 2013. 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 (13)

Virginia Lottery's "2013 Super Teacher Awards Contest" Final Requirements for Game Operation (effective January 4, 2013)

Director's Order Number Two (13)

Virginia's Instant Game Lottery 1394 "Good Deal" Final Rules for Game Operation (effective January 4, 2013)

Director's Order Number Three (13)

Virginia's Instant Game Lottery 1420 "Daily Crossword" Final Rules for Game Operation (effective January 14, 2013)

Director's Order Number Five (13)

Virginia's Instant Game Lottery 1412 "$" Final Rules for Game Operation (effective January 14, 2013)

Director's Order Number Fourteen (13)

Virginia's On-Line Game "Fast Play Find The 9's" Final Rules for Game Operation (effective January 11, 2013)

Director's Order Number One Hundred Sixteen (12)

"Mid-Atlantic Convenience Stores (t/a Uppy's/Circle K) Buy $10/Get $1 Free Retailer Incentive Promotion" Virginia Lottery Retailer Incentive Program Requirements (effective December 6, 2012)

Director's Order Number One Hundred Thirty-Six (12)

"Monopoly Ticket Dispenser" Virginia Lottery Retailer Incentive Program Requirements (effective December 20, 2012)

Director's Order Number One Hundred Forty (12)

"Fas Mart/VA Lottery Coffee Travel Mug Retailer Incentive Promotion" Virginia Lottery Retailer Incentive Program Requirements (effective December 8, 2012)

Director's Order Number One Hundred Forty-Two (12)

Virginia's Instant Game Lottery 1393 "Monopoly™" Final Rules for Game Operation (effective December 20, 2012)

Director's Order Number One Hundred Forty-Six (12)

"You Activate We Pay" Virginia Lottery Retailer Incentive Program Requirements (effective December 20, 2012)

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intent to Amend the Virginia State Plan for Medical Assistance (pursuant to § 1902(a)(13) of the Act (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 is being amended to increase rates for Medicaid primary care services furnished by eligible physicians in calendar years 2013 and 2014 as directed by the Affordable Care Act. Qualifying physicians are Medicaid participating physicians who attest to being primary care physicians. DMAS intends to make supplemental payments to qualifying physicians equal to the Medicare rates specified in federal regulations. DMAS estimates the rate increase will expend $35.3 million in federal funds in state fiscal year 2013 and $73.3 million in federal funds in state fiscal year 2014.

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 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: 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, TDD (800) 343-0634, or email brian.mccormick@dmas.virginia.gov.

STATE WATER CONTROL BOARD

Amendment of Water Quality Management Planning Regulation

Notice of action: The State Water Control Board (board) is considering the amendment of the regulation on water quality management planning in accordance with the Public Participation Procedures for Water Quality Management Planning. A regulation is a general rule governing people's rights or conduct that is upheld by a state agency.

Purpose of notice: The board is seeking comments through the Department of Environmental Quality on the proposed amendment. The purpose of the amendment to the state's Water Quality Management Planning Regulation (9VAC25-720) is to adopt three total maximum daily load (TMDL) waste load allocations and one TMDL modification.

Public comment period: February 11, 2013, through March 12, 2013.

Description of proposed action: DEQ staff will propose amendments of the state's Water Quality Management Planning regulation for the New River Basin (9VAC25-720-130 A), Chesapeake Bay-Small Coastal-Eastern Shore Basin (9VAC25-720-110 A), and Tennessee/Big Sandy River Basin (9VAC25-720-90 A). Statutory authority for promulgating these amendments can be found in § 62.1-44.15(10) of the Code of Virginia.

Staff intends to recommend 1) that the board approve the TMDL reports and modification as the plan for the pollutant reductions necessary for attainment of water quality goals in the impaired segments, 2) that the board authorize inclusion of the TMDL reports and TMDL modification in the appropriate Water Quality Management Plan, and 3) that the board adopt three TMDL waste load allocations and one TMDL modification as part of the state's Water Quality Management Planning Regulation in accordance with § 2.2-4006 A 4 c and § 2.2-4006 B of the Code of Virginia.

The TMDL reports and modification were developed in accordance with federal regulations (40 CFR 130.7) and are exempt from the provisions of Article II of the Virginia Administrative Process Act. The reports were subject to the TMDL public participation process contained in DEQ's Public Participation Procedures for Water Quality Management Planning. The public comment process provides the affected stakeholders an opportunity for public appeal of the TMDL. EPA approved the TMDLs and modification presented under this public notice. The approved reports can be found at http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/ApprovedTMDLReports.aspx.

Affected Waterbodies and Localities:

In the New River Basin (9VAC25-720-130 A):

1. "Total Maximum Daily Load (TMDL) Development Little River Watershed, Virginia"

• The Little River Watershed TMDL, located in Floyd, Franklin, Montgomery, Patrick, and Pulaski counties, provides sediment reductions for the watershed. It provides one wasteload allocation for sediment in the entire watershed and the wasteload allocation is 116.49 tons/year of sediment.

In the Chesapeake Bay-Small Coastal-Eastern Shore Basin (9VAC25-720-110 A):

2. "Total Maximum Daily Loads of Pathogens for Folly Creek in Accomack County, Virginia"

• The Folly Creek Dissolved Oxygen impairment, located in Accomack County, proposes Total Nitrogen reductions for portions of the watershed and provides a Total Nitrogen wasteload allocation of 2.6 lbs/day.

3. "Total Maximum Daily Loads of DO and Pathogens for Gargathy Creek (Upper, Lower, and Riverine Portions) in Accomack County, Virginia"

• The Gargathy Creek Dissolved Oxygen impairment, located in Accomack County, proposes Total Nitrogen reductions for portions of the watershed and provides a Total Nitrogen wasteload allocation of 1.9 lbs/day.

In the Tennessee/Big Sandy River Basin (9VAC25-720-90 A):

4. Modification to "General Standard (Benthic)Total Maximum Daily Load Development for Upper North Fork Holston River"

• The modification for the Upper North Fork Holston chloride TMDL proposes to revise the WLA to accommodate the expansion of the Town of Saltville Wastewater Treatment Plant from 0.50 million

gallons per day (MGD) to 0.99 MGD. The revised waste load allocation for the watershed is 862,466 kg/year. This change in chloride load with sufficient new water to maintain the water quality standard of 230 mg/L will not increase the chloride concentration or decrease water quality.

How to comment: The DEQ accepts written comments by email, fax, and postal mail. All written comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by 5 p.m. on the last day of the comment period.

How a decision is made: After comments have been considered, the board will make the final decision. Citizens who submit statements during the comment period may address the board members during the board meeting at which a final decision is made on the proposal.

To review documents: The TMDL report is available on the DEQ website at http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/ApprovedTMDLReports.aspx and by contacting the DEQ representative named below. The electronic copies are in PDF format and may be read online or downloaded.

Contact for public comments, document requests and additional information: Liz McKercher, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4291, FAX (804) 698-4116, or email elizabeth.mckercher@deq.virginia.gov.

Approval of Water Quality Management Planning Actions

Notice of action: The State Water Control Board (board) is considering the approval of two total maximum daily load implementation plans (TMDL IPs) and granting authorization to include the TMDL IPs in the appropriate Water Quality Management Plans (WQMPs).

Purpose of notice: The board is seeking comment on the proposed approvals and authorizations. The purpose of these actions is to approve two TMDL IPs as Virginia's plans for the management actions necessary for attainment of water quality goals in several impaired waterbodies. These actions are taken in accordance with the Public Participation Procedures for Water Quality Management Planning.

Public comment period: February 11, 2013, through March 12, 2013.

Description of proposed action: DEQ staff intends to recommend 1) that the DEQ Director approve the TMDL IPs listed below as Virginia's plans for the management actions necessary for attainment of water quality goals in the impaired segments and 2) that the DEQ Director authorize inclusion of the TMDL IPs in the appropriate WQMPs. No regulatory amendments are required for these TMDL IPs.

At the June 28, 2005, meeting, the board voted unanimously to delegate to the DEQ Director the authority to approve TMDL implementation plans, provided that a summary report of the action the Director plans to take is presented to the board prior to the Director's approval. The TMDL Implementation Plans included in this public notice will be approved using this delegation of authority.

The TMDLs listed below were developed in accordance with 1997 Water Quality Monitoring, Information and Restoration Act (WQMIRA, §§ 62.1-44.19:4 through § 62.1-44.19:8 of the Code of Virginia) and federal recommendations. The TMDL IPs were developed in accordance with DEQ's Public Participation Procedures for Water Quality Management Planning. Extensive public participation was solicited during the development of the plans and the public comment process provided the affected stakeholders with opportunities for comment on the proposed plans. The final TMDL IPs can be found at http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLImplementation/TMDLImplementationPlans.aspx .

Affected Waterbodies and Localities:

In the New River Basin:

1. "Little River Total Maximum Daily Load Implementation Plan"

• The IP proposes management actions needed to restore the natural trout and stockable trout temperature water quality standards, and reduce bacteria and sediment to restore the primary contact (swimming) and aquatic life designated uses in the Little River watershed located in Floyd and Montgomery counties.

In the York River Basin:

2. "Upper York River Basin Watershed Implementation Plan"

• The IP proposes management actions needed to reduce bacteria and restore the primary contact (swimming) use in Beaver Creek, Mountain Run, Pamunkey Creek, Plentiful Creek, and Terrys Run located in Louisa, Orange, and Spotsylvania counties.

How to comment: The DEQ accepts written comments by email, fax, and postal mail. All written comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by 5 p.m. on the last day of the comment period.

How a decision is made: After comments have been considered, the board will make the final decision.

To review documents: The TMDL implementation plans are available on the DEQ website at http://www.deq.virginia.gov/Programs/Water/WaterQualityIn

formationTMDLs/TMDL/TMDLImplementation/TMDLImplementationPlans.aspx and by contacting the DEQ representative named below. The electronic copies are in PDF format and may be read online or downloaded.

Contact for public comments, document requests, and additional information: Liz McKercher, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4291, FAX (804) 698-4116, or email elizabeth.mckercher@deq.virginia.gov.

Approval of Water Quality Management Planning Actions

Notice of action: The State Water Control Board (board) is considering the approval of ten total maximum daily load (TMDL) reports and one TMDL modification, and granting authorization to include the TMDL reports in the appropriate Water Quality Management Plans (WQMPs).

Purpose of notice: The board is seeking comment on the proposed approvals and authorizations. The purpose of these actions is to approve ten TMDL reports and one TMDL modification as Virginia's plans for the pollutant reductions necessary for attainment of water quality goals in impaired waterbodies. These actions are taken in accordance with the Public Participation Procedures for Water Quality Management Planning.

Public comment period: February 11, 2013, through March 12, 2013.

Description of proposed action: DEQ staff intends to recommend 1) that the DEQ Director approve the TMDL reports and TMDL modification listed below as Virginia's plans for the pollutant reductions necessary for attainment of water quality goals in the impaired segments and 2) that the DEQ Director authorize inclusion of the TMDL reports and TMDL modification in the appropriate WQMPs. No regulatory amendments are required for these TMDLs and their associated waste load allocations.

At the December 2, 2004, meeting, the board voted unanimously to delegate to the DEQ director the authority to approve TMDLs that do not include waste load allocations requiring regulatory adoption by the board, provided that a summary report of the action the director plans to take is presented to the board prior to the director approving the TMDL reports. The TMDLs included in this public notice will be approved using this delegation of authority.

The TMDLs listed below were developed in accordance with federal regulations (40 CFR 130.7) and are exempt from the provisions of Article 2 of the Virginia Administrative Process Act. The TMDLs have been through the TMDL public participation process contained in DEQ's Public Participation Procedures for Water Quality Management Planning. The public comment process provides the affected stakeholders an opportunity for public appeal of the TMDLs. The Environmental Protection Agency approved all TMDL reports presented under this public notice. The approved reports can be found at http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/ApprovedTMDLReports.aspx .

Affected Waterbodies and Localities:

<u>In the New River Basin:</u>

1. "Bacteria TMDL Development for Mill Creek, Cove Creek, Miller Creek, Stony Fork, Tate Run, South Fork Reed Creek, and Reed Creek in Wythe County, Virginia"

- 12 bacteria TMDLs, located in Wythe County, propose bacteria reductions for portions of the watersheds to address primary contact (swimming) use.

2. "Bacteria, Benthic, and Temperature TMDLs in the Little River Watershed of Floyd and Montgomery Counties, Virginia"

- 1 bacteria TMDL and 8 temperature TMDLs, located in Floyd, Franklin, Montgomery, Patrick, and Pulaski counties, propose bacteria and temperature reductions for portions of the watersheds to address primary contact (swimming) and aquatic life uses.

<u>In the James River Basin:</u>

3. "Bacteria TMDL Development for Rockfish River, North Fork Rockfish River, and South Fork Rockfish River in Nelson County and Albemarle County, Virginia"

- 3 bacteria TMDLs, located in Nelson and Albemarle counties, propose bacteria reductions for portions of the watersheds to address primary contact (swimming use) impairments.

4. "E. Coli TMDL Development for Chickahominy River and Tributaries, VA"

- 1 bacteria TMDL, located in Hanover, Charles City, New Kent, and Henrico counties, proposes bacteria reductions for portions of the watershed to address primary contact (swimming use) impairments.

<u>In the Chowan River Basin:</u>

5. "Bacteria Total Maximum Daily Load Development for Three Creek, Flat Swamp, Tarrara Creek, Mill Swamp, and Darden Mill Run in Southampton, Sussex, Greensville, Brunswick Counties, VA"

- 7 bacteria TMDLs, located in Southampton, Sussex, Brunswick and Greensville counties, proposes bacteria reductions for portions of the watersheds to address the primary contact (swimming) use.

<u>In the Chesapeake Bay-Small Coastal-Eastern Shore Basin:</u>

6. "Total Maximum Daily Loads of Pathogens for Finney Creek in Accomack County, Virginia"

• 2 bacteria TMDLs, located in Accomack County, propose bacteria reductions for portions of the watershed to address primary contact (swimming use) impairments.

7. "Total Maximum Daily Loads of DO and Pathogens for Gargathy Creek (Upper, Lower, and Riverine Portions) in Accomack County, Virginia"

• 1 bacteria TMDL, located in Accomack County, proposes bacteria reductions for portions of the watershed to address the primary contact (swimming use) impairment.

8. "Total Maximum Daily Loads of Pathogens for Unnamed Tributary to Pitts Creek in Accomack County, Virginia"

• 1 bacteria TMDL, located in Accomack County, proposes bacteria reductions for portions of the watershed to address the primary contact (swimming use) impairment.

In the Tennessee/Big Sandy River Basin:

9. "TMDL Development, Middle Clinch River Watershed, VA"

• 6 bacteria TMDLs, located in Tazewell and Russell counties, propose bacteria reductions for portions of the watershed to address the primary contact (swimming use) impairments.

10. "TMDL Development, North Fork Holston River Watershed, VA"

• 1 temperature TMDL and 5 bacteria TMDLs, located in Bland, Tazewell, Smyth, Washington, and Scott counties, propose bacteria reductions for portions of the watershed to address the primary contact (swimming use) and aquatic life use impairments.

In the York River Basin:

11. Modification to "Bacteria Total Maximum Daily Load Development for the Pamunkey River Basin"

• 11 bacteria TMDLs, located in Albemarle, Caroline, Fluvanna, Goochland, Hanover, King William, Louisa, New Kent, Orange, and Spotsylvania counties propose bacteria reductions to address the primary contact (swimming use) impairments.

How to comment: DEQ accepts written comments by email, fax, and postal mail. All written comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by 5 p.m. on the last day of the comment period.

How a decision is made: After comments have been considered, the board will make the final decision.

To review documents: The TMDL reports and TMDL implementation plans are available on the DEQ website at http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/ApprovedTMDLReports.aspx and by contacting the DEQ representative named below. The electronic copies are in PDF format and may be read online or downloaded.

Contact for public comments, document requests and additional information: Liz McKercher, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4291, FAX (804) 698-4116, or email elizabeth.mckercher@deq.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, General Assembly Building, 201 North 9th Street, 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/.

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 use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works 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.