



# VIRGINIA

## REGISTER OF REGULATIONS

VOL. 29 ISS. 20

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

JUNE 3, 2013

### TABLE OF CONTENTS

<b>Register Information Page</b> .....	2367
<b>Publication Schedule and Deadlines</b> .....	2368
<b>Notices of Intended Regulatory Action</b> .....	2369
<b>Regulations</b> .....	2371
1VAC20-50. Candidate Qualification (Proposed) .....	2371
1VAC20-50. Candidate Qualification (Proposed) .....	2373
1VAC20-60. Election Administration (Proposed) .....	2374
1VAC20-70. Absentee Voting (Proposed) .....	2374
1VAC20-70. Absentee Voting (Proposed) .....	2375
1VAC20-70. Absentee Voting (Proposed) .....	2376
4VAC15-20. Definitions and Miscellaneous: In General (Proposed) .....	2376
4VAC15-30. Definitions and Miscellaneous: Importation, Possession, Sale, Etc., of Animals (Proposed) .....	2379
4VAC15-340. Fish: Seines and Nets (Proposed) .....	2380
6VAC20-270. Regulations Relating to Campus Security Officers (Final) .....	2381
8VAC20-60. Regulations Governing the Approval of Correspondence Courses for Home Instruction (Proposed) .....	2386
8VAC20-340. Regulations Governing Driver Education (Proposed) .....	2386
12VAC30-120. Waivered Services (Final) .....	2391
14VAC5-130. Rules Governing the Filing of Rates for Individual and Certain Group Accident and Sickness Insurance Policy Forms (Final) .....	2430
18VAC15-40. Virginia Certified Home Inspectors Regulations (Fast-Track) .....	2439
18VAC85-50. Regulations Governing the Practice of Physician Assistants (Final) .....	2441
18VAC90-30. Regulations Governing the Licensure of Nurse Practitioners (Emergency) .....	2444
18VAC90-40. Regulations for Prescriptive Authority for Nurse Practitioners (Emergency) .....	2447
18VAC95-20. Regulations Governing the Practice of Nursing Home Administrators (Fast-Track) .....	2449
18VAC110-20. Regulations Governing the Practice of Pharmacy (Proposed) .....	2453
18VAC110-20. Regulations Governing the Practice of Pharmacy (Proposed) .....	2460
21VAC5-10. General Administration - Securities Act (Final) .....	2464
21VAC5-20. Broker-Dealers, Broker-Dealer Agents and Agents of the Issuer (Final) .....	2464
21VAC5-30. Securities Registration (Final) .....	2464
21VAC5-40. Exempt Securities and Transactions (Final) .....	2464
21VAC5-45. Federal Covered Securities (Final) .....	2464
21VAC5-80. Investment Advisors (Final) .....	2464
21VAC5-100. Disclosure of Information or Documents by Commission (Final) .....	2464
24VAC15-10. Standards and Procedures Governing Intrastate Rail Rates in Virginia (Final) .....	2515
<b>Governor</b> .....	2517
<b>General Notices/Errata</b> .....	2519

Virginia Code Commission

<http://register.dls.virginia.gov>

THE VIRGINIA REGISTER OF REGULATIONS (USPS 001-831) is published biweekly by Matthew Bender & Company, Inc., 1275 Broadway, Albany, NY 12204-2694 for \$209.00 per year. Periodical postage is paid in Albany, NY and at additional mailing offices. POSTMASTER: Send address changes to The Virginia Register of Regulations, 136 Carlin Road, Conklin, NY 13748-1531.

---

# THE VIRGINIA REGISTER INFORMATION PAGE

---

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

## **ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS**

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

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

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

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

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

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

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation,

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

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

## **FAST-TRACK RULEMAKING PROCESS**

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

## **EMERGENCY REGULATIONS**

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 12 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*. During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

## **STATEMENT**

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

## **CITATION TO THE VIRGINIA REGISTER**

The *Virginia Register* is cited by volume, issue, page number, and date. **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.

Members of the Virginia Code Commission: **John S. Edwards**, Chairman; **Gregory D. Habeeb**; **James M. LeMunyon**; **Ryan T. McDougle**; **Robert L. Calhoun**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **Wesley G. Russell, Jr.**; **Charles S. Sharp**; **Robert L. Tavenner**; **Christopher R. Nolen**; **J. Jasen Eige** or **Jeffrey S. Palmore**.

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations; **Karen Perrine**, Assistant Registrar; **Anne Bloomsburg**, Regulations Analyst; **Rhonda Dyer**, Publications Assistant; **Terri Edwards**, Operations Staff Assistant.

---

## PUBLICATION SCHEDULE AND DEADLINES

---

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

---

### June 2013 through June 2014

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
29:20	May 15, 2013	June 3, 2013
29:21	May 29, 2013	June 17, 2013
29:22	June 12, 2013	July 1, 2013
29:23	June 26, 2013	July 15, 2013
29:24	July 10, 2013	July 29, 2013
29:25	July 24, 2013	August 12, 2013
29:26	August 7, 2013	August 26, 2013
30:1	August 21, 2013	September 9, 2013
30:2	September 4, 2013	September 23, 2013
30:3	September 18, 2013	October 7, 2013
30:4	October 2, 2013	October 21, 2013
30:5	October 16, 2013	November 4, 2013
30:6	October 30, 2013	November 18, 2013
30:7	November 13, 2013	December 2, 2013
30:8	November 26, 2013 ( <b>Tuesday</b> )	December 16, 2013
30:9	December 11, 2013	December 30, 2013
30:10	December 23, 2013 ( <b>Monday</b> )	January 13, 2014
30:11	January 8, 2014	January 27, 2014
30:12	January 22, 2014	February 10, 2014
30:13	February 5, 2014	February 24, 2014
30:14	February 19, 2014	March 10, 2014
30:15	March 5, 2014	March 24, 2014
30:16	March 19, 2014	April 7, 2014
30:17	April 2, 2014	April 21, 2014
30:18	April 16, 2014	May 5, 2014
30:19	April 30, 2014	May 19, 2014
30:20	May 14, 2014	June 2, 2014
30:21	May 28, 2014	June 16, 2014
30:22	June 11, 2014	June 30, 2014

\*Filing deadlines are Wednesdays unless otherwise specified.

---

# NOTICES OF INTENDED REGULATORY ACTION

---

## TITLE 2. AGRICULTURE

### BOARD OF AGRICULTURE AND CONSUMER SERVICES

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to consider amending **2VAC5-610, Rules Governing the Solicitation of Contributions**. The purpose of the proposed action is to remove references to the Office of Consumer Affairs, update references to other state agencies, reflect changes in Internal Revenue Service filing requirements, and revise the regulation as determined to be necessary during upcoming stakeholder meetings.

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

Statutory Authority: § 57-66 of the Code of Virginia.

Public Comment Deadline: July 3, 2013.

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

VA.R. Doc. No. R13-3701; Filed May 15, 2013, 10:43 a.m.

---

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD FOR BARBERS AND COSMETOLOGY

#### Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the Board for Barbers and Cosmetology has withdrawn the Notice of Intended Regulatory Action for **18VAC41-20, Barbering and Cosmetology Regulations**, which was published in [28:12 VA.R. 1011 February 13, 2012](#). The board intends to reinstate this regulatory action.

Agency Contact: William H. Ferguson, II, Executive Director, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email [barbercosmo@dpor.virginia.gov](mailto:barbercosmo@dpor.virginia.gov).

VA.R. Doc. No. R12-3107; Filed May 1, 2013, 1:35 p.m.

## BOARD FOR CONTRACTORS

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board for Contractors intends to consider amending **18VAC50-22, Board for Contractors Regulations**. The purpose of the proposed action is to review and amend the definitions of classifications and specialties. The proposed amendments are required to comply with the provisions of Chapter 116 of the 2013 Acts of Assembly, which established separate license categories for residential and commercial contractors for each of the current licensing categories: Class A, B, and C contractor licenses.

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

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

Public Comment Deadline: July 3, 2013.

Agency Contact: Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (804) 527-4401, or email [contractors@dpor.virginia.gov](mailto:contractors@dpor.virginia.gov).

VA.R. Doc. No. R13-3648; Filed May 10, 2013, 2:14 p.m.

## BOARD OF NURSING

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Nursing intends to consider amending **18VAC90-30, Regulations Governing the Licensure of Nurse Practitioners**. The purpose of the proposed action is to revise requirements for the practice of nurse practitioners consistent with a model of collaboration and consultation with a patient care team physician working under a mutually agreed-upon practice agreement within a patient care team. The goal of the amended regulation is to revise terminology and criteria for practice, consistent with changes to the Code of Virginia in Chapter 213 of the 2012 Acts of Assembly. The proposed regulations will replace emergency regulations that are currently in place to implement these requirements.

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

Statutory Authority: §§ 54.1-2400 and 54.1-3005 of the Code of Virginia.

Public Comment Deadline: July 3, 2013.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4515, FAX (804) 527-4455, or email [jay.douglas@dhp.virginia.gov](mailto:jay.douglas@dhp.virginia.gov).

VA.R. Doc. No. R13-3349; Filed May 8, 2013, 11:11 a.m.

---

# Notices of Intended Regulatory Action

---

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Nursing intends to consider amending **18VAC90-40, Regulations for Prescriptive Authority for Nurse Practitioners**. The purpose of the proposed action is to amend the requirements for prescriptive authority for nurse practitioners consistent with a model of collaboration and consultation with a patient care team physician working under a mutually agreed-upon practice agreement within a patient care team. The goal of the amended regulation is to revise terminology and criteria for practice for consistency with changes to the Code of Virginia in Chapter 213 of the 2012 Acts of Assembly. The proposed regulations will replace emergency regulations that are currently in place to implement these requirements.

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

Statutory Authority: §§ 54.1-2400 and 54.1-2957.01 of the Code of Virginia.

Public Comment Deadline: July 3, 2013.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4515, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

V.A.R. Doc. No. R13-3350; Filed May 8, 2013, 11:12 a.m.

social services with rules for the provision of child welfare services.

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

Statutory Authority: §§ 63.2-217 and 63.2-900 of the Code of Virginia.

Public Comment Deadline: July 3, 2013.

Agency Contact: Cynthia Bauer, Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7550, FAX (804) 726-7499, or email cynthia.bauer@dss.virginia.gov.

V.A.R. Doc. No. R13-3751; Filed May 15, 2013, 10:22 a.m.

---

## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Social Services intends to consider **22VAC40-201, Permanency Services - Prevention, Foster Care, Adoption, and Independent Living**. The purpose of the proposed action is to make 22VAC40-201 consistent with the Code of Virginia and federal laws, as well as make other necessary changes, including (i) amending definitions (such as guidance manual name changes to the Child and Family Services Manual); (ii) eliminating independent living (IL) as an allowable permanency goal; (iii) changing family assessment requirements; (iv) adding references to the Department of Education and the Department of Social Services Joint Guidance for School Stability of Children in Foster Care; (v) adding components for service planning; (vi) clarifying and adding changes to IL services; (vii) clarifying and adding training requirements for child welfare staff; and (viii) establishing a process for regularly reviewing foster and adoptive parent rates. This regulation encompasses the full range of services for prevention, foster care, adoption, and independent living services and provides local departments of

---

# REGULATIONS

---

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

---

## Symbol Key

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

---

## TITLE 1. ADMINISTRATION

### STATE BOARD OF ELECTIONS

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

#### Proposed Regulation

**Titles of Regulations:** 1VAC20-50. Candidate Qualification (amending 1VAC20-50-20).

**1VAC20-60. Election Administration (amending 1VAC20-60-20).**

**Statutory Authority:** §§ 24.2-103 and 24.2-506 (eff. July 1, 2013) of the Code of Virginia.

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

**Public Comment Deadline:** June 21, 2013.

**Agency Contact:** Myron McClees, Policy Analyst, State Board of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8949, FAX (804) 786-0760, or email myron.mcclees@sbe.virginia.gov.

#### Summary:

*Pursuant to Chapter 684 of the 2013 Acts of Assembly, the proposed amendments establish standards and procedures for determining the validity of petition signatures.*

**1VAC20-50-20. Material omissions from candidate petitions and petition signature qualifications.**

A. Pursuant to the requirements of §§ 24.2-506, 24.2-521, and 24.2-543 of the Code of Virginia, a petition or a petition signature should not be rendered invalid if it contains an error or omission not material to its proper processing.

B. The following omissions are always material and any petition containing such omissions ~~should~~ shall be rendered invalid if:

1. The petition submitted is not the double-sided document, or a copy thereof, provided by the State Board of Elections;
2. The petition does not have the name, or some variation of the name, and address of the candidate on the front of the form;
3. The petition fails to identify the office sought on the front of the form;

4. The petition fails to identify the applicable election district in which the candidate is running for office;
5. The circulator has not signed the petition affidavit and provided his current address;
6. The circulator is (i) not a legal resident of the Commonwealth, (ii) a minor, or (iii) a felon whose voting rights have not been restored;
7. The circulator has not signed the petition he circulated in the presence of a notary;
8. The circulator has not had a notary sign the affidavit for each petition submitted;
9. The notary has not affixed a photographically reproducible seal;
10. The notary has not included his registration number and commission expiration date; or
11. Any combination of the scenarios of this subsection exists.

~~C. If the circulator signs the petition in the "Signature of Registered Voter," his signature shall be invalidated but the petition shall be valid notwithstanding any other error or omission. The following omissions related to individual petition signatures are always material and any petition signature containing such omission shall be rendered invalid if:~~

1. The signer is not qualified to cast a ballot for the office for which the petition was circulated;
2. The signer is also the circulator of the petition;
3. The signer provided an accompanying date that is subsequent to the date upon which the notary signed the petition;
4. The signer provided an address that does not match the petition signer's address in the Virginia voter registration system; or
5. The signer did not sign the petition.

D. The following omissions shall be treated as nonmaterial provided ~~that the general registrar can independently and reasonably verify~~ the omitted information ~~can be independently verified:~~

1. An older version of the petition is used (provided that the information presented complies with current laws, regulations, and guidelines);
2. The "election information" including (i) county, city, or town in which the election will be held; (ii) election type; and (iii) date of election are omitted;

---

# Regulations

---

3. The name of the candidate and office sought are omitted from the back of the petition; ~~or~~

4. The circulator has not provided the last four digits of his social security number in the affidavit;

5. The signer omits his first name, provided he provides a combination of his first or middle initials or a middle name and last name and address that matches a qualified voter within the Virginia voter registration system;

6. The signer prints his name on the "Print" line and prints his name on the "Sign" line; or

7. The signer fails to provide the date but a period of time that qualifies can affirmatively be established with previous and subsequent dates provided by other signers upon the petition page.

E. A signature upon a petition shall be included in the count toward meeting the petition signature requirements only if:

1. The petition signer is a qualified voter who is maintained on the Virginia voter registration system either (i) with active status or (ii) with inactive status and qualified to vote for the office for which the petition was circulated. All qualified voters with inactive status must provide an address upon the petition that matches what is listed for the voter within the Virginia voter registration system;

2. The signer provides his name; and

3. The signer provides his house number, street name, street type, and as applicable, city that matches a qualified voter within the Virginia voter registration system. For purposes of this section, "city" may include the signer's locality, town, or any acceptable mailing name for the five-digit zip code of the signer's residence.

## **1VAC20-60-20. Material omissions on referendum petitions and petition signature qualifications.**

A. Pursuant to the requirements of § 24.2-684.1 of the Code of Virginia, a petition or a petition signature should not be rendered invalid if it contains an error or omission not material to its proper processing.

B. The following omissions are always material and any petition containing such omissions ~~should~~ shall be rendered invalid if:

1. The petition submitted is not the double-sided document, or a copy thereof, provided by the State Board of Elections;

2. The "question" or "referendum issue" is not stated in a manner set forth by law on the front of the petition;

3. The circulator has not signed the petition affidavit and provided his current address;

4. The circulator is (i) not a legal resident of the Commonwealth, (ii) a minor, or (iii) a felon whose rights have not been restored;

5. The circulator has not signed the affidavit for the petition he circulated in the presence of a notary;

6. The circulator has not had a notary sign the affidavit for each petition submitted;

7. The notary has not affixed a photographically reproducible seal;

8. The notary has not included his registration number and commission expiration date; or

9. Any combination of the aforementioned scenarios exist.

~~C. If the circulator signs the petition in the "Signature of Registered Voter" field, his signature shall be invalidated but the petition shall be valid notwithstanding any other error or omission. The following omissions related to individual petition signatures are always material and any petition signature containing such omission shall be rendered invalid if:~~

1. The signer is not qualified to cast a ballot for the referendum for which the petition was circulated;

2. The signer is also the circulator of the petition;

3. The signer provided an accompanying date that is subsequent to the date upon which the notary signed the petition;

4. The signer provided an address that does not match the petition signer's address in the Virginia voter registration system; or

5. The signer did not sign the petition.

~~D. Subdivision B 3 of this section does not apply to a school board referendum submitted pursuant to § 24.2-57.2 or 24.2-165 of the Code of Virginia.~~

~~E. D.~~ The following omissions shall be treated as nonmaterial provided ~~that~~ the general registrar can independently and reasonably verify the omitted information ~~can be independently verified:~~

1. An older version of the petition is used (provided that the information presented complies with current laws, regulations, and guidelines);

2. The "election information" including: (i) county, city, or town in which the election will be held; (ii) election type; and (iii) date of election are omitted; ~~or~~

3. The circulator has not provided the last four digits of his social security number in the affidavit;

4. The signer omits his first name, provided he provides a combination of his first or middle initials or a middle name and last name and address that matches a qualified voter within the Virginia voter registration system;

5. The signer prints his name on the "Print" line and prints his name on the "Sign" line; or

6. The signer fails to provide the date but a period of time that qualifies can affirmatively be established with previous and subsequent dates provided by other signers upon the petition page.

E. A signature upon a petition shall be included in the count toward meeting the petition signature requirements only if:

1. The petition signer is a qualified voter who is maintained on the Virginia voter registration system either (i) with active status or (ii) with inactive status and qualified to vote for the office for which the petition was circulated. All qualified voters with inactive status must provide an address upon the petition that matches what is listed for the voter within the Virginia voter registration system;

2. The signer provides his name; and

3. The signer provides his house number, street name, street type, and as applicable, city that matches a qualified voter within the Virginia voter registration system. For purposes of this section, "city" may include the signer's locality, town, or any acceptable mailing name for the five-digit zip code of the signer's residence.

VA.R. Doc. No. R13-3744; Filed May 15, 2013, 11:56 a.m.

**Proposed Regulation**

Title of Regulation: 1VAC20-50. Candidate Qualification (adding 1VAC20-50-30).

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

Public Hearing Information:

June 25, 2013 - 10 a.m. - General Assembly Building, House Room C, Richmond, VA

Public Comment Deadline: June 21, 2013.

Agency Contact: Myron McClees, Policy Analyst, State Board of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8949, FAX (804) 786-0760, or email myron.mcclees@sbe.virginia.gov.

Summary:

*Chapter 684 of the 2013 Acts of Assembly provides that candidates are given an opportunity to appeal a decision of signature insufficiency and requires the State Board of Elections to develop procedures for the conduct of such an appeal. The proposed regulation provides a process that fills in specific procedures not directly addressed by the legislation, including (i) documents that must be submitted with a notice of appeal, (ii) notary requirements for the notice of appeal, (iii) who bears the burden of proof, (iv) necessary documentation to support claims of eligibility, (v) the number of board members' acquiescence necessary to reverse a previously rendered eligibility determination of a signature, and (vi) the finality of the appeal process.*

**1VAC20-50-30. Appeals of petition signature insufficiency.**

A. Pursuant to the requirements of §§ 24.2-506 and 24.2-543 of the Code of Virginia, a candidate for office, other than a party nominee, may appeal a determination that the candidate has failed to provide the required number of valid petition signatures necessary to qualify to appear on the ballot.

B. Any communication or notice required in this section shall be made in writing and delivered by mail or, unless otherwise prohibited by the Code of Virginia, electronically by electronic mail or facsimile. Notice of appeal from candidates must bear a photographically reproducible notary seal and be received by the State Board of Elections prior to the deadlines established within this section.

C. A candidate for a county, city, or town office shall file his appeal with the local electoral board. A candidate for any other office shall file his appeal with the State Board of Elections.

D. A candidate for an office other than President of the United States must file his appeal within five calendar days of the issuance of the notice of disqualification.

E. A candidate for President of the United States must file his appeal within seven calendar days of the issuance of the notice of disqualification.

F. The proper body to which the appeal notice was given shall establish the time and place where the appeal will be heard and convey this information immediately to the candidate.

G. The candidate bears the burden of proof in establishing that a sufficient number of signatures from qualified voters were timely provided.

1. The candidate must submit a list containing the rejected signatures to be reviewed and the specific reason for each signature's reconsideration at least two calendar days prior to the date on which the appeal will be heard. If the candidate submits no list, or submits a list that contains an insufficient number of names and reconsideration reasons to make up the number of signatures by which the candidate was deemed deficient, no appeal shall be held and the initial determination that the candidate did not qualify for the ballot will be final.

2. The candidate may submit documents clarifying the status of persons whose signatures were rejected for lacking proper registration status or residence.

3. The candidate may submit documents establishing the age of majority for any signer who was listed as ineligible due to status of being a legal minor.

4. The candidate may submit affidavits from persons whose signatures were rejected due to illegibility that attest to their identity. If possible, the affidavits should state the person's name, residence address, and a reasonable description of the location where approached by the circulator to sign the petition.

5. The candidate may not submit documents establishing that a petition signer became registered or updated his voter registration status to the address provided upon the petition after the established candidate filing deadline for the office sought. A candidate may provide documents establishing that the petition signer filed a Virginia voter registration application or change of address application to

---

# Regulations

---

his local registrar during the period in which the locality's voter registration procedures were suspended in accordance with § 24.2-416 of the Code of Virginia.

H. Individual signatures reconsidered during the appeal will only count towards the candidate's requisite number if a majority of board members agree that sufficient evidence exists for their inclusion.

I. All determinations of the board before which the appeal is being heard shall be considered final and not subject to further appeal.

V.A.R. Doc. No. R13-3750; Filed May 15, 2013, 10:38 a.m.

## Proposed Regulation

**Title of Regulation: 1VAC20-60. Election Administration (amending 1VAC20-60-40).**

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

**Public Hearing Information:**

June 25, 2013 - 10 a.m. - General Assembly Building, House Room C, Richmond, VA

**Public Comment Deadline:** June 21, 2013.

**Agency Contact:** Myron McClees, Policy Analyst, State Board of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8949, or email myron.mcclees@sbe.virginia.gov.

**Summary:**

*Chapter 469 of the 2013 Acts of Assembly added a provision that allows an officer of election to cause a machine to accept an optical scan ballot that was rejected due to an overvote. To conform the regulation to Chapter 469, the proposed amendment provides an exception to the general rule that a ballot may only be cast by a voter or an officer of election who has been specifically directed to do so by the voter.*

### 1VAC20-60-40. When ballot cast.

A. A voter, voting in person on election day or voting absentee in-person, has not voted until a permanent record of the voter's intent is preserved.

B. A permanent record is preserved by a voter pressing the vote or cast button on a direct recording electronic machine, inserting an optical scan ballot into an electronic counter, or placing a paper ballot in an official ballot container.

C. A vote has not been cast by the voter unless and until the voter or an officer of election or assistant at the direction of and on behalf of the voter pursuant to § 24.2-649 of the Code of Virginia completes these actions to preserve a permanent record of the vote.

D. If any voter's ballot was not so cast by or at the direction of the voter, then the ballot cannot be cast by any officer of election or other person present. Notwithstanding the previous sentence, if a voter inserts a ballot into an optical scanner and departs prior to the ballot being returned by the

scanner due to an overvote, the officer of election may cast the ballot for the absent voter.

E. An absentee voter who votes other than in person shall be deemed to have cast his ballot at the moment he personally delivers the ballot to the general registrar or electoral board or relinquishes control over the ballot to the United States Postal Service or other authorized carrier for returning the ballot as required by law.

V.A.R. Doc. No. R13-3743; Filed May 15, 2013, 10:29 a.m.

## Proposed Regulation

**Title of Regulation: 1VAC20-70. Absentee Voting (amending 1VAC20-70-20).**

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

**Public Hearing Information:**

June 25, 2013 - 10 a.m. - General Assembly Building, House Room C, Richmond, VA

**Public Comment Deadline:** June 21, 2013.

**Agency Contact:** Martha Brissette, State Board of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8925, FAX (804) 371-0194, TTY (800) 260-3466, or email martha.brissette@sbe.virginia.gov.

**Summary:**

*The proposed amendment provides that an absentee ballot not sealed in Envelope B should not be rendered invalid, provided that the unsealed absentee ballot within Envelope B substantially complies with the requirement that the ballot be accompanied by the Statement of Voter.*

### 1VAC20-70-20. Material omissions from absentee ballots.

A. Pursuant to the requirements of § 24.2-706 of the Code of Virginia, a timely received absentee ballot contained in an Envelope B shall not be rendered invalid if it contains an error or omission not material to its proper processing.

B. The following omissions are always material and any Envelope B containing such omissions shall be rendered invalid if any of the following exists:

1. Except as provided in subdivisions C 2 and 3 of this section, the voter did not include his full first name;
2. The voter did not provide his last name;
3. If the voter has a legal middle name, the voter did not provide at least a middle initial;
4. The voter did not provide his house number and street name or his rural route address;
5. The voter did not provide either his city or zip code;
6. The voter did not sign Envelope B;
7. The voter did not provide the date on which he signed Envelope B; or
8. The voter's witness did not sign Envelope B; ~~or~~
9. ~~The ballot is not sealed in Envelope B.~~

C. The ballot shall not be rendered invalid if on the Envelope B:

1. The voter included his full name in an order other than "last, first, middle";
2. The voter used his first initial instead of his first full name, so long as the voter provided his full middle name;
3. The voter provided a derivative of his legal name as his first or middle name (e.g., "Bob" instead of "Robert");
4. The voter did not provide his generational suffix;
5. The voter did not provide his residential street identifier (Street, Drive, etc.);
6. The voter did not provide a zip code, so long as the voter provided his city;
7. The voter did not provide his city, so long as the voter provided his zip code;
8. The voter omitted the year in the date on which he signed Envelope B; ~~or~~
9. The voter provided the incorrect date on which he signed Envelope B; or
10. The voter did not seal the ballot within Envelope B, provided there is substantial compliance with the requirement that the ballot be accompanied by the required Statement of Voter.

D. For the purposes of this regulation, "city" may include the voter's locality, town, or any acceptable mailing name for the five-digit zip code of the voter's residence.

E. The illegibility of a voter's or witness' signature on an Envelope B shall not be considered an omission or error.

F. Whether an error or omission on an Envelope B not specifically addressed by this regulation is material and shall render the absentee ballot invalid shall be determined by a majority of the officers of the election present.

VA.R. Doc. No. R13-3739; Filed May 15, 2013, 10:28 a.m.

**Proposed Regulation**

Title of Regulation: **1VAC20-70. Absentee Voting (amending 1VAC20-70-30).**

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

Public Hearing Information:

June 25, 2013 - 10 a.m. - General Assembly Building, House Room C, Richmond, VA

Public Comment Deadline: June 21, 2013.

Agency Contact: Martha Brissette, Policy Analyst, State Board of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8925, FAX (804) 371-0194, TTY (800) 260-3466, or email martha.brissette@sbe.virginia.gov.

Summary:

*The proposed amendment provides that a Federal Write-In Absentee Ballot should not be rendered invalid if the applicant did not seal the ballot within the security envelope, provided there is substantial compliance with the*

*requirement that the ballot be accompanied by the required voter statement.*

**1VAC20-70-30. Material omissions from Federal Write-In Absentee Ballots.**

A. Pursuant to the requirements of §§ 24.2-702.1 and 24.2-706 of the Code of Virginia, a timely received write-in absentee ballot on a Federal Write-In Absentee Ballot (FWAB) (Form SF-186A) should not be rendered invalid if it contains an error or omission not material to determining the eligibility of the applicant to vote in the election in which he offers to vote.

B. If the applicant is not registered, the FWAB may not be accepted as timely for registration unless the applicant has met the applicable registration deadline. Section 24.2-419 of the Code of Virginia extends the mail registration deadline for certain military applicants. All applicants are subject to the absentee application deadline in § 24.2-701 of the Code of Virginia.

C. The following omissions are always material and any FWAB containing such omissions should be rendered invalid if any of the following, or combination thereof, exists:

1. The applicant has omitted the signature of the voter or the notation of an assistant in the voter signature box that the voter is unable to sign;
2. The applicant has omitted the signature of the witness;
3. The applicant did not include the declaration/affirmation page; or
4. The applicant omitted from the declaration/affirmation information required by § 24.2-702.1 of the Code of Virginia needed to determine eligibility including, but not limited to, current military or overseas address.

D. The ballot should not be rendered invalid if on the FWAB any of the following, or combination thereof, exists:

1. The applicant has not listed the names specifically in the order of last, first, and middle name;
2. The applicant has listed a middle initial or maiden name, instead of the full middle name;
3. The applicant has omitted the street identifier, such as the term "road" or "street" when filling in the legal residence;
4. The applicant has omitted the county or city of registration if the county or city is clearly identifiable by the residence address information provided;
5. The applicant has omitted the zip code;
6. The applicant has omitted the date of the signature of the voter;
7. The applicant has omitted the address of the witness;
8. The applicant has omitted the date of signature of the witness;
9. The applicant ~~has omitted a security envelope~~ did not seal the ballot within the security envelope, provided there

# Regulations

is substantial compliance with the requirement that the ballot be accompanied by the required voter statement; or

10. The applicant has submitted a ballot containing offices or issues for which he is not eligible.

VA.R. Doc. No. R13-3742; Filed May 15, 2013, 10:29 a.m.

## Proposed Regulation

**Title of Regulation:** **1VAC20-70. Absentee Voting (amending 1VAC20-70-40).**

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

**Public Hearing Information:**

June 25, 2013 - 10 a.m. - General Assembly Building, House Room C, Richmond, VA

**Public Comment Deadline:** June 21, 2013.

**Agency Contact:** Lindsay Fraser, Election Uniformity Analyst, State Board of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8936, FAX (804) 371-0194, or email lindsay.fraser@sbe.virginia.gov.

**Summary:**

*In response to Chapter 501 of the 2013 Acts of Assembly, the proposed amendment gives the general registrar responsibility for taking the steps needed to prepare absentee ballots for counting after polls close on election day.*

**1VAC20-70-40. Alternative counting processing procedures for absentee ballots returned before election day.**

~~An electoral board that approves use of alternative procedures for~~ Each general registrar in taking the measures as needed to expedite counting absentee ballots under § 24.2-709.1 of the Code of Virginia shall ensure that:

1. The general registrar staff assigned follow all previously prescribed instructions for processing and verifying absentee ballots.
2. All absentee ballots are secured at the end of each day following principles of dual control and chain of custody.
3. The general registrar staff assigned follow carefully all the requirements of § 24.2-709.1 of the Code of Virginia, including the requirement that at least two officers of election, one representing each party, be present during all hours that the expedited procedures are used.
4. Notice is given to the local political party chairs of the times and places for processing absentee ballots in sufficient time to allow for the authorized party representatives to be present.

VA.R. Doc. No. R13-3741; Filed May 15, 2013, 10:27 a.m.

## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### BOARD OF GAME AND INLAND FISHERIES

**REGISTRAR'S NOTICE:** The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife. The department is required by § 2.2-4031 of the Code of Virginia to publish all proposed and final wildlife management regulations, including length of seasons and bag limits allowed on the wildlife resources within the Commonwealth of Virginia.

## Proposed Regulation

**Title of Regulation:** **4VAC15-20. Definitions and Miscellaneous: In General (amending 4VAC15-20-65).**

**Statutory Authority:** §§ 29.1-103 and 29.1-501 of the Code of Virginia.

**Public Hearing Information:**

June 13, 2013 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

**Public Comment Deadline:** May 31, 2013.

**Agency Contact:** Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

**Summary:**

*The proposed amendments create a one-day nonresident trip fishing license at a fee of \$7.00 and reduce the fee of the Permit to Fish for One Day at Board-Designated Stocked Trout Fishing Areas with Daily Use Fees from \$8.00 to \$7.00.*

**4VAC15-20-65. Hunting, trapping, and fishing license and permit fees.**

In accordance with the authority of the board under § 29.1-103 (16) of the Code of Virginia, the following fees are established for hunting, trapping, and fishing licenses and permits:

Virginia Resident Licenses to Hunt	
Type license	Fee
1-year Resident License to Hunt, for licensees 16 years of age or older	\$22.00
2-year Resident License to Hunt, for licensees 16 years of age or older	\$43.00
3-year Resident License to Hunt, for licensees 16 years of age or older	\$64.00
4-year Resident License to Hunt, for licensees 16 years of age or older	\$85.00

## Regulations

County or City Resident License to Hunt in County or City of Residence Only, for licensees 16 years of age or older	\$15.00	Virginia Resident Licenses for Additional Hunting Privileges	
Resident Senior Citizen Annual License to Hunt, for licensees 65 years of age or older	\$8.00	Type license or permit	Fee
Resident Junior License to Hunt, for licensees 12 through 15 years of age, optional for licensees under 12 years of age	\$7.50	Resident Bear, Deer, and Turkey Hunting License, for licensees 16 years of age or older	\$22.00
Resident Youth Combination License to Hunt, and to hunt bear, deer, and turkey, to hunt with bow and arrow during archery hunting season, and to hunt with muzzleloading guns during muzzleloading hunting season, for licensees under 16 years of age	\$15.00	Resident Junior Bear, Deer, and Turkey Hunting License, for licensees under 16 years of age	\$7.50
Resident Sportsman License to Hunt and Freshwater Fish, and to hunt bear, deer, and turkey, to hunt with bow and arrow during archery hunting season, to hunt with muzzleloading guns during muzzleloading hunting season, to fish in designated stocked trout waters, and to hunt with a crossbow (also listed under Virginia Resident Licenses to Fish)	\$132.00	Resident Archery License to Hunt with bow and arrow during archery hunting season	\$17.00
Resident Junior Lifetime License to Hunt, for licensees under 12 years of age at the time of purchase	\$255.00	Resident Crossbow License to Hunt with crossbow during archery hunting season	\$17.00
Resident Lifetime License to Hunt, for licensees at the time of purchase:		Resident Muzzleloading License to Hunt during muzzleloading hunting season	\$17.00
through 44 years of age	\$260.00	Resident Bonus Deer Permit	\$17.00
45 through 50 years of age	\$210.00	Virginia Nonresident Licenses to Hunt	
51 through 55 years of age	\$160.00	Type license	Fee
56 through 60 years of age	\$110.00	Nonresident License to Hunt, for licensees 16 years of age or older	\$110.00
61 through 64 years of age	\$60.00	Nonresident Three-Day Trip License to Hunt	\$59.00
65 years of age and over	\$20.00	Nonresident Youth License to Hunt, for licensees:	
Totally and Permanently Disabled Resident Special Lifetime License to Hunt	\$15.00	under 12 years of age	\$12.00
Service-Connected Totally and Permanently Disabled Veteran Resident Lifetime License to Hunt and Freshwater Fish (also listed under Virginia Resident Licenses to Fish)	\$15.00	12 through 15 years of age	\$15.00
		Nonresident Youth Combination License to Hunt, and to hunt bear, deer, and turkey, to hunt with bow and arrow during archery hunting season, and to hunt with muzzleloading guns during muzzleloading hunting season, for licensees under 16 years of age	\$30.00
		Nonresident Lifetime License to Hunt	\$555.00
		Virginia Nonresident Licenses for Additional Hunting Privileges	
		Type license or permit	Fee
		Nonresident Bear, Deer, and Turkey Hunting License, for licensees:	
		16 years of age or older	\$85.00
		12 through 15 years of age	\$15.00
		under 12 years of age	\$12.00

# Regulations

Nonresident Archery License to Hunt with bow and arrow during archery hunting season	\$30.00	Service-Connected Totally and Permanently Disabled Veteran Resident Lifetime License to Trap	\$15.00
Nonresident Crossbow License to Hunt with crossbow during archery hunting season	\$30.00	Nonresident License to Trap	\$205.00
Nonresident Muzzleloading License to Hunt during muzzleloading hunting season	\$30.00	Virginia Resident Licenses to Fish	
Nonresident Shooting Preserve License to Hunt within the boundaries of a licensed shooting preserve	\$22.00	Type license	Fee
Nonresident Bonus Deer Permit	\$30.00	1-year Resident License to Freshwater Fish	\$22.00
Miscellaneous Licenses or Permits to Hunt		2-year Resident License to Freshwater Fish	\$43.00
Type license or permit	Fee	3-year Resident License to Freshwater Fish	\$64.00
Waterfowl Hunting Stationary Blind in Public Waters License	\$22.50	4-year Resident License to Freshwater Fish	\$85.00
Waterfowl Hunting Floating Blind in Public Waters License	\$40.00	County or City Resident License to Freshwater Fish in County or City of Residence Only	\$15.00
Foxhound Training Preserve License	\$17.00	Resident License to Freshwater Fish, for licensees 65 years of age or older	\$8.00
Public Access Lands for Sportsmen Permit to Hunt, Trap, or Fish on Designated Lands (also listed under Miscellaneous Licenses or Permits to Fish)	\$17.00	Resident License to Fish in Designated Stocked Trout Waters	\$22.00
Virginia Resident and Nonresident Licenses to Trap		Resident License to Freshwater and Saltwater Fish	\$39.00
Type license	Fee	Resident License to Freshwater Fish for Five Consecutive Days	\$13.00
1-year Resident License to Trap, for licensees 16 years of age or older	\$45.00	Resident License to Freshwater and Saltwater Fish for Five Consecutive Days	\$23.00
2-year Resident License to Trap, for licensees 16 years of age or older	\$89.00	Resident Sportsman License to Hunt and Freshwater Fish, and to hunt bear, deer, and turkey, to hunt with bow and arrow during archery hunting season, to hunt with muzzleloading guns during muzzleloading hunting season, to fish in designated stocked trout waters, and to hunt with a crossbow (also listed under Virginia Resident Licenses to Hunt)	\$132.00
3-year Resident License to Trap, for licensees 16 years of age or older	\$133.00	Resident Special Lifetime License to Freshwater Fish, for licensees at the time of purchase:	
4-year Resident License to Trap, for licensees 16 years of age or older	\$177.00	through 44 years of age	\$260.00
County or City Resident License to Trap in County or City of Residence Only	\$20.00	45 through 50 years of age	\$210.00
Resident Junior License to Trap, for licensees under 16 years of age	\$10.00	51 through 55 years of age	\$160.00
Resident Senior Citizen License to Trap, for licensees 65 years of age or older	\$8.00	56 through 60 years of age	\$110.00
Resident Senior Citizen Lifetime License to Trap, for licensees 65 years of age or older	\$20.00	61 through 64 years of age	\$60.00
Totally and Permanently Disabled Resident Special Lifetime License to Trap	\$15.00	65 years of age and over	\$20.00

**Proposed Regulation**

**Title of Regulation:** **4VAC15-30. Definitions and Miscellaneous: Importation, Possession, Sale, Etc., of Animals (amending 4VAC15-30-50).**

**Statutory Authority:** § 29.1-501 of the Code of Virginia.

**Public Hearing Information:**

June 13, 2013 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

**Public Comment Deadline:** May 31, 2013.

**Agency Contact:** Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

**Summary:**

*The proposed amendment allows facilities accredited by the Association of Zoos and Aquariums (AZA) to possess, transport, have transported, export, or import native and naturalized species with written approval from the Director of the Department of Game and Inland Fisheries or his designee.*

**4VAC15-30-50. Possession, transportation, and release of wildlife by authorized persons.**

A. Department employees in the performance of their official duties; U.S. government agencies' employees whose responsibility includes fisheries and wildlife management; and county, city or town animal control officers in the performance of their official duties related to public health concerns or problem wildlife removal, and individuals operating under conditions of a commercial nuisance animal permit issued by the department pursuant to §§ 29.1-412 and 29.1-417 of the Code of Virginia will be deemed to be permitted pursuant to this section to capture, temporarily hold or possess, transport, release, and when necessary humanely euthanize wildlife, provided that the methods of and documentation for the capture, possession, transport, release and euthanasia shall be in accordance with board policy.

B. Local animal shelters operating under the authority of, or under contract with, any county, city, or town with animal control responsibilities shall be authorized to receive, temporarily confine, and humanely euthanize wildlife, except for state or federal threatened and endangered species; federally protected migratory bird species; black bear; white-tailed deer; and wild turkey, provided that the methods of and documentation for the possession, confinement, and euthanasia shall be in accordance with conditions defined by the agency director. Provided further that any person may legally transport wildlife, except for those species listed above, to an authorized animal shelter after contacting the facility to confirm the animal will be accepted.

C. Employees or agents of other state wildlife agencies while in the performance of their official duty in transporting

Resident Special Lifetime License to Fish in Designated Stocked Trout Waters, for licensees at the time of purchase:	
through 44 years of age	\$260.00
45 through 50 years of age	\$210.00
51 through 55 years of age	\$160.00
56 through 60 years of age	\$110.00
61 through 64 years of age	\$60.00
65 years of age and over	\$20.00
Totally and Permanently Disabled Resident Special Lifetime License to Freshwater Fish	\$15.00
Service-Connected Totally and Permanently Disabled Veteran Resident Lifetime License to Hunt and Freshwater Fish (also listed under Virginia Resident Licenses to Hunt)	\$15.00
<b>Virginia Nonresident Licenses to Fish</b>	
Type license	Fee
Nonresident License to Freshwater Fish	\$46.00
Nonresident License to Freshwater Fish in Designated Stocked Trout Waters	\$46.00
Nonresident License to Freshwater and Saltwater Fish	\$70.00
<u>Nonresident License to Freshwater Fish for One Day</u>	<u>\$7.00</u>
Nonresident License to Freshwater Fish for Five Consecutive Days	\$20.00
Nonresident License to Freshwater and Saltwater Fish for Five Consecutive Days	\$30.00
Nonresident Special Lifetime License to Freshwater Fish	\$555.00
Nonresident Special Lifetime License to in Fish in Designated Stocked Trout Waters	\$555.00
<b>Miscellaneous Licenses or Permits to Fish</b>	
Type license or permit	Fee
Permit to Fish for One Day at Board-Designated Stocked Trout Fishing Areas with Daily Use Fees	<del>\$8.00</del> <u>\$7.00</u>
Public Access Lands for Sportsmen Permit to Hunt, Trap, or Fish on Designated Lands (also listed under Miscellaneous Licenses or Permits to Hunt)	\$17.00
Special Guest Fishing License	\$60.00

---

# Regulations

---

wildlife through the Commonwealth will be deemed to be permitted pursuant to this section, provided that a list of animals to be transported, a schedule of dates and locations where those animals will be housed while in the Commonwealth, and a letter of authorization from both the forwarding and receiving state agencies are provided to the department 24 hours prior to the transporting of such animals, and further provided that such animals shall not be liberated within the Commonwealth.

D. Employees or agents of government agencies, while in the performance of their official duties, may temporarily possess, transport, and dispose of carcasses of wild animals killed by vehicles, except for state or federal threatened and endangered species, and federally protected migratory bird species.

E. With prior written approval from the director or his designee and under conditions of an applicable department permit, institutions with bona fide accreditation from the Association of Zoos and Aquariums may possess, transport, have transported, export, or import native and naturalized species defined in the List of Native and Naturalized Fauna of Virginia, which is incorporated by reference into 4VAC15-20-50.

VA.R. Doc. No. R13-3717; Filed May 15, 2013, 2:27 a.m.

## Proposed Regulation

**Title of Regulation: 4VAC15-340. Fish: Seines and Nets (adding 4VAC15-340-70, 4VAC15-340-80).**

**Statutory Authority:** § 29.1-501 of the Code of Virginia.

**Public Hearing Information:**

June 13, 2013 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

**Public Comment Deadline:** May 31, 2013.

**Agency Contact:** Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

**Summary:**

*The proposed amendments allow the licensing of eel pots for the taking of American eels for personal use or commercial purposes in Back Bay and its natural tributaries and in the North Landing River and its tributaries.*

### **4VAC15-340-70. Eel pots for taking American eels for personal use.**

A. The director may issue, deny, modify, suspend, or revoke annual eel pot permits for American eels designated for personal use. Such permits shall authorize the taking of American eels for personal use only (not for sale) with eel pots from waters designated in this section. Such permits shall be valid so long as the harvest of eels in the Commonwealth is not prohibited by other state or federal law or regulation.

B. It shall be unlawful for a permit holder to possess elvers.

C. It shall be unlawful for permit holders fishing eel pots to take any species other than American eels.

D. It shall be unlawful to place, set, or fish any eel pot that has a mesh less than 1/2-inch by 1/2-inch and does not contain at least one unrestricted 4-inch by 4-inch escape panel of 1/2-inch by 1-inch mesh. Buoys of all pots set must be marked by permanent means with the permit holder's name, address, and phone number.

E. American eels may be taken with eel pots in Back Bay and its natural tributaries (not including Lake Tecumseh and Red Wing Lake) and North Landing River and its natural tributaries from the North Carolina line to the Great Bridge locks.

F. It shall be unlawful for any permit holder to possess more than 50 eels daily. When fishing from a boat or vessel where the entire catch is held in a common hold or container, the daily possession limit shall be for the boat or vessel and shall be equal to the number of permit holders on board multiplied by 50. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any eel taken after the daily possession limit has been reached shall be returned to the water immediately. Possession of any quantity of eels that exceeds the daily possession limit described in this subsection shall be presumed to be for commercial purposes.

G. For the purposes of this section, the term "elver" shall mean any American eel of less than six inches in total length.

### **4VAC15-340-80. Eel pots for taking American eels for sale.**

A. The director may issue, deny, modify, suspend, or revoke annual eel pot permits designated for the sale of American eels. Such permits shall authorize the taking of American eels for sale, as specified, with eel pots from waters designated in this section. Such permits shall be valid so long as the harvest of American eels in the Commonwealth is not prohibited by other state or federal law or regulation. To be eligible, applicants must document harvest of at least one pound of American eels from Back Bay or North Landing River or their tributaries via reports submitted through the Virginia Marine Resources Commission Mandatory Harvest Reporting Program during the period January 1, 2007, to December 31, 2012, both dates inclusive. Applicants must document the reported harvest occurred while the applicant held a valid commercial fish pot or eel pot license issued by the Virginia Marine Resources Commission.

B. It shall be unlawful for permit holders to possess elvers.

C. It shall be unlawful for permit holders fishing eel pots to take any species other than American eels.

D. It shall be unlawful to place, set, or fish any eel pot that has a mesh less than 1/2-inch by 1/2-inch and does not contain at least one unrestricted 4-inch by 4-inch escape panel consisting of 1/2-inch by 1-inch mesh.

E. The permit holder's last name and Virginia Department of Game and Inland Fisheries American eel pot number must be permanently attached to buoys of all eel pots set. The maximum number of pots authorized per permit holder under this permit shall be 300.

F. American eels may be taken with eel pots in Back Bay and its natural tributaries (not including Lake Tecumseh and Red Wing Lake) and in North Landing River and its natural tributaries from the North Carolina line to the Great Bridge locks.

G. It shall be unlawful for any person to ship or otherwise transport any package, box, or other receptacle containing fish taken under an eel pot permit unless the same bears the permit holder's name and address.

H. Failure to comply with the daily harvest and sales reporting requirements as detailed in conditions of the permit shall be unlawful and may result in immediate permit revocation. It shall be the permit holder's responsibility to report "No Activity" when no activity occurs during a monthly reporting period.

I. For the purposes of this section, the term "elver" shall mean any American eel of less than six inches in total length.

V.A.R. Doc. No. R13-3728; Filed May 15, 2013, 3:19 a.m.

**TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS**

**CRIMINAL JUSTICE SERVICES BOARD**

**Final Regulation**

**Title of Regulation:** 6VAC20-270. Regulations Relating to Campus Security Officers (adding 6VAC20-270-10 through 6VAC20-270-130).

**Statutory Authority:** § 9.1-102 of the Code of Virginia.

**Effective Date:** July 3, 2013.

**Agency Contact:** Lisa McGee, Regulatory Manager, Department of Criminal Justice Services, P.O. Box 1300, Richmond, VA 23218, telephone (804) 371-2419, FAX (804) 786-6377, or email lisa.mcgee@dcjs.virginia.gov.

**Summary:**

*The regulations establish standards for campus security officers who are hired by colleges or universities or contracted through private security firms. The standards include eligibility requirements for certification, standards for initial training and biennial recertification, continuing education requirements, rules of conduct, and provisions for suspending certification.*

**Summary of Public Comments and Agency's Response:** A summary of comments made by the public and the agency's

response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

**CHAPTER 270**

**REGULATIONS RELATING TO CAMPUS SECURITY OFFICERS**

**6VAC20-270-10. Definitions.**

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

"Approved instructor" means a person who has been approved by the department to instruct the Campus Security Officer Training Course.

"Campus security officer" means any person employed by or contracted to a college or university for the sole purpose of maintaining peace and order and who is primarily responsible for ensuring the safety, security, and welfare of students, faculty, staff, and visitors. Certified law-enforcement officers as defined in § 9.1-101 of the Code of Virginia and campus police officers appointed pursuant to § 23-233 of the Code of Virginia are not included in this definition.

"Campus security point of contact" is the person designated by the college, university, private security services business, or private security services training school to serve as the contact person between the department and the college, university, private security services business, or private security services training school on matters concerning the certification of campus security officers.

"Certification" means that a qualified person has met the compulsory minimum entry-level training standards mandated for a campus security officer.

"College or university" means an institution of higher education created to educate and grant certificates or degrees in a variety of subjects.

"Compulsory minimum entry-level training and certification standards" means the compulsory training modules and other certification requirements, determined by the department, to comprise the necessary training and certification standards required as a basis for initial certification.

"Contracted" means a person employed by a licensed private security services business under contract to perform the functions of a campus security officer.

"Date of hire" means the date an employee is hired to provide campus security officer services for a college, university, or private security services business, and whom the department must regulate.

"Department" means the Department of Criminal Justice Services or any successor agency.

"Director" means the chief administrative officer of the department.

"Employee" means a person providing campus security services hired directly by the employing college or university or a person hired by a licensed private security services

---

# Regulations

---

business supplying campus security services to the college or university on a contract basis.

"Entry-level training requirement" means the compulsory modules determined by the department to comprise the necessary training required as a basis for certification.

"In-service training requirement" means the compulsory in-service training requirement adopted by the department for campus security officers.

"Private security services business" or "PSS" means any person engaged in the business of providing, or who undertakes to provide, security officers to another person under contract, express, or implied as defined in § 9.1-138 of the Code of Virginia.

"Private security services training school" means any person certified by the department to provide instruction in private security subjects for the training of private security service business personnel in accordance with this chapter.

"Special events" means those events at which large numbers of people gather on campus or at college or university facilities creating a need for additional or specialized security actions.

"This chapter" means the Regulations Relating to Campus Security Officers.

"Training requirement" means any entry-level or in-service training or retraining standard established by this chapter.

## **6VAC20-270-20. Exemption from certification.**

A. Contracted personnel who hold a valid private security services registration as an unarmed or armed security officer as defined under § 9.1-138 of the Code of Virginia are exempt from these compulsory minimum entry-level training and certification standards provided their duties are limited to security at special events.

B. Part-time officers employed or contracted to any one college or university, or any combination of colleges or universities in Virginia, are exempt from the provisions of this chapter provided that the aggregate hours worked by the officer during the calendar year do not exceed 120 hours.

## **6VAC20-270-30. Compulsory minimum entry-level training and certification standards.**

A. In addition to meeting all the hiring requirements of the employing college, university, or private security services business supplying campus security services to the college or university, all campus security officers are required to meet the following compulsory minimum entry-level training and certification standards. Such person shall:

1. Be a United States citizen or legal resident eligible under United States law for employment in the United States.
2. Undergo a background investigation to include a criminal history inquiry. Results of such inquiries shall be examined by the employer.

3. Possess a high school diploma, General Education Diploma (GED), or other accepted secondary school credential.

4. Be a minimum of 18 years of age.

5. Possess a valid driver's license issued by his state of residence if required by the duties of office to operate a motor vehicle.

6. Successfully complete first aid training as determined by the employing college or university. The level and substance of such training shall be at the discretion of the employing college or university.

7. Complete the online course Introduction to Incident Command System for Higher Education (IS-100.HE) as provided by the Emergency Management Institute at the Federal Emergency Management Agency (FEMA).

8. Comply with compulsory minimum entry-level training standards approved by the department.

a. Every campus security officer hired before January 31, 2011, is required to comply with the compulsory minimum entry-level training standards within 365 days of the effective date of this regulation. Every campus security officer hired on or after January 31, 2011, is required to comply with the compulsory minimum entry-level training standards within 180 days of the date of hire.

b. The compulsory minimum entry-level training standard shall consist of modules of content developed and approved by the department. Such training shall include but not be limited to:

- (1) The role and responsibility of campus security officers;
- (2) Relevant state and federal laws;
- (3) School and personal liability issues;
- (4) Security awareness in the campus environment;
- (5) Mediation and conflict resolution;
- (6) Disaster and emergency response; and
- (7) Behavioral dynamics.

c. The compulsory minimum entry-level training standard shall include a test for each module approved and provided by the department with a minimum passing grade of 70% on each module. Any officer not receiving a minimum grade of 70% on each module shall, at the discretion of the approved instructor, be given remedial training and thereafter the opportunity to be tested again on the questions incorrectly answered on the first attempt. If this option is utilized, the initial test score shall be recorded with an asterisk followed by the signature of the approved instructor who provided the remedial training. The approved instructor's signature shall be accepted as verification that the officer successfully answered enough of the questions missed on the initial test to achieve a passing score of 70%. A

second unsuccessful test, subsequent to remedial training, shall result in a grade of "FAIL" after which the officer may, at the discretion of the employing college, university, or PSS business be enrolled in future training for the failed module.

9. Submit to the department a properly completed and signed application for certification from the employing college, university, or PSS business in a format provided by the department.

B. All costs associated with meeting the certification requirements are the responsibility of the employer.

C. The department may grant an extension of the time limit for completion of the compulsory minimum entry-level training and certification standards under the following documented conditions:

1. Illness or injury;
2. Military service;
3. Special duty required and performed in the public interest;
4. Administrative leave, full-time educational leave, or suspension pending investigation or adjudication of a crime; or
5. Any other reasonable situation documented by the employing college, university, or PSS business.

#### **6VAC20-270-40. Certification procedures.**

A. The department will notify the applicant for campus security officer certification and the designated campus security point of contact for the employing college, university, or PSS business that the campus security officer is certified in accordance with this chapter after the following conditions are met:

1. Notification to the department by the designated campus security point of contact that the applicant for campus security officer certification has successfully met the following compulsory minimum entry-level training and certification standards:

- a. The total of modules that comprise the compulsory minimum entry-level training as required by this chapter;
- b. Complete background investigation as required by this chapter;
- c. First-aid training consistent with the standard set by the employing college or university; and
- d. Completion of the online course Introduction to Incident Command System for Higher Education (IS-100.HE) as provided by the Emergency Management Institute at the Federal Emergency Management Agency (FEMA) and as indicated by the department.

2. Receipt by the department of application for certification signed by the designated point of contact for the employing college, university, or PSS business.

B. If a campus security officer seeking certification is denied by the department, the department will notify the designated campus security point of contact for the employing college, university, or PSS business and the applicant in writing, outlining the basis for the denial and the process for appeal of the decision to deny.

C. The department shall maintain a current database of certified campus security officers as well as relevant training records.

D. Certification shall be for a period not to exceed 24 months.

#### **6VAC20-270-50. Suspension of certification.**

A. Campus security officers will only be certified while employed by a college, university, or a PSS business while assigned to a college or university.

B. Certification of the campus security officer will be suspended upon the termination of the officer's employment with the college, university, or PSS business. For the purposes of this chapter, a previously certified campus security officer's status shall be changed to suspended upon the department receiving notice that the officer is no longer employed by a college, university, or PSS business.

C. Upon obtaining employment at another college, university, or PSS business, a previously certified campus security officer will not be required to repeat the compulsory minimum entry-level training provided the officer's employment starts within the two-year period of the previous certification.

#### **6VAC20-270-60. Training waiver for experienced officers.**

A. Subject to the approval of the department, a compulsory minimum entry-level training waiver may be obtained for experienced campus security officers with a minimum of five years of experience who successfully complete the module tests with a minimum score of 70% on each test. The application for a waiver shall be submitted on the form prescribed by the department and must contain the signature of the designated campus security point of contact.

B. If any module test grade is less than 70%, the experienced officer shall be required to complete the prescribed compulsory minimum entry-level training standards as outlined in this chapter.

#### **6VAC20-270-70. Educational requirement waiver for experienced officers.**

Subject to the approval of the department, an educational requirement waiver may be obtained for campus security officers who have been continuously employed in that capacity at a college, university, or PSS business under contract to a college or university for a minimum of five years prior to January 31, 2011.

#### **6VAC20-270-80. Standards of conduct.**

A campus security officer shall:

---

# Regulations

---

1. Conform to all requirements pursuant to the Code of Virginia and this chapter;

2. Maintain a valid mailing address with the employing college, university, or PSS business at all times. Written notification of any address change shall be submitted to the campus security point of contact for the employing college, university, or PSS business no later than 10 days after the effective date of the change;

3. Inform the designated campus security point of contact for the employing college, university, or PSS business in writing within 72 hours or the beginning of the next work day, whichever comes first, after an arrest for any felony or misdemeanor;

4. Inform the designated campus security point of contact for the employing college, university, or PSS business in writing within 72 hours or the beginning of the next work day, whichever comes first, after having been convicted of any felony or misdemeanor; and

5. Inform the designated campus security point of contact for the employing college, university, or PSS business in writing within 10 days after having been found guilty by any court or administrative body of competent jurisdiction to have violated the statutes or regulations of that jurisdiction.

## **6VAC20-270-90. Recertification requirements.**

A. Applications for recertification must be received by the department prior to certification expiration. It is the responsibility of the campus security officer employer to ensure recertification applications are filed with the department. A valid certification as a campus security officer is required in order to remain eligible for employment as a campus security officer. If the campus security officer has met the required in-service training requirements and the required in-service training documents and recertification application are on file with the department prior to expiration, the campus security officer is deemed recertified and may continue to operate in the campus security officer capacity.

B. Applicants for recertification must have completed 16 hours of in-service training during each two-year period after initial certification. The in-service training must be directly related to the duties of the campus security officer, to include a legal update and other relevant topics approved by the department.

C. Individuals whose certification is expired shall comply with the compulsory minimum entry-level training and certification standards set forth in this chapter.

D. The department, subject to its discretion, retains the right to grant an extension of the recertification time limit and requirements under the following conditions:

1. Illness or injury;
2. Military service;

3. Administrative leave, full-time educational leave, or suspension pending investigation or adjudication of a crime; or

4. Any other reasonable situation documented by the employing college, university, or PSS business.

## **E. Request for extensions shall:**

1. Be submitted in writing and signed by the designated campus security point of contact for the employing college, university, or PSS business prior to the expiration date of the time limit for completion of the requirement; and

2. Indicate the projected date for the completion of the requirement.

## **6VAC20-270-100. Decertification and appeal procedure.**

A. The department may decertify a campus security officer who has:

1. Been convicted of or pled guilty or no contest to a felony or any offense that would be a felony if committed in Virginia;

2. Failed to comply with or maintain compliance with compulsory minimum entry-level training and certification standards;

3. Refused to submit to a drug screening or has produced a positive result on a drug screening reported to the employer where the positive result cannot be explained to the employer's satisfaction;

4. Lied on or failed to provide required information on an employment application for the current position; or

5. Been terminated for just cause by the employing college, university, or PSS business.

B. Such campus security officer shall not have the right to serve as a campus security officer within this Commonwealth until the department has reinstated the certification.

C. The findings and the decision of the department may be appealed to the board provided that written notification is given to the attention of the Director, Department of Criminal Justice Services, within 30 days following the date notification of the decision was served or the date it was mailed to the respondent, whichever occurs first. In the event the hearing decision is served by mail, three days shall be added to that period. (Rule 2A:2 of Rules of the Virginia Supreme Court.)

## **6VAC20-270-110. Instructor approval.**

A. The department may approve instructors to deliver the compulsory minimum entry-level training for campus security officers and may revoke such approval for cause.

B. Each person applying for instructor approval shall:

1. Submit an instructor application, signed by the designated point of contact of the employing college, university, PSS business, or private security services training school on the form prescribed by the department;

2. Have a high school diploma or equivalent (GED) or have passed the National External Diploma Program;

3. Have a minimum of:

a. Two years of management or supervisory experience as a campus security officer or supervisory experience with any federal, state, county, or municipal law-enforcement agency in a related field; or

b. Three years of general experience as a campus security officer or with a federal, state, or local law-enforcement agency in a related field; and

4. One year experience and demonstrated success as an instructor or teacher in an accredited educational institution or law-enforcement or security agency.

C. Each person applying for instructor approval shall file with the department a properly completed application provided by the department. The department maintains the right to require additional documentation of instructor qualifications.

D. The department will evaluate qualifications based upon the justification provided.

E. Upon completion of the instructor application requirements, the department may approve the instructor for an indefinite period.

F. Each instructor shall conduct himself in a professional manner and the department may revoke instructor approval for cause.

G. The department has the authority to accept a waiver application with supporting documentation demonstrating related training or experience that meets or exceeds standards established by the department within the three years immediately preceding the date of the instructor application.

### **6VAC20-270-120. Instructor standards of conduct.**

An instructor shall:

1. Conform to all requirements pursuant to the Code of Virginia and this chapter;

2. Maintain a current mailing address, phone number, and email address with the department. Written notification of any address, phone number, or email change shall be received by the department no later than 30 days after the effective date of the change;

3. Inform the department in writing within 72 hours or the beginning of the next work day, whichever comes first, after an arrest for any felony or misdemeanor;

4. Inform the department in writing within 72 hours or the beginning of the next work day, whichever comes first, after having been convicted of any felony or misdemeanor;

5. Inform the department in writing within 10 days after having been found guilty by any court or administrative body of competent jurisdiction to have violated the statutes or regulations of that jurisdiction;

6. Conduct compulsory minimum entry-level trainings pursuant to requirements established in this chapter;

7. Notify the department within 10 calendar days following termination of employment; and

8. Be professional in conduct.

### **6VAC20-270-130. Instructor administrative requirements.**

A. Campus security officer instructors shall ensure that compulsory minimum entry-level trainings are conducted in accordance with requirements established in this chapter. Adherence to the administrative requirements, attendance, and standards of conduct are the responsibility of the instructor.

B. Administrative requirements.

1. An approved instructor must submit a notification to conduct a compulsory minimum entry-level training in a manner approved by the department. All notifications shall be received by the department no less than 30 calendar days before the beginning of each compulsory minimum entry-level. The department may waive the 30-day notification at its discretion.

2. The instructor must submit notification of any changes to the date, time, location, or cancellation of a future training to the department. This notice must be received by the department at least 24 hours in advance of the scheduled starting time of the training. In the event that a session must be cancelled on the scheduled date, the department must be notified as soon as practical.

3. A test approved by the department shall be administered at the conclusion of each module of the compulsory minimum entry-level training. The student must attain a grade of 70% on each module. All test documents must be returned to the department with an accompanying training roster in a manner approved by the department.

4. The instructor shall submit tests and training rosters to the department. These shall be received by the department within seven calendar days, or if mailed, postmarked no later than five business days following the training completion date.

5. Instructors will conduct trainings utilizing the curriculum developed or approved by the department, including, at a minimum, any compulsory minimum entry-level trainings modules established pursuant to this chapter. Instructors must maintain accurate and current information on relevant laws and make necessary changes to the curriculum. It is the instructor's responsibility to assure they have the most recent curriculum supplied or approved by the department.

6. The instructor shall permit the department to inspect and observe any training.

---

# Regulations

---

7. Compulsory minimum entry-level trainings conducted not in accordance with the Code of Virginia and this chapter [ is are ] invalid.

## C. Attendance.

1. Campus security officers enrolled in an approved training are required to be present for the modules required for each training.

2. Tardiness and absenteeism will not be permitted. Individuals violating these provisions will be required to make up any training missed. Such training must be completed by the certification process deadline and cannot be used to extend that deadline. Individuals not completing the compulsory minimum entry-level training within this period may not be certified or recertified and may be required to complete the entire training.

3. Each individual attending an approved training shall comply with the regulations promulgated by the department and any other rules applicable to the training. If the instructor considers a violation of the rules detrimental to the training of other students or to involve cheating on tests, the instructor may expel the individual from the training. The instructor shall immediately report such action to the designated campus security point of contact for the employing college, university, PSS business, or private security services training school and the department.

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

## FORMS (6VAC20-270)

- ~~[Campus Security Officer Certification Application \(1/11\).](#)~~
- ~~[Campus Security Officer Training Class Request \(1/11\).](#)~~
- ~~[Campus Security Officer Recertification Application \(1/11\).](#)~~
- ~~[Campus Security Officer Permission for Extension \(1/11\).](#)~~
- ~~[Campus Security Officer Instructor Application \(1/11\).](#)~~
- ~~[Campus Security Officer Instructor Approval Waiver Application \(1/11\).](#)~~
- [Campus Security Officer Certification Application \(1/13\).](#)
- [Campus Security Officer Training Class Request \(1/13\).](#)
- [Campus Security Officer Application for Re-Certification \(1/13\).](#)
- [Campus Security Officer Certification Program - Permission for Extension \(1/13\).](#)
- [Campus Security Officer Instructor Application \(1/13\).](#)
- [Campus Security Officer Request for Waiver of Instructor Approval Qualifications \(1/13\).](#)

[Campus Security Officer Basic Training Roster \(1/13\).](#)

[Campus Security Officer Educational Requirement Waiver Application \(1/13\).](#)

[Campus Security Officer Partial In-Service Credit Course Approval Form \(1/13\).](#)

[Campus Security Officer Certification: Classroom Testing - Standard Operating Procedure \(1/13\).](#) ]

VA.R. Doc. No. R11-2165; Filed May 8, 2013, 1:14 p.m.



## TITLE 8. EDUCATION

### STATE BOARD OF EDUCATION

#### Proposed Regulation

Titles of Regulations: **8VAC20-60. Regulations Governing the Approval of Correspondence Courses for Home Instruction (repealing 8VAC20-60-10 through 8VAC20-60-100).**

**8VAC20-340. Regulations Governing Driver Education (adding 8VAC20-340-5, 8VAC20-340-40).**

Statutory Authority: §§ 22.1-16 and 22.1-205 of the Code of Virginia.

#### Public Hearing Information:

July 25, 2013 - 11 a.m. - Department of Education, James Monroe Building, 101 North 14th Street, 22nd Floor Conference Room, Richmond, VA

Public Comment Deadline: August 2, 2013.

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

Basis: Section 22.1-16 of the Code of Virginia vests the Board of Education with the authority to promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of Title 22.1 of the Code of Virginia. In addition, § 22.1-205 of the Code of Virginia provides the board with the authority to approve correspondence courses for the classroom training component of driver education.

Purpose: Chapter 364 of the 2008 Acts of Assembly removed the correspondence course approval requirements in § 22.1-254.1 of the Code of Virginia so that parents who home instruct can use any correspondence course of their choosing. However, the requirement for the approval of correspondence courses for driver education by the department remains. The proposed amendments consolidate the process for approval of correspondence courses for driver education into one set of regulations. This streamlines and clarifies the current approval process for users.

The proposed regulatory action is essential to protect the health, safety, and welfare of the public in that it will ensure that courses offered by correspondence schools in driver education will meet state requirements for such programs. It will also help ensure that young aspiring drivers receive adequate instruction prior to seeking a driver's license.

Substance: The proposed change repeals an outdated regulation (Regulations Governing the Approval of Correspondence Courses for Home Instruction) initially adopted by the Board of Education in 1985 and revises a current regulation (Regulations Governing Driver Education) directed specifically at approving driver education courses offered as correspondence programs. The need for a separate set of regulations was eliminated by an amendment to § 22.1-254.1 of the Code of Virginia by the 2008 General Assembly.

The proposed amendment to 8VAC20-340 (Regulations Governing Driver Education) regarding approval of correspondence courses for driver education consolidates the approval process into one set of regulations, streamlining the current process and deleting an obsolete set of regulations, 8VAC20-60 (Regulations Governing the Approval of Correspondence Courses for Home Instruction).

The proposed amendments include the definition section from the repealed regulations with minor revisions and add a definition for the term "parent." The proposed amendments require the applicant to submit to the department as part of the application process an affidavit, a schedule of tuition and fees, a description of its refund policy, and copies of all application forms and enrollment agreements used by the correspondence program. All proposed amendments are to protect the parents and students who use these programs. The approval criteria have been expanded to add a requirement that the content of each course meets the requirements of the Driver Education Standards of Learning and the Curriculum and Administrative Guide for Driver Education in Virginia, 2010 edition. An appeals process has also been added to clarify the applicant's right to due process.

Issues: The proposed amendments ensure that courses approved by the State Board of Education and offered by driver education correspondence programs will meet the minimal requirements for such programs offered in public schools. It will also help ensure that young aspiring drivers receive adequate instruction prior to seeking a driver's license. This should ensure better drivers and a safer public. In addition, the proposed revisions will protect the parents and students who use these programs.

This regulatory action does not pose a disadvantage to the public or to the Commonwealth in any way.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. In 1984, the Virginia General Assembly adopted legislation amending the state's compulsory attendance laws (§ 22.1-254 of the Code of Virginia) to allow parents to teach their

children at home in lieu of sending them to a public or private school. One of the provisions qualifying parents to home instruct their children permitted them to enroll a child in a correspondence course approved by the Board of Education (§ 22.1-254.1 of the Code). In 1999, the General Assembly amended § 22.1-205 of the Code to permit the Board to approve correspondence courses in the classroom portion of driver education for parents who home-school their children.

The 2008 General Assembly adopted HB 767 that removed the correspondence course approval requirements in § 22.1-254.1 so that parents who home instruct can use any correspondence course of their choosing to meet this option rendering the previous approval requirement moot, except in the case of driver education. As a result, the Board proposes to repeal the Regulations Governing the Approval of Correspondence Courses for Home Instruction. However, the requirement for the approval of correspondence courses for driver education by the Board remains. In order to ensure continued compliance with this requirement, the Board proposes a new section governing the approval of correspondence courses for driver education be added to the Regulations Governing Driver Education, thus, consolidating the process for approval of correspondence courses for driver education in one set of regulations.

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

Estimated Economic Impact. Except in the case of driver education, since the 2008 General Assembly adopted HB 767 the Regulations Governing the Approval of Correspondence Courses for Home Instruction have served no person. Currently portions of the public may mistakenly believe that correspondence courses require Board approval. Thus the proposal to repeal these regulations will be beneficial since it would eliminate this potential source of confusion.

The Board proposal to add a new section governing the approval of correspondence courses for driver education to the Regulations Governing Driver Education will not produce any change of requirements in practice. Thus it will have no impact other than perhaps helping the public find the relevant requirements.

Businesses and Entities Affected. The proposed regulations affect the four approved driver education correspondence programs in the Commonwealth, as well as any other future programs which may wish to apply for approval.

Localities Particularly Affected. The proposed regulations do not disproportionately affect particular localities.

Projected Impact on Employment. The proposed repeal of the Regulations Governing the Approval of Correspondence Courses for Home Instruction and the proposed addition to the Regulations Governing Driver Education of a new section governing the approval of correspondence courses for driver education are unlikely to significantly affect employment.

---

# Regulations

---

Effects on the Use and Value of Private Property. The proposed repeal of the Regulations Governing the Approval of Correspondence Courses for Home Instruction and the proposed addition to the Regulations Governing Driver Education of a new section governing the approval of correspondence courses for driver education are unlikely to significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed repeal of the Regulations Governing the Approval of Correspondence Courses for Home Instruction and the proposed addition to the Regulations Governing Driver Education of a new section governing the approval of correspondence courses for driver education does not significantly affect costs for small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed repeal of the Regulations Governing the Approval of Correspondence Courses for Home Instruction and the proposed addition to the Regulations Governing Driver Education of a new section governing the approval of correspondence courses for driver education does not adversely affect small businesses.

Real Estate Development Costs. The proposed repeal of the Regulations Governing the Approval of Correspondence Courses for Home Instruction and the proposed addition to the Regulations Governing Driver Education of a new section governing the approval of correspondence courses for driver education will not affect real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 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 State Board of Education concurs with the economic impact analysis completed by the Department of Planning and Budget and will continue to examine the economic and administrative impact of the regulations as they progress through the Administrative Process Act.

Summary:

*The proposed action repeals 8VAC20-60 (Regulations Governing the Approval of Correspondence Courses for Home Instruction) and moves some provisions of that chapter to new sections added to 8VAC20-340 (Regulations Governing Driver Education). The proposed amendments include the definition section from the repealed regulation, with minor revisions, and add a definition for the term "parent" in the new section. In addition, the proposed amendments require the applicant to submit to the department as part of the application process an affidavit, a schedule of tuition and fees, a description of its refund policy, and copies of all application forms and enrollment agreements used by the correspondence program. The approval criteria have been expanded to add a requirement that the content of each course meets the requirements of the Driver Education Standards of Learning and the Curriculum and Administrative Guide for Driver Education in Virginia, 2010 edition. An appeals process has also been added to clarify the applicant's right to due process.*

**8VAC20-340-5. Definitions.**

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

"Board" means the Virginia Board of Education.

"Correspondence school" means a school, organization, or other entity, no matter how titled, that teaches students by mailing them lessons and exercises that upon completion are returned to the school for grading. Such lessons or exercises also may be transmitted and graded by electronic means.

"Course" means the presentation of an orderly sequence of material dealing with an individual subject area, such as driver education.

"Department" means the Virginia Department of Education.

"Home instruction" means the teaching of a child or children by a teaching parent in the home as an alternative to meeting the requirements of compulsory attendance as defined in § 22.1-254 of the Code of Virginia and as a means of complying with § 22.1-254.1 of the Code of Virginia.

"Parent" means any parent, guardian, legal guardian, or other person having control or charge of a child as specified in § 22.1-1 of the Code of Virginia.

"School" means a correspondence school for driver education programs.

**8VAC20-340-40. Approval of correspondence courses for driver education.**

A. Required submissions. Schools seeking approval to offer the classroom portion of a driver education program to school-age children through a correspondence program or course in Virginia shall submit the following:

1. A signed and completed copy of the department's affidavit form.
2. A catalog or other documents containing the following information:
  - a. A statement of ownership or control of the institution;
  - b. Descriptions of the driver education courses offered by the institution;
  - c. A description of the method used to evaluate the students' work;
  - d. A schedule of tuition and fees, including the school's refund policies; and
  - e. Copies of all application forms and enrollment agreements used by the school.
3. Verification of approval or exemption from regular oversight from the appropriate state or local government agency in the school's state of domicile.
4. Information regarding the school's accreditation status.
5. The name and publisher of the textbook required.
6. An estimate of the minimum amount of time (in hours) required to complete the course.
7. Such additional information as the board or department may deem necessary.

B. All schools must evaluate the students' work at regular intervals specified by the department and maintain a permanent record of the work.

C. Each school meeting the criteria listed in this section is required to submit the required materials for review every year concurrent with the renewal affidavit.

D. Approval criteria. Driver education courses offered by schools submitting the materials required by this section shall be approved if the following criteria have been met:

1. The school is, in fact, a correspondence school as defined in 8VAC20-340-5;
2. The courses offered are consistent with state or federal laws or regulations;
3. The school evaluates the students' progress at regular intervals specified by the department and maintains a permanent record of that work; and
4. The content of each course is accurate, rigorous, and meets the requirements of the Curriculum and Administrative Guide for Driver Education in Virginia, 2010 edition, which includes the Driver Education Standards of Learning.

The school must provide evidence that at least two subject matter experts have reviewed and validated the accuracy of online content and textbook materials.

E. The department will consider an application complete when it determines that all required information has been submitted in the form required by the department. If the department finds the application incomplete, the applicant will be notified in writing within 45 days of receipt of the incomplete application. If the applicant does not resubmit a complete application within 45 days from the notification, the case file for the request for approval as a provider will be closed. Prior to closure, the applicant may withdraw the request for approval. The applicant may resubmit a complete application at a later time.

F. Approval process. After a review of the complete application, the department will notify the applicant of its decision regarding approval. If the application is approved, the department will issue a letter of approval with terms of the approval. If the department denies or revokes the approval for good cause, the department will issue a letter stating the reasons for revocation and denial, including information regarding the applicant's right to appeal this decision.

G. Appeal process for denial or revocation.

1. Fact-finding conference: notification, appearance, and conduct.

a. Unless emergency circumstances exist that require immediate action, no application shall be denied, suspended, or revoked except upon notice stating the proposed basis for such action and the time and place for a fact-finding conference.

b. If a basis exists for a refusal to approve or a suspension or a revocation of the department's approval, the department shall notify, via certified or hand-delivered mail, the interested parties at the address of record maintained by the department.

c. Notification shall include the basis for the proposed action and any information in the possession of the department that can be relied upon in making an adverse decision.

d. The fact-finding conference shall afford the interested party the opportunity to present written and oral information to the department that may have a bearing on the proposed action at a fact-finding conference. Such information should include a brief, written statement of errors the party believes were made in the department's decision.

e. If no withdrawal occurs, a fact-finding conference shall be scheduled at the earliest mutually agreeable date, but no later than 60 days from the date of the notification. A school wishing to waive its right to a conference to proceed directly to a formal hearing shall notify the department of such at least 14 days before the scheduled conference.

---

# Regulations

---

f. The department may rely on public data, documents, or information in making its decision if all parties are given advance notice of the department's intent to rely on such data.

g. If, after consideration of information presented during an informal fact-finding conference, a basis for adverse action still exists, the department shall send to the interested parties a report on the fact-finding conference within 90 days of the conference, via certified or hand-delivered mail, that shall include the decision, a brief and general description of the factual or procedural basis for the decision, and the right to a formal hearing.

h. Parties may enter into a consent agreement to settle the issues at any time prior to, during, or subsequent to an informal fact-finding conference.

## 2. Hearing: notification, appearance, and conduct.

a. If an interested party intends to request a formal hearing, it shall notify the department within 30 days of receipt of a report on the fact-finding conference.

b. Parties shall be given reasonable notice of the (i) time, place, and nature of the hearing; (ii) basic law under which the department contemplates its possible exercise of authority; and (iii) matters of fact and law asserted or questioned by the department.

c. If an interested party or representative fails to appear at a hearing, the hearing officer may proceed in the party's or representative's absence and make a recommendation.

d. Oral and written arguments may be submitted to and limited by the hearing officer. Oral arguments shall be recorded in an appropriate manner.

e. The burden of proof at such hearings shall be on the party seeking to reverse the decision of the department.

3. Hearing location. Hearings before a hearing officer shall be held, insofar as practical, in the county or city in which the school is located. Hearing officers may conduct hearings at locations convenient to the greatest number of persons or by telephone conference, videoconference, or similar technology in order to expedite the hearing process. No hearing shall be located outside of the Commonwealth of Virginia unless it is held by electronic means as specified in the Code of Virginia.

## 4. Hearing decisions.

a. Recommendations of the hearing officer shall be a part of the record and shall include a written statement of the hearing officer's findings of fact and recommendations as well as the reasons or basis for the recommendations. Recommendations shall be based upon all the material issues of fact, law, or discretion presented on the record.

b. The Superintendent of Public Instruction shall review the recommendation of the hearing officer and render a decision on the recommendation within 30 days of

receipt. The decision shall cite the appropriate rule, relief, or denial thereof as to each issue.

c. The Superintendent of Public Instruction's decision regarding the school's approval shall be delivered to the concerned parties within five days of the decision and include a brief statement of the conclusions, the basis of the conclusions, the basic law upon which the department relies, and the recommendation of the hearing officer.

5. Agency representation. The Superintendent of Public Instruction's designee may represent the department in an informal conference or at a hearing.

H. Determination of continued compliance. Approval of the academic courses shall be renewed annually on or before August 1, provided that the school verifies that it continues to meet the requirements of this section. Forms for this purpose shall be provided by the department.

I. Disclaimer. The Board of Education's approval of a correspondence course is not an endorsement of the program as a substitute for public school programs nor is it an endorsement of the educational or operational philosophy of the school. Additionally, the approval of courses is not intended as an endorsement of the quality of the courses nor is it a conclusion that these courses meet the educational needs of the student or the assessment required by § 22.1-254.1 of the Code of Virginia.

Parents who choose to educate their children at home through a driver education correspondence course are directly responsible for the educational progress of their children and the adequacy of instruction. The board assumes no liability for damages or financial loss to parents using any of the approved driver education correspondence courses.

J. Restrictions. No school whose courses are approved as a driver education program shall advertise in any way that the courses have the endorsement, recommendation, accreditation, or recognition, or any other similar term, of the board, the department, or the Commonwealth of Virginia.

K. Transmitting the affidavit, documents, and other materials. The affidavit, related letters, forms, and other required application materials must be submitted to the Division of Instruction at the Virginia Department of Education by email to the Driver Education Specialist, whose contact information may be found at <http://www.doe.virginia.gov/directories/index.shtml#vdoe>.

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

FORMS (8VAC20-340)

[Affidavit for Approval to Provide Driver Education Programs for Parents Approved to Home School \(undated\).](#)

[Classroom Driver Education Program Approval/Renewal for Homeschool Students \(undated\).](#)

DOCUMENTS INCORPORATED BY REFERENCE (8VAC20-340)

[Curriculum and Administrative Guide for Driver Education in Virginia, 2010 Edition \(includes Driver Education Standards of Learning, revised January 2008\), Virginia Department of Education \(\[http://www.doe.virginia.gov/instruction/driver\\\_education/curriculum\\\_admin\\\_guide/index.shtml\]\(http://www.doe.virginia.gov/instruction/driver\_education/curriculum\_admin\_guide/index.shtml\)\).](#)

VA.R. Doc. No. R11-2644; Filed May 8, 2013, 1:13 p.m.

## TITLE 12. HEALTH

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

#### Final Regulation

Title of Regulation: **12VAC30-120. Waivered Services (adding 12VAC30-120-1000, 12VAC30-120-1005, 12VAC30-120-1010, 12VAC30-120-1020, 12VAC30-120-1030, 12VAC30-120-1040, 12VAC30-120-1060, 12VAC30-120-1070, 12VAC30-120-1080, 12VAC30-120-1088, 12VAC30-120-1090; repealing 12VAC30-120-211, 12VAC30-120-213, 12VAC30-120-215, 12VAC30-120-217, 12VAC30-120-219, 12VAC30-120-221, 12VAC30-120-223, 12VAC30-120-225, 12VAC30-120-227, 12VAC30-120-229, 12VAC30-120-231, 12VAC30-120-233, 12VAC30-120-235, 12VAC30-120-237, 12VAC30-120-241, 12VAC30-120-245, 12VAC30-120-247, 12VAC30-120-249).**

Statutory Authority: § 32.1-323 of the Code of Virginia; 42 USC § 1396 et seq.

Effective Date: July 4, 2013.

Agency Contact: Sam Pinero, Long Term Care Division, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 786-2149, FAX (804) 786-1680, or email [sam.pinero@dmas.virginia.gov](mailto:sam.pinero@dmas.virginia.gov).

Summary:

*The amendments (i) require the use of a statewide Supports Intensity Scale form, an assessment instrument, to comprehensively assess individuals' needs for supports and services received through the waiver every three years; (ii) require case managers to conduct an annual risk assessment of individuals enrolled in waiver programs; (iii) require persons whose services do not start within 30 days to be referred back to the local departments of social services for redetermination of eligibility; (iv) make the*

*utilization of a service facilitator by the recipient optional under the consumer-directed model; (v) allow involuntary disenrollment from the consumer-directed model if consumer-directed services are not working well for a recipient; (vi) modify the process currently used to fill waiver slots to ensure the uniformity of the statewide process; (vii) include provisions for electronic information exchange between the local departments of social services, the Department of Medical Assistance Services, and enrolled service providers for determination of the patient pay requirement for waiver services; (viii) reorganize the existing requirements, incorporate new terminology, and update name changes and definitions; and (ix) revise the prior authorization of respite services from once a year up to 720 hours to once every six months up to 360 hours.*

*Changes made since publication of the proposed regulation include the following: (i) references to "MR/ID" have been changed to "ID"; (ii) a definition has been added for "in-home residential support services"; (iii) in the definition for "services facilitator" reference is made to collaborating with the case manager; (iv) provider monitoring of the electronic system for patient pay information has been changed from periodically to monthly; (v) collaborative development of the Individual Support Plan between the individual and the case manager is emphasized; (vi) annual expenditure amounts for assistive technology and environmental modifications have been restored to \$5,000; (vii) the six-month time blocks for respite services have been removed; (viii) community services board case managers, working with the individual and family/caregivers, will have only 30 days to initiate services before the individual will have to be referred back to the local department of social services for re-evaluation of eligibility; (ix) the knowledge, skills, and abilities required for persons to enroll with the department as services facilitators (as now set out in 12VAC30-120-225) are being added back into these regulations rather than being incorporated by reference from a guidance document; and (x) respite assistants are being required to have two references in their work record, rather than one as was proposed, as is set out in the current regulations 12VAC30-120-233 D. Other clarifying text changes are made in response to commenters' questions and to improve clarity and readability. Finally, references to "Intermediate Care Facilities for the Mentally Retarded" (ICF/MR) have been replaced with "Intermediate Facilities for the Intellectually Disabled" (ICF/ID).*

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

**EDITOR'S NOTE:** Part IV, Mental Retardation Waiver, consisting of 12VAC30-120-211 through 12VAC30-120-249, is being repealed in its entirety and is not set out below. The

---

# Regulations

---

full text of the repealed provisions was published at the proposed stage in 28:12 VA.R. 67-97 September 26, 2011.

## Part IV

[ ~~Mental Retardation/Intellectual~~ Intellectual ] Disability

## Waiver

### Article 1

#### Definitions and General Requirements

#### **12VAC30-120-1000. Definitions.**

"Activities of daily living" or "ADLs" means personal care tasks, e.g., bathing, dressing, toileting, transferring, and eating/feeding. An individual's degree of independence in performing these activities is a part of determining appropriate level of care and service needs.

"Agency-directed model" means a model of service delivery where an agency is responsible for providing direct support staff, for maintaining individuals' records, and for scheduling the dates and times of the direct support staff's presence in the individuals' homes.

"ADA" means the American with Disabilities Act pursuant to 42 USC § 12101 et seq.

"Appeal" means the process used to challenge actions regarding services, benefits, and reimbursement provided by Medicaid pursuant to 12VAC30-110 and 12VAC30-20-500 through 12VAC30-20-560.

"Applicant" means a person (or his representative acting on his behalf) who has applied for or is in the process of applying for and is awaiting a determination of eligibility for admission to a home and community-based waiver or is on the waiver waiting list waiting for a slot to become available.

"Assistive technology" or "AT" means specialized medical equipment and supplies, including those devices, controls, or appliances specified in the Individual Support Plan but not available under the State Plan for Medical Assistance, which enable individuals to increase their abilities to perform ADLs, or to perceive, control, or communicate with the environment in which they live, or that are necessary to the proper functioning of the specialized equipment.

"Barrier crime" means those crimes listed in §§ 32.1-162.9:1 and 63.2-1719 of the Code of Virginia.

"Behavioral health authority" or "BHA" means the local agency, established by a city or county under § 37.2-100 of the Code of Virginia that plans, provides, and evaluates mental health, [ ~~mental retardation/intellectual~~ intellectual ] disability [ ~~(MR/ID)~~ (ID) ], and substance abuse services in the locality that it serves.

"CMS" means the Centers for Medicare and Medicaid Services, which is the unit of the federal Department of Health and Human Services that administers the Medicare and Medicaid programs.

"Case management" means the assessing and planning of services; linking the individual to services and supports identified in the Individual Support Plan; assisting the

individual directly for the purpose of locating, developing, or obtaining needed services and resources; coordinating services and service planning with other agencies and providers involved with the individual; enhancing community integration; making collateral contacts to promote the implementation of the Individual Support Plan and community integration; monitoring to assess ongoing progress and ensuring services are delivered; and education and counseling that guides the individual and develops a supportive relationship that promotes the Individual Support Plan.

"Case manager" means the person who provides case management services on behalf of the community services board or behavioral health authority [ , as either an employee or a contractor, ] possessing a combination of [ ~~(MR/ID)~~ (ID) ] work experience and relevant education that indicates that the individual possesses the knowledge, skills, and abilities as established by DMAS in 12VAC30-50-450.

"Community services board" or "CSB" means the local agency, established by a city or county or combination of counties or cities under Chapter 5 (§ 37.2-500 et seq.) of Title 37.2 of the Code of Virginia, that plans, provides, and evaluates mental health, [ ~~MR/ID~~ ID ], and substance abuse services in the jurisdiction or jurisdictions it serves.

"Companion" means a person who provides companion services for compensation by DMAS.

"Companion services" means nonmedical care, support, and socialization provided to an adult (ages 18 years and over). The provision of companion services does not entail [ routine ] hands-on care. It is provided in accordance with a therapeutic outcome in the Individual Support Plan and is not purely diversional in nature.

"Comprehensive assessment" means the gathering of relevant social, psychological, medical, and level of care information by the case manager and is used as a basis for the development of the Individual Support Plan.

"Congregate residential support" means those supports in which the residential support services provider renders primary care (room, board, general supervision) and residential support services to the individual in the form of continuous (up to 24 hours per day) services performed by paid staff who shall be physically present in the home. These supports may be provided individually or simultaneously to more than one individual living in that home, depending on the required support. These supports are typically provided to an individual living (i) in a group home, (ii) in the home of the [ ~~MR/ID~~ ID ] Waiver services provider (such as adult foster care or sponsored residential), or (iii) in an apartment or other home setting.

"Consumer-directed model" means a model of service delivery for which the individual or the individual's employer of record, as appropriate, [ ~~are~~ is ] responsible for hiring, training, supervising, and firing of the person or persons who render the direct support or services reimbursed by DMAS.

"Crisis stabilization" means direct intervention to [ persons individuals ] with [ MR/ID ID ] who are experiencing serious psychiatric or behavioral challenges that jeopardize their current community living situation, by providing temporary intensive services and supports that avert emergency psychiatric hospitalization or institutional placement or prevent other out-of-home placement. This service shall be designed to stabilize the individual and strengthen the current living situation so the individual can be supported in the community during and beyond the crisis period.

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

"DBHDS staff" means persons employed by or contracted with DBHDS.

"DMAS" means the Department of Medical Assistance Services.

"DMAS staff" means persons employed by or contracted with DMAS.

"DRS" means the Department of Rehabilitative Services.

"Day support" means services that promote skill building and provide supports (assistance) and safety supports for the acquisition, retention, or improvement of self-help, socialization, and adaptive skills, which typically take place outside the home in which the individual resides. Day support services shall focus on enabling the individual to attain or maintain his highest potential level of functioning.

"Developmental risk" means the presence before, during, or after an individual's birth, of conditions typically identified as related to the occurrence of a developmental disability and for which no specific developmental disability is identifiable through existing diagnostic and evaluative criteria.

"Direct marketing" means either (i) conducting directly or indirectly door-to-door, telephonic, or other "cold call" marketing of services at residences and provider sites; (ii) mailing directly; (iii) paying "finders' fees"; (iv) offering financial incentives, rewards, gifts, or special opportunities to eligible individuals and the individual's family/caregivers, as appropriate, as inducements to use the providers' services; (v) continuous, periodic marketing activities to the same prospective individual and the individual's family/caregiver, as appropriate - for example, monthly, quarterly, or annual giveaways as inducements to use the providers' services; or (vi) engaging in marketing activities that offer potential customers rebates or discounts in conjunction with the use of the providers' services or other benefits as a means of influencing the individual's and the individual's family/caregivers, as appropriate, use of the providers' services.

"Employer of record" or "EOR" means the person who performs the functions of the employer in the consumer directed model. The EOR may be the [ waiver ] individual [ enrolled in the waiver ], or a family member,

caregiver or another person, as appropriate, when the individual is unable to perform the employer functions.

"Enroll" means that the individual has been determined by the case manager to meet the level of functioning requirements for the [ MR/ID ID ] Waiver and DBHDS has verified the availability of a [ MR/ID ID ] Waiver slot for that individual. Financial eligibility determinations and enrollment in Medicaid are set out in 12VAC30-120-1010.

"Entrepreneurial model" means a small business employing a shift of eight or fewer individuals who have disabilities and usually involves interactions with the public and coworkers who do not have disabilities.

"Environmental modifications" or "EM" means physical adaptations to a primary place of residence, primary vehicle, or work site (when the work site modification exceeds reasonable accommodation requirements of the Americans with Disabilities Act) that are necessary to ensure the individual's health and safety or enable functioning with greater independence when the adaptation is not being used to bring a substandard dwelling up to minimum habitation standards. Such EM shall be of direct medical or remedial benefit to the individual.

"EPSDT" means the Early Periodic Screening, Diagnosis and Treatment program administered by DMAS for children under the age of 21 according to federal guidelines (that prescribe preventive and treatment services for Medicaid eligible children) as defined in 12VAC30-50-130.

"Fiscal employer/agent" means a state agency or other entity as determined by DMAS to meet the requirements of 42 CFR 441.484 and the Virginia Public Procurement Act (Chapter 43 (§ 2.2-4300 et seq.) of Title 2.2 of the Code of Virginia).

"Freedom of choice" means the right afforded an individual who is determined to require a level of care specified in a waiver to choose (i) either institutional or home and community-based services provided there are available CMS-allocated and state-funded slots; (ii) providers of services; and (iii) waiver services as may be limited by medical necessity.

"Health planning region" or "HPR" means the federally designated geographical area within which health care needs assessment and planning takes place, and within which health care resource development is reviewed.

"Health, safety, and welfare standard" means that an individual's right to receive a waiver service is dependent on a finding that the individual needs the service, based on appropriate assessment criteria and a written individual plan for supports, and that services can be safely provided in the community.

"Home and community-based waiver services" or "waiver services" means the range of community services approved by the CMS, pursuant to § 1915(c) of the Social Security Act, to be offered to persons as an alternative to institutionalization.

[ "IDOLS" means Intellectual Disability Online System.

---

# Regulations

---

"In-home residential support services" means support provided in a private residence by a DBHDS-licensed residential provider to an individual enrolled in the waiver to include: (i) skill building and supports and safety supports to enable individuals to maintain or improve their health; (ii) developing skills in daily living; (iii) safely using community resources; (iv) being included in the life of the community and home; (v) developing relationships; and (vi) participating as citizens of the community. In-home residential support services shall not replace the primary care provided to the individual by his family and caregiver but shall be supplemental to it. ]

"Individual" means the person receiving the services or evaluations established in these regulations.

"Individual Support Plan" means a comprehensive plan that sets out the supports and actions to be taken during the year by each service provider, as detailed in the provider's Plan for Supports, to achieve desired outcomes. The Individual Support Plan shall be developed by the individual [ enrolled in the waiver ], the individual's family/caregiver, as appropriate, other service providers such as the case manager, and other interested parties chosen by the individual, and shall contain essential information, what is important to the individual on a day-to-day basis and in the future, and what is important for the individual to be healthy and safe as reflected in the Plan for Supports. The Individual Support Plan is known as the Consumer Service Plan in the Day Support Waiver.

"Instrumental activities of daily living" or "IADLs" means tasks such as meal preparation, shopping, housekeeping, laundry, and money management.

[ "Intellectual disability" or "ID" means a disability as defined by the American Association on Intellectual and Developmental Disabilities (AAIDD) in the Intellectual Disability: Definition, Classification, and Systems of Supports (11th edition, 2010). ]

[ "ICF/MR" "ICF/ID" ] means a facility or distinct part of a facility certified by the Virginia Department of Health as meeting the federal certification regulations for an Intermediate Care Facility for the [ ~~Mentally Retarded~~ Intellectually Disabled ] and persons with related conditions and that addresses the total needs of the residents, which include physical, intellectual, social, emotional, and habilitation providing active treatment as defined in 42 CFR 435.1010 and 42 CFR 483.440.

[ ~~"ISAR" means the Individual Service Authorization Request and is the DMAS form used by providers to request prior authorization for MR/ID Waiver services. ]~~

"Licensed practical nurse" or "LPN" means a person who is licensed or holds multi-state licensure privilege pursuant to Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia to practice practical nursing as defined.

"Medicaid Long-Term Care Communication Form" or "DMAS-225" means the form used by the case manager to report [ ~~as required in agency's guidance documents,~~ ] information about changes in an individual's situation.

"Medically necessary" means an item or service provided for the diagnosis or treatment of an individual's condition consistent with community standards of medical practice as determined by DMAS and in accordance with Medicaid policy.

[ ~~"Mental retardation/intellectual disability" or "MR/ID" means a disability as defined by the American Association on Intellectual and Developmental Disabilities (AAIDD). For the purposes of this waiver and these regulations, "MR" and "ID" shall be synonymous terms.~~

"Parent" or "parents" means a person or persons who is or are biologically or naturally related, a foster parent, or an adoptive parent to the individual enrolled in the waiver. ]

"Participating provider" means an entity that meets the standards and requirements set forth by DMAS and has a current, signed provider participation agreement with DMAS.

"Pend" means delaying the consideration of an individual's request for services until all required information is received by DBHDS.

"Person-centered planning" means a fundamental process that focuses on the needs and preferences of the individual to create an Individual Support Plan that shall contain essential information, a personal profile, and desired outcomes of the individual to be accomplished through waiver services and included in the providers' Plans for Supports.

"Personal assistance services" means assistance with ADLs, IADLs, access to the community, self-administration of medication or other medical needs, and the monitoring of health status and physical condition.

"Personal assistant" means a person who provides personal assistance services.

"Personal emergency response system" or "PERS" means an electronic device and monitoring service that enable certain individuals at high risk of institutionalization to secure help in an emergency. PERS services shall be limited to those individuals who live alone or are alone for significant parts of the day and who have no regular caregiver for extended periods of time and who would otherwise require extensive routine supervision.

"Personal profile" means a point-in-time synopsis of what [ a waiver an ] individual [ enrolled in the waiver ] wants to maintain, change, or improve in his life and shall be completed by the [ ~~waiver~~ ] individual and another person, such as his case manager or family/caregiver, chosen by the individual to help him plan before the annual planning meeting where it is discussed and finalized.

"Plan for Supports" means each service provider's plan for supporting the individual [ enrolled in the waiver ] in achieving his desired outcomes and facilitating the

individual's health and safety. The Plan for Supports is one component of the Individual Support Plan. The Plan for Supports is referred to as an Individual Service Plan in the Day Support and Individual and Family with Developmental Disability Services (IFDDS) Waivers.

"Prevocational services" means services aimed at preparing an individual [ enrolled in the waiver ] for paid or unpaid employment. The services do not include activities that are specifically job-task oriented but focus on concepts such as accepting supervision, attendance at work, task completion, problem solving, and safety. Compensation for the [ waiver ] individual, if provided, shall be less than 50% of the minimum wage.

"Primary caregiver" means the primary person who consistently assumes the role of providing direct care and support of the individual [ enrolled in the waiver ] to live successfully in the community without compensation for providing such care.

[ "Prior authorization" means the process of approving by either DMAS or its designated prior authorization contractor, for the purpose of DMAS' reimbursement, the service for the individual before it is rendered. ]

"Qualified mental retardation professional" or "QMRP" for the purposes of the [ MR/ID ID ] Waiver means [ a professional possessing (i) at least one year of documented experience working directly with individuals who have MR/ID or developmental disabilities; (ii) at least a bachelor's degree in a human services field including, but not necessarily limited to, sociology, social work, special education, rehabilitation counseling, or psychology, or a bachelor's degree in another field in addition to an advanced degree in a human services field; and (iii) the required, as appropriate, Virginia or national license, registration, or certification in accordance with his professional standards the same as defined at 12VAC35-105-20 ].

"Registered nurse" or "RN" means a person who is licensed or holds multi-state licensure privilege pursuant to Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia to practice professional nursing.

"Residential support services" means support provided in the individual's home by a DBHDS-licensed residential provider or a VDSS-approved provider of adult foster care services. This service is one in which skill-building, supports, and safety supports are routinely provided to enable individuals to maintain or improve their health, to develop skills in daily living and safely use community resources, to be included in the community and home, to develop relationships, and to participate as citizens in the community.

"Respite services" means services provided to individuals who are unable to care for themselves, furnished on a short-term basis because of the absence or need for relief of those unpaid persons normally providing the care.

"Risk assessment" means an assessment that is completed by the case manager to determine areas of high risk of danger to the individual or others based on the individual's serious medical or behavioral factors. The required risk assessment for the [ MR/ID ID ] Waiver shall be found in the state-designated assessment form which may be supplemented with other information. The risk assessment shall be used to plan risk mitigating supports for the individual in the Individual Support Plan.

"Safety supports" means specialized assistance that is required to assure the health and welfare of an individual.

[ "Service authorization" means the process of approving by either DMAS or its designated service authorization contractor, for the purpose of DMAS' reimbursement, the service for the individual before it is rendered. ]

"Services facilitation" means a service that assists the individual or the individual's family/caregiver, or EOR, as appropriate, in arranging for, directing, and managing services provided through the consumer-directed model of service delivery.

"Services facilitator" means the DMAS-enrolled provider who is responsible for supporting the individual or the individual's family/caregiver, or EOR, as appropriate, by [ ensuring collaborating with the case manager to ensure ] the development and monitoring of the CD Services Plan for Supports, providing employee management training, and completing ongoing review activities as required by DMAS for consumer-directed companion, personal assistance, and respite services.

"Significant change" means, but shall not be limited to, a change in an individual's condition that is expected to last longer than 30 days but shall not include short-term changes that resolve with or without intervention, a short-term acute illness or episodic event, or a well-established, predictive, cyclical pattern of clinical signs and symptoms associated with a previously diagnosed condition where an appropriate course of treatment is in progress.

"Skilled nursing services" means both skilled and hands-on care, as rendered by either a licensed RN or LPN, of either a supportive or health-related nature and may include, but shall not be limited to, all skilled nursing care as ordered by the attending physician and documented on the Plan for Supports, assistance with ADLs, administration of medications or other medical needs, and monitoring of the health status and physical condition of the [ waiver ] individual [ enrolled in the waiver ].

"Slot" means an opening or vacancy in waiver services for an individual.

"State Plan for Medical Assistance" or "Plan" means the Commonwealth's legal document approved by CMS identifying the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

---

# Regulations

---

"Supports" means paid and nonpaid assistance that promotes the accomplishment of an individual's desired outcomes. There shall be three types of supports: (i) routine supports that assist the individual in daily activities; (ii) skill building supports that help the individual gain new abilities; and (iii) safety supports that are required to assure the individual's health and safety.

"Supported employment" means paid supports provided in work settings in which persons without disabilities are typically employed. Paid supports include skill-building supports related to paid employment, ongoing or intermittent routine supports, and safety supports to enable an individual with [ MR/ID ID ] to maintain paid employment.

"Support plan" means the report of recommendations resulting from a therapeutic consultation.

"Therapeutic consultation" means covered services designed to assist the individual and the individual's family/caregiver, as appropriate, with assessments, plan design, and teaching for the purpose of assisting the [ waiver ] individual [ enrolled in the waiver ].

"Transition services" means set-up expenses as defined in 12VAC30-120-2010.

"VDSS" means the Virginia Department of Social Services.

## **12VAC30-120-1005. Waiver description and legal authority.**

A. Home and community-based waiver services shall be available through a § 1915(c) waiver of the Social Security Act. Under this waiver, DMAS has waived § 1902(a) (10) (B) and (C) of the Social Security Act related to comparability of services. These services shall be appropriate and necessary to maintain the individual in the community.

B. Federal waiver requirements, as established in § 1915 of the Social Security Act and 42 CFR 430.25, provide that the average per capita fiscal year expenditures in the aggregate under this waiver shall not exceed the average per capita expenditures for the level of care provided in an [ ICF/MR ICF/ID ], as defined in 42 CFR 435.1010 and 42 CFR 483.440, under the State Plan that would have been provided had the waiver not been granted.

C. DMAS shall be the single state agency authority pursuant to 42 CFR 431.10 responsible for the processing and payment of claims for the services covered in this waiver and for obtaining federal financial participation from CMS. The Department of Behavioral Health and Developmental Services (DBHDS) shall be responsible for the daily administrative supervision of the [ MR/ID ID ] Waiver in accordance with the interagency agreement between DMAS and DBHDS.

D. [ Any of the services covered under the authority of this waiver shall be required in order for the individual to avoid institutionalization.

E. ] Waiver service populations. These waiver services shall be provided for the following individuals who have been

determined to require the level of care provided in an [ ICF/MR ICF/ID ]:

1. Individuals with [ MR/ID ID ]; or

2. Individuals younger than the age of six who are at developmental risk. At the age of six years, these individuals must have a diagnosis of [ MR/ID ID ] to continue to receive [ these ] home and community-based waiver services [ specifically under this program ].

[ MR/ID Waiver individuals Individuals enrolled in the waiver ] who attain the age of six years of age, who are determined not to have a diagnosis of [ MR/ID ID ], and who meet all Individual and Family Developmental Disability Support (IFDDS) Waiver eligibility criteria, shall be eligible [ to apply ] for transfer to the IFDDS Waiver for the period of time up to their seventh birthday. Psychological evaluations [ or standardized development assessments ] confirming [ individuals' ] diagnoses must be completed less than one year prior to transferring to the IFDDS Waiver. These individuals transferring from the [ MR/ID ID ] Waiver will be assigned a slot in the IFDDS Waiver, [ subject to the approval of the slot by CMS if one is available ]. The case manager shall submit the current Level of Functioning Survey, Individual Support Plan, and psychological evaluation (or standardized developmental assessment for children under six years of age) to DMAS for review. Upon determination by DMAS that the individual is appropriate for transfer to the IFDDS Waiver and there is a slot available for the child, the [ MR/ID ID ] case manager shall provide the family with a list of IFDDS Waiver case managers. The [ MR/ID ID ] case manager shall work with the selected IFDDS Waiver case manager to determine an appropriate transfer date and shall submit a DMAS-225 to the local department of social services. The [ MR/ID ID ] Waiver slot shall be held by the CSB until the child has successfully transitioned to the IFDDS Waiver. Once the child's transition into the IFDDS Waiver is complete, the CSB shall reallocate [ , consistent with DBHDS guidance policies, ] the [ MR/ID ID ] slot to another individual on the waiting list. [ If there is no IFDDS Waiver slot available for this child, then the child shall be placed on the IFDDS Waiver's waiting list. Such waiver individuals shall be disenrolled from the MR/ID Waiver. ]

[ E. MR/ID F. ID ] services shall not be offered or provided to an individual who resides outside of the physical boundaries of the United States or the Commonwealth. Waiver services shall not be furnished to individuals who are inpatients of a hospital, nursing facility, [ ICF/MR ICF/ID ], or inpatient rehabilitation facility. Individuals with [ MR/ID ID ] who are inpatients of these facilities may receive case management services as described in 12VAC30-50-450. The case manager may recommend waiver services that would promote exiting from the institutional placement; however, these waiver services shall not be provided until the individual has exited the institution.

[ ~~F. G.~~ ] An individual shall not be simultaneously enrolled in more than one waiver [ ~~program~~ ].

[ ~~G. H.~~ ] DMAS shall be responsible for assuring appropriate placement of the individual in home and community-based waiver services and shall have the authority to terminate such services for the individual who no longer qualifies for the waiver. Termination from this waiver shall occur when the individual's health and medical needs can no longer be safely met by waiver services in the community.

[ ~~H. I.~~ ] No waiver services shall be reimbursed until after both the provider enrollment process and individual eligibility process have been completed.

**12VAC30-120-1010. Individual eligibility requirements.**

A. Individuals receiving services under this waiver must meet the following Medicaid eligibility requirements. The Commonwealth shall apply the financial eligibility criteria contained in the State Plan for the categorically needy. The Commonwealth covers the optional categorically needy groups under 42 CFR 435.211, 42 CFR 435.217, and 42 CFR 435.230.

1. The income level used for 42 CFR 435.211, 42 CFR 435.217 and 42 CFR 435.230 shall be 300% of the current Supplemental Security Income (SSI) payment standard for one person.

2. Under this waiver, the coverage groups authorized under § 1902(a)(10)(A)(ii)(VI) of the Social Security Act shall be considered as if they were institutionalized for the purpose of applying institutional deeming rules. All individuals under the waiver must meet the financial and nonfinancial Medicaid eligibility criteria and meet the institutional level-of-care criteria. The deeming rules shall be applied to waiver eligible individuals as if the individuals were residing in an institution or would require that level of care.

3. The Commonwealth shall reduce its payment for home and community-based waiver services provided to an individual who is eligible for Medicaid services under 42 CFR 435.217 by that amount of the individual's total income (including amounts disregarded in determining eligibility) that remains after allowable deductions for personal maintenance needs, other dependents, and medical needs have been made, according to the guidelines in 42 CFR 435.735 and § 1915(c)(3) of the Social Security Act as amended by the Consolidated Omnibus Budget Reconciliation Act of 1986. DMAS shall reduce its payment for home and community-based waiver services by the amount that remains after the deductions listed in this subdivision:

a. For individuals to whom § 1924(d) applies and for whom the Commonwealth waives the requirement for comparability pursuant to § 1902(a)(10)(B), DMAS shall deduct the following in the respective order:

(1) The basic maintenance needs for an individual under this waiver, which shall be equal to 165% of the SSI payment for one person. As of January 1, 2002, due to expenses of employment, a working individual shall have an additional income allowance. For an individual employed 20 hours or more per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 300% SSI; for an individual employed at least eight but less than 20 hours per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 200% of SSI. If the individual requires a guardian or conservator who charges a fee, the fee, not to exceed an amount greater than 5.0% of the individual's total monthly income, is added to the maintenance needs allowance. However, in no case shall the total amount of the maintenance needs allowance (basic allowance plus earned income allowance plus guardianship fees) for the individual exceed 300% of SSI.

(2) For an individual with only a spouse at home, the community spousal income allowance determined in accordance with § 1924(d) of the Social Security Act.

(3) For an individual with a family at home, an additional amount for the maintenance needs of the family determined in accordance with § 1924(d) of the Social Security Act.

(4) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles or coinsurance charges, and necessary medical or remedial care recognized under state law but not covered under the plan.

b. For individuals to whom § 1924(d) does not apply and for whom the Commonwealth waives the requirement for comparability pursuant to § 1902(a)(10)(B), DMAS shall deduct the following in the respective order:

(1) The basic maintenance needs for an individual under this waiver, which is equal to 165% of the SSI payment for one person. As of January 1, 2002, due to expenses of employment, a working individual shall have an additional income allowance. For an individual employed 20 hours or more per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 300% SSI; for an individual employed at least eight but less than 20 hours per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 200% of SSI. If the individual requires a guardian or conservator who charges a fee, the fee, not to exceed an amount greater than 5.0% of the individual's total monthly income, is added to the maintenance needs allowance. However, in no case shall the total amount of the maintenance needs allowance (basic allowance plus earned income

---

# Regulations

---

allowance plus guardianship fees) for the individual exceed 300% of SSI.

(2) For an individual with a dependent child or children, an additional amount for the maintenance needs of the child or children, which shall be equal to the Title XIX medically needy income standard based on the number of dependent children.

(3) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles or coinsurance charges, and necessary medical or remedial care recognized under state law but not covered under the State Plan for Medical Assistance.

B. The following four criteria shall apply to all individuals who have [ ~~MR/ID~~ ID ] who seek these waiver services:

[ ~~a.~~ 1. ] Individuals qualifying for [ ~~MR/ID~~ ID ] Waiver services shall have a demonstrated need for the service due to significant functional limitations in major life activities. The need for these waiver services shall arise from either (i) an individual having a diagnosed condition of [ ~~MR/ID~~ ID ] or (ii) a child younger than six years of age being at developmental risk of significant functional limitations in major life activities;

[ ~~b.~~ 2. ] Individuals qualifying for [ ~~MR/ID~~ ID ] Waiver services shall meet the [ ~~ICF/MR~~ ICF/ID ] level-of-care criteria;

[ ~~c.~~ 3. ] The Individual Support Plan and services that are delivered shall be consistent with the Medicaid definition of each service; and

[ ~~d.~~ 4. ] Services shall be recommended by the case manager based on [ his documentation of the need for each specific service as reflected in ] a current assessment using a DBHDS-approved [ ~~assessment~~ SIS ] instrument, [ ~~as specified in DBHDS and DMAS guidance documents, by demonstrating need for each specific service or for children younger than five years of age, an alternative industry assessment instrument, such as the Early Learning Assessment Profile, and authorized by DBHDS~~ ].

C. Assessment and enrollment.

1. To ensure that Virginia's home and community-based waiver programs serve only individuals who would otherwise be placed in an [ ~~ICF/MR~~ ICF/ID ], home and community-based waiver services shall be considered only for individuals who are eligible for admission to an [ ~~ICF/MR~~ ICF/ID ] due to their diagnoses of [ ~~MR/ID~~ ID ], or individuals who are younger than six years of age and who are at developmental risk. For the case manager to make a recommendation for waiver services, [ ~~MR/ID~~ ID ] Waiver services must be determined to be an appropriate service alternative to delay or avoid placement in an [ ~~ICF/MR~~ ICF/ID ], or to promote exiting from [ ~~either~~ ] an [ ~~ICF/MR~~ ICF/ID ] or other institutional placement.

2. The case manager shall recommend the individual for home and community-based waiver services after determining diagnostic and functional eligibility. This determination shall be mandatory before DMAS assumes payment responsibility of home and community-based waiver services and shall include:

a. The required level-of-care determination by applying the existing DMAS [ ~~ICF/MR~~ ICF/ID ] criteria (Part VI (12VAC30-130-430 et seq.) of the Amount, Duration and Scope of Selected Services Regulation) to be completed no more than six months prior to enrollment. The case manager determines whether the individual meets the [ ~~ICF/MR~~ ICF/ID ] criteria with input from the individual and the individual's family/caregiver, as appropriate, and service and support providers involved in the individual's support; and

b. A psychological evaluation or standardized developmental assessment for children who are younger than six years of age that reflects the current psychological status (diagnosis), current cognitive abilities, and current adaptive level of the individual's functioning.

3. The case manager shall provide the individual and the individual's family/caregiver, as appropriate, with the choice of [ ~~MR/ID~~ ID ] Waiver services or [ ~~ICF/MR~~ ICF/ID ] placement.

4. The case manager shall [ ~~send the appropriate forms to DBHDS to~~ ] enroll the individual in the [ ~~MR/ID~~ ID ] Waiver or, if no slot is available, [ ~~to~~ ] place the individual on the waiting list. [ ~~DBHDS~~ The CSB ] shall only enroll the individual [ ~~if following electronic confirmation by DBHDS that~~ ] a slot is available. If no slot is available, then the individual's name shall be placed on either the urgent or [ ~~non-urgent nonurgent~~ ] statewide waiting list, consistent with criteria established in this waiver in 12VAC30-120-1088, until such time as a slot becomes available. Once [ ~~notification has been received from DBHDS that the individual~~ the individual's name ] has been placed on either the urgent or [ ~~non-urgent nonurgent~~ ] waiting list, the case manager shall notify the individual in writing within 10 business days of his placement on either list and offer appeal rights. The case manager shall contact the individual and the individual's family/caregiver, as appropriate, at least annually while the individual is on the waiting list to provide the choice between institutional placement and waiver services.

D. Waiver approval process: authorizing and accessing services.

1. Once the case manager has determined an individual meets the functional criteria for [ ~~MR/ID~~ ID ] Waiver services, has determined that a slot is available, and that the individual has chosen [ ~~MR/ID~~ ID ] Waiver services, the case manager shall submit enrollment information [ via

the IDOLS ] to DBHDS to confirm level-of-care eligibility [ ~~and the availability of a slot~~ ].

2. Once the individual has been enrolled by [ ~~DBHDS~~ the CSB ], the case manager will submit a DMAS-225 along with a [ ~~written~~ computer-generated ] confirmation [ ~~from DBHDS~~ ] of level-of-care eligibility to the local department of social services to determine financial eligibility for the waiver program and any patient pay responsibilities.

3. After the case manager has received written notification of Medicaid eligibility by the local departments of social services [ ~~and written confirmation of enrollment from DBHDS~~ ], the case manager shall so inform the individual and the individual's family/caregiver, as appropriate, to permit the development of the Individual Support Plan.

a. The individual and the individual's family/caregiver, as appropriate, shall meet with the case manager within 30 calendar days [ of waiver enrollment ] to discuss the individual's needs and existing supports, complete the DBHDS-approved assessment, obtain a medical examination completed no earlier than 12 months prior to the initiation of waiver services, begin to develop the Personal Profile, and complete all designated assessments, such as the Supports Intensity Scale (SIS), deemed necessary to establish and document the needed services.

b. The case manager shall provide the individual and the individual's family/caregiver, as appropriate, with choice of needed services available under the [ ~~MR/ID~~ ID ] Waiver, alternative settings, and providers. Once the service providers are chosen, a planning meeting shall be arranged by the case manager to develop the person-centered Individual Support Plan based on the assessment of needs as reflected in the level of care and DBHDS-approved functional assessment instruments and the preferences of the individual and the individual's family/caregiver's, as appropriate.

c. Participants invited to participate in the person-centered planning meeting shall include the individual, case manager, service providers, the individual's family/caregiver, as appropriate, and others desired by the individual. The Individual Support Plan development process identifies the services to be rendered to individuals, the frequency of services, the type of service provider or providers, and a description of the services to be offered. [ The individual enrolled in the waiver, or the family/caregiver as appropriate, and case manager must sign the ISP. ]

4. The individual or case manager shall contact chosen service providers so that services can be initiated within 30 [ calendar ] days of [ ~~receipt of~~ ] enrollment [ ~~confirmation from DBHDS~~ ]. The service providers in conjunction with the individual and the individual's family/caregiver, as appropriate, and the case manager shall develop Plans for

Supports for each service. A copy of these plans shall be submitted to the case manager. The case manager shall review and ensure the Plan for Supports meets the established service criteria for the identified needs prior to submitting to the state-designated agency or its contractor for [ ~~prior~~ service ] authorization. Only [ ~~MR/ID~~ ID ] Waiver services authorized on the Individual Support Plan by the state-designated agency or its contractor according to DMAS policies may be reimbursed by DMAS. The Plan for Supports from each waiver service provider shall be incorporated into the Individual Support Plan along with the steps for risk mitigation as indicated by the risk assessment.

5. When the case manager obtains the DMAS-225 form from a local department of social services, the case manager shall designate and inform in writing a service provider to be the collector of patient pay when applicable. The designated provider shall [ ~~periodically~~ monthly ] monitor the DMAS-designated system for changes in patient pay obligations and adjust billing, as appropriate, with the change documented in the record in accordance with DMAS policy. When the designated collector of patient pay is the consumer-directed [ ~~EOR~~ personal or respite assistant or companion ], the case manager shall forward a copy of the DMAS-225 form to the [ ~~consumer-directed fiscal/employer agent and the~~ ] EOR [ along with the case manager's designation described in 12VAC30-120-1060 S 2 a (6). In such cases, the case manager shall be required to perform the monthly monitoring of the patient pay system and shall notify the EOR of all changes ].

6. The case manager shall submit the results of the comprehensive assessment and a recommendation to DBHDS staff for final determination of [ ~~ICF/MR~~ ICF/ID ] level of care and authorization for community-based services. The state-designated agency or its contractor shall, within 10 working days of receiving all supporting documentation, review and approve, pend for more information, or deny the individual service requests. The state-designated agency or its contractor shall communicate in writing to the case manager whether the recommended services have been approved and the amounts and type of services authorized or if any services have been denied. Medicaid shall not pay for any home and community-based waiver services delivered prior to the authorization date approved by the state-designated agency or its contractor if [ ~~prior~~ service ] authorization is required.

7. [ ~~MR/ID~~ ID ] Waiver services may be recommended by the case manager only if:

a. The individual is Medicaid eligible as determined by the local departments of social services;

b. The individual has a diagnosis of [ ~~MR/ID~~ ID ] as defined by the American Association on Intellectual and

---

# Regulations

---

Developmental Disabilities, or is a child under the age of six at developmental risk, and who would in the absence of waiver services require the level of care provided in an [ ICF/MR ICF/ID ] the cost of which would be reimbursed under the Plan; and

c. The contents of the Plans for Support [ ~~shall be~~ are ] consistent with the Medicaid definition of each service.

8. All Individual Support Plans shall be subject to final approval by DMAS. DMAS is the single state agency authority responsible for the supervision of the administration of the [ MR/ID ID ] Waiver.

9. If services are not initiated by the provider within 30 days of receipt of enrollment confirmation from DBHDS, the case manager shall notify the local department of social services so that a re-evaluation of eligibility as a noninstitutionalized individual can be made.

10. In the case of [ a ~~waiver individual~~ an individual enrolled in the waiver ] being referred back to a local department of social services for a redetermination of eligibility and in order to retain the designated slot, the case manager shall submit [ ~~written~~ ] information to DBHDS [ via IDOLS ] requesting retention of the designated slot pending the initiation of services. A copy of the request shall be provided to the individual and the individual's family/caregiver, as appropriate. DBHDS shall have the authority to approve the slot-retention request in 30-day extensions, up to a maximum of four consecutive extensions, or deny such request to retain the waiver slot for that individual. DBHDS shall provide a [ ~~written~~ ] response to the case manager [ via IDOLS ] indicating denial or approval of the slot extension request. DBHDS shall submit this response within 10 working days of the receipt of the request for extension and include the individual's right to appeal its decision.

## E. Reevaluation of service need.

### 1. The Individual Support Plan.

a. The Individual Support Plan, as defined herein, shall be [ collaboratively ] developed annually by the case manager with the individual and the individual's family/caregiver, as appropriate, other service providers, consultants, and other interested parties based on relevant, current assessment data.

b. The case manager shall be responsible for continuous monitoring of the appropriateness of the individual's services and revisions to the Individual Support Plan as indicated by the changing needs of the individual. At a minimum, the case manager must review the Individual Support Plan every three months to determine whether the individual's desired outcomes and support activities are being met and whether any modifications to the Individual Support Plan are necessary.

c. Any modification to the amount or type of services in the Individual Support Plan shall be prior authorized by the state-designated agency or its contractor.

d. All requests for increased waiver services by [ ~~MR/ID Waiver individuals~~ individuals enrolled in the waiver ] shall be reviewed under the health, safety, and welfare standard and for consistency with cost effectiveness. This standard assures that an individual's ability to receive a waiver service is dependent on the finding that the individual needs the service, based on appropriate assessment criteria and a written Plan for Supports, and that services can safely and cost effectively be provided in the community.

### 2. Review of level of care.

a. The case manager shall complete a reassessment annually in coordination with the individual and the individual's family/caregiver, as appropriate, and service providers. The reassessment shall include an update of the level of care and Personal Profile, risk assessment, and any other appropriate assessment information. The Individual Support Plan shall be revised as appropriate.

b. At least every three years [ for those individuals who are 16 years of age and older and every two years for those individuals who are ages birth through 15 years old, ] or when the individual's support needs change significantly, the case manager, with the assistance of the individual and other appropriate parties who have knowledge of the individual's circumstances and needs for support, shall complete the DBHDS-approved SIS form or [ its an ] approved [ ~~substitute form~~ alternative instrument for children younger than the age of five years ].

c. A medical examination shall be completed for adults based on need identified by the individual and the individual's family/caregiver, as appropriate, provider, case manager, or DBHDS staff. Medical examinations and screenings for children shall be completed according to the recommended frequency and periodicity of the EPSDT program.

d. A new psychological evaluation shall be required whenever the individual's functioning has undergone significant change (such as a loss of abilities or awareness that is expected to last longer than 30 days) and is no longer reflective of the past psychological evaluation. A psychological evaluation or standardized developmental assessment for children younger than six years of age must reflect the current psychological status (diagnosis), adaptive level of functioning, and cognitive abilities.

3. The case manager shall monitor the service providers' Plans for Supports to ensure that all providers are working toward the desired outcomes of the individuals.

4. Case managers shall be required to conduct monthly onsite visits for all ~~MR/ID Waiver~~ individuals [ enrolled in the waiver ] residing in VDSS-licensed assisted living facilities or approved adult foster care homes. Case managers shall conduct a minimum of quarterly ~~on-site onsite~~ home visits to individuals receiving ~~MR/ID ID~~ Waiver services who ~~also~~ reside in ~~all~~ DBHDS-licensed sponsored residential homes.

**12VAC30-120-1020. Covered services; limits on covered services.**

A. Covered services in the ~~MR/ID ID~~ Waiver include: assistive technology, companion services (both consumer-directed and agency-directed), crisis stabilization, day support, environmental modifications, personal assistance services (both consumer-directed and agency-directed), personal emergency response systems (PERS), prevocational services, residential support services, respite services (both consumer-directed and agency-directed), services facilitation (only for consumer-directed services), skilled nursing services, supported employment, therapeutic consultation, and transition services.

1. There shall be separate supporting documentation for each service and each shall be clearly differentiated in documentation and corresponding billing.

2. ~~Each waiver individual's~~ The need [ of each individual enrolled in the waiver ] for each service shall be clearly set out in the Individual Support Plan containing the providers' Plans for Supports.

3. Claims for payment that are not supported by their related documentation shall be subject to recovery by DMAS or its designated contractor as a result of utilization reviews or audits.

4. ~~Waiver individuals~~ Individuals enrolled in the waiver may choose between the agency-directed model of service delivery or the consumer-directed model when DMAS makes this alternative model available for care. The only services provided in this waiver that permit the consumer-directed model of service delivery shall be: (i) personal assistance services; (ii) respite services; and (iii) companion services. ~~A waiver individual~~ An individual enrolled in the waiver shall not receive consumer-directed services if at least one of the following conditions exists:

(a) The ~~waiver~~ individual [ enrolled in the waiver ] is younger than 18 years of age or is unable to be the employer of record and no one else can assume this role;

(b) The health, safety, or welfare of the ~~waiver~~ individual [ enrolled in the waiver ] cannot be ~~guaranteed~~ assured ] or a back up emergency plan cannot be developed; or

(c) The ~~waiver~~ individual [ enrolled in the waiver ] has medication or skilled nursing needs or medical/behavioral conditions that cannot be safely met via the consumer-directed model of service delivery.

5. Voluntary/involuntary disenrollment of consumer-directed services. Either voluntary or involuntary disenrollment of consumer-directed services may occur. In either voluntary or involuntary situations, the ~~waiver~~ individual [ enrolled in the waiver ] shall be permitted to select an agency from which to receive his personal assistance, respite, or companion services.

a. An individual who has chosen consumer direction may choose, at any time, to change to the agency-directed services model as long as he continues to qualify for the specific services. The services facilitator or case manager, as appropriate, shall assist the individual with the change of services from consumer-directed to agency-directed.

b. The services facilitator or case manager, as appropriate, shall initiate involuntary disenrollment from consumer direction of the ~~waiver~~ individual [ enrolled in the waiver ] when any of the following conditions occur:

(1) The health, safety, or welfare of the ~~waiver~~ individual [ enrolled in the waiver ] is at risk;

(2) The individual or EOR, as appropriate, demonstrates consistent inability to hire and retain a personal assistant; or

(3) The individual or EOR, as appropriate, is consistently unable to manage the assistant, as may be demonstrated by, but shall not necessarily be limited to, a pattern of serious discrepancies with timesheets.

c. Prior to involuntary disenrollment, the services facilitator or case manager, as appropriate, shall:

(1) Verify that essential training has been provided to the individual or EOR, as appropriate, to improve the problem condition or conditions;

(2) Document in the individual's record the conditions creating the necessity for the involuntary disenrollment and actions taken by the services facilitator or case manager, as appropriate;

(3) Discuss with the individual or the EOR, as appropriate, the agency directed option that is available and the actions needed to arrange for such services while providing a list of potential providers; and

(4) Provide written notice to the individual and EOR, as appropriate, of the right to appeal [ , pursuant to 12VAC30-110, ] such involuntary termination of consumer direction. Such notice shall be given at least 10 business days prior to the effective date of this action.

[ d. If the services facilitator initiates the involuntary disenrollment from consumer direction, then he shall inform the case manager. ]

6. ~~Coordination of waiver services with the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Medicaid benefit. When the definition of this waiver's~~

---

# Regulations

---

~~service is the same as that for EPSDT, then reimbursement for the waiver service shall first be made through the Medicaid EPSDT benefit. All requests for this waiver's services shall be submitted to either DMAS or the service authorization contractor for service (prior authorization)].~~

**B. Assistive technology (AT). Service description.** This service shall entail the provision of specialized medical equipment and supplies including those devices, controls, or appliances, specified in the Individual Support Plan but which are not available under the State Plan for Medical Assistance, that (i) enable individuals to increase their abilities to perform activities of daily living (ADLs); (ii) enable individuals to perceive, control, or communicate with the environment in which they live; or (iii) are necessary for life support, including the ancillary supplies and equipment necessary to the proper functioning of such technology.

1. **Criteria.** In order to qualify for these services, the individual shall have a demonstrated need for equipment or modification for remedial or direct medical benefit primarily in the individual's home, vehicle, community activity setting, or day program to specifically improve the individual's personal functioning. AT shall be covered in the least expensive, most cost-effective manner.

2. **Service units and service limitations.** AT shall be available to individuals who are receiving at least one other waiver service and may be provided in a residential or nonresidential setting. Only the AT services set out in the Plan for Supports shall be covered by DMAS. AT shall be prior authorized by the state-designated agency or its contractor for each calendar year with no carry-over across calendar years.

a. ~~[ Effective July 1, 2011, the ]~~ The  ~~]~~ maximum funded expenditure per individual for all AT covered procedure codes (combined total of AT items and labor related to these items) shall be  ~~[ \$3,000 \$5,000 ]~~ per calendar year for individuals regardless of waiver for which AT is approved.  ~~[ Requests made for reimbursement between January 1, 2011, and June 30, 2011, shall be subject to a \$5,000 annual maximum; requests made for reimbursement between July 1, 2011, and December 31, 2011, shall be subject to \$3,000 annual maximum and shall consider, against the \$3,000 limit, any relevant expenditure from the first six months of the calendar year. Expenditures made in the first six months of calendar year 2011 (under the \$5,000 limit) shall count against the \$3,000 limit applicable in the second six months of calendar year 2011. For subsequent calendar years, the limit shall be \$3,000 throughout the time period. ]~~ The service unit shall always be one for the total cost of all AT being requested for a specific timeframe.

b. Costs for AT shall not be carried over from calendar year to calendar year and shall be prior authorized by the state-designated agency or its contractor each calendar year. AT shall not be approved for purposes of

~~convenience of the caregiver or restraint of the individual.~~

3. An independent professional consultation shall be obtained from staff knowledgeable of that item for each AT request prior to approval by the state-designated agency or its contractor. Equipment, supplies, or technology not available as durable medical equipment through the State Plan may be purchased and billed as AT as long as the request for such equipment, supplies, or technology is documented and justified in the individual's Plan for Supports, recommended by the case manager, prior authorized by the state-designated agency or its contractor, and provided in the least expensive, most cost-effective manner possible.

~~[ 4. Medical equipment and supplies required for individuals under age 21 that are covered both under the State Plan for Medical Assistance and outside the State Plan shall be furnished through the Early Periodic Screening, Diagnosis, and Treatment (EPSDT) program.~~

~~5. 4. ]~~ All AT items to be covered shall meet applicable standards of manufacture, design, and installation.

~~[ 6. 5. ]~~ The AT provider shall obtain, install, and demonstrate, as necessary, such AT prior to submitting his claim to DMAS for reimbursement. The provider shall provide all warranties or guarantees from the AT's manufacturer to the individual and family/caregiver, as appropriate.

~~[ 7. 6. ]~~ AT providers shall not be the spouse or parents of the  ~~[ waiver ]~~ individual  ~~[ enrolled in the waiver ]~~.

**C. Companion (both consumer-directed and agency-directed) services. Service description.** These services provide nonmedical care, socialization, or support to an adult (ages 18 or older). Companions may assist or support the  ~~[ waiver ]~~ individual  ~~[ enrolled in the waiver ]~~ with such tasks as meal preparation, community access and activities, laundry, and shopping, but companions do not perform these activities as discrete services. Companions may also perform light housekeeping tasks (such as bed-making, dusting and vacuuming, laundry, grocery shopping, etc.) when such services are specified in the individual's Plan for Supports and essential to the individual's health and welfare in the context of providing nonmedical care, socialization, or support, as may be needed  ~~[ by the waiver individual ]~~ in order to maintain the individual's home environment in an orderly and clean manner. Companion services shall be provided in accordance with a therapeutic outcome in the Plan for Supports and shall not  ~~[ purely ]~~ be  ~~[ purely ]~~ recreational in nature. This service may be provided and reimbursed either through an agency-directed or a consumer-directed model.

1. In order to qualify for companion services, the  ~~[ waiver ]~~ individual  ~~[ enrolled in the waiver ]~~ shall have demonstrated a need for assistance with IADLs, light housekeeping (such as cleaning the bathroom used by the  ~~[ waiver ]~~ individual, washing his dishes, preparing his

meals, or washing his clothes), community access, reminders for medication self-administration, or support to assure safety. The provision of companion services shall not entail [ routine ] hands-on care.

2. Individuals choosing the consumer-directed option shall meet requirements for consumer direction as described herein.

3. Service units and service limitations.

a. The unit of service for companion services shall be one hour and the amount that may be included in the Plan for Supports shall not exceed eight hours per 24-hour day regardless of whether it is an agency-directed or consumer-directed service model, or both.

b. A companion shall not be permitted to provide nursing care procedures such as, but not limited to, ventilators, [ continuous ] tube feedings, suctioning of airways, or wound care.

c. The hours that can be authorized shall be based on documented individual need. No more than two unrelated individuals who are receiving waiver services and who live in the same home shall be permitted to share the authorized work hours of the companion.

4. This consumer directed service shall be available to [ waiver ] individuals [ enrolled in the waiver ] who receive congregate residential services. These services shall be available when [ waiver ] individuals [ enrolled in the waiver ] are not receiving congregate residential services such as, but not necessarily limited to, when they are on vacation or are visiting with family members.

D. Crisis stabilization. Service description. These services shall involve direct interventions that provide temporary intensive services and support that avert emergency psychiatric hospitalization or institutional placement of individuals with [ MR/ID ID ] who are experiencing serious psychiatric or behavioral problems that jeopardize their current community living situation. Crisis stabilization services shall have two components: (i) intervention and (ii) supervision. Crisis stabilization services shall include, as appropriate, neuropsychiatric, psychiatric, psychological, and other assessments and stabilization techniques, medication management and monitoring, behavior assessment and positive behavioral support, and intensive service coordination with other agencies and providers. This service shall be designed to stabilize the individual and strengthen the current living situation, so that the individual remains in the community during and beyond the crisis period.

1. These services shall be provided to:

a. Assist with planning and delivery of services and supports to enable the individual to remain in the community;

b. Train family/caregivers and service providers in positive behavioral supports to maintain the individual in the community; and

c. Provide temporary crisis supervision to ensure the safety of the individual and others.

2. In order to receive crisis stabilization services, the individual shall:

a. Meet at least one of the following: (i) the individual shall be experiencing a marked reduction in psychiatric, adaptive, or behavioral functioning; (ii) the individual shall be experiencing an increase in extreme emotional distress; (iii) the individual shall need continuous intervention to maintain stability; or (iv) the individual shall be causing harm to himself or others; and

b. Be at risk of at least one of the following: (i) psychiatric hospitalization; (ii) emergency [ ICF/MR ICF/ID ] placement; (iii) immediate threat of loss of a community service due to a severe situational reaction; or (iv) causing harm to self or others.

3. Service units and service limitations. Crisis stabilization services shall only be authorized following a documented face-to-face assessment conducted by a qualified mental retardation professional (QMRP).

a. The unit for either intervention or supervision of this covered service shall be one hour. This service shall only be authorized in 15-day increments but no more than 60 days in a calendar year shall be approved. The actual service units per episode shall be based on the documented clinical needs of the individual being served. Extension of services, beyond the 15-day limit per authorization, shall only be authorized following a documented face-to-face reassessment conducted by a QMRP.

b. Crisis stabilization services shall be provided directly in the following settings, but shall not be limited to:

(1) The home of an individual who lives with family, friends, or other primary caregiver or caregivers;

(2) The home of an individual who lives independently or semi-independently to augment any current services and supports; or

(3) Either a community-based residential program, a day program, or a respite care setting to augment ongoing current services and supports;

4. Crisis supervision shall be an optional component of crisis stabilization in which one-to-one supervision of the individual who is in crisis shall be provided by agency staff in order to ensure the safety of the individual and others in the environment. Crisis supervision may be provided as a component of crisis stabilization only if clinical or behavioral interventions allowed under this service are also provided during the authorized period. Crisis supervision must be provided one-to-one and face-to-face with the individual. Crisis supervision, if provided as a part of this service, shall be separately billed in hourly service units.

---

# Regulations

---

5. Crisis stabilization services shall not be used for continuous long-term care. Room, board, and general supervision shall not be components of this service.

6. If appropriate, the assessment and any reassessments may be conducted jointly with a licensed mental health professional or other appropriate professional or professionals.

E. Day support services. Service description. These services shall include skill-building, supports, and safety supports for the acquisition, retention, or improvement of self-help, socialization, community integration, and adaptive skills. These services shall be typically offered in a nonresidential setting that provides opportunities for peer interactions, community integration, and enhancement of social networks. There shall be two levels of this service: (i) intensive and (ii) regular.

1. Criteria. For day support services, individuals shall demonstrate the need for skill-building or supports offered primarily in settings other than the individual's own residence that allows him an opportunity for being a productive and contributing member of his community.

2. Types of day support. The amount and type of day support included in the individual's Plan for Supports shall be determined by what is required for that individual. There are two types of day support: center-based, which is provided primarily at one location/building; or noncenter-based, which is provided primarily in community settings. Both types of day support may be provided at either intensive or regular levels.

3. Levels of day support. There shall be two levels of day support, intensive and regular. To be authorized at the intensive level, the individual shall meet at least one of the following criteria: (i) the individual requires physical assistance to meet the basic personal care needs (such as but not limited to toileting, eating/feeding); (ii) the individual requires additional, ongoing support to fully participate in programming and to accomplish the individual's desired outcomes due to extensive disability-related difficulties; or (iii) the individual requires extensive constant supervision to reduce or eliminate behaviors that preclude full participation in the program. In this case, written behavioral support activities shall be required to address behaviors such as, but not limited to, withdrawal, self-injury, aggression, or self-stimulation. Individuals not meeting these specified criteria for intensive day support shall be provided with regular day support.

4. Service units and service limitations.

a. This service shall be limited to 780 [ ~~unit~~ ] blocks, or its equivalent under the DMAS fee schedule, per Individual Support Plan year. A block shall be defined as a period of time from one hour through three hours and 59 [ ~~seconds~~ minutes ]. [ Two blocks are defined as four hours to six hours and 59 minutes. Three blocks are defined as seven hours to nine hours and 59 minutes. ] If

this service is used in combination with prevocational, or group supported employment services, or both, the combined total units for day support, prevocational, or group supported employment services shall not exceed 780 units, or its equivalent under the DMAS fee schedule, per Individual Support Plan year.

b. Day support services shall be billed according to the DMAS fee schedule.

c. Day support shall not be regularly or temporarily provided in an individual's home setting or other residential setting (e.g., due to inclement weather or individual illness) without prior written approval from the state-designated agency or its contractor.

d. Noncenter-based day support services shall be separate and distinguishable from either residential support services or personal assistance services. The supporting documentation shall provide an estimate of the amount of day support required by the individual.

5. Service providers shall be reimbursed only for the amount and level of day support services included in the individual's approved Plan for Supports based on the setting, intensity, and duration of the service to be delivered.

F. Environmental modifications (EM). Service description. This service shall be defined [ , as set out in 12VAC30-120-1000, ] as those physical adaptations to the [ ~~waiver~~ individual's ] primary home [ ~~or~~ ] primary vehicle [ , or work site ] that shall be required by the [ ~~waiver~~ ] individual's Individual Support Plan, that are necessary to ensure the health and welfare of the individual, or that enable the individual to function with greater independence [ ~~and without which the individual would require institutionalization~~ ]. [ Environmental modifications reimbursed by DMAS may only be made to an individual's work site when the modification exceeds the reasonable accommodation requirements of the Americans with Disabilities Act. ] Such adaptations may include, but shall not necessarily be limited to, the installation of ramps and grab-bars, widening of doorways, modification of bathroom facilities, or installation of specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies that are necessary for the individual. Modifications may be made to a primary automotive vehicle in which the individual is transported if it is owned by the individual, a family member with whom the individual lives or has consistent and ongoing contact, or a nonrelative who provides primary long-term support to the individual and is not a paid provider of services. [ ~~Environmental modifications reimbursed by DMAS may only be made to an individual's work site when the modification exceeds the reasonable accommodation requirements of the Americans with Disabilities Act.~~ ]

1. In order to qualify for these services, the [ ~~waiver~~ ] individual [ ~~enrolled in the waiver~~ ] shall have a

demonstrated need for equipment or modifications of a remedial or medical benefit offered in an individual's primary home, the primary vehicle used by the individual, community activity setting, or day program to specifically improve the individual's personal functioning. This service shall encompass those items not otherwise covered in the State Plan for Medical Assistance or through another program.

2. Service units and service limitations.

a. Environmental modifications shall be provided in the least expensive manner possible that will accomplish the modification required by the [waiver] individual [enrolled in the waiver] and shall be completed within the [Plan of Support calendar] year consistent with [such plan's the Plan of Supports'] requirements.

b. [Effective July 1, 2011, the The] maximum funded expenditure per individual for all EM covered procedure codes (combined total of EM items and labor related to these items) shall be [ \$3,000 \$5,000 ] per calendar year for individuals regardless of waiver for which EM is approved. [Requests made for reimbursement between January 1, 2011, and June 30, 2011, shall be subject to a \$5,000 annual maximum; requests made for reimbursement between July 1, 2011, and December 31, 2011, shall be subject to \$3,000 annual maximum, and shall consider, against the \$3,000 limit, any relevant expenditure from the first six months of the calendar year. Expenditures made in the first six months of calendar year 2011 (under the \$5,000 limit) shall count against the \$3,000 limit applicable in the second six months of calendar year 2011. For subsequent calendar years, the limit shall be \$3,000 throughout the time period.] The service unit shall always be one, for the total cost of all EM being requested for a specific timeframe.

EM shall be available to individuals [ who are receiving at least one other waiver service in addition to MR/ID targeted case management pursuant to 12VAC30-50-450 enrolled in the waiver who are receiving at least one other waiver service and may be provided in a residential or nonresidential setting ]. EM shall be prior authorized by the state-designated agency or its contractor for each calendar year with no carry-over across calendar years.

c. Modifications shall not be used to bring a substandard dwelling up to minimum habitation standards.

d. Providers shall be reimbursed for their actual cost of material and labor and no additional mark-ups shall be permitted.

e. Providers of EM services shall not be the spouse or parents of the [waiver] individual [enrolled in the waiver].

f. Excluded from coverage under this waiver service shall be those adaptations or improvements to the home that

are of general utility and that are not of direct medical or remedial benefit to the [waiver] individual [enrolled in the waiver], such as, but not necessarily limited to, carpeting, roof repairs, and central air conditioning. Also excluded shall be modifications that are reasonable accommodation requirements of the Americans with Disabilities Act, the Virginians with Disabilities Act, and the Rehabilitation Act. Adaptations that add to the total square footage of the home shall be excluded from this service. Except when EM services are furnished in the individual's own home, such services shall not be provided to individuals who receive residential support services.

3. Modifications shall not be prior authorized or covered to adapt living arrangements that are owned or leased by providers of waiver services or those living arrangements that are sponsored by a DBHDS-licensed residential support provider. Specifically, provider-owned or leased settings where residential support services are furnished shall already be compliant with the Americans with Disabilities Act.

4. Modifications to a primary vehicle that shall be specifically excluded from this benefit shall be:

a. Adaptations or improvements to the vehicle that are of general utility and are not of direct medical or remedial benefit to the individual;

b. Purchase or lease of a vehicle; and

c. Regularly scheduled upkeep and maintenance of a vehicle, except upkeep and maintenance of the modifications that were covered under this waiver benefit.

G. Personal assistance services. Service description. These services may be provided either through an agency-directed or consumer-directed (CD) model.

1. Personal assistance shall be provided to individuals in the areas of activities of daily living (ADLs), instrumental activities of daily living (IADLs), access to the community, monitoring of self-administered medications or other medical needs, monitoring of health status and physical condition, and work-related personal assistance. Such services, as set out in the Plan for Supports, may be provided and reimbursed in home and community settings to enable an individual to maintain the health status and functional skills necessary to live in the community or participate in community activities. When specified, such supportive services may include assistance with IADLs. Personal assistance shall not include either practical or professional nursing services or those practices regulated in Chapters 30 (§ 54.1-3000 et seq.) and 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia, as appropriate. This service shall not include skilled nursing services with the exception of skilled nursing tasks that may be delegated pursuant to 18VAC90-20-420 through 18VAC90-20-460.

---

# Regulations

---

2. Criteria. In order to qualify for personal assistance, the individual shall demonstrate a need for assistance with ADLs, community access, self-administration of medications or other medical needs, or monitoring of health status or physical condition.

3. Service units and service limitations.

a. The unit of service shall be one hour.

b. Each individual [ ~~and family/caregiver~~, family, or caregiver ] shall have a back-up plan for the individual's needed supports in case the personal assistant does not report for work as expected or terminates employment without prior notice.

c. Personal assistance shall not be available to individuals who (i) receive congregate residential services or who live in assisted living facilities, (ii) would benefit from ADL or IADL skill development as identified by the case manager, or (iii) receive comparable services provided through another program or service.

d. The hours to be authorized shall be based on the individual's need. No more than two unrelated individuals who live in the same home shall be permitted to share the authorized work hours of the assistant.

H. Personal Emergency Response System (PERS). Service description. This service shall be a service that monitors [ ~~waiver~~ ] individuals' safety in their homes, and provides access to emergency assistance for medical or environmental emergencies through the provision of a two-way voice communication system that dials a 24-hour response or monitoring center upon activation and via the individuals' home telephone system. PERS may also include medication monitoring devices.

1. PERS may be authorized when there is no one else in the home with the [ ~~waiver~~ ] individual [ enrolled in the waiver ] who is competent or continuously available to call for help in an emergency.

2. Service units and service limitations.

a. A unit of service shall include administrative costs, time, labor, and supplies associated with the installation, maintenance, monitoring, and adjustments of the PERS. A unit of service is the one-month rental price set by DMAS. The one-time installation of the unit shall include installation, account activation, individual and caregiver instruction, and removal of PERS equipment.

b. PERS services shall be capable of being activated by a remote wireless device and shall be connected to the individual's telephone system. The PERS console unit must provide hands-free voice-to-voice communication with the response center. The activating device must be waterproof, automatically transmit to the response center an activator low battery alert signal prior to the battery losing power, and be able to be worn by the individual.

c. PERS services shall not be used as a substitute for providing adequate supervision for the [ ~~waiver~~ ] individual [ enrolled in the waiver ].

I. Prevocational services. Service description. These services shall be intended to prepare [ ~~a waiver~~ an ] individual [ enrolled in the waiver ] for paid or unpaid employment but shall not be job-task oriented. Prevocational services shall be provided to individuals who are not expected to be able to join the general work force without supports or to participate in a transitional sheltered workshop within one year of beginning waiver services. Activities included in this service shall not be directed at teaching specific job skills but at underlying habilitative outcomes such as accepting supervision, regular job attendance, task completion, problem solving, and safety. There shall be two levels of this covered service: (i) intensive and (ii) regular.

1. In order to qualify for prevocational services, the [ ~~waiver~~ ] individual [ enrolled in the waiver ] shall have a demonstrated need for support in skills that are aimed toward preparation of paid employment that may be offered in a variety of community settings.

2. Service units and service limitations. Billing shall be in accordance with the DMAS fee schedule.

a. This service shall be limited to 780 [ ~~unit~~ ] blocks, or its equivalent under the DMAS fee schedule, per Individual Support Plan year. [ A block shall be defined as a period of time from one hour through three hours and 59 minutes. Two blocks are defined as four hours to six hours and 59 minutes. Three blocks are defined as seven hours to nine hours and 59 minutes. ] If this service is used in combination with day support or group-supported employment services, or both, the combined total units for prevocational services, day support and group supported employment services shall not exceed 780 [ ~~unit~~ ] blocks, or its equivalent under the DMAS fee schedule, per Individual Support Plan year. A block shall be defined as a period of time from one hour through three hours and 59 [ ~~seconds~~ minutes ].

b. Prevocational services may be provided in center-based or noncenter-based settings. Center-based settings means services shall be provided primarily at one location or building and noncenter-based means services shall be provided primarily in community settings.

c. For prevocational services to be authorized at the intensive level, the individual must meet at least one of the following criteria: (i) require physical assistance to meet the basic personal care needs (such as, but not limited to, toileting, eating/feeding); (ii) require additional, ongoing support to fully participate in services and to accomplish desired outcomes due to extensive disability-related difficulties; or (iii) require extensive constant supervision to reduce or eliminate behaviors that preclude full participation in the program. In this case, written behavioral support activities shall be

required to address behaviors such as, but not limited to, withdrawal, self-injury, aggression, or self-stimulation. Individuals not meeting these specified criteria for intensive prevocational services shall be provided with regular prevocational services.

4. There shall be documentation regarding whether prevocational services are available in vocational rehabilitation agencies through § 110 of the Rehabilitation Act of 1973 or through the Individuals with Disabilities Education Act (IDEA). If the individual is not eligible for services through the IDEA due to his age, documentation shall be required only for lack of DRS funding. When these services are provided through these alternative funding sources, the Plan for Supports shall not authorize prevocational services as waiver expenditures.

5. Prevocational services shall only be provided when the individual's compensation for work performed is less than 50% of the minimum wage.

J. Residential support services. Service description. These services shall consist of skill-building, supports, and safety supports, provided primarily in an individual's home or in a licensed or approved residence, that enable an individual to acquire, retain, or improve the self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings. Service providers shall be reimbursed only for the amount and type of residential support services that are included in the individual's approved Plan for Supports. There shall be two types of this service: congregate residential support and in-home supports. Residential support services shall be authorized for Medicaid reimbursement in the Plan for Supports only when the individual requires these services and when such needs exceed the services included in the individual's room and board arrangements with the service provider, or if these services exceed supports provided by the family/caregiver. [ Residential Only in exceptional instances shall residential ] support services [ shall not ] be routinely reimbursed up to a 24-hour period.

1. Criteria.

a. In order for DMAS to reimburse for congregate residential support services, the individual shall have a demonstrated need for supports to be provided by staff who shall be paid by the residential support provider.

b. To qualify for this service in a congregate setting, the individual shall have a demonstrated need for continuous skill-building, supports, and safety supports for up to 24 hours per day.

c. Providers shall participate as requested in the completion of the DBHDS-approved SIS form or its approved substitute form.

d. The residential support Plan for Supports shall indicate the necessary amount and type of activities required by the individual, the schedule of residential support

services, and the total number of projected hours per week of waiver reimbursed residential support.

[ e. In-home residential supports shall be supplemental to the primary care provided by the individual, his family member or members, and other caregivers. In-home residential supports shall not replace this primary care.

f. In-home residential supports shall be delivered on an individual basis, typically for less than a continuous 24-hour period. This service shall be delivered with a 1:1 staff-to-individual ratio except when skill building supports require interaction with another person. ]

2. Service units and service limitations. Total billing shall not exceed the amount authorized in the Plan for Supports. The provider must maintain documentation of the date and times that services have been provided, and specific circumstances that prevented provision of all of the scheduled services, should that occur.

a. This service shall be provided on an individual-specific basis according to the Plan for Supports and service setting requirements;

b. Congregate residential support shall not be provided to any [ ~~waiver~~ ] individual [ enrolled in the waiver ] who receives personal assistance services under the [ ~~MR/ID ID~~ ] Waiver or other residential services that provide a comparable level of care [ ~~as described in the agency's guidance documents~~ ]. Residential support services shall be permitted to be provided to [ ~~waiver individuals~~ the individual enrolled in the waiver ] in conjunction with respite services for unpaid caregivers;

c. Room, board, and general supervision shall not be components of this service;

d. This service shall not be used solely to provide routine or emergency respite care for the family/caregiver with whom the individual lives; and

e. Medicaid reimbursement shall be available only for residential support services provided when the individual is present and when an enrolled Medicaid provider is providing the services.

K. Respite services. Service description. These services may be provided either through an agency-directed or consumer-directed (CD) model.

1. Respite services shall be provided to individuals in the areas of activities of daily living (ADLs), instrumental activities of daily living (IADLs), access to the community, monitoring of self-administered medications or other medical needs, and monitoring of health status and physical condition in the absence of the primary caregiver or to relieve the primary caregiver from the duties of caregiving. Such services may be provided in home and community settings to enable an individual to maintain the health status and functional skills necessary to live in the community or participate in community activities. When specified, such supportive services may include assistance

---

# Regulations

---

with IADLs. Respite assistance shall not include either practical or professional nursing services or those practices regulated in Chapters 30 (§ 54.1-3000 et seq.) and 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia, as appropriate. This service shall not include skilled nursing services with the exception of skilled nursing tasks that may be delegated pursuant to 18VAC90-20-420 through 18VAC90-20-460.

2. Respite services shall be those that are normally provided by the individual's family or other unpaid primary caregiver. These covered services shall be furnished on a short-term, episodic, or periodic basis because of the absence of the unpaid caregiver or need for relief of ~~[ those the ]~~ unpaid caregiver or caregivers who normally provide care for the individual ~~[ in order to prevent the breakdown of the unpaid caregiver ]~~.

### 3. Criteria.

a. In order to qualify for respite services, the individual shall demonstrate a need for assistance with ADLs, community access, self-administration of medications or other medical needs, or monitoring of health status or physical condition.

b. Respite services shall only be offered to individuals ~~[ ; in order to avoid institutionalization of the individual, ]~~ who have an unpaid primary caregiver or caregivers who require temporary relief. Such need for relief may be either episodic ~~[ or, ]~~ intermittent ~~[ , or periodic ]~~.

### 4. Service units and service limitations.

a. The unit of service shall be one hour. Respite services shall be limited to 480 hours per individual per ~~[ state fiscal ]~~ year ~~[ ; to be prior authorized in six month increments not to exceed 240 hours per six months ]~~. If an individual changes waiver programs, this same maximum number of respite hours shall apply. No additional respite hours beyond the 480 maximum limit shall be approved for payment. ~~[ Individuals who do not use all of their allowed respite hours in the first six month prior authorization period shall not be permitted to carry over any unused portion of hours to the second prior authorization period. ]~~ Individuals who are receiving respite services in this waiver through both the agency-directed and CD models shall not exceed 480 hours per year combined.

b. Each individual ~~[ and family/caregiver, family, or caregiver ]~~ shall have a back-up plan for the individual's care in case the respite assistant does not report for work as expected or terminates employment without prior notice.

c. Respite services shall not be provided to relieve staff of either group homes, pursuant to 12VAC35-105-20, or assisted living facilities, pursuant to 22VAC40-72-10, where residential supports are provided in shifts. Respite services shall not be provided for DMAS reimbursement

by adult foster care providers for an individual residing in that foster home.

~~[ d. ]~~ Skill development shall not be provided with respite services.

~~[ e. ]~~ The hours to be authorized shall be based on the individual's need. No more than two unrelated individuals who live in the same home shall be permitted to share the authorized work hours of the respite assistant.

5. Consumer-directed ~~[ and agency-directed ]~~ respite services shall meet the same standards ~~[ as agency directed respite services ]~~ for service limits ~~[ ; and ]~~ authorizations ~~[ ; provider restrictions ]~~.

L. Services facilitation and consumer-directed service model. Service description. ~~[ Waiver individuals ]~~ Individuals enrolled in the waiver ~~] may be approved to select consumer directed (CD) models of service delivery, absent any of the specified conditions that precludes such a choice, and may also receive support from a services facilitator. Persons functioning as services facilitators shall be enrolled Medicaid providers. This shall be a separate waiver service to be used in conjunction with CD personal assistance, respite, or companion services and shall not be covered for an individual absent one of these consumer directed services.~~

1. Services facilitators shall train ~~[ waiver ]~~ individuals ~~[ enrolled in the waiver ]~~, family/caregiver, or EOR, as appropriate, to direct (such as select, hire, train, supervise, and authorize timesheets of) their own assistants who are rendering personal assistance, respite services, and companion services.

2. The services facilitator shall ~~[ be responsible for assessing ]~~ assess ~~] the individual's particular needs for a requested CD service, assisting in the development of the Plan for Supports, [ providing ]~~ management training for the individual or the EOR, as appropriate, on his responsibilities as ~~[ employers ]~~ employer ~~], and [ providing ]~~ ongoing support of the CD model of services. The ~~[ prior ]~~ service authorization for receipt of consumer directed services shall be based on the approved Plan for Supports.

3. The services facilitator shall make an initial comprehensive home visit to collaborate with the individual and the individual's family/caregiver, as appropriate, to identify the individual's needs, assist in the development of the Plan for Supports with the individual and the individual's family/caregiver, as appropriate, and provide employer management training ~~[ using DMAS' agency guidance documents to the individual and the family/caregiver, as appropriate, on his responsibilities as an employer, and providing ongoing support of the consumer-directed model of services. ]~~ Individuals or EORs who are unable to receive employer management training at the time of the initial visit shall receive management training within seven days of the initial visit.

- a. The initial comprehensive home visit shall be completed only once upon the individual's entry into the CD model of service regardless of the number or type of CD services that an individual requests.
- b. If an individual changes services facilitators, the new services facilitator shall complete a reassessment visit in lieu of a comprehensive visit.
- [ c. This employer management training shall be completed before the individual or EOR may hire an assistant who is to be reimbursed by DMAS. ]
- 4. After the initial visit, the services facilitator shall continue to monitor the individual's Plan for Supports quarterly (i.e., every 90 days) and more often as-needed. If CD respite services are provided, the services facilitator shall review the utilization of CD respite services either every six months or upon the use of [ 400 240 ] respite services hours, whichever comes first.
- 5. A face-to-face meeting shall occur between the services facilitator and the individual at least every six months to reassess the individual's needs and to ensure appropriateness of any CD services received by the individual. During these visits with the individual, the services facilitator shall observe, evaluate, and consult with the individual, EOR, and the individual's family/caregiver, as appropriate, for the purpose of documenting the adequacy and appropriateness of CD services with regard to the individual's current functioning and cognitive status, medical needs, and social needs. The services facilitator's written summary of the visit shall include, but shall not necessarily be limited to:
  - a. Discussion with the individual and EOR or family/caregiver, as appropriate, whether the particular consumer directed service is adequate to meet the individual's needs;
  - b. Any suspected abuse, neglect, or exploitation and to whom it was reported;
  - c. Any special tasks performed by the assistant and the assistant's qualifications to perform these tasks;
  - d. Individual's and EOR's or family/caregiver's, as appropriate, satisfaction with the assistant's service;
  - e. Any hospitalization or change in medical condition, functioning, or cognitive status;
  - f. The presence or absence of the assistant in the home during the services facilitator's visit; and
  - g. Any other services received and the amount.
- 6. The services facilitator, during routine visits, shall also review and verify timesheets as needed to ensure that the number of hours approved in the Plan for Supports is not exceeded. If discrepancies are identified, the services facilitator shall discuss these with the individual or the EOR to resolve discrepancies and shall notify the fiscal/employer agent. If an individual is consistently

identified as having discrepancies in his timesheets, the services facilitator shall contact the case manager to resolve the situation.

7. The services facilitator shall maintain a record of each individual containing elements as [ ~~described in DMAS' guidance documents~~ set out in 12VAC30-120-1060 ].

8. The services facilitator shall be available during standard business hours to the individual or EOR by telephone.

9. If a services facilitator is not selected by the individual, the individual or the family/caregiver serving as the EOR shall perform all of the duties and meet all of the requirements, [ ~~as set out in the agency's guidance documents~~ including documentation requirements ], identified for services facilitation. However, the individual or family/caregiver shall not be reimbursed by DMAS for performing these duties or meeting these requirements.

10. If an individual enrolled in consumer-directed services has a lapse in services facilitator duties for more than 90 consecutive days, and the individual or family/caregiver is not willing or able to assume the service facilitation duties, then the case manager shall notify DMAS or its designated prior authorization contractor and the consumer-directed services shall be discontinued [ once the required 10 days notice of this change has been observed ]. [ The individual whose consumer-directed services have been discontinued shall have the right to appeal this discontinuation action pursuant to 12VAC30-110. ] The individual shall be given his choice of an agency for the alternative personal care, respite, or companion services that he was previously obtaining through consumer direction.

11. The CD services facilitator, who is to be reimbursed by DMAS, shall not be the [ ~~waiver~~ ] individual [ enrolled in the waiver ], the individual's case manager, a direct service provider, the individual's spouse, a parent of the individual who is a minor child, or [ ~~a family/caregiver~~ the EOR ] who is employing the assistant/companion.

12. The services facilitator shall document what constitutes the individual's back-up plan in case the assistant [ /companion ] does not report for work as expected or terminates employment without prior notice.

13. Should the assistant [ /companion ] not report for work or terminate his employment without notice, then the services facilitator shall, upon the individual's or EOR's request, provide management training to ensure that the individual or the EOR is able to recruit and employ a new assistant [ /companion ].

14. The limits and requirements for individuals' selection of consumer directed services shall be as follows:

- a. In order to be approved to use the CD model of services, the [ ~~waiver~~ ] individual [ enrolled in the waiver ], or if the individual is unable, the [ ~~family/caregiver~~ designated EOR ], shall have the

---

# Regulations

---

capability to hire, train, and fire his own assistants and supervise the assistants' performance. Case managers shall document in the Individual Support Plan the individual's choice for the CD model and whether or [ not ] the individual chooses services facilitation. ~~[ For the individual not selecting SF, the ]~~ The case manager shall document in this individual's record that the individual can serve as the EOR or if there is a need for another person to serve as the EOR on behalf of the individual.

b. ~~[ A waiver ]~~ An individual [ enrolled in the waiver ] who is younger than 18 years of age shall be required to have ~~[ someone function ]~~ an adult responsible for functioning in the capacity of an EOR.

c. Specific employer duties shall include checking references of assistants, determining that assistants meet specified qualifications, [ timely and accurate completion of hiring packets, ] training the assistants, supervising assistants' performance, and submitting complete and accurate timesheets to the fiscal/employer agent on a consistent and timely basis.

~~[ d. Once the individual is authorized for CD services, the individual or the EOR shall successfully complete management training conducted by the services facilitator using DMAS guidance documents before the individual may hire an assistant for Medicaid reimbursement. ]~~

M. Skilled nursing services. Service description. These services shall be provided for [ ~~waiver~~ ] individuals [ enrolled in the waiver ] having serious medical conditions and complex health care needs who do not meet home health criteria but who require specific skilled nursing services which cannot be provided by non-nursing personnel. Skilled nursing services may be provided in the [ ~~waiver~~ ] individual's home or other community setting on a regularly scheduled or intermittent basis. It may include consultation, nurse delegation as appropriate, oversight of direct support staff as appropriate, and training for other providers.

1. In order to qualify for these services, the [ ~~waiver~~ ] individual [ enrolled in the waiver ] shall have demonstrated complex health care needs that require specific skilled nursing services as ordered by a physician that cannot be otherwise provided under the Title XIX State Plan for Medical Assistance, such as under the home health care benefit.

2. Service units and service limitations. Skilled nursing services [ ~~to shall~~ ] be rendered by a registered nurse or licensed practical nurse as defined in 12VAC30-120-1000 and shall be provided in hourly units in accordance with the DMAS fee schedule as set out in DMAS guidance documents. The services shall be explicitly detailed in a Plan for Supports and shall be specifically ordered by a physician as medically necessary [ ~~to prevent institutionalization~~ ].

N. Supported employment services. Service description. These services shall consist of [ ~~intensive,~~ ] ongoing supports that enable individuals to be employed in [ ~~a regular~~ an integrated ] work setting and may include assisting the individual to locate a job or develop a job on behalf of the individual, as well as activities needed to sustain paid work by the individual including skill-building supports and safety supports on a job site. These services shall be provided in work settings where persons without disabilities are employed. ~~[ It is ]~~ Supported employment services shall be especially designed for individuals with developmental disabilities, including individuals with [ ~~MR/ID~~ ID ], who face severe impediments to employment due to the nature and complexity of their disabilities, irrespective of age or vocational potential (i.e., [ the ] individual's ability to perform work).

1. Supported employment services shall be available to individuals for whom competitive employment at or above the minimum wage is unlikely without ongoing supports and who because of their disabilities need ongoing support to perform in a work setting. The individual's assessment and Individual Support Plan must clearly reflect the individual's need for employment-related skill building.

2. Supported employment shall be provided in one of two models: individual or group.

a. Individual supported employment shall be defined as [ ~~intermittent~~ ] support, usually provided one-on-one by a job coach to an individual in a supported employment position. For this service, reimbursement of supported employment shall be limited to actual documented interventions or collateral contacts by the provider, not the amount of time the [ ~~waiver~~ ] individual [ enrolled in the waiver ] is in the supported employment situation.

b. Group supported employment shall be defined as continuous support provided by staff to eight or fewer individuals with disabilities who work in an enclave, work crew, bench work, or in an entrepreneurial model.

3. Criteria.

a. Only job development tasks that specifically [ ~~include~~ ] pertain to ] the individual shall be allowable [ ~~job search~~ ] activities under the [ ~~MR/ID waiver~~ ID Waiver ] supported employment service and DMAS shall cover this service only after determining that this service is not available from DRS for this [ ~~waiver~~ ] individual [ enrolled in the waiver ].

b. In order to qualify for these services, the individual shall have demonstrated that competitive employment at or above the minimum wage is unlikely without ongoing supports and, that because of his disability, he needs ongoing support to perform in a work setting.

c. Providers shall participate as requested in the completion of the DBHDS-approved assessment.

d. The Plan for Supports shall document the amount of supported employment required by the individual.

4. Service units and service limitations.

a. Service providers shall be reimbursed only for the amount and type of supported employment included in the individual's Plan for Supports, which must be based on the intensity and duration of the service delivered.

b. The unit of service for individual job placement supported employment shall be one hour. This service shall be limited to 40 hours per week per individual.

c. Group models of supported employment shall be billed according to the DMAS fee schedule.

d. Group supported employment shall be limited to 780 [ ~~unit~~ ] blocks per individual, or its equivalent under the DMAS fee schedule, per Individual Support Plan year. A block shall be defined as a period of time from one hour through three hours and 59 [ ~~seconds~~ minutes ]. [ Two blocks are defined as four hours to six hours and 59 minutes. Three blocks are defined as seven hours to nine hours and 59 minutes. ] If this service is used in combination with prevocational and day support services, the combined total unit blocks for these three services shall not exceed 780 units, or its equivalent under the DMAS fee schedule, per Individual Support Plan year.

O. Therapeutic consultation. Service description. This service shall provide expertise, training, and technical assistance in any of the following specialty areas to assist family members, caregivers, and other service providers in supporting the [ ~~waiver~~ ] individual [ enrolled in the waiver ]. The specialty areas shall be (i) psychology, (ii) behavioral consultation, (iii) therapeutic recreation, (iv) speech and language pathology, (v) occupational therapy, (vi) physical therapy, and (vii) rehabilitation engineering. The need for any of these services shall be based on the [ ~~waiver~~ ] individuals' Individual Support Plans, and shall be provided to those individuals for whom specialized consultation is clinically necessary and who have additional challenges restricting their abilities to function in the community. Therapeutic consultation services may be provided in individuals' homes, and in appropriate community settings (such as licensed or approved homes or day support programs) [ ~~and shall be as long as they are~~ ] intended to facilitate implementation of individuals' desired outcomes as identified in their Individual Support Plans.

1. In order to qualify for these services, the individual shall have a demonstrated need for consultation in any of these services. Documented need must indicate that the Individual Support Plan cannot be implemented effectively and efficiently without such consultation as provided by this covered service.

a. The individual's therapeutic consultation Plan for Supports shall clearly reflect the individual's needs, as documented in the assessment information, for

specialized consultation provided to family/caregivers and providers in order to effectively implement the Plan for Supports.

b. Therapeutic consultation services shall not include direct therapy provided to [ ~~waiver~~ ] individuals [ ~~or monitoring activities enrolled in the waiver~~ ] and shall not duplicate the activities of other services that are available to the individual through the State Plan for Medical Assistance.

2. The unit of service shall be one hour. The services must be explicitly detailed in the Plan for Supports. Travel time, written preparation, and telephone communication shall be considered as in-kind expenses within this service and shall not be reimbursed as separate items. Therapeutic consultation shall not be billed solely for purposes of monitoring the individual.

3. Only behavioral consultation in this therapeutic consultation service may be offered in the absence of any other waiver service when the consultation is determined to be necessary [ ~~to prevent institutionalization~~ ].

P. Transition services. Transition services, as defined at [ and controlled by ] 12VAC30-120-2000 and 12VAC30-120-2010, provide for set-up expenses for qualifying applicants. The [ ~~MR/ID ID~~ ] case manager shall coordinate with the discharge planner to ensure that [ ~~MR/ID ID~~ ] Waiver eligibility criteria shall be met. [ ~~±~~ ] Transition services shall be prior authorized by DMAS or its designated agent in order for reimbursement to occur.

[ ~~2. For the purposes of transition funding, an institution means an ICF/MR, as defined at 42 CFR 435.1009, long stay hospital, or nursing facility.~~ ]

**12VAC30-120-1030. [Reserved]**

**12VAC30-120-1040. General requirements for participating providers.**

A. Requests for participation [ as Medicaid providers of waiver services ] shall be screened by DMAS or its designated contractor to determine whether the provider applicant meets the basic requirements for provider participation. [ All providers must be currently enrolled with DMAS in order to be reimbursed for services rendered. Providers who are not enrolled shall not be reimbursed. Consumer-directed assistants shall not be considered Medicaid providers for the purpose of enrollment procedures. ]

B. For DMAS to approve provider agreements with home and community-based waiver providers, the following standards shall be met:

1. For services that have licensure and certification requirements, [ ~~licensure and certification requirements~~ the standards of any state licensure or certification requirements, or both as applicable ] pursuant to 42 CFR 441.302;

---

## Regulations

---

2. Disclosure of ownership pursuant to 42 CFR 455.104 and 42 CFR 455.105; and

3. The ability to document and maintain individual records in accordance with state and federal requirements.

C. Providers approved for participation shall, at a minimum, perform the following activities:

1. Screen all new and existing employees and contractors to determine whether any are excluded from eligibility for payment from federal healthcare programs, including Medicaid (i.e., via the U.S. Department of Health and Human Services Office of Inspector General List of Excluded Individuals or Entities (LEIE) website). Immediately report in writing to DMAS any exclusion information discovered to: DMAS, ATTN: Program Integrity/Exclusions, 600 E. Broad St., Suite 1300, Richmond, VA 23219 or emailed to [providerexclusion@dmass.virginia.gov](mailto:providerexclusion@dmass.virginia.gov);

2. Immediately notify DMAS and DBHDS, in writing, of any change in the information that the provider previously submitted [ , for the purpose of the provider agreement, ] to DMAS and DBHDS;

3. Assure freedom of choice to individuals in seeking services from any institution, pharmacy, practitioner, or other provider qualified to perform the service or services required and participating in the Medicaid program at the time the service or services were performed;

4. Assure the individual's freedom to refuse medical care, treatment, and services;

5. Accept referrals for services only when staff is available to initiate services and perform, as may be required, such services on an ongoing basis;

6. Provide services and supplies to individuals in full compliance with Title VI of the Civil Rights Act of 1964, as amended (42 USC § 2000d et seq.), which prohibits discrimination on the grounds of race, color, or national origin; the Virginians with Disabilities Act (§ 51.5-1 et seq. of the Code of Virginia); § 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794), which prohibits discrimination on the basis of a disability; [ the Fair Housing Amendments Act of 1988 (42 USC § 3601 et seq.); ] and the Americans with Disabilities Act, as amended (42 USC § 12101 et seq.), which provides comprehensive civil rights protections to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications;

7. Provide services and supplies to individuals of the same quality and in the same mode of delivery as provided to the general public;

8. Submit charges to DMAS for the provision of services and supplies to individuals in amounts not to exceed the provider's usual and customary charges to the general public and accept as payment in full the amount

established by [ the ] DMAS payment methodology from the individual's authorization date for the waiver services;

9. Use program-designated billing forms for submission of charges;

10. Maintain and retain business and professional records sufficient to document fully and accurately the nature, scope, and details of the services provided;

a. In general, such records shall be retained for at least six years from the last date of service or as provided by applicable state or federal laws, whichever period is longer. However, if an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every exception resolved. Records of minors shall be kept for at least six years after such minor has reached the age of 18 years.

b. Policies regarding retention of records shall apply even if the provider discontinues operation. DMAS shall be notified in writing of storage location and procedures for obtaining records for review should the need arise. The location, agent, or trustee shall be within the Commonwealth of Virginia.

11. Agree to furnish information on request and in the form requested to DMAS, DBHDS, the Attorney General of Virginia or his authorized representatives, federal personnel, and the state Medicaid Fraud Control Unit. The Commonwealth's right of access to provider agencies and records shall survive any termination of the provider agreement. No business or professional records shall be created or modified by providers once an audit has been initiated;

12. Disclose, as requested by DMAS, all financial, beneficial, ownership, equity, surety, or other interests in any and all firms, corporations, partnerships, associations, business enterprises, joint ventures, agencies, institutions, or other legal entities providing any form of health care services to individuals receiving Medicaid;

13. Hold confidential and use for authorized DMAS or DBHDS purposes only, all medical assistance information regarding individuals served pursuant to Subpart F of 42 CFR Part 431, 12VAC30-20-90, and any other applicable state or federal law. A provider shall disclose information in his possession only when the information is used in conjunction with a claim for health benefits or the data is necessary for the functioning of [ the ] DMAS in conjunction with the cited laws;

14. Notify DMAS of change of ownership. When ownership of the provider changes, DMAS shall be notified at least 15 calendar days before the date of change;

15. Comply with applicable standards that meet the requirements for board and care facilities for all facilities covered by § 1616(e) of the Social Security Act in which home and community-based waiver services will be provided. Health and safety standards shall be monitored

through the DBHDS' licensure standards or through VDSS-approved standards for adult foster care providers;

16. Immediately report, pursuant to §§ 63.2-1509 and 63.2-1606 of the Code of Virginia, such knowledge if a participating provider knows or suspects that [an individual enrolled in] a home and community-based waiver service [individual] is being abused, neglected, or exploited. The party having knowledge or suspicion of the abuse, neglect, or exploitation shall from first knowledge report [the same] to the local department of social services' adult or child protective services worker and to DBHDS Offices of Licensing and Human Rights as applicable;

17. Perform criminal history record checks for barrier crimes, as [herein] defined [in 12VAC30-120-1000], within 15 days from the date of employment. If the [waiver] individual [enrolled in the waiver] to be served is a minor child, perform a search of the VDSS Child Protective Services Central Registry. The [personal care/respite] assistant or companion [for either agency-directed or consumer-directed services] shall not be compensated for services provided to the [waiver] individual [enrolled in the waiver] if any of these records checks verifies that the assistant or companion has been convicted of crimes described in § 37.2-416 of the Code of Virginia or if the assistant or companion has a finding in the VDSS Child Protective Services Central Registry; or if the assistant or companion is determined by a local department of social services as having abused, neglected, or exploited an adult 60 years of age or older or an adult who is 18 years of age [regardless of capacity if incapacitated]. The personal assistant or companion shall not be reimbursed by DMAS for services provided to the [waiver] individual [enrolled in the waiver] effective on the date and thereafter that the criminal record check verifies that the assistant or companion has been convicted of crimes described in § 37.2-416 of the Code of Virginia. The personal assistant (for either agency-directed or consumer-directed services) and companion shall notify either their employer or the services facilitator, the [waiver] individual [enrolled in the waiver] and [family/caregiver, and] EOR, as appropriate, of all convictions occurring subsequent to this record check. Failure to report any subsequent convictions may result in termination of employment. Assistants or companions who refuse to consent to child protective services registry checks shall not be eligible for Medicaid reimbursement of services that they may provide;

18. Refrain from performing any type of direct marketing activities [as defined in 12VAC30-120-1000.] to Medicaid [recipients individuals]; [and]

19. Adhere to the provider participation agreement and the [DMAS provider service manual Virginia Medicaid Provider Manual]. In addition to compliance with the

general conditions and requirements, all providers enrolled by DMAS shall adhere to the conditions of participation outlined in their individual provider participation agreements and in the [DMAS provider manual, Virginia Medicaid Provider Manual; and

20. Participate, as may be requested, in the completion of the DBHDS-approved assessment instrument when the provider possesses specific, relevant information about the individual enrolled in the waiver.]

D. DMAS [or its contractor] shall be responsible for assuring continued adherence to provider participation standards. DMAS [or its contractor] shall conduct ongoing monitoring of compliance with provider participation standards and DMAS' policies and periodically [re-certify recertify] each provider for participation agreement renewal to provide home and community-based waiver services. A provider's noncompliance with DMAS' policies and procedures, as required in the provider's participation agreement, may result in a written request from DMAS for a corrective action plan that details the steps the provider must take and the length of time permitted to achieve full compliance with the plan to correct the deficiencies that have been cited. Failure to comply may result in termination of the provider enrollment agreement as well as other sanctions.

E. Felony convictions. DMAS shall immediately terminate the provider's Medicaid provider agreement pursuant to § 32.1-325 of the Code of Virginia [and] as may be required for federal financial participation. A provider who has been convicted of a felony, or who has otherwise pled guilty to a felony, in Virginia or in any other of the 50 states, the District of Columbia, or the U.S. Territories shall, within 30 days of such conviction, notify DMAS of this conviction and relinquish its provider agreement. Such provider agreement terminations shall be effective immediately and conform to 12VAC30-10-690 and 12VAC30-20-491.

1. Providers shall not be reimbursed for services that may be rendered between the conviction of a felony and the provider's notification to DMAS of the conviction.

2. Except as otherwise provided by applicable state or federal law, the Medicaid provider agreement may be terminated [by DMAS] at will on 30 days written notice. The agreement may be terminated if DMAS determines that the provider poses a threat to the health, safety, or welfare of any individual enrolled in a DMAS administered program.

3. A participating provider may voluntarily terminate his participation with DMAS by providing 30 days written notification.

F. Providers shall [be required to] use [the required forms IDOLS] to document services, for purposes of reimbursement, to [waiver] individuals [enrolled in the waiver]. The DBHDS approved assessment shall be the Supports Intensity Scale (SIS), as published by the American Association on Intellectual and Developmental Disabilities

---

# Regulations

---

and as may be amended from time to time [ ~~or its required successor form. Such forms shall be further described and discussed in the agency's guidance documents for this waiver program~~ ].

[ ~~1. The Supports Intensity Scale form's use shall be phased in across all CSBs/BHAs with completion effective by July 2012. During the phase in process, CSBs/BHAs may use alternative assessment forms with the approval of DBHDS.~~

~~2. This provision for the phase in process of the use of the SIS shall sunset effective July 1, 2012, except if otherwise noted in agency guidance documents. During the phase in process, CSBs/BHAs may use alternative assessment forms with the approval of DBHDS. ]~~

G. Fiscal employer/agent requirements. Pursuant to a duly negotiated contract or interagency agreement, the contractor or entity shall be reimbursed by DMAS to perform certain employer functions including, but not limited to, payroll and bookkeeping functions on the part of the [waiver] individual/employer who is receiving consumer-directed services.

1. The fiscal employer/agent shall be responsible for administering payroll services on behalf of the [waiver] individual [enrolled in the waiver] including, but not limited to:

a. Collecting and maintaining citizenship and alien status employment eligibility information required by the Department of Homeland Security;

b. Securing all necessary authorizations and approvals in accordance with state and federal tax requirements;

c. Deducting and filing state and federal income and employment taxes and other withholdings;

d. Verifying that assistants' or companions' submitted timesheets do not exceed the maximum hours prior authorized for [waiver] individuals [enrolled in the waiver];

e. Processing timesheets for payment;

f. Making all deposits of income taxes, FICA, and other withholdings according to state and federal requirements; and

g. Distributing bi-weekly payroll checks to [waiver] individuals' assistants.

2. All timesheet discrepancies shall be reported promptly upon their identification to DMAS for investigation and resolution.

3. The fiscal employer/agent shall maintain records and information as required by DMAS and state and federal laws and regulations and make such records available upon DMAS' request in the needed format.

4. The fiscal employer/agent shall establish and operate a customer service center to respond to individuals' and assistants' payroll and related inquiries.

5. The fiscal employer/agent shall maintain confidentiality of all Medicaid information pursuant to HIPAA and DMAS requirements. Should any breaches of confidential information occur, the fiscal/employer agent shall assume all liabilities under both state and federal law.

H. Changes to or termination of services. DBHDS shall have the authority, subject to final approval by DMAS, to approve changes to [a waiver an] individual's Individual Support Plan, based on the recommendations of the case management provider.

1. Providers of direct services shall be responsible for modifying their plans for supports, with the involvement of the [waiver] individual [enrolled in the waiver] and the individual's family/caregiver, as appropriate, and submitting such revised plans for supports to the case manager any time there is a change in the [waiver] individual's condition or circumstances that may warrant a change in the amount or type of service rendered.

(a) The case manager shall review the need for a change and may recommend a change to the plan for supports to the DBHDS staff.

(b) DBHDS shall review and approve, deny, or suspend for additional information, the requested change or changes to the individual's Plan for Supports. DBHDS shall communicate its determination to the case manager within 10 business days of receiving all supporting documentation regarding the request for change or in the case of an emergency within three [working business] days of receipt of the request for change.

2. The [waiver] individual [enrolled in the waiver] and the individual's family/caregiver, as appropriate, shall be notified in writing by the case manager of his right to appeal pursuant to DMAS client appeals regulations, Part I of 12VAC30-110, about the decision or decisions to reduce, terminate, suspend, or deny services. The case manager shall submit this written notification to the [waiver] individual [enrolled in the waiver] within 10 business days of the decision.

3. In a nonemergency situation, when a participating provider determines that services to [a waiver an] individual [enrolled in the waiver] must be terminated, the participating provider shall give the individual and the individual's family/caregiver, as appropriate, and case manager 10 business days written notification of the provider's intent to discontinue services. The notification letter shall provide the reasons for the planned termination and the effective date the provider will be discontinuing services. The effective date shall be at least 10 business days from the date of the notification letter. The [waiver] individual [enrolled in the waiver] shall [not] be eligible for appeal rights in this situation and may pursue services from another provider.

4. In an emergency situation when the health, safety, [and or] welfare of the [waiver] individual [enrolled in the

waiver ], other individuals in that setting, or provider personnel are endangered, the case manager and DBHDS shall be notified prior to discontinuing services. The 10-business-day [ prior ] written notification period shall not be required. The local department of social services adult protective services unit or child protective services unit, as appropriate, and DBHDS Offices of Licensing and Human Rights shall be notified immediately [ by the case manager and the provider ] when the individual's health, safety, [ ~~and~~ or ] welfare may be in danger.

5. The case manager shall have the responsibility to identify those individuals who no longer meet the level of care criteria or for whom home and community-based waiver services are no longer an appropriate alternative. In such situations, such individuals shall be discharged from the waiver.

(a) The case manager shall notify the individual of this determination and afford the individual and family/caregiver, as appropriate, with his right to appeal such discharge.

(b) The individual shall be entitled to the continuation of his waiver services pending the final outcome of his appeal action. Should the appeal action confirm the case manager's determination that the individual shall be discharged from the waiver, the individual shall be responsible for the costs of his waiver services incurred by DMAS during his appeal action.

**12VAC30-120-1060. Participation standards for provision of services; providers' requirements.**

A. The required documentation for residential support services, day support services, supported employment services, and prevocational support shall be as follows:

1. A completed copy of the DBHDS-approved SIS assessment form [ ; or ] its approved alternative form during the phase in period [ ; ~~or its successor form as specified in DBHDS guidance documents~~ ].

2. A Plan for Supports containing, at a minimum, the following elements:

(a) The [ ~~waiver~~ ] individual's strengths, desired outcomes, required or desired supports or both, and skill-building needs;

(b) The [ ~~waiver~~ ] individual's support activities to meet the identified outcomes;

(c) The services to be rendered and the schedule of such services to accomplish the above desired outcomes and support activities;

(d) A timetable for the accomplishment of the [ ~~waiver~~ ] individual's desired outcomes and support activities;

(e) The estimated duration of the [ ~~waiver~~ ] individual's needs for services; and

(f) The provider staff responsible for the overall coordination and integration of the services specified in the Plan for Supports.

3. Documentation indicating that the Plan for Supports' desired outcomes and support activities have been reviewed by the provider quarterly, annually, and more often as needed. The results of the review must be submitted to the case manager. For the annual review and in cases where the Plan for Supports is modified, the Plan for Supports shall be reviewed with [ and agreed to by ] the individual [ enrolled in the waiver ] and the individual's family/caregiver, as appropriate.

4. All correspondence to the individual and the individual's family/caregiver, as appropriate, the case manager, DMAS, and DBHDS.

5. Written documentation of contacts made with family/caregiver, physicians, formal and informal service providers, and all professionals concerning the individual.

B. The required documentation for personal assistance services, respite services, and companion services shall be as set out in this subsection. The agency provider holding the service [ ~~prior~~ ] authorization or the services facilitator [ , or the EOR in the absence of a services facilitator, ] shall maintain records regarding each individual who is receiving services. At a minimum, these records shall contain:

1. A copy of the completed DBHDS-approved SIS assessment (or its approved alternative during the phase in [ ~~period or its required successor form as specified in DBHDS guidance documents~~ period ] ) and, as needed, an initial assessment completed by the supervisor or services facilitator prior to or on the date services are initiated.

2. A Plan for Supports, that contains, at a minimum, the following elements:

(a) The individual's strengths, desired outcomes, required or desired supports;

(b) The individual's support activities to meet these identified outcomes;

(c) Services to be rendered and the frequency of such services to accomplish the above desired outcomes and support activities; and

(d) For the agency-directed model, the provider staff responsible for the overall coordination and integration of the services specified in the Plan for Supports. For the consumer-directed model, the identifying information for the assistant or assistants and the Employer of Record.

3. Documentation indicating that the Plan for Supports' desired outcomes and support activities have been reviewed by the provider quarterly, annually, and more often as needed. The results of the review must be submitted to the case manager. For the annual review and in cases where the Plan for Supports is modified, the Plan for Supports shall be reviewed with [ and agreed to by ] the

---

# Regulations

---

individual [ enrolled in the waiver ] and the individual's family/caregiver, as appropriate.

4. The companion services supervisor or CD services facilitator, as required by [ ~~12VAC30-120-1060~~ 12VAC30-120-1020 ], shall document in the [ waiver ] individual's record in a summary note following significant contacts with the companion and home visits with the individual:

- a. Whether companion services continue to be appropriate;
- b. Whether the plan is adequate to meet the individual's needs or changes are indicated in the plan;
- c. The individual's satisfaction with the service;
- d. The presence or absence of the companion during the supervisor's visit;
- e. Any suspected abuse, neglect, or exploitation and to whom it was reported; and
- f. Any hospitalization or change in medical condition, and functioning or cognitive status;

5. All correspondence to the individual and the individual's family/caregiver, as appropriate, the case manager, DMAS, and DBHDS; [ ~~and~~ ]

6. Contacts made with family/caregiver, physicians, formal and informal service providers, and all professionals concerning the individual [ ~~;~~ and

7. Documentation provided by the case manager as to why there are no providers other than family members available to render respite assistant care if this service is part of the individual's Plan for Supports. ]

C. The required documentation for assistive technology, environmental modifications (EM), and Personal Emergency Response Systems (PERS) shall be as follows:

1. The appropriate [ ~~Individualized Service Authorization Request (ISAR) form~~ IDOLS documentation ], to be completed by the case manager, may serve as the Plan for Supports for the provision of AT, EM, and PERS services. A rehabilitation engineer may be involved for AT or EM services if disability expertise is required that a general contractor may not have. The [ ~~Plan for Supports/ISAR~~ Plan for Supports/IDOL ] shall include justification and explanation that a rehabilitation engineer is needed, if one is required. The [ ~~ISAR~~ IDOL ] shall be submitted to the state-designated agency or its contractor in order for [ ~~prior~~ service ] authorization to occur;

2. Written documentation for AT services regarding the process and results of ensuring that the item is not covered by the State Plan for Medical Assistance as DME and supplies, and that it is not available from a DME provider;

3. AT documentation of the recommendation for the item by a qualified professional;

4. Documentation of the date services are rendered and the amount of service that is needed;

5. Any other relevant information regarding the device or modification;

6. Documentation in the case management record of notification by the designated individual or individual's representative family/caregiver of satisfactory completion or receipt of the service or item; and

7. Instructions regarding any warranty, repairs, complaints, or servicing that may be needed.

D. Assistive technology (AT). In addition to meeting the [ service coverage requirements in 12VAC30-120-1020 and the ] general conditions and requirements for home and community-based participating providers as specified in 12VAC30-120-1040, AT shall be provided by DMAS-enrolled [ ~~DME~~ durable medical equipment (DME) ] providers or DMAS-enrolled CSBs/BHAs with [ ~~a MR/ID~~ an ID ] Waiver provider agreement to provide AT. DME shall be provided in accordance with 12VAC30-50-165.

E. Companion services (both agency-directed and consumer-directed). In addition to meeting the [ service coverage requirements in 12VAC30-120-1020 and the ] general conditions and requirements for home and community-based participating providers as specified in 12VAC30-120-1040, companion service providers shall meet the following qualifications:

1. For the agency-directed model, the provider shall be licensed by DBHDS as either a residential service provider, supportive in-home residential service provider, day support service provider, or respite service provider or [ shall ] meet the DMAS criteria to be a personal care/respite care provider.

2. For the consumer-directed model, there may be a services facilitator (or person serving in this capacity) meeting the requirements found in 12VAC30-120-1020.

3. Companion qualifications. Persons functioning as companions shall meet the following requirements:

- a. Be at least 18 years of age;
- b. Be able to read and write English to the degree required to function in this capacity and possess basic math skills;
- c. Be capable of following a Plan for Supports with minimal supervision and be physically able to perform the required work;
- d. Possess a valid social security number that has been issued by the Social Security Administration to the person who is to function as the companion;
- e. Be capable of aiding in IADLs; and
- f. Receive an annual tuberculosis screening.

4. Persons rendering companion services for reimbursement by DMAS shall not be the [ waiver ] individual's spouse. Other family members living under the same roof as the individual being served may not provide companion services unless there is objective written

documentation [ ~~as defined in the DMAS MR/ID Provider Manual,~~ completed by the services facilitator, or the EOR when the individual does not select services facilitation, ] as to why there are no other providers available to provide companion services.

[ ~~a. For CD companion services, the case manager shall determine and document why no other providers are available. ]~~

[ ~~b. a. ] Family members who are approved to be reimbursed by DMAS to provide companion services shall meet all of the companion qualifications.~~

[ ~~c. b. ] Companion services shall not be provided by adult foster care providers or any other paid caregivers for an individual residing in that foster care home.~~

5. For the agency-directed model, companions shall be employees of enrolled providers that have participation agreements with DMAS to provide companion services. Providers shall be required to have a companion services supervisor to monitor companion services. The companion services supervisor shall have a bachelor's degree in a human services field and have at least one year of experience working in the [ ~~MR/ID ID~~ ] field, or be a licensed practical nurse (LPN) or a registered nurse (RN) with at least one year of experience working in the [ ~~MR/ID ID~~ ] field. Such LPNs and RNs shall have the appropriate current licenses to either practice nursing in the Commonwealth or have multi-state licensure privilege as defined herein.

6. The companion services supervisor or services facilitator, as appropriate, shall conduct an initial home visit prior to initiating companion services to document the efficacy and appropriateness of such services and to establish a Plan for Supports for the [ ~~waiver~~ ] individual [ enrolled in the waiver ]. The companion services supervisor or services facilitator must provide quarterly follow-up home visits to monitor the provision of services under the agency-directed model and semi-annually (every six months) under the consumer-directed model or more often as needed.

7. In addition to the requirements in subdivisions 1 through 6 of this subsection the companion record for agency-directed service providers must also contain:

(a) The specific services delivered to the [ ~~waiver~~ ] individual [ enrolled in the waiver ] by the companion, dated the day of service delivery, and the individual's responses;

(b) The companion's arrival and departure times;

(c) The companion's weekly comments or observations about the [ ~~waiver~~ ] individual [ enrolled in the waiver ] to include observations of the individual's physical and emotional condition, daily activities, and responses to services rendered; and

(d) The companion's and individual's and the individual's family/caregiver's, as appropriate, weekly signatures recorded on the last day of service delivery for any given week to verify that companion services during that week have been rendered.

8. Consumer-directed model companion record. In addition to the requirements outlined in this subsection, the companion record for services facilitators must contain:

[ ~~(4) a. ] The services facilitator's dated notes documenting any contacts with the [ ~~waiver~~ ] individual [ enrolled in the waiver ] and the individual's family/caregiver, as appropriate, and visits to the individual's home;~~

[ ~~(2) b. ] Documentation of training provided to the companion by the individual or EOR, as appropriate;~~

[ ~~(3) c. ] Documentation of all [ ~~employee employer~~ ] management training provided to the [ ~~waiver~~ ] individual [ ~~and the individual's family/caregiver, as appropriate~~ enrolled in the waiver or the EOR ], including the individual's and the [ ~~individual's family/caregiver's~~ EOR's ], as appropriate, receipt of training on their [ legal ] responsibility for the accuracy [ and timeliness ] of the companion's timesheets; and~~

[ ~~(4) d. ] All documents signed by the [ ~~waiver~~ ] individual [ enrolled in the waiver ] and the EOR [ ~~as appropriate~~, ] that acknowledge their responsibilities and legal liabilities as the companion's or companions' employer, as appropriate.~~

F. Crisis stabilization services. In addition to the [ service coverage requirements in 12VAC30-120-1020 and the ] general conditions and requirements for home and community-based participating providers as specified in 12VAC30-120-1040, the following crisis stabilization provider qualifications shall apply:

1. A crisis stabilization services provider shall be licensed by DBHDS as a provider of either outpatient services, crisis stabilization services, residential services with a crisis stabilization track, supportive residential services with a crisis stabilization track, or day support services with a crisis stabilization track.

2. The provider shall employ or use QMRPs, licensed mental health professionals, or other qualified personnel who have demonstrated competence to provide crisis stabilization and related activities to individuals with [ ~~MR/ID ID~~ ] who are experiencing serious psychiatric or behavioral problems. [ ~~The QMRP shall have: (i) at least one year of documented experience working directly with individuals who have MR/ID or developmental disabilities; (ii) at least either a bachelor's degree in a human services field including, but not limited to, sociology, social work, special education, rehabilitation counseling, or psychology, or a bachelor's degree in another field in addition to an~~

---

# Regulations

---

advanced degree in a human services field; and (iii) the required Virginia or national license, registration, or certification in accordance with his profession. ]

3. To provide the crisis supervision component, providers must be licensed by DBHDS as providers of residential services, supportive in-home residential services, or day support services. Documentation of providers' qualifications shall be maintained for review by DBHDS and DMAS staff or DMAS' designated agent.

4. A Plan for Supports must be developed or revised and submitted to the case manager for submission to DBHDS within 72 hours of the requested start date for authorization.

5. Required documentation in the [ ~~waiver~~ ] individual's record. The provider shall maintain a record regarding each [ ~~waiver~~ ] individual [ enrolled in the waiver ] who is receiving crisis stabilization services. At a minimum, the record shall contain the following:

a. Documentation of the face-to-face assessment and any reassessments completed by a QMRP;

b. A Plan for Supports that contains, at a minimum, the following elements:

(1) The individual's strengths, desired outcomes, required or desired supports;

(2) Services to be rendered and the frequency of services to accomplish these desired outcomes and support activities;

(3) A timetable for the accomplishment of the individual's desired outcomes and support activities;

(4) The estimated duration of the individual's needs for services; and

(5) The provider staff responsible for the overall coordination and integration of the services specified in the Plan for Supports; and

c. Documentation indicating the dates and times of crisis stabilization services, the amount and type of service or services provided, and specific information regarding the individual's response to the services and supports as agreed to in the Plan for Supports.

G. Day support services. In addition to meeting the [ service coverage requirements in 12VAC30-120-1020 and the ] general conditions and requirements for home and community-based participating providers as specified in 12VAC30-120-1040, day support providers, for both intensive and regular service levels, shall meet the following additional requirements:

1. The provider of day support services must be specifically licensed by DBHDS as a provider of day support services. [ (12VAC 35-105-20) ]

2. In addition to licensing requirements, day support staff shall also have training in the characteristics of [ ~~MR/ID~~ intellectual disabilities ] and the appropriate interventions,

skill building strategies, and support methods for individuals with [ ~~MR/ID~~ intellectual disabilities ] and such functional limitations. All providers of day support services shall pass an objective, standardized test of skills, knowledge, and abilities approved by DBHDS and administered according to DBHDS' defined procedures. (See [www.dbhds.virginia.gov](http://www.dbhds.virginia.gov) for further information.)

3. Documentation confirming the individual's attendance and amount of time in services and specific information regarding the individual's response to various settings and supports as agreed to in the Plan for Supports. An attendance log or similar document must be maintained that indicates the individual's name, date, type of services rendered, staff signature and date, and the number of service units delivered, in accordance with the DMAS fee schedule.

4. Documentation indicating whether the services were center-based or noncenter-based shall be included on the Plan for Supports.

5. In instances where day support staff may be required to ride with the [ ~~waiver~~ ] individual [ enrolled in the waiver ] to and from day support services, the day support staff transportation time may be billed as day support services and documentation maintained, provided that billing for this time does not exceed 25% of the total time spent in day support services for that day.

6. If intensive day support services are requested, documentation indicating the specific supports and the reasons they are needed shall be included in the Plan for Supports. For ongoing intensive day support services, there shall be specific documentation of the ongoing needs and associated staff supports.

H. Environmental modifications. In addition to meeting the [ service coverage requirements in 12VAC30-120-1020 and the ] general conditions and requirements for home and community-based participating providers as specified in 12VAC30-120-1040, environmental modifications shall be provided in accordance with all applicable federal, state, or local building codes and laws by CSBs/BHAs contractors or DMAS-enrolled providers.

I. Personal assistance services (both consumer-directed and agency directed models). In addition to meeting the [ service coverage requirements in 12VAC30-120-1020 and the ] general conditions and requirements for home and community-based participating providers as specified in 12VAC30-120-1040, personal assistance providers shall meet additional provider requirements:

1. For the agency-directed model, services shall be provided by an enrolled DMAS personal care provider or by a residential services provider licensed by the DBHDS that is also enrolled with DMAS. All [ agency-directed ] personal assistants shall pass an objective standardized test of skills, knowledge, and abilities approved by DBHDS

that must be administered according to DBHDS' defined procedures.

2. For the CD model, services shall meet the requirements found in 12VAC30-120-1020.

3. For DBHDS-licensed residential services providers, a residential supervisor shall provide ongoing supervision of all personal assistants.

4. For DMAS-enrolled personal care providers, the provider shall employ or subcontract with and directly supervise an RN or an LPN who shall provide ongoing supervision of all assistants. The supervising RN or LPN [ shall ] have at least one year of related clinical nursing experience that may include work in an acute care hospital, public health clinic, home health agency, [ ICF/MR ICF/ID ], or nursing facility.

5. For agency-directed services, the supervisor, or for CD services the services facilitator, shall make a home visit to conduct an initial assessment prior to the start of services for all [ waiver ] individuals [ enrolled in the waiver ] requesting, and who have been approved to receive, personal assistance services. The supervisor or services facilitator, as appropriate, shall also perform any subsequent reassessments or changes to the Plan for Supports. [ All changes that are indicated for an individual's Plan for Supports shall be reviewed with and agreed to by the individual and, if appropriate, the family/caregiver. ]

6. The supervisor or services facilitator, as appropriate, shall make supervisory home visits as often as needed to ensure both quality and appropriateness of services. The minimum frequency of these visits shall be every 30 to 90 days under the agency-directed model and semi-annually (every six months) under the CD model of services, depending on the [ waiver ] individual's needs.

7. Based on continuing evaluations of the assistant's performance and individual's needs, the supervisor (for agency-directed services) or the individual or the employer of record (EOR) (for the CD model) shall identify any gaps in the assistant's ability to function competently and shall provide training as indicated.

8. Qualifications for consumer directed personal assistants. The assistant shall:

a. Be 18 years of age or older and possess a valid social security number that has been issued by the Social Security Administration to the person who is to function as the attendant;

b. Be able to read and write English to the degree necessary to perform the tasks expected and possess basic math skills;

c. Have the required skills and physical abilities to perform the services as specified in the individual's Plan for Supports;

d. Be willing to attend training at the [ waiver ] individual's [ and the family/caregiver's, ] and EOR's, as appropriate, request;

e. Understand and agree to comply with the DMAS' [ MR/ID ID ] Waiver requirements [ as contained in this part (12VAC30-120-1000 et seq.) ]; and

f. Receive an annual tuberculosis screening.

9. Additional requirements for DMAS-enrolled (agency-directed) personal care providers.

a. Personal assistants shall have completed an educational curriculum of at least 40 hours of study related to the needs of individuals who have disabilities, including intellectual/developmental disabilities, as ensured by the provider prior to being assigned to support an individual, and have the required skills and training to perform the services as specified in the individual's Plan for Supports and related supporting documentation. Personal assistants' required training, as further detailed in the applicable provider manual, shall be met in one of the following ways:

(1) Registration with the Board of Nursing as a certified nurse aide;

(2) Graduation from an approved educational curriculum as listed by the Board of Nursing; or

(3) Completion of the provider's educational curriculum, as conducted by a licensed RN who shall have at least one year of related clinical nursing experience that may include work in an acute care hospital, public health clinic, home health agency, [ ICF/MR ICF/ID ], or nursing facility.

b. Assistants shall have a satisfactory work record, as evidenced by two references from prior job experiences, if applicable, including no evidence of possible abuse, neglect, or exploitation of elderly persons, children, or adults with disabilities.

10. Personal assistants to be paid by DMAS shall not be the parents of [ waiver ] individuals [ enrolled in the waiver ] who are [ minors minor children ] or the individuals' spouses.

a. Payment shall not be made for services furnished by other family members living under the same roof as the [ waiver ] individual [ enrolled in the waiver ] receiving services unless there is objective written documentation [ completed by the services facilitator, or the case manager when the individual does not select services facilitation, ] as to why there are no other providers available to render the services [ required by the waiver individual. The case manager shall make and document this determination ].

b. Family members who are approved to be reimbursed for providing this service shall meet the same qualifications as all other personal assistants.

---

# Regulations

---

11. Provider inability to render services and substitution of assistants (agency-directed model).

a. When assistants are absent or otherwise unable to render scheduled supports to [waiver] individuals [enrolled in the waiver], the provider shall be responsible for ensuring that services continue to be provided to [the affected] individuals. The provider may either provide another assistant, obtain a substitute assistant from another provider if the lapse in coverage is to be less than two weeks in duration, or transfer the individual's services to another personal care or respite provider. The provider that has the [prior service] authorization to provide services to the [waiver] individual [enrolled in the waiver] must contact the case manager to determine if additional, or modified, [prior service] authorization is necessary.

b. If no other provider is available who can supply a substitute assistant, the provider shall notify the individual and the individual's family/caregiver, as appropriate, and the case manager so that the case manager may find another available provider of the individual's choice.

c. During temporary, short-term lapses in coverage that are not expected to exceed approximately two weeks in duration, the following procedures [must shall] apply:

(1) The [prior service] authorized provider shall provide the supervision for the substitute assistant;

(2) The provider of the substitute assistant shall send a copy of the assistant's daily documentation signed by the assistant, the individual, and the individual's family/caregiver, as appropriate, to the provider having the [service] authorization; and

(3) The [prior service] authorized provider shall bill DMAS for services rendered by the substitute assistant.

d. If a provider secures a substitute assistant, the provider agency shall be responsible for ensuring that all DMAS requirements continue to be met including documentation of services rendered by the substitute assistant and documentation that the substitute assistant's qualifications meet DMAS' requirements. The two providers involved shall be responsible for negotiating the financial arrangements of paying the substitute assistant.

12. For the agency-directed model, the personal assistant record shall contain:

a. The specific services delivered to the [waiver] individual [enrolled in the waiver] by the assistant, dated the day of service delivery, and the individual's responses;

b. The assistant's arrival and departure times;

c. The assistant's weekly comments or observations about the [waiver] individual [enrolled in the waiver] to include observations of the individual's physical and

emotional condition, daily activities, and responses to services rendered; and

d. The assistant's and [waiver] individual's and the individual's family/caregiver's, as appropriate, weekly signatures recorded on the last day of service delivery for any given week to verify that services during that week have been rendered.

13. The records of [waiver] individuals [enrolled in the waiver] who are receiving personal assistance services in a congregate residential setting (because skill building services are no longer appropriate or desired for the individual), must contain:

a. The specific services delivered to the [waiver] individual [enrolled in the waiver], dated the day that such services were provided, the number of hours as outlined in the Plan for Supports, the individual's responses, and observations of the individual's physical and emotional condition; and

b. At a minimum, monthly verification by the residential supervisor of the services and hours rendered and billed to DMAS.

14. For the consumer-directed model, the services facilitator's record shall contain, at a minimum:

a. Documentation of all [employee employer] management training provided to the [waiver] individual [enrolled in the waiver] and the EOR [as appropriate,] including the [waiver] individual [and or] the individual's family/caregiver, [as appropriate,] and EOR, as appropriate, receipt of training on their legal responsibilities for the accuracy and timeliness of the assistant's timesheets;

b. All documents signed by the [waiver] individual [enrolled in the waiver] and the EOR, as appropriate, which acknowledge the responsibilities as the employer.

J. Personal Emergency Response Systems. In addition to meeting the [service coverage requirements in 12VAC30-120-1020 and the] general conditions and requirements for home and community-based participating providers as specified in 12VAC30-120-1040, PERS providers shall also meet the following qualifications:

1. A PERS provider shall be either: (i) an enrolled personal care agency; (ii) an enrolled durable medical equipment provider; (iii) a licensed home health provider; or (iv) a PERS manufacturer that has the ability to provide PERS equipment, direct services (i.e., installation, equipment maintenance, and service calls), and PERS monitoring services.

2. The PERS provider must provide an emergency response center with fully trained operators who are capable of receiving signals for help from an individual's PERS equipment 24-hours a day, 365, or 366, days per year as appropriate, of determining whether an emergency exists, and of notifying an emergency response

organization or an emergency responder that the PERS service [ waiver ] individual needs emergency help.

3. A PERS provider must comply with all applicable Virginia statutes, applicable regulations of DMAS, and all other governmental agencies having jurisdiction over the services to be performed.

4. The PERS provider shall have the primary responsibility to furnish, install, maintain, test, and service the PERS equipment, as required, to keep it fully operational. The provider shall replace or repair the PERS device within 24 hours of the individual's notification of a malfunction of the console unit, activating devices, or medication-monitoring unit.

5. The PERS provider must properly install all PERS equipment into a PERS individual's functioning telephone line or cellular system and must furnish all supplies necessary to ensure that the PERS system is installed and working properly.

6. The PERS installation shall include local seize line circuitry, which guarantees that the unit shall have priority over the telephone connected to the console unit should the phone be off the hook or in use when the unit is activated.

7. A PERS provider shall install, test, and demonstrate to the individual and family/caregiver, as appropriate, the PERS system before submitting his claim for services to DMAS.

8. A PERS provider shall maintain a data record for each PERS individual at no additional cost to DMAS or DBHDS. The record must document the following:

- a. Delivery date and installation date of the PERS;
- b. Individual or family/caregiver, as appropriate, signature verifying receipt of PERS device;
- c. Verification by a [ monthly, or more frequently as needed, ] test that the PERS device is operational [ monthly or more frequently as needed ];
- d. Updated and current individual responder and contact information, as provided by the individual, the individual's family/caregiver, or case manager; and
- e. A case log documenting the individual's utilization of the system and contacts and communications with the individual, family/caregiver, case manager, and responders.

9. The PERS provider shall have back-up monitoring capacity in case the primary system cannot handle incoming emergency signals.

10. All PERS equipment shall be approved by the Federal Communications Commission and meet the Underwriters' Laboratories, Inc. (UL) safety standard for home health care signaling equipment [ in Underwriter's Laboratories Safety Standard 1637, Standard for Home Health Care Signaling Equipment, Fourth Edition, December 29, 2006 ]. The UL listing mark on the equipment shall be

accepted as evidence of the equipment's compliance with such standard. The PERS device shall be automatically reset by the response center after each activation, ensuring that subsequent signals can be transmitted without requiring manual reset by the [ waiver ] individual [ enrolled in the waiver or family/caregiver, as appropriate ].

11. A PERS provider shall instruct the individual, family/caregiver, and responders in the use of the PERS service.

12. The emergency response activator shall be able to be activated either by breath, by touch, or by some other means, and must be usable by individuals who are visually or hearing impaired or physically disabled. The emergency response communicator must be capable of operating without external power during a power failure at the individual's home for a minimum period of 24-hours and automatically transmit a low battery alert signal to the response center if the back-up battery is low. The emergency response console unit must also be able to self-disconnect and redial the back-up monitoring site without the individual [ or family/caregiver ] resetting the system in the event it cannot get its signal accepted at the response center.

13. The PERS provider shall be capable of continuously monitoring and responding to emergencies under all conditions, including power failures and mechanical malfunctions. It shall be the PERS provider's responsibility to ensure that the monitoring function and the agency's equipment meets the following requirements. The PERS provider must be capable of simultaneously responding to signals for help from multiple individuals' PERS equipment. The PERS provider's equipment shall include the following:

- a. A primary receiver and a back-up receiver, which must be independent and interchangeable;
- b. A back-up information retrieval system;
- c. A clock printer, which must print out the time and date of the emergency signal, the PERS individual's identification code, and the emergency code that indicates whether the signal is active, passive, or a responder test;
- d. A back-up power supply;
- e. A separate telephone service;
- f. A toll-free number to be used by the PERS equipment in order to contact the primary or back-up response center; and
- g. A telephone line monitor, which must give visual and audible signals when the incoming telephone line is disconnected for more than 10 seconds.

14. The PERS provider shall maintain detailed technical and operations manuals that describe PERS elements, including the installation, functioning, and testing of PERS

---

# Regulations

---

equipment, emergency response protocols, and recordkeeping and reporting procedures.

15. The PERS provider shall document and furnish within 30 days of the action taken a written report to the case manager for each emergency signal that results in action being taken on behalf of the individual [ -This excludes, excluding ] test signals or activations made in error.

K. Prevocational services. In addition to meeting the [ service coverage requirements in 12VAC30-120-1020 and the ] general conditions and requirements for home and community-based services participating providers as specified in 12VAC30-120-1040, prevocational providers shall also meet the following qualifications:

1. The provider of prevocational services shall be a vendor of either extended employment services, long-term employment services, or supported employment services for DRS, or be licensed by DBHDS as a provider of day support services. Both licensee groups must also be enrolled with DMAS.

2. In addition to licensing requirements, prevocational staff shall also have training in the characteristics of [ ~~MR/ID~~ ID ] and the appropriate interventions, skill building strategies, and support methods for individuals with [ ~~MR/ID~~ ID ] and such functional limitations. All providers of prevocational services shall pass an objective, standardized test of skills, knowledge, and abilities approved by DBHDS and administered according to DBHDS' defined procedures. (See [www.dbhds.virginia.gov](http://www.dbhds.virginia.gov) for further information.)

3. [ ~~Documentation~~ Preparation and maintenance of documentation ] confirming the individual's attendance and amount of time in services and specific information regarding the individual's response to various settings and supports as agreed to in the Plan for Supports. An attendance log or similar document must be maintained that indicates the individual's name, date, type of services rendered, staff signature and date, and the number of service units delivered, in accordance with the DMAS fee schedule.

4. [ ~~Documentation~~ Preparation and maintenance of documentation ] indicating whether the services were center-based or noncenter-based shall be included on the Plan for Supports.

5. In instances where prevocational staff may be required to ride with the [ ~~waiver~~ ] individual [ enrolled in the waiver ] to and from prevocational services, the prevocational staff transportation time (actual time spent in transit) may be billed as prevocational services and documentation maintained, provided that billing for this time does not exceed 25% of the total time spent in prevocational services for that day.

6. If intensive prevocational services are requested, documentation indicating the specific supports and the

reasons they are needed shall be included in the Plan for Supports. For ongoing intensive prevocational services, there shall be specific documentation of the ongoing needs and associated staff supports.

7. [ ~~Documentation~~ Preparation and maintenance of documentation ] indicating that prevocational services are not available in vocational rehabilitation agencies through § 110 of the Rehabilitation Act of 1973 or through the Individuals with Disabilities Education Act (IDEA).

L. Residential support services.

1. In addition to meeting the [ service coverage requirements in 12VAC30-120-1020 and the ] general conditions and requirements for home and community-based participating providers as specified in 12VAC30-120-1040 and in order to be reimbursed by DMAS for rendering these services, the provider of residential services shall have the appropriate DBHDS residential license [ (12VAC35-105) ].

2. Residential support services may also be provided in adult foster care homes approved by local department of social services' offices pursuant to 22VAC40-771-20.

3. In addition to licensing requirements, provider personnel rendering residential support services shall participate in training in the characteristics of [ ~~MR/ID~~ ID ] and appropriate interventions, skill building strategies, and support methods for individuals who have diagnoses of [ ~~MR/ID~~ ID ] and functional limitations. See [www.dbhds.virginia.gov](http://www.dbhds.virginia.gov) for information about such training. All providers of residential support services must pass an objective, standardized test of skills, knowledge, and abilities approved by DBHDS and administered according to DBHDS' defined procedures.

4. Provider professional documentation shall confirm the [ ~~waiver~~ ] individual's participation in the services and provide specific information regarding the individual's responses to various settings and supports as set out in the Plan for Supports.

M. Respite services (both consumer-directed and agency-directed models). In addition to meeting the [ service coverage requirements in 12VAC30-120-1020 and the ] general conditions and requirements for home and community-based participating providers as specified in 12VAC30-120-1040, respite services providers shall meet additional provider requirements:

1. For the agency-directed model, services shall be provided by an enrolled DMAS respite care provider or by a residential services provider licensed by the DBHDS that is also enrolled by DMAS. In addition, respite services may be provided by a DBHDS-licensed respite services provider or a local department of social services-approved foster care home for children or by an adult foster care provider that [ ~~are~~ is ] also enrolled by DMAS.

2. For the CD model, services shall meet the requirements found in Services Facilitation, 12VAC30-120-1020.

3. For DBHDS-licensed residential or respite services providers, a residential or respite supervisor shall provide ongoing supervision of all respite assistants.

4. For DMAS-enrolled respite care providers, the provider shall employ or subcontract with and directly supervise an RN or an LPN who will provide ongoing supervision of all assistants. The supervising RN or LPN must have at least one year of related clinical nursing experience that may include work in an acute care hospital, public health clinic, home health agency, [~~ICF/MR~~ ICF/ID], or nursing facility.

5. For agency-directed services, the supervisor, or for CD services the services facilitator, shall make a home visit to conduct an initial assessment prior to the start of services for all [~~waiver~~] individuals [enrolled in the waiver] requesting respite services. The supervisor or services facilitator, as appropriate, shall also perform any subsequent reassessments or changes to the Plan for Supports.

6. The supervisor or services facilitator, as appropriate, shall make supervisory home visits as often as needed to ensure both quality and appropriateness of services. The minimum frequency of these visits shall be every 30 to 90 days under the agency-directed model and semi-annually (every six months) under the CD model of services, depending on the [~~waiver~~] individual's needs.

a. When respite services are not received on a routine basis, but are episodic in nature, the supervisor or services facilitator shall conduct the initial home visit with the respite assistant immediately preceding the start of services and make a second home visit within the respite [service authorization] period. The supervisor or services facilitator, as appropriate, shall review the use of respite services either every six months or upon the use of [~~100~~ 240] respite service hours, whichever comes first.

b. When respite services are routine in nature, that is occurring with a scheduled regularity for specific periods of time, and offered in conjunction with personal assistance, the supervisory visit conducted for personal assistance may serve as the supervisory visit for respite services. However, the supervisor or services facilitator, as appropriate, shall document supervision of respite services separately. For this purpose, the same individual record shall be used with a separate section for respite services documentation.

7. Based on continuing evaluations of the assistant's performance and individual's needs, the supervisor (for agency-directed services) or the individual or the EOR (for the CD model) shall identify any gaps in the assistant's ability to function competently and shall provide training as indicated.

8. Qualifications for respite assistants. The assistant shall:

[~~(a)~~ a.] Be 18 years of age or older and possess a valid social security number that has been issued by the Social Security Administration to the person who is to function as the [~~attendant~~ respite assistant ];

[~~(b)~~ b.] Be able to read and write English to the degree necessary to perform the tasks expected and possess basic math skills; and

[~~(c)~~ c.] Have the required skills to perform services as specified in the individual's Plan for Supports and shall be physically able to perform the tasks required by the [~~waiver~~] individual [enrolled in the waiver].

9. Additional requirements for DMAS-enrolled (agency-directed) respite care providers.

a. Respite assistants shall have completed an educational curriculum of at least 40 hours of study related to the needs of individuals who have disabilities, including intellectual/developmental disabilities, as ensured by the provider prior to being assigned to support an individual, and have the required skills and training to perform the services as specified in the individual's Plan for Supports and related supporting documentation. Respite assistants' required training, as further detailed in the applicable provider manual, shall be met in one of the following ways:

(1) Registration with the Board of Nursing as a certified nurse aide;

(2) Graduation from an approved educational curriculum as listed by the Board of Nursing; or

(3) Completion of the provider's educational curriculum, as taught by an RN who shall have at least one year of related clinical nursing experience that may include work in an acute care hospital, public health clinic, home health agency, [~~ICF/MR~~ ICF/ID], or nursing facility.

b. Assistants shall have a satisfactory work record, as evidenced by [~~one reference~~ two references] from prior job experiences including no evidence of possible abuse, neglect, or exploitation of [~~aged or incapacitated adults or children~~ any person regardless of age or disability].

10. Additional requirements for respite assistants for the CD option. The assistant shall:

a. Be willing to attend training at the [~~waiver~~] individual's and the individual family/caregiver's, as appropriate, request;

b. Understand and agree to comply with the DMAS' [~~MR/ID~~ ID] Waiver requirements [as contained in 12VAC30-120-1000 et seq.]; and

c. Receive an annual tuberculosis screening.

11. Assistants to be paid by DMAS shall not be the parents of [~~waiver~~] individuals [enrolled in the waiver] who are [~~minors~~ minor children] or the individuals' spouses. Payment shall not be made for services furnished by other

---

## Regulations

---

family members living under the same roof as the [waiver] individual who is receiving services unless there is objective written documentation [completed by the services facilitator, or the case manager when the individual does not select services facilitation,] as to why there are no other providers available to render the services required by the [waiver] individual. ~~[The case manager shall make and document this determination.]~~ Family members who are approved to be reimbursed for providing this service shall meet the same qualifications as all other respite assistants.

### 12. Provider inability to render services and substitution of assistants (agency-directed model).

a. When assistants are absent or otherwise unable to render scheduled supports to [waiver] individuals [enrolled in the waiver], the provider shall be responsible for ensuring that services continue to be provided to individuals. The provider may either provide another assistant, obtain a substitute assistant from another provider if the lapse in coverage is expected to be less than two weeks in duration, or transfer the individual's services to another respite care provider. The provider that has the [prior service] authorization to provide services to the [waiver] individual [enrolled in the waiver] must contact the case manager to determine if additional, or modified, [prior service] authorization is necessary.

b. If no other provider is available who can supply a substitute assistant, the provider shall notify the individual and the individual's family/caregiver, as appropriate, and the case manager so that the case manager may find another available provider of the individual's choice.

c. During temporary, short-term lapses in coverage not to exceed two weeks in duration, the following procedures shall apply:

(1) The [prior service] authorized provider shall provide the supervision for the substitute assistant;

(2) The provider of the substitute assistant shall send a copy of the assistant's daily documentation signed by the assistant, the individual and the individual's family/caregiver, as appropriate, to the provider having the [service] authorization; and

(3) The [prior service] authorized provider shall bill DMAS for services rendered by the substitute assistant.

d. If a provider secures a substitute assistant, the provider agency shall be responsible for ensuring that all DMAS requirements continue to be met including documentation of services rendered by the substitute assistant and documentation that the substitute assistant's qualifications meet DMAS' requirements. The two providers involved shall be responsible for negotiating

the financial arrangements of paying the substitute assistant.

### 13. For the agency-directed model, the assistant record shall contain:

a. The specific services delivered to the [waiver] individual [enrolled in the waiver] by the assistant, dated the day of service delivery, and the individual's responses;

b. The assistant's arrival and departure times;

c. The assistant's weekly comments or observations about the [waiver] individual [enrolled in the waiver] to include observations of the individual's physical and emotional condition, daily activities, and responses to services rendered; and

d. The assistant's and [waiver] individual's and the individual's family/caregiver's, as appropriate, weekly signatures recorded on the last day of service delivery for any given week to verify that services during that week have been rendered.

### N. Services facilitation and consumer directed model of service delivery.

1. If the services facilitator is not an RN, the services facilitator shall inform the primary health care provider that services are being provided and request skilled nursing or other consultation as needed [by the individual].

2. To be enrolled as a Medicaid CD services facilitator and maintain provider status, the services facilitator shall have sufficient resources to perform the required activities, including the ability to maintain and retain business and professional records sufficient to document fully and accurately the nature, scope, and details of the services provided. To be enrolled, the services facilitator shall also meet the combination of work experience and relevant education [set out in this subsection] that indicate the possession of the specific knowledge, skills, and abilities [as set out in DMAS' guidance documents to perform this function]. The services facilitator shall maintain a record of each individual containing elements as [described in the agency guidance documents set out in this section].

a. It is preferred that the CD services facilitator possess a minimum of an undergraduate degree in a human services field or be a registered nurse currently licensed to practice in the Commonwealth or hold multi-state licensure privilege pursuant to Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia. In addition, it is preferable that the CD services facilitator have two years of satisfactory experience in a human service field working with individuals with intellectual disability or individuals with other developmental disabilities. Such knowledge, skills, and abilities must be documented on the provider's application form, found in supporting documentation, or be observed during a job interview.

Observations during the interview must be documented. The knowledge, skills, and abilities include:

(1) Knowledge of:

(a) Types of functional limitations and health problems that may occur in individuals with intellectual disability or individuals with other developmental disabilities, as well as strategies to reduce limitations and health problems;

(b) Physical assistance that may be required by individuals with intellectual disabilities, such as transferring, bathing techniques, bowel and bladder care, and the approximate time those activities normally take;

(c) Equipment and environmental modifications that may be required by individuals with intellectual disabilities that reduce the need for human help and improve safety;

(d) Various long-term care program requirements, including nursing home and ICF/ID placement criteria, Medicaid waiver services, and other federal, state, and local resources that provide personal assistance, respite, and companion services;

(e) ID Waiver requirements, as well as the administrative duties for which the services facilitator will be responsible;

(f) Conducting assessments (including environmental, psychosocial, health, and functional factors) and their uses in service planning;

(g) Interviewing techniques;

(h) The individual's right to make decisions about, direct the provisions of, and control his consumer-directed personal assistance, companion and respite services, including hiring, training, managing, approving timesheets, and firing an assistant/companion;

(i) The principles of human behavior and interpersonal relationships; and

(j) General principles of record documentation.

(2) Skills in:

(a) Negotiating with individuals and the individual's family/caregivers, as appropriate, and service providers;

(b) Assessing, supporting, observing, recording, and reporting behaviors;

(c) Identifying, developing, or providing services to individuals with intellectual disabilities; and

(d) Identifying services within the established services system to meet the individual's needs.

(3) Abilities to:

(a) Report findings of the assessment or onsite visit, either in writing or an alternative format, for individuals who have visual impairments;

(b) Demonstrate a positive regard for individuals and their families;

(c) Be persistent and remain objective;

(d) Work independently, performing position duties under general supervision;

(e) Communicate effectively, orally and in writing; and

(f) Develop a rapport and communicate with individuals of diverse cultural backgrounds. ]

3. [ ~~For the consumer directed model, the~~ The ] services facilitator's record shall contain:

a. Documentation of all [ ~~employee~~ employer ] management training provided to the [ ~~waiver~~ ] individual [ ~~enrolled in the waiver~~ ] and the EOR, as appropriate, including the [ ~~waiver~~ ] individual's or the EOR's, as appropriate, receipt of training on their responsibility for the accuracy and timeliness of the assistant's timesheets; and

b. All documents signed by the [ ~~waiver~~ ] individual [ ~~enrolled in the waiver~~ ] or the EOR, as appropriate, which acknowledge their legal responsibilities as the employer.

O. Skilled nursing services. In addition to meeting the [ service coverage requirements in 12VAC30-120-1020 and the ] general conditions and requirements for home and community-based participating providers as specified in 12VAC30-120-1040, participating skilled nursing providers shall meet the following qualifications:

1. Skilled nursing services shall be provided by either a DMAS-enrolled home health provider, or by a licensed registered nurse (RN), or licensed practical nurse (LPN) under the supervision of a licensed RN who shall be contracted with or employed by DBHDS-licensed day support, respite, or residential providers.

2. Skilled nursing services providers shall not be the parents (natural, adoptive, or foster) of [ ~~waiver~~ ] individuals [ ~~enrolled in the waiver~~ ] who are [ ~~minors~~ minor children ] or the [ ~~waiver~~ ] individual's spouse [ ~~nor shall such persons be the employees of companies that render skilled nursing care to the waiver individual~~ ]. Payment shall not be made for services furnished by other family members who are living under the same roof as the individual receiving services unless there is objective written documentation as to why there are no other providers available to provide the care. Other family members who are approved to provide skilled nursing services must meet the same skilled nursing provider requirements as all other licensed providers.

3. Foster care providers shall not be the skilled nursing services providers for the same individuals for whom they provide foster care.

4. Skilled nursing hours shall not be reimbursed while the [ ~~waiver~~ ] individual [ ~~enrolled in the waiver~~ ] is receiving emergency care or is an inpatient in an acute care hospital or during emergency transport of the individual to such facilities. The attending RN or LPN shall not transport the

---

# Regulations

---

[ waiver ] individual [ enrolled in the waiver ] to such facilities.

5. Skilled nursing services may be ordered but shall not be provided simultaneously with respite [ care ] or personal [ care assistance ] services.

6. Reimbursement for skilled nursing services shall not be made for services that may be delivered prior to the attending physician's dated signature on the [ waiver ] individual's support plan in the form of the physician's order.

7. DMAS shall not reimburse for skilled nursing services that may be rendered simultaneously through the Medicaid EPSDT benefit and the Medicare home health skilled nursing service benefit.

8. Required documentation. The provider shall maintain a record, for each [ waiver ] individual [ enrolled in the waiver ] whom he serves, that contains:

a. A Plan for Supports that contains, at a minimum, the following elements:

(1) The individual's strengths, desired outcomes, required or desired supports;

(2) Services to be rendered and the frequency of services to accomplish the above desired outcomes and support activities;

(3) The estimated duration of the individual's needs for services; and

(4) The provider staff responsible for the overall coordination and integration of the services specified in the Plan for Supports;

b. Documentation of all training, including the dates and times, provided to family/caregivers or staff, or both, including the person or persons being trained and the content of the training. Training of professional staff shall be consistent with the Nurse Practice Act;

c. Documentation of the physician's determination of medical necessity prior to services being rendered;

d. Documentation of nursing license/qualifications of providers;

e. Documentation indicating the dates and times of nursing services that are provided and the amount and type of service;

f. Documentation that the Plan for Supports was reviewed by the provider quarterly, annually, and more often as needed, modified as appropriate, and results of these reviews submitted to the CSB/BHA case manager. For the annual review and in cases where the Plan for Supports is modified, the Plan for Supports shall be reviewed with [ and agreed to by ] the individual and the family/caregiver, as appropriate; and

g. Documentation that the Plan for Supports has been reviewed by a physician within 30 days of initiation of services, when any changes are made to the Plan for

Supports, and also reviewed and approved annually by a physician.

P. Supported employment services. In addition to meeting the [ service coverage requirements in 12VAC30-120-1020 and the ] general conditions and requirements for home and community-based participating providers as specified in 12VAC30-120-1040, supported employment provider qualifications shall include:

1. Group and individual supported employment shall be provided only by agencies that are DRS-vendors of supported employment services;

2. Documentation indicating that supported employment services are not available in vocational rehabilitation agencies through § 110 of the Rehabilitation Act of 1973 or through the Individuals with Disabilities Education Act (IDEA); and

3. In instances where supported employment staff are required to ride with the [ waiver ] individual [ enrolled in the waiver ] to and from supported employment activities, the supported employment staff's transportation time (actual transport time) may be billed as supported employment, provided that the billing for this time does not exceed 25% of the total time spent in supported employment for that day.

Q. Therapeutic consultation. In addition to meeting the [ service coverage requirements in 12VAC30-120-1020 and the ] general conditions and requirements for home and community-based participating providers as specified in 12VAC30-120-1040, professionals rendering therapeutic consultation services shall meet all applicable state or national licensure, endorsement or certification requirements. The following documentation shall be required for therapeutic consultation:

1. A Plan for Supports, that contains at a minimum, the following elements:

a. Identifying information;

b. Desired outcomes, support activities, and time frames; and

c. Specific consultation activities.

2. A written support plan detailing the recommended interventions or support strategies for providers and family/caregivers to better support the [ waiver ] individual [ enrolled in the waiver ] in the service.

3. Ongoing documentation of rendered consultative services which may be in the form of contact-by-contact or monthly notes, which must be signed and dated, that identify each contact, what was accomplished, the professional who made the contact and rendered the service.

4. If the consultation services extend three months or longer, written quarterly reviews are required to be completed by the service provider and shall be forwarded

to the case manager. If the consultation service extends beyond one year [ or when there are changes to the Plan for Supports ], the Plan [ ~~for Supports~~ ] shall be reviewed by the provider with the individual [    ] and family/caregiver [    ] as appropriate [   . The Plan for Supports shall be agreed to by the individual and family/caregiver, as appropriate, ] and the case manager [    ] and [ ~~this written annual review~~ ] shall be submitted to the case manager [    ] ~~at least annually, or more often as needed~~ ]. All changes to the Plan for Supports shall be reviewed with [ and agreed to by ] the individual and the individual's family/caregiver, as appropriate.

5. A final disposition summary must be forwarded to the case manager within 30 days following the end of this service.

R. Transition services. Providers shall be enrolled as a Medicaid provider for case management. DMAS or the DMAS designated agent shall reimburse for the purchase of appropriate transition goods or services on behalf of the individual as set out in [ 12VAC30-120-1020 and ] 12VAC30-120-2010.

S. Case manager's responsibilities for the Medicaid Long-Term Care Communication Form (DMAS-225).

1. When any of the following circumstances occur, it shall be the responsibility of the case management provider to notify DBHDS and the local department of social services, in writing using the DMAS-225 form, and the responsibility of DBHDS to update DMAS, as requested:

- a. Home and community-based waiver services are implemented.
- b. [ ~~A waiver An~~ ] individual [ enrolled in the waiver ] dies.
- c. [ ~~A waiver An~~ ] individual [ enrolled in the waiver ] is discharged from all [ ~~MR/ID waiver ID Waiver~~ ] services.
- d. Any other circumstances (including hospitalization) that cause home and community-based waiver services to cease or be interrupted for more than 30 days.
- e. A selection by the [ ~~waiver~~ ] individual [ enrolled in the waiver ] and the individual's family/caregiver, as appropriate, of [ ~~a different~~ an alternative ] community services board/behavioral health authority that provides case management services.

2. Documentation requirements. [ ~~a~~ ] The case manager shall maintain the following documentation for review by DMAS for a period of not less than six years from each individual's last date of service:

- [ ~~(1)~~ a. ] The initial comprehensive assessment, subsequent updated assessments, and all Individual Support Plans completed for the individual;
- [ ~~(2)~~ b. ] All Plans for Support from every provider rendering waiver services to the individual;

[ ~~(3)~~ c. ] All supporting documentation related to any change in the Individual Support Plans;

[ ~~(4)~~ d. ] All related communication with the individual and the individual's family/caregiver, as appropriate, consultants, providers, DBHDS, DMAS, DRS, local departments of social services, or other related parties;

[ ~~(5)~~ e. ] An ongoing log that documents all contacts made by the case manager related to the individual [ enrolled in the waiver ] and the individual's family/caregiver, as appropriate; and

[ ~~(6)~~ f. ] When a service provider [ or consumer-directed personal or respite assistant or companion ] is designated by the case manager to collect the patient pay amount, a copy of the case manager's written designation, as specified in 12VAC30-120-1010 D 5, and documentation of monthly monitoring of DMAS-designated system.

[ ~~b~~. T. ] The service providers shall maintain, for a period of not less than six years from the individual's last date of service, documentation necessary to support services billed. Review of individual-specific documentation shall be conducted by DMAS staff. This documentation shall contain, up to and including the last date of service, all of the following:

- [ ~~(1)~~ 1. ] All assessments and reassessments.
- [ ~~(2)~~ 2. ] All Plans for Support developed for that individual and the written reviews.
- [ ~~(3)~~ 3. ] Documentation of the date services were rendered and the amount and type of services rendered.
- [ ~~(4)~~ 4. ] Appropriate data, contact notes, or progress notes reflecting an individual's status and, as appropriate, progress or lack of progress toward the outcomes on the Plans for Support.
- [ ~~(5)~~ 5. ] Any documentation to support that services provided are appropriate and necessary to maintain the individual in the home and in the community.

[ ~~e~~. An individual's case manager shall not be the direct staff person or the immediate supervisor of a staff person who provides MR/ID Waiver services for the individual.

[ ~~6~~. 6. ] Documentation shall be filed in the individual's record upon the documentation's completion but not later than two weeks from the date of the document's preparation. Documentation for an individual's record shall not be created or modified once a review or audit of that individual [ enrolled in the waiver ] has been initiated by either DBHDS or DMAS.

**12VAC30-120-1070. Payment for services.**

A. All residential support, day support, [ ~~supported employment~~ ] personal assistance (both agency directed and consumer directed), respite (both agency directed and consumer directed), skilled nursing, therapeutic consultation, crisis stabilization, prevocational, PERS, companion (both agency directed and consumer directed), consumer-directed

---

# Regulations

---

services facilitation, and transition services provided in this waiver shall be reimbursed consistent with the agency's service limits and payment amounts as set out in the fee schedule.

B. [ Reimbursement rates for individual supported employment shall be the same as set by the Department for Aging and Rehabilitative Services for the same procedures. Reimbursement rates for group supported employment shall be as set by DMAS. ]

C. ] All AT and EM covered procedure codes provided in the [ ~~MR/ID waiver ID Waiver~~ ] shall be reimbursed as a service limit of one. [ ~~Effective July 1, 2011, the~~ The ] maximum Medicaid funded expenditure per individual for all AT/EM covered procedure codes (combined total of AT/EM items and labor related to these items) shall be [ ~~\$3,000~~ \$5,000 each for AT and EM ] per calendar year. No additional mark-ups, such as in the durable medical equipment rules, shall be permitted. [ ~~Requests made for reimbursement between January 1, 2011, and June 30, 2011, shall be subject to a \$5,000 annual maximum; requests made for reimbursement between July 1, 2011, and December 31, 2011, shall be subject to the \$3,000 annual maximum, and shall consider, against the \$3,000 limit, any relevant expenditure from the first six months of the calendar year. For subsequent calendar years, the limit shall be \$3,000 throughout the period.~~ ]

[ ~~C. D.~~ ] Duplication of services.

1. DMAS shall not duplicate services that are required as a reasonable accommodation as a part of the ADA (42 USC [ §§ ] 12131 through [ ~~42 USC~~ ] 12165), the Rehabilitation Act of 1973, [ ~~or~~ ] the Virginians with Disabilities Act [ , or any other applicable statute ] .

2. Payment for services under the Plan for Supports shall not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

3. Payment for services under the Plan for Supports shall not be made for services that are duplicative of each other.

4. Payments for services shall only be provided as set out in the individuals' Plans for Supports.

## **12VAC30-120-1080. Utilization review; level of care reviews.**

A. Reevaluation of service need and case manager review. Case managers shall complete reviews and updates of the Individual Support Plan and level of care as specified in 12VAC30-120-1020. Providers shall meet the documentation requirements as specified in 12VAC30-120-1040 [ ~~and DMAS' guidance documents~~ ] .

B. Quality management reviews (QMR) shall be performed [ ~~at least annually~~ ] by DMAS Division of Long Term Care Services [ or its designated contractor ] . Utilization review of rendered services shall be conducted by

DMAS Division of Program Integrity (PI) or its designated contractor.

C. Providers who are determined during QMRs to not be in compliance with the requirements of these regulations may be requested to provide a corrective action plan. DMAS shall follow up with such providers on subsequent QMRs to evaluate compliance with their corrective action plans. Providers failing to comply with their corrective action plans shall be referred to Program Integrity for further review and possible sanctions.

D. Providers who are determined during PI utilization reviews to not be in compliance with these regulations may have their reimbursement retracted or other action pursuant to 12VAC30-120-1040 and 12VAC30-120-1060.

E. [ ~~Waiver individuals~~ Individuals enrolled in the waiver ] who no longer meet the [ ~~MR/ID waiver ID Waiver~~ ] services and level of care criteria shall be informed of the termination of services and shall be afforded their right to appeal pursuant to 12VAC30-120-1090.

## **12VAC30-120-1088. Waiver waiting list.**

A. This waiver shall have both urgent and nonurgent waiting lists.

B. Urgent waiting list criteria. When a slot becomes available, the CSB/BHA shall determine, from among the [ ~~waiver~~ ] applicants [ for enrollment in the waiver ] included in the urgent category list, who shall be served first based on the needs of those applicants and consistent with these criteria. This determination [ of the assignment of the slot ] shall be based on statewide criteria as specified in DBHDS guidance [ ~~documents~~ document entitled MR/ID Waiver Slot Assignment Process (rev 08/20/2010) ] .

1. The urgent category shall be assigned when the applicant is in need of services because he is determined to meet one or more of the criteria established in subdivision 2 of this subsection and services will be required within 30 days of the date of established need. Only after all applicants in the Commonwealth who meet the urgent criteria have been served shall applicants in the nonurgent category waiting list be permitted to be served.

2. Assignment to the urgent category may be requested by the applicant, his legally responsible relative, or primary caregiver. The urgent category shall be assigned only when the applicant (who shall have [ first ] met all of the waiver's level of care criteria), the applicant's spouse or parent (either natural, adoptive, or foster), or the person who has legal decision-making authority for an individual who is a minor child would accept the requested service if it were offered. The urgent category list criteria shall be as follows:

a. Both primary caregivers are 55 years of age or older, or if there is one primary caregiver, that primary caregiver is 55 years of age or older;

b. The applicant is living with a primary caregiver, who is providing the service voluntarily and without pay, and the primary caregiver indicates that he can no longer care for the applicant with [ MR/ID ID ];

c. There is a clear risk for the applicant with the [ MR/ID ID ] of abuse, neglect, or exploitation;

d. A primary caregiver has a chronic or long-term physical or psychiatric condition or conditions that significantly limits the abilities of the primary caregiver or caregivers to care for the applicant with [ MR/ID ID ];

e. The applicant with [ MR/ID ID ] is aging out of publicly funded residential placement or otherwise becoming homeless (exclusive of children who are graduating from high school); or

f. The applicant with [ MR/ID ID ] lives with the primary caregiver, and there is a risk to the health or safety of the applicant, primary caregiver, or other person living in the home due to either of the following conditions:

(1) The applicant's behavior or behaviors present a risk to himself or others that cannot be effectively managed by the primary caregiver even with generic or specialized support arranged or provided by the CSB/BHA; or

(2) There are physical care needs (such as lifting or bathing) or medical needs that cannot be managed by the primary caregiver even with generic or specialized supports arranged or provided by the CSB/BHA.

[ 3. The case manager shall notify the individual in writing within 10 business days of receiving DBHDS' notification that he has been placed on the Statewide ID Waiting List-Urgent and of his appeal rights. ]

C. Nonurgent waiting list criteria. Applicants in the nonurgent category shall be those who meet the diagnostic and functional criteria for the waiver, including the need for services within 30 days, but who do not meet the urgent criteria. [ The case manager shall notify the individual in writing within 10 business days of receiving DBHDS' notification that he has been placed on the Statewide ID Waiting List-Nonurgent and of his appeal rights. ]

**12VAC30-120-1090. Appeals.**

A. Providers shall have the right to appeal actions taken by DMAS. Provider appeals shall be considered pursuant to § 32.1-325.1 of the Code of Virginia and the Virginia Administrative Process Act (Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia), and DMAS regulations at 12VAC30-10-1000 and 12VAC30-20-500 through 12VAC30-20-560.

B. Individuals shall have the right to appeal an action, as that term is defined in 42 CFR 431.201, taken by DMAS. Individuals' appeals shall be considered pursuant to 12VAC30-110-10 through 12VAC30-110-370. DMAS shall provide the opportunity for a fair hearing, consistent with 42 CFR Part 431, Subpart E.

C. The individual shall be advised in writing of such denial and of his right to appeal consistent with DMAS client appeals regulations 12VAC30-110-70 and 12VAC30-110-80.

DOCUMENTS INCORPORATED BY REFERENCE (12VAC30-120)

[ ~~User's Guide: Mental Retardation: Definition, Classification and Systems of Supports, 10th Edition, 2002, American Association on Intellectual and Developmental Disabilities.~~

Intellectual Disability: Definition, Classification, and Systems of Supports, 11th edition, 2010, American Association on Intellectual and Developmental Disabilities, 501 3rd Street, NW, Suite 200, Washington, DC 20001-2760; [http://www.aaid.org/intellectualdisabilitybook/.](http://www.aaid.org/intellectualdisabilitybook/) ]

Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DMS-IV-TR), 2000, American Psychiatric Association.

Underwriter's Laboratories Safety Standard 1635, Standard for Digital Alarm Communicator System Units, Third Edition, January 31, 1996, with revisions through August 15, 2005.

Underwriter's Laboratories Safety Standard 1637, Standard for Home Health Care Signaling Equipment, Fourth Edition, December 29, 2006.

[ [MR/ID Waiver Slot Assignment Process, August 20, 2010, Department of Behavioral Health and Developmental Services.](#)

Virginia Medicaid Provider Manual

[Chapter I: General Information \(rev. 12/1/2011\).](#)

[Chapter II: Provider Participation Requirements \(rev. 2/8/2012\).](#)

[Chapter III: Recipient Eligibility \(rev. 12/1/2011\).](#)

[Chapter IV: Covered Services and Limitations \(rev. 7/14/2010\).](#)

[Chapter V: Billing Instructions \(rev. 1/26/2011\).](#)

[Chapter VI: Quality Management Review \(rev. 7/14/2010\).](#)

[Chapter VII: Day Support Waiver \(rev. 7/14/2010\).](#) ]

VA.R. Doc. No. R10-2056; Filed May 15, 2013, 12:24 p.m.



**TITLE 14. INSURANCE**

**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

---

# Regulations

---

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

**Title of Regulation:** 14VAC5-130. Rules Governing the Filing of Rates for Individual and Certain Group Accident and Sickness Insurance Policy Forms (amending 14VAC5-130-10, 14VAC5-130-30, 14VAC5-130-40, 14VAC5-130-50, 14VAC5-130-60, 14VAC5-130-70, 14VAC5-130-90; adding 14VAC5-130-65, 14VAC5-130-75, 14VAC5-130-81; repealing 14VAC5-130-80).

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

**Effective Date:** July 1, 2013.

**Agency Contact:** Bob Grissom, Chief Insurance Market Examiner, Market Regulation, Life and Health Division, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9152, FAX (804) 371-9944, or email bob.grissom@scc.virginia.gov.

**Summary:**

*The amendments to 14VAC5-130 are necessary to implement the provisions of Chapter 679 of the 2013 Acts of Assembly. This legislation created § 38.2-316.1 of the Code of Virginia and requires the commission to review and approve accident and sickness insurance premium rates applicable to health benefit plans issued in Virginia in the individual and small group markets and health benefit plans or health insurance coverage in the individual market issued to residents of Virginia through a group trust, association, purchasing cooperative, or other group that is not an employer group. The scope of 14VAC5-130 is expanded to include these additional rate review requirements, including new definitions, filing requirements, minimum standards, loss ratios, risk pools, and templates.*

*Revisions to the proposed amendments made as a result of industry comments include changing the definition of "actuarial value" in 14VAC5-130-40 to conform to the federal definition, adding the geographic location of the member as a reason why premium rates may be adjusted to 14VAC5-130-50 E 4; adding a provision that all information required in SERFF will be required with rate submissions for new policy forms in 14VAC5-130-60 A and that the actuarial memorandum contain the estimated average annual premium per policy and per anticipated member in 14VAC5-130-60 B, removing the requirement for actuarial value in 14VAC5-130-81 D, and adding a provision that the commission can consider previous or expected premium refunds or credits to 14VAC5-130-90 C.*

AT RICHMOND, MAY 14, 2013

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2013-00050

Ex Parte: In the matter of  
Amending the Rules Governing  
Filing of Rates for Individual and  
Group Accident and Sickness Insurance

ORDER ADOPTING RULES

By Order to Take Notice entered March 29, 2013, all interested persons were ordered to take notice that subsequent to May 6, 2013, the State Corporation Commission ("Commission") would consider the entry of an order to adopt amendments to the Commission's Rules Governing Filing of Rates for Individual and Group Accident and Sickness Insurance, 14VAC5-130-10 et seq. ("Rules"), which amend the Rules at 14VAC5-130-10, 14VAC5-130-30 through 14VAC5-130-70, and 14VAC5-130-90; add new Rules at 14VAC5-130-65, 14VAC5-130-75, and 14VAC5-130-81; repeal the Rules at 14VAC5-130-80; and add new forms. These amendments were proposed by the Bureau of Insurance ("Bureau"). The Order to Take Notice required that on or before May 6, 2013, any person objecting to the amendments to the Rules shall have filed a request for hearing with the Clerk of the Commission ("Clerk").

No request for a hearing was filed with the Clerk.

The Order to Take Notice also required all interested persons to file their comments in support of or in opposition to the amendments to the Rules on or before May 6, 2013.

Comments were filed on May 6, 2013, by a representative from UnitedHealthcare Mid-Atlantic Health Plan concerning the proposed amendments to 14VAC5-130-40, 14VAC5-130-50 E 4, and 14VAC5-130-90 C. The Bureau considered these comments and responded to them by letter dated May 9, 2013, and filed with the Clerk of the Commission. The Bureau recommends revisions to these proposed amendments as a result of the comments.

The Bureau also conducted an informational meeting on April 22, 2013, at which time interested parties and the public were able to address questions or comments to the Bureau. Based on comments and questions at this meeting, the Bureau recommends revisions to the proposed amendments at 14VAC5-130-60 subsections A and B to clarify that all rate submissions shall include all information required in SERFF (System for Electronic Rate and Form Filing) and that the actuarial memorandum contain the estimated average annual premium per policy and per anticipated member. Further, the Bureau recommends that subdivision D 1 of 14VAC5-130-81 be revised to eliminate the actuarial value requirement. Forms 130A and 130B were revised as well.

The amendments and revisions to Chapter 130 are necessary to implement the provisions of Chapter 679 of the 2013 Acts of Assembly. This legislation creates a new section, § 38.2-

316.1 of the Code of Virginia, which requires the Commission to review and approve accident and sickness insurance premium rates applicable to health benefit plans issued in Virginia in the individual and small group markets and health benefit plans providing health insurance coverage in the individual market to residents of Virginia through a group trust, association, purchasing cooperative, or other group that is not an employer plan. Chapter 679 further requires the Commission to promulgate regulations to establish standards applicable to such review and approval. Accordingly, the scope of Chapter 130 has been expanded to include these additional rate review requirements and includes new definitions, filing requirements, minimum standards, loss ratios, risk pools and templates.

The Bureau recommends that these Rules be adopted as revised to be effective July 1, 2013.

NOW THE COMMISSION, having considered this matter, the comments filed, and the Bureau's recommendation to amend and revise the Rules, is of the opinion that the Rules should be adopted as amended and revised, effective July 1, 2013.

Accordingly, IT IS ORDERED THAT:

(1) The amendments and revisions to Chapter 130 of Title 14 of the Virginia Administrative Code entitled Rules Governing Filing of Rates for Individual and Group Accident and Sickness Insurance, 14VAC5-130-10 et seq., which amend the Rules at 14VAC5-130-10, 14VAC5-130-30 through 14VAC5-130-70, and 14VAC5-130-90; add new Rules at 14VAC5-130-65, 14VAC5-130-75, and 14VAC5-130-81; repeal the Rules at 14VAC5-130-80; and add new forms, which are attached hereto and made a part hereof, are hereby ADOPTED effective July 1, 2013.

(2) AN ATTESTED COPY hereof, together with a copy of the adopted amended and revised Rules shall be sent by the Clerk of the Commission to Althelia P. Battle, Deputy Commissioner, Bureau of Insurance, State Corporation Commission, who forthwith shall give notice of the adopted amended and revised Rules by mailing a copy of this Order, including a clean copy of the Rules, to all companies licensed by the Commission to write accident and sickness insurance in the Commonwealth of Virginia, as well as all interested parties.

(3) The Commission's Division of Information Resources shall cause a copy of this Order, together with the adopted amended and revised Rules at 14VAC5-130-10 et seq., to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(4) The Commission's Division of Information Resources shall make available this Order and the attached adopted amended and revised Rules at 14VAC5-130-10 et seq., on the Commission's website: <http://www.scc.virginia.gov/case>.

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

**14VAC5-130-10. Purpose.**

The purposes of this chapter (14VAC5-130-10 et seq.) are to: (i) implement procedures for the filing and approval of rates for individual and certain group accident and sickness insurance policy forms and (ii) establish minimum loss ratios to assure that the benefits provided by such policy forms are or are likely to be reasonable in relation to the premiums charged.

**14VAC5-130-30. Scope.**

A. This chapter (14VAC5-130-10 et seq.) applies to all individual accident and sickness insurance policy forms, subscriber contracts of hospital, medical or surgical plans, dental plans, and optometric plans delivered or issued for delivery in this Commonwealth ~~on and after the effective date~~.

B. This chapter also applies to all health insurance coverage issued in the individual and small group markets.

~~B. C.~~ This chapter also applies to group Medicare supplement insurance policy forms and group Medicare supplement subscriber contracts of hospital, medical or surgical plans delivered or issued for delivery in this Commonwealth ~~on and after the effective date~~.

~~C. D.~~ For purposes of this chapter, a policy form shall include any rider or endorsement form affecting benefits which is attached to the base policy.

~~D. E.~~ Except as otherwise provided, nothing contained in this chapter shall be construed to relieve ~~an insurer~~ a health insurance issuer of complying with the statutory requirements set forth in Title 38.2 of the Code of Virginia.

**14VAC5-130-40. Definitions.**

As used in this chapter:

"Actuarial value" or "AV" means the [ result generated by the federal AV calculator that is a percentage of health care costs a health plan may cover anticipated covered medical spending for essential health benefits (EHB) coverage paid by a health plan for a standard population, computed in accordance with the plan's cost-sharing, divided by the total anticipated allowed charges for EHB coverage provided to a standard population, and expressed as a percentage ].

"Anticipated loss ratio" ~~is~~ means the ratio of the present value of the future benefits to the present value of the future premiums of a policy form over the entire period for which rates are computed to provide coverage.

"Grandfathered plan" means coverage provided by a health carrier in which an individual was enrolled on March 23, 2010, for as long as such plan maintains that status in accordance with federal law.

---

# Regulations

---

"Group health insurance coverage" means in connection with a group health plan, health insurance coverage offered in connection with such plan.

"Group health plan" means an employee welfare benefit plan (as defined in § 3 (1) of the Employee Retirement Income Security Act of 1974 (29 USC § 1002 (1)), to the extent that the plan provides medical care and including items and services paid for as medical care to employees or their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement, or otherwise.

"Group Medicare supplement policy" ~~is~~ means a group policy of accident and sickness insurance, or a group subscriber contract of hospital, medical or surgical plans, covering individuals who are entitled to have payment made under Medicare, which is designed primarily to supplement Medicare by providing benefits for payment of hospital, medical or surgical expenses, or is advertised, marketed or otherwise purported to be a supplement to Medicare. Such term does not include:

1. A policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations; or
2. A policy or contract of any professional, trade or occupational association for its members or former retired members, or combination thereof, if such association:
  - a. Is composed of individuals all of whom are actively engaged in the same profession, trade, or occupation;
  - b. Has been maintained in good faith for purposes other than obtaining insurance; and
  - c. Has been in existence for at least two years prior to the date of its initial offering of such policy or plan to its members.

"Health benefit plan" means any accident and health insurance policy or certificate, health services plan contract, health maintenance organization subscriber contract, plan provided by a MEWA, or plan provided by another benefit arrangement. "Health benefit plan" does not mean accident only, credit, or disability insurance; coverage of Medicare services or federal employee health plans, pursuant to contracts with the United States government; Medicare supplement or long-term care insurance; Medicaid coverage; dental only or vision only insurance; specified disease insurance; hospital confinement indemnity coverage; limited benefit health coverage; coverage issued as a supplement to liability insurance; insurance arising out of a workers' compensation or similar law; automobile medical payment insurance; medical expense and loss of income benefits; or insurance under which benefits are payable with or without

regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

"Health insurance coverage" means benefits consisting of medical care (provided directly, through insurance or reimbursement, or otherwise and including items and services paid for as medical care) under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract offered by a health insurance issuer.

"Health insurance issuer" means an insurance company, or insurance organization (including a health maintenance organization) that is licensed to engage in the business of insurance in this Commonwealth and that is subject to the laws of this Commonwealth that regulate insurance within the meaning of § 514 (b) (2) of the Employee Retirement Income Security Act of 1974 (29 USC § 1144 (b) (2)). Such term does not include a group health plan.

"Health maintenance organization" means:

1. A federally qualified health maintenance organization;
2. An organization recognized under the laws of this Commonwealth as a health maintenance organization; or
3. A similar organization regulated under the laws of this Commonwealth for solvency in the same manner and to the same extent as such a health maintenance organization.

"Individual accident and sickness insurance" ~~is~~ means insurance against loss resulting from sickness or from bodily injury or death by accident or accidental means or both when sold on an individual rather than group basis.

"Individual health insurance coverage" means health insurance coverage offered to individuals in the individual market, that includes a health benefit plan provided to individuals through a trust arrangement, association, or other discretionary group that is not an employer plan, but does not include coverage defined as "excepted benefits" in § 38.2-3431 of the Code of Virginia or short-term limited duration insurance.

"Individual market" means the market for health insurance coverage offered to individuals other than in connection with a group health plan. Coverage that would be regulated as individual market coverage if it were not sold through an association is individual market coverage.

"Individual Medicare supplement policy" ~~is~~ means an individual policy of accident and health insurance or a subscriber contract of hospital, medical or surgical plans, offered to individuals who are entitled to have payment made under Medicare, which is designed primarily to supplement Medicare by providing benefits for hospital, medical or surgical expenses, or is advertised, marketed or otherwise purported to be a supplement to Medicare.

"Member" means an enrollee, member, subscriber, policyholder, certificate holder, or other individual who is participating in a health benefit plan or covered under health insurance.

"Premium" means all moneys paid by an employer, eligible employee, or member as a condition of coverage from a health insurance issuer, including fees and other contributions associated with a health benefit plan.

"Qualified Actuary" is means a member of the American Academy of Actuaries, or any other individual who has demonstrated actuarial competence that in the opinion of the Commission is deemed adequate to certify the actuarial content of the rate filing qualified as described in the American Academy of Actuaries' U.S. Qualification Standards and the Code of Professional Conduct to render statements of actuarial opinion in the applicable area of practice.

"SERFF" means the National Association of Insurance Commissioner's (NAIC) System for Electronic Rate and Form Filing.

"Small employer" means in connection with a group health plan or health insurance coverage with respect to a calendar year and a plan year, an employer who employed an average of at least one but not more than 50 employees on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year. Effective January 1, 2016, "small employer" means in connection with a group health plan or health insurance coverage with respect to a calendar year and a plan year, an employer who employed an average of at least one but not more than 100 employees on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year.

"Small group market" means the health insurance market under which individuals obtain health insurance coverage (directly or through any arrangement) on behalf of themselves (and their dependents) through a group health plan maintained by a small employer. Coverage that would be regulated as small group market coverage if it were not sold through an association is small group market coverage.

**14VAC5-130-50. General rules on rate filing; experience records and data.**

A. Every policy, rider or endorsement form affecting benefits which is submitted for approval shall be accompanied by a rate filing unless such rider or endorsement form does not require a change in the rate. Any subsequent addition to or change in rates applicable to such policy, rider or endorsement form shall also be filed.

B. Each rate submission shall include an actuarial memorandum describing the basis on which rates were determined and shall indicate and describe the calculation of the anticipated loss ratio. ~~Interest.~~ Except for coverage issued in the small group market, interest at a rate consistent with that assumed in the original determination of premiums, shall

be used in the calculation of this loss ratio. Each rate submission must also include a certification by a qualified actuary that to the best of the actuary's knowledge and judgment, the rate filing is in compliance with the applicable laws and regulations of this Commonwealth and that the benefits are reasonable in relation to the premiums.

C. ~~Insurers~~ Health insurance issuers shall maintain records of earned premiums and incurred benefits for each calendar year for each policy form, including data for rider and endorsement forms which are used with the policy form, on the same basis, including all reserves, as required for the Accident and Health Policy Experience Exhibit. Separate data may be maintained for each rider or endorsement form to the extent appropriate. Experience under forms which provide substantially similar coverage may be combined. The data shall be ~~for all years of issue combined,~~ for each calendar year of experience since the year the form was first issued; ~~except that data for calendar years prior to the most recent five years may be combined.~~

D. In determining the credibility and appropriateness of experience data, due consideration must be given to all relevant factors, such as:

1. Statistical credibility of premiums and benefits, e.g., low exposure, low loss frequency.
2. Experienced and projected trends relative to the kind of coverage, e.g., inflation in medical expenses, economic cycles affecting disability income experience.
3. The concentration of experience at early policy durations where select morbidity and preliminary term reserves are applicable and where loss ratios are expected to be substantially lower than at later policy durations.
4. The mix of business by risk classification.

E. Rates for coverage issued in the individual or small group markets are required to meet the following:

1. Premium rates with respect to a particular plan or coverage may only vary by:
  - a. Whether the plan or coverage covers an individual or family;
  - b. Rating area, as may be established by the commission;
  - c. Age, consistent with the Uniform Age Rating Curve table below; and
  - d. Tobacco use, except that the rate shall not vary by more than 1.5 to 1. Employees of a small employer may avoid this surcharge by participating in a wellness program that complies with § 2705(j) of the Public Health Service Act (42 USC § 300gg-4).

# Regulations

Uniform Age Rating Curve

<u>AGE</u>	<u>PREMIUM RATIO</u>	<u>AGE</u>	<u>PREMIUM RATIO</u>	<u>AGE</u>	<u>PREMIUM RATIO</u>
<u>0-20</u>	<u>0.635</u>	<u>35</u>	<u>1.222</u>	<u>50</u>	<u>1.786</u>
<u>21</u>	<u>1.000</u>	<u>36</u>	<u>1.230</u>	<u>51</u>	<u>1.865</u>
<u>22</u>	<u>1.000</u>	<u>37</u>	<u>1.238</u>	<u>52</u>	<u>1.952</u>
<u>23</u>	<u>1.000</u>	<u>38</u>	<u>1.246</u>	<u>53</u>	<u>2.040</u>
<u>24</u>	<u>1.000</u>	<u>39</u>	<u>1.262</u>	<u>54</u>	<u>2.135</u>
<u>25</u>	<u>1.004</u>	<u>40</u>	<u>1.278</u>	<u>55</u>	<u>2.230</u>
<u>26</u>	<u>1.024</u>	<u>41</u>	<u>1.302</u>	<u>56</u>	<u>2.333</u>
<u>27</u>	<u>1.048</u>	<u>42</u>	<u>1.325</u>	<u>57</u>	<u>2.437</u>
<u>28</u>	<u>1.087</u>	<u>43</u>	<u>1.357</u>	<u>58</u>	<u>2.548</u>
<u>29</u>	<u>1.119</u>	<u>44</u>	<u>1.397</u>	<u>59</u>	<u>2.603</u>
<u>30</u>	<u>1.135</u>	<u>45</u>	<u>1.444</u>	<u>60</u>	<u>2.714</u>
<u>31</u>	<u>1.159</u>	<u>46</u>	<u>1.500</u>	<u>61</u>	<u>2.810</u>
<u>32</u>	<u>1.183</u>	<u>47</u>	<u>1.563</u>	<u>62</u>	<u>2.873</u>
<u>33</u>	<u>1.198</u>	<u>48</u>	<u>1.635</u>	<u>63</u>	<u>2.952</u>
<u>34</u>	<u>1.214</u>	<u>49</u>	<u>1.706</u>	<u>64 and older</u>	<u>3.000</u>

2. A premium rate shall not vary by any other factor not described in this subsection.

3. With respect to family coverage, the rating variations permitted in this subsection shall be applied based on the portion of the premium that is attributable to each family member covered under the plan. With respect to family members under age 21, the premiums for no more than the three oldest covered children shall be taken into account in determining the total family premium.

4. The premium charged shall not be adjusted more frequently than annually, except that the premium rate may be changed to reflect changes to (i) the family composition of the member [ or, ] (ii) the coverage requested by the member [ , or (iii) the geographic location of the member ] .

~~E. F.~~ In the event of disapproval or withdrawal of approval by the ~~Commission~~ commission of a ~~policy form~~ rate submission, ~~an insurer~~ a health insurance issuer may proceed as indicated in § 38.2-1926 of the Code of Virginia.

#### 14VAC5-130-60. Filing of rates for a new policy form.

A. Each rate submission shall include: (i) the applicable policy or certificate form, application and endorsements required by § 38.2-316 of the Code of Virginia, (ii) a rate sheet [ and, ] (iii) an actuarial memorandum [ , and (iv) all information required in SERFF ]. For coverage issued in the individual or small group markets, the Unified Rate Review Template shall also be filed.

~~B. Actuarial memorandum:~~ The actuarial memorandum shall contain the following information:

1. A description of the type of policy or coverage, including benefits, renewability, general marketing method, and issue age limits.

2. A description of how rates were determined, including the general description and source of each assumption used.

3. The estimated average annual premium per policy and per [ anticipated ] member.

4. The anticipated loss ratio and a description of how it was calculated.

5. The minimum anticipated loss ratio presumed reasonable in this chapter, as specified in ~~subsection C of this section~~ 14VAC5-130-65.

6. If ~~item~~ the anticipated loss ratio in subdivision 4 of this subsection is less than ~~item~~ the minimum loss ratio in subdivision 5 of this subsection, supporting documentation for the use of such premiums shall also be included.

7. For coverage issued in the individual or small group market, a certification by a qualified actuary of the actuarial value of each plan of benefits included and the AV calculation summary.

~~7. 8.~~ A certification by a qualified actuary that, to the best of the actuary's knowledge and judgment, the rate filing is

in compliance with the applicable laws and regulations of this Commonwealth and the premiums are reasonable in relation to the benefits provided.

~~C. Reasonableness of benefits in relation to premiums: Benefits shall be deemed reasonable in relation to premiums provided the anticipated loss ratio of the policy form, including riders and endorsements, is at least as great as specified below:~~

~~1. If the expected average annual premium is at least \$200 but less than \$1,000:~~

Type of Coverage	Renewal Clause				
	OR	CR	GR	NC	Other
Hospital Expense, Medical-Surgical Expense, Major Medical Expense, Hospital Confinement Indemnity	60%	55%	55%	50%	60%
Disability Income Protection, Accident Only, Specified Disease and Other, whether paid on an expense incurred or indemnity basis	60%	55%	50%	45%	60%

~~Definitions of renewal clause:~~

~~OR—Optionally renewable: individual policy renewal is at the option of the insurance company.~~

~~CR—Conditionally renewable: renewal can be declined by the insurance company only for stated reasons other than deterioration of health or renewal can be declined on a geographic territory basis.~~

~~GR—Guaranteed renewable: renewal cannot be declined by the insurance company for any reason, but the insurance company can revise rates on a class basis.~~

~~NC—Non-cancellable: renewal cannot be declined nor can rates be revised by the insurance company.~~

~~Other—Any other renewal or non-renewal clauses (e.g. short term non-renewable policies).~~

2. If the expected average annual premium is \$100 or more but less than \$200, subtract five percentage points from the numbers in the table above.

3. If the expected average annual premium is less than \$100, subtract 10 percentage points from the numbers in the table above.

4. If the expected average annual premium is \$1,000 or more, add five percentage points to the numbers in the table above.

5. Notwithstanding 1 above, group Medicare supplement policies, shall be expected to return to policyholders in the form of aggregate benefits under the policy at least 75% of the aggregate amount of premiums collected.

6. Notwithstanding 1 and 5 above, Medicare supplement policies issued as a result of solicitation of individuals through the mails or by mass media advertising, which shall include both print and broadcast advertising, shall be expected to return to policyholders in the form of aggregate benefits under the policy at least 60% of the aggregate amount of premiums collected.

7. Notwithstanding 1 above, Medicare supplement policies sold on an individual rather than group basis shall be expected to return to policyholders in the form of aggregate benefits under the policy at least 60% of the aggregate amount of premiums collected.

The above anticipated loss ratio standards do not apply to a class of business where such standards are in conflict with specific statutes or regulations.

The average annual premium per policy shall be computed by the insurer based on an anticipated distribution of business by all applicable criteria having a price difference, such as age, sex, amount, dependent status, rider frequency, etc., except assuming an annual mode for all policies (i.e., the fractional premium loading shall not affect the average annual premium or anticipated loss ratio calculation).

**14VAC5-130-65. Reasonableness of benefits in relation to initial premiums.**

A. Benefits shall be deemed reasonable in relation to premiums provided the anticipated loss ratio of the policy form, including riders and endorsements, is at least as great as specified below:

1. If the expected average annual premium is at least \$200 but less than \$1,000:

Type of Coverage	Renewal Clause				
	OR	CR	GR	NC	Other
<u>Hospital Confinement Indemnity</u>	<u>60%</u>	<u>55%</u>	<u>55%</u>	<u>50%</u>	<u>60%</u>
<u>Disability Income Protection,</u>	<u>60%</u>	<u>55%</u>	<u>50%</u>	<u>45%</u>	<u>60%</u>

# Regulations

Accident Only, Specified Disease and Other, whether paid on an expense incurred or indemnity basis					
--	--	--	--	--	--

Definitions of renewal clause:

OR - Optionally renewable: individual policy renewal is at the option of the insurance company.

CR - Conditionally renewable: renewal can be declined by the insurance company only for stated reasons other than deterioration of health or renewal can be declined on a geographic territory basis.

GR - Guaranteed renewable: renewal cannot be declined by the insurance company for any reason, but the insurance company can revise rates on a class basis.

NC - Noncancellable: renewal cannot be declined nor can rates be revised by the insurance company.

Other - Any other renewal or nonrenewal clauses (e.g., short term nonrenewable policies).

2. If the expected average annual premium is \$100 or more but less than \$200, subtract five percentage points from the numbers in the table in subdivision 1 of this subsection.

3. If the expected average annual premium is less than \$100, subtract 10 percentage points from the numbers in the table in subdivision 1 of this subsection.

4. If the expected average annual premium is \$1,000 or more, add five percentage points to the numbers in the table in subdivision 1 of this subsection.

5. Notwithstanding subdivision 1 of this subsection, group Medicare supplement policies, shall be expected to return to policyholders in the form of aggregate benefits under the policy at least 75% of the aggregate amount of premiums collected.

6. Notwithstanding subdivisions 1 and 5 of this subsection, for Medicare supplement policies issued prior to July 30, 1992, as a result of solicitation of individuals through the mails or by mass media advertising, which shall include both print and broadcast advertising, shall be expected to return to policyholders in the form of aggregate benefits under the policy at least 60% of the aggregate amount of premiums collected.

7. Notwithstanding subdivision 1 of this subsection, for Medicare supplement policies issued prior to July 30, 1992, sold on an individual rather than group basis shall be expected to return to policyholders in the form of

aggregate benefits under the policy at least 60% of the aggregate amount of premiums collected.

8. Notwithstanding subdivisions 1 through 4 of this subsection, all health insurance coverage issued in the individual market shall be originally priced to meet a minimum 75% loss ratio and shall be guaranteed renewable or noncancellable.

9. Notwithstanding subdivisions 1 through 4 of this subsection, all health insurance coverage issued in the small group market shall be originally priced to meet a minimum 75% loss ratio and shall be guaranteed renewable or noncancellable.

The above anticipated loss ratio standards do not apply to a type of coverage where such standards are in conflict with specific statutes or regulations.

B. The average annual premium per policy and per member shall be computed by the health insurance issuer based on an anticipated distribution of business by all applicable criteria having a price difference, such as age, sex, amount, dependent status, rider frequency, etc., except assuming an annual mode for all policies (i.e., the fractional premium loading shall not affect the average annual premium or anticipated loss ratio calculation).

**14VAC5-130-70. Filing of a rate increase revision.**

A. Each rate revision submission shall include: (i) a new rate sheet and; (ii) an actuarial memorandum; and (iii) all information required in SERFF. For coverage issued in the individual or small group markets, the Unified Rate Review Template shall also be filed.

B. Actuarial memorandum. The actuarial memorandum shall contain the following information:

1. A description of the type of policy, including benefits, renewability, and issue age limits, and if applicable, whether the policy includes grandfathered or nongrandfathered plans or both.

2. The scope and reason for the premium or rate revision.

3. A comparison of the revised premiums with the current premium scale, including all percentage rate changes and any rating factor changes.

4. A statement of whether the revision applies only to new business, only to in-force business, or to both.

5. The estimated average annual premium per policy and per member, before and after the proposed rate increase revision. Where different changes by rating classification are being requested, the rate filing shall also include (i) the range of changes and (ii) the average overall change with a detailed explanation of how the change was determined.

6. ~~Past~~ Except for coverage issued in the small group market, historical and projected experience, as specified in 14VAC5-130-50-C submitted on Form 130 A, including:

- a. Virginia and national historical experience as specified in 14VAC5-130-50 C and projections for future experience;
  - b. A statement indicating the basis for determining the rate revision (Virginia, national or blended);
  - c. If the basis is blended, the credibility factor assigned to the national experience;
  - a. ~~Show~~ d. Earned Premiums (EP), Incurred Benefits (IB), Increase in Reserves (IR), and Incurred Loss Ratio = (IB + IR) ÷ (EP); and
  - b. ~~e.~~ Any other available data the insurer health insurance issuer may wish to provide. The additional data may include, if available and appropriate, the ratios of actual claims to the claims expected according to the assumptions underlying the existing rates; substitution of actual claim run-offs for claim reserves and liabilities; accumulations of experience funds; substitution of net level policy reserves for preliminary term policy reserves; adjustments of premiums to an annual mode basis; or other adjustments or schedules suited to the form and to the records of the company. All additional data must be reconciled, as appropriate, to the required data.
7. Details and dates of all past rate increases on this form revisions, including the annual rate revisions members will experience as a result of this filing. For companies revising rates only annually, the rate revision should be identical to the current submission. For companies that have had more frequent rate revisions, the annual revision should reflect the compounding impact of all such revisions for the previous 12 months.
8. A description of how revised rates were determined, including the general description and source of each assumption used. For expenses, include percent of premium, dollars per policy, and/or dollars per unit of benefit on Form 130A. For claims, provide historical and projected claims by major service category for both cost and utilization on Form 130B.
9. If the rate revision applies to new business, provide the anticipated loss ratio and a description of how it was calculated.
10. If the rate revision applies to in-force business:
- a. The anticipated future loss ratio and a description of how it was calculated; and
  - b. The estimated cumulative loss ratio, past historical and future anticipated, and a description of how it was calculated.
11. Minimum loss ratio presumed reasonable in 14VAC5-130-60 C The loss ratio that was originally anticipated for the policy.
12. If 9, 10a, or 10b is less than 11, supporting documentation for the use of such premiums or rates.

13. The current number of Virginia policyholders and national members to which the revision applies for the most recent month for which such data is available, and either premiums in force, premiums earned, or premiums collected for such policyholders members in the year immediately prior to the filing of the rate increase revision.

14. Certification by a qualified actuary that, to the best of the actuary's knowledge and judgment, the rate filing is in compliance with applicable laws and regulations of this Commonwealth and the premiums are reasonable in relation to the benefits provided.

15. For coverage issued in the individual or small group markets, a certification by a qualified actuary of the actuarial value of each plan of benefits included and the AV calculation summary.

~~C. Reasonableness of benefits in relation to premiums. With respect to filings of rate revisions for a previously approved form, benefits shall be deemed reasonable in relation to premiums provided the following standards are met:~~

~~1. Both a and b as follows shall be at least as great as the standards in 14VAC5-130-60 C.~~

~~a. The anticipated loss ratio over the entire period for which the revised rates are computed to provide coverage;~~

~~b. The ratio of (1) to (2) where~~

~~(1) is the sum of the accumulated benefits, from the original effective date of the form to the effective date of the revision, and the present value of future benefits, and~~

~~(2) is the sum of the accumulated premiums from the original effective date of the form to the effective date of the revision and the present value of future premiums,~~

~~such present values to be taken over the entire period for which the revised rates are computed to provide coverage, and such accumulated benefits and premiums to include an explicit estimate of the actual benefits and premiums from the last date as of which an accounting has been made to the effective date of the revision. Interest, at a rate consistent with that assumed in the determination of premiums, shall be used in the calculation of this loss ratio.~~

~~2. If an insurer wishes to charge a premium for policies issued on or after the effective date of the revision which is different from the premium charged for such policies issued prior to the revision date, then with respect to policies issued prior to the effective date of the revision the requirements of subdivision C 1 above must be satisfied, and with respect to policies issued on and after the effective date of the revision, the standards are the same as in 14VAC5-130-60 C, except that the average annual premium shall be determined based on an actual rather than an anticipated distribution of business.~~

---

# Regulations

---

## 14VAC5-130-75. Reasonableness of benefits in relation to revised premiums.

A. For individual accident and sickness insurance, group Medicare supplement insurance, and coverage issued in the individual market, with respect to filings of rate revisions for a previously approved form, benefits shall be deemed reasonable in relation to premiums provided that both subdivisions 1 and 2 of this subsection shall be at least as great as the standards in 14VAC5-130-70 B 11.

1. The anticipated loss ratio over the entire period for which the revised rates are computed to provide coverage; and

2. The ratio of (a) to (b) where (a) is the sum of the accumulated benefits, from the original effective date of the form to the effective date of the revision, and the present value of future benefits, and (b) is the sum of the accumulated premiums from the original effective date of the form to the effective date of the revision and the present value of future premiums.

Present values shall be taken over the entire period for which the revised rates are computed to provide coverage. Accumulated benefits and premiums shall include an explicit estimate of benefits and premiums from the last accounting date to the effective date of the revision. Interest, at a rate consistent with that assumed in the original determination of premiums shall be used in the calculation of this loss ratio.

B. For coverage issued in the small group market, the anticipated loss ratio over the entire period for which the revised rates are computed to provide coverage shall be at least as great as the standards in 14VAC5-130-70 B 11.

C. If a health insurance issuer wishes to charge a premium for policies issued on or after the effective date of the rate revision that is different from the premium charged for such policies issued prior to the revision date, then with respect to policies issued prior to the effective date of the revision the requirements of subsection A of this section must be satisfied, and with respect to policies issued on and after the effective date of the revision, the standards are the same as in 14VAC5-130-65, except that the average annual premium shall be determined based on an actual rather than an anticipated distribution of business.

## 14VAC5-130-80. Special considerations relating to new forms and rate increases. (Repealed.)

The Commission, in certain limited instances, may approve new forms and rate revisions with loss ratios lower than those indicated in 14VAC5-130-60 C and 14VAC5-130-70 C. Any such approval will require justification based on the special circumstances that may be applicable.

## 14VAC5-130-81. Risk pools and index rate.

A. A health insurance issuer shall consider the claims experience of all enrollees in all health benefit plans, other than grandfathered plans, in the individual market to be members of a single risk pool.

B. A health insurance issuer shall consider the claims experience of all enrollees in all health plans, other than grandfathered plans, in the small group market to be members of a single risk pool.

C. Each plan year or policy year, as applicable, a health insurance issuer shall establish an index rate based on the total combined claims costs for providing essential health benefits within the single risk pool of the individual or small group market. The index rate may be adjusted on a market-wide basis based on the total expected market-wide payments and charges under the risk adjustment and reinsurance programs in this Commonwealth. The premium rate for all of the health insurance issuer's plans shall use the applicable index rate, as adjusted in accordance with subsection D of this section.

D. A health insurance issuer may vary premium rates for a particular plan from its index rate for a relevant state market based only on the following actuarially justified plan-specific factors:

1. [ ~~The actuarial value and cost sharing~~ Cost-sharing ] design of the plan.

2. The plan's provider network, delivery system characteristics, and utilization management practices.

3. The benefits provided under the plan that are in addition to the essential health benefits. These additional benefits shall be pooled with similar benefits within a single risk pool and the claims experience from those benefits shall be utilized to determine rate variations for plans that offer those benefits in addition to essential health benefits.

4. Administrative costs, excluding health benefit exchange user fees.

5. With respect to catastrophic plans, the expected impact of the specific eligibility categories for those plans.

## 14VAC5-130-90. Monitoring of experience.

A. The ~~Commission~~ commission may prescribe procedures for the effective monitoring of actual experience under ~~policy forms~~ any form subject to this chapter.

B. The ~~Commission~~ commission may request information subsequent to approval of a policy form or rate revision so that it may determine whether premium rates are reasonable in relation to the benefits provided as specified herein in 14VAC5-130-60 C ~~14VAC5-130-65~~ and 14VAC5-130-70 C ~~14VAC5-130-75~~.

C. If the commission finds that the premium rate filed in accordance with this chapter is or will not meet the originally filed and approved loss ratio, the commission may require appropriate rate adjustments, premium refunds or premium credits as deemed necessary for the coverage to conform with the minimum loss ratio standards set forth in 14VAC5-130-65, and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current rates by the health insurance issuer for the coverage. [ The commission may take into consideration any previous

or expected premium refunds or credits. ] Detailed supporting documents will be required as necessary to justify the adjustment.

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

FORMS (14VAC5-130)

[Form 130A, Template for data supporting individual rate revision filings \(eff. 7/13\).](#)

[Form 130B, Trend analysis details \(eff. 7/13\).](#)

[ ~~Unified rate review template, at [http://www.serff.com/plan\\_management\\_data\\_templates.htm](http://www.serff.com/plan_management_data_templates.htm).~~

[Unified rate review template \[http://www.serff.com/plan\\\_management\\\_data\\\_templates.htm\]\(http://www.serff.com/plan\_management\_data\_templates.htm\)\]. \]](#)

V.A.R. Doc. No. R13-3605; Filed May 14, 2013, 6:53 p.m.

◆ ————— ◆

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

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

#### Fast-Track Regulation

**Title of Regulation:** 18VAC15-40. Virginia Certified Home Inspectors Regulations (amending 18VAC15-40-30).

**Statutory Authority:** §§ 54.1-201 and 54.1-501 of the Code of Virginia.

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

**Public Comment Deadline:** July 3, 2013.

**Effective Date:** August 1, 2013.

**Agency Contact:** Trisha L. Henshaw, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (804) 350-5354, or email [alhi@dpor.virginia.gov](mailto:alhi@dpor.virginia.gov).

**Basis:** Section 54.1-201 of the Code of Virginia states that the board has the power and duty to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) necessary to assure continued competency, prevent deceptive or misleading practices by practitioners, and effectively administer the regulatory system administered by the board.

Section 54.1-501 states that the board shall promulgate regulations regarding the professional qualifications of home

inspectors applicants, the requirements necessary for passing home inspectors examinations in whole or in part, the proper conduct of its examinations, the proper conduct of the home inspectors certified by the board, the implementation of exemptions from certifications requirements, and the proper discharge of its duties.

**Purpose:** The purpose of the amendment is to remove the requirement that training courses be taken in a classroom setting in order to meet certified home inspector entry requirements. The fact that distance learning is not acceptable as an entry requirement but is acceptable as a renewal requirement may create confusion among the regulant population. In addition, the desire to complete distance learning courses, online courses specifically, has grown in popularity. The cost reduction from not having to travel, find lodging, and take time away from work could be substantial for some individuals. With advancement in technology, the number of home inspector online courses has increased and are readily available. At the same time, classroom courses are becoming more difficult to find compared to online courses, which creates a barrier to certification. The board feels there will be no loss in the required skills resulting from the switch to distance learning.

**Rationale for Using Fast-Track Process:** The fast-track process is being used to make amendments to the board's regulation language for consistency, not to add any substantive changes to its existing regulations. The amendment also results in a less restrictive regulation.

**Substance:** No new substantive provisions or changes are being introduced. The amendments remove the requirement that restricts training courses to be conducted in a classroom setting to meet the certified home inspector entry requirements.

**Issues:** The primary advantage to the public is a more flexible training entry requirement, which may allow for additional certified home inspectors. There are no disadvantages to the public as precertification training is still a requirement.

The primary advantage to the Commonwealth is a more flexible training entry requirement, which may allow for additional certified home inspectors. There are no disadvantages to the Commonwealth as precertification training is still a requirement.

The primary advantage to those wishing to become certified home inspectors is that the barrier of completing classroom instruction is removed and more flexible and more available precertification training options, such as online courses, will now be accepted by the board.

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

Summary of the Proposed Amendments to Regulation. The Board for Asbestos, Lead, and Home Inspectors (Board) proposes to remove the requirement that training courses have

---

# Regulations

---

to be taken in a classroom setting to be accepted as meeting the certified home inspector entry requirements.

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

**Estimated Economic Impact.** Under the current regulations required training for the initial home inspector license must be in a classroom. The Board proposes to allow the initial training to be via distance learning including, but not limited to, online courses. The cost reduction from not having to travel, find lodging, and spend time away from work could be substantial for some individuals. Additionally, the Board has determined that there would be no loss in the required skills resulting from the newly permitted switch to distance learning. Thus, the proposed amendment should produce a net benefit.

**Businesses and Entities Affected.** The proposed amendment affects applicants for initial home inspector certification, as well as providers of training for home inspectors. There were 37 applicants for certification in fiscal year 2011.

**Localities Particularly Affected.** The proposed regulations do not disproportionately affect particular localities.

**Projected Impact on Employment.** The proposal amendments are unlikely to significantly affect total employment.

**Effects on the Use and Value of Private Property.** The proposed amendment will moderately reduce costs for some home inspector certification applicants. Providers of classroom training who do not also provide distance learning will likely lose some business, while some providers of online training or other distance learning will likely receive additional demand for their services.

**Small Businesses: Costs and Other Effects.** The proposed amendments will reduce costs for some small home inspector firms. Small providers of classroom training who do not also provide distance learning will likely lose some business, while some small providers of online training or other distance learning will likely receive additional demand for their services.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed amendments do not adversely affect small home inspector firms. Small providers of classroom training who do not also provide distance learning will likely lose some business, but there is no alternative method that reduces the adverse impact to these firms and still accomplishes the policy goal of reduced costs for initial training of home inspectors.

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

**Legal Mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact

analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

**Agency's Response to Economic Impact Analysis:** The Board for Asbestos, Lead, and Home Inspectors concurs with approval.

**Summary:**

*The proposed amendments remove the requirement that training courses to meet the certified home inspector entry requirements be taken in a classroom setting. These amendments allow for distance learning options, including, but not limited to, online courses, and make the regulations regarding precertification training more consistent with continuing professional education requirements.*

**18VAC15-40-30. Qualifications for certification.**

Every applicant for an individual home inspector certificate shall have the following qualifications:

1. The applicant shall be at least 18 years old.
2. The applicant shall meet the following educational and experience requirements:
  - a. High school diploma or equivalent; and
  - b. One of the following:
    - (1) Completed 35 contact hours of ~~classroom~~ instruction and have completed a minimum of 100 home inspections;
    - (2) Completed 35 contact hours of ~~classroom~~ instruction and have completed a minimum of 50 certified home inspections in compliance with this chapter under the direct supervision of a certified home inspector, who shall certify the applicant's completion of each inspection and shall be responsible for each inspection;

- (3) Completed 70 contact hours of ~~classroom~~ instruction and have completed a minimum of 50 home inspections; or
- (4) Completed 70 contact hours of ~~classroom~~ instruction and have completed a minimum of 25 certified home inspections in compliance with this chapter under the direct supervision of a certified home inspector, who shall certify the applicant's completion of each inspection and shall be responsible for each inspection.

Instruction courses shall cover the content areas of the board-approved examinations.

An applicant who cannot fulfill the ~~classroom~~ instruction requirement as outlined in this subsection may provide documentation of a minimum of 10 years of experience as a home inspector with a minimum of 250 home inspections completed in substantial compliance with this chapter to satisfy this requirement. The documentation is subject to board review and approval.

- 3. The applicant shall have passed a written competency examination approved by the board.
- 4. The board may accept proof of membership in good standing, in a national or state professional home inspectors association approved by the board, as satisfaction of subdivisions 1, 2, and 3 of this section, provided that the requirements for the applicant's class of membership in such association are equal to or exceed the requirements established by the board for all applicants.
- 5. The applicant shall have a good reputation for honesty, truthfulness, and fair dealing, and be competent to transact the business of a home inspector in such a manner as to safeguard the interests of the public.
- 6. The applicant shall disclose whether a certificate or license as a home inspector from any jurisdiction where certified or licensed has ever been suspended, revoked or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for certification in Virginia. The board may deny certification to any applicant so disciplined after examining the totality of the circumstances.
- 7. The applicant shall disclose any conviction or finding of guilt, regardless of adjudication, in any jurisdiction of the United States of any misdemeanor involving violence, repeat offenses, multiple offenses, or crimes that endangered public health or safety, or of any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Subject to the provisions of § 54.1-204 of the Code of Virginia, the board shall have the authority to determine, based upon all the information available, including the applicant's record of prior convictions, if the applicant is unfit or unsuited to engage in the profession of residential home inspections. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere shall be

considered a conviction for purposes of this subdivision. A certified copy of a final order, decree, or case decision by a court with the lawful authority to issue such order, decree or case decision shall be admissible as prima facie evidence of such conviction or guilt.

8. Procedures and appropriate conduct established by either the board or any testing service administering an examination approved by the board or both shall be followed by the applicant. Such procedures shall include any written instructions communicated prior to the examination date and any instructions communicated at the site, either written or oral, on the date of the examination. Failure to comply with all procedures established by the board or the testing service with regard to conduct at the examination shall be grounds for denial of the application.

9. Applicants shall show evidence of having obtained general liability insurance with minimum limits of \$250,000.

VA.R. Doc. No. R13-2848; Filed May 2, 2013, 10:00 a.m.

**BOARD OF MEDICINE**

**Final Regulation**

**Title of Regulation: 18VAC85-50. Regulations Governing the Practice of Physician Assistants (amending 18VAC85-50-10, 18VAC85-50-101, 18VAC85-50-110, 18VAC85-50-115, 18VAC85-50-130; repealing 18VAC85-50-150).**

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

**Effective Date: July 3, 2013.**

**Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4558, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.**

**Summary:**

*The amendments (i) change the requirement for the physician to see a patient not less frequently than every fourth visit for a continuing illness by allowing the physician and his assistant to determine the evaluation process and (ii) amend the regulations for consistency and clarity.*

**Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.**

**Part I  
General Provisions**

**18VAC85-50-10. Definitions.**

A. The following words and terms shall have the meanings ascribed to them in § 54.1-2900 of the Code of Virginia:

"Board."

"Physician assistant."

---

# Regulations

---

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

"Committee" means the Advisory Committee on Physician Assistants as specified in § 54.1-2950.1 of the Code of Virginia.

"Group practice" means the practice of a group of two or more doctors of medicine, osteopathy, or podiatry licensed by the board who practice as a partnership or professional corporation.

"Institution" means a hospital, nursing home or other health care facility, community health center, public health center, industrial medicine or corporation clinic, a medical service facility, student health center, or other setting approved by the board.

"NCCPA" means the National Commission on Certification of Physician Assistants.

~~"Protocol"~~ "Practice agreement" means a ~~set of directions~~ written agreement developed by the supervising physician that defines the supervisory relationship between the physician assistant and the physician and the circumstances under which the physician will see and evaluate the patient.

"Supervision" means:

1. "Alternate supervising physician" means a member of the same group or professional corporation or partnership of any licensee, any hospital or any commercial enterprise with the supervising physician. Such alternating supervising physician shall be a physician licensed in the Commonwealth who has registered with the board and who has accepted responsibility for the supervision of the service that a physician assistant renders.
2. "Direct supervision" means the physician is in the room in which a procedure is being performed.
3. "General supervision" means the supervising physician is easily available and can be physically present or accessible for consultation with the physician assistant within one hour.
4. "Personal supervision" means the supervising physician is within the facility in which the physician's assistant is functioning.
5. "Supervising physician" means the doctor of medicine, osteopathy, or podiatry licensed in the Commonwealth who has accepted responsibility for the supervision of the service that a physician assistant renders.
6. "Continuous supervision" means the supervising physician has on-going, regular communication with the physician assistant on the care and treatment of patients.

## Part IV Practice Requirements

### **18VAC85-50-101. Requirements for a ~~protocol~~ practice agreement.**

A. Prior to initiation of practice, a physician assistant and his supervising physician shall submit a written ~~protocol~~ practice agreement which spells out the roles and functions of the assistant. Any such ~~protocol~~ practice agreement shall take into account such factors as the physician assistant's level of competence, the number of patients, the types of illness treated by the physician, the nature of the treatment, special procedures, and the nature of the physician availability in ensuring direct physician involvement at an early stage and regularly thereafter. The ~~protocol~~ practice agreement shall also provide an evaluation process for the physician assistant's performance, including a requirement specifying the time period, proportionate to the acuity of care and practice setting, within which the supervising physician shall review the record of services rendered by the physician assistant.

B. The board may require information regarding the level of supervision, i.e. "direct," "personal" or "general," with which the supervising physician plans to supervise the physician assistant for selected tasks. The board may also require the supervising physician to document the assistant's competence in performing such tasks.

C. If the role of the assistant includes prescribing for drugs and devices, the written ~~protocol~~ practice agreement shall include ~~those~~:

1. Those schedules and categories of drugs and devices that are within the scope of practice and proficiency of the supervising physician; and
2. Requirements for periodic site visits by supervising licensees who supervise and direct assistants who provide services at a location other than where the licensee regularly practices.

D. If the initial practice agreement did not include prescriptive authority, an addendum to the practice agreement for prescriptive authority shall be submitted.

E. If there are any changes in supervision, authorization, or scope of practice, a revised practice agreement shall be submitted at the time of the change.

### **18VAC85-50-110. Responsibilities of the supervisor.**

The supervising physician shall:

1. ~~See and evaluate any patient who presents the same complaint twice in a single episode of care and has failed to improve significantly. Such physician involvement shall occur not less frequently than every fourth visit for a continuing illness~~ Review the clinical course and treatment plan for any patient who presents for the same acute complaint twice in a single episode of care and has failed to improve as expected. The supervising physician shall be involved with any patient with a continuing illness as noted

in the written practice agreement for the evaluation process.

2. Be responsible for all invasive procedures.
  - a. Under general supervision, a physician assistant may insert a nasogastric tube, bladder catheter, needle, or peripheral intravenous catheter, but not a flow-directed catheter, and may perform minor suturing, venipuncture, and subcutaneous intramuscular or intravenous injection.
  - b. All other invasive procedures not listed above must be performed under direct supervision unless, after directly supervising the performance of a specific invasive procedure three times or more, the supervising physician attests to the competence of the physician assistant to perform the specific procedure without direct supervision by certifying to the board in writing the number of times the specific procedure has been performed and that the physician assistant is competent to perform the specific procedure. After such certification has been accepted and approved by the board, the physician assistant may perform the procedure under general supervision.
3. Be responsible for all prescriptions issued by the assistant and attest to the competence of the assistant to prescribe drugs and devices.

**18VAC85-50-115. Responsibilities of the physician assistant.**

A. The physician assistant shall not render independent health care and shall:

1. Perform only those medical care services that are within the scope of the practice and proficiency of the supervising physician as prescribed in the physician assistant's ~~protocol~~ practice agreement. When a physician assistant is to be supervised by an alternate supervising physician outside the scope of specialty of the supervising physician, then the physician assistant's functions shall be limited to those areas not requiring specialized clinical judgment, unless a separate ~~protocol~~ practice agreement for that alternate supervising physician is approved and on file with the board.
2. Prescribe only those drugs and devices as allowed in Part V (18VAC85-50-130 et seq.) of this chapter.
3. Wear during the course of performing his duties identification showing clearly that he is a physician assistant.

B. If, due to illness, vacation, or unexpected absence, the supervising physician is unable to supervise the activities of his assistant, such supervising physician may temporarily delegate the responsibility to another doctor of medicine, ~~osteopathy~~ osteopathic medicine, or podiatry. The supervising physician so delegating his responsibility shall report such arrangement for coverage, with the reason therefor, to the board office in writing, subject to the following provisions:

1. For planned absence, such notification shall be received at the board office at least one month prior to the supervising physician's absence;
  2. For sudden illness or other unexpected absence, the board office shall be notified as promptly as possible, but in no event later than one week; and
  3. Temporary coverage may not exceed four weeks unless special permission is granted by the board.
- C. With respect to assistants employed by institutions, the following additional regulations shall apply:

1. No assistant may render care to a patient unless the physician responsible for that patient has signed the ~~protocol~~ practice agreement to act as supervising physician for that assistant. The board shall make available appropriate forms for physicians to join the ~~protocol~~ practice agreement for an assistant employed by an institution.
2. Any such ~~protocol~~ practice agreement as described in subdivision 1 of this subsection shall delineate the duties which said physician authorizes the assistant to perform.
3. The assistant shall, as soon as circumstances may dictate, report an acute or significant finding or change in clinical status to the supervising physician concerning the examination of the patient. The assistant shall also record his findings in appropriate institutional records.

D. Practice by a physician assistant in a hospital, including an emergency department, shall be in accordance with § 54.1-2952 of the Code of Virginia.

Part V  
Prescriptive Authority

**18VAC85-50-130. Qualifications for approval of prescriptive authority.**

An applicant for prescriptive authority shall meet the following requirements:

1. Hold a current, unrestricted license as a physician assistant in the Commonwealth;
2. Submit a ~~protocol~~ practice agreement acceptable to the board prescribed in 18VAC85-50-101. This ~~protocol~~ practice agreement must be approved by the board prior to issuance of prescriptive authority;
3. Submit evidence of successful passing of the NCCPA exam; and
4. Submit evidence of successful completion of a minimum of 35 hours of acceptable training to the board in pharmacology.

**18VAC85-50-150. ~~Protocol regarding prescriptive authority.~~ (Repealed.)**

~~A. A physician assistant with prescriptive authority may prescribe only within the scope of the written protocol as prescribed in 18VAC85-50-101.~~

---

# Regulations

---

~~B. A new protocol must be submitted with the initial application for prescriptive authority and with the application for each biennial renewal, if there have been any changes in supervision, authorization or scope of practice.~~

VA.R. Doc. No. R11-2642; Filed May 8, 2013, 10:48 a.m.

## BOARD OF NURSING

### Emergency Regulation

Title of Regulation: **18VAC90-30. Regulations Governing the Licensure of Nurse Practitioners (amending 18VAC90-30-10, 18VAC90-30-90, 18VAC90-30-100, 18VAC90-30-105, 18VAC90-30-120, 18VAC90-30-121; adding 18VAC90-30-122).**

Statutory Authority: §§ 54.1-2400 and 54.1-3005 of the Code of Virginia.

Effective Dates: May 8, 2013, through May 7, 2014.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4515, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

#### Preamble:

*Chapter 213 of the 2012 Acts of Assembly requires the Boards of Nursing and Medicine to promulgate regulations to implement provisions of the act with 280 days of its enactment. Therefore, the board is authorized to adopt emergency regulations establishing rules for practice of nurse practitioners in collaboration and consultation with a patient care team physician.*

*A team care approach emphasizing collaboration and consultation will allow for more creative and fuller utilization of nurse practitioners while ensuring appropriate setting-specific physician input. The law and regulations also embrace technological and communications advances such as telemedicine not envisaged under the earlier statutes. Nurse practitioner mobility and geographic outreach into underserved areas can be facilitated by the revised practice paradigm. Collaboration and consultation on patient care within a patient care team protects public health and safety by utilizing the strengths and expertise of nurse practitioners and physicians.*

*The emergency regulation revises requirements for practice of nurse practitioners consistent with a model of collaboration and consultation with a patient care team physician working under a mutually agreed-upon practice agreement within a patient care team. The amended regulation revises terminology and criteria for practice consistent with changes to the Code of Virginia as enacted by Chapter 213 of the 2012 Acts of the Assembly.*

## Part I General Provisions

### **18VAC90-30-10. Definitions.**

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

"Approved program" means a nurse practitioner education program that is accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs/Schools, American College of Nurse Midwives, Commission on Collegiate Nursing Education or the National League for Nursing Accrediting Commission or is offered by a school of nursing or jointly offered by a school of medicine and a school of nursing which grant a graduate degree in nursing and which hold a national accreditation acceptable to the boards.

"Boards" means the Virginia Board of Nursing and the Virginia Board of Medicine.

"Collaboration" means the communication and decision-making process among members of a patient care team related to the treatment and care of a patient and includes (i) communication of data and information about the treatment and care of a patient, including exchange of clinical observations and assessments, and (ii) development of an appropriate plan of care, including decisions regarding the health care provided, accessing and assessment of appropriate additional resources or expertise, and arrangement of appropriate referrals, testing, or studies.

"Committee" means the Committee of the Joint Boards of Nursing and Medicine.

"Consultation" means the communicating of data and information, exchanging of clinical observations and assessments, accessing and assessing of additional resources and expertise, problem solving, and arranging for referrals, testing, or studies.

~~"Controlling institution" means the college or university offering a nurse practitioner education program.~~

"Licensed nurse practitioner" means a an advanced practice registered nurse who has met the requirements for licensure as stated in Part II (18VAC90-30-60 et seq.) of this chapter.

~~"Licensed physician" means a person licensed by the Board of Medicine to practice medicine or osteopathic medicine.~~

"National certifying body" means a national organization that is accredited by an accrediting agency recognized by the U. S. Department of Education or deemed acceptable by the National Council of State Boards of Nursing and has as one of its purposes the certification of nurse anesthetists, nurse midwives or nurse practitioners, referred to in this chapter as professional certification, and whose certification of such persons by examination is accepted by the committee.

"Patient care team physician" means a person who holds an active, unrestricted license issued by the Virginia Board of Medicine to practice medicine or osteopathic medicine.

~~"Preceptor" means a physician or a licensed nurse practitioner who supervises and evaluates the nurse practitioner student.~~

~~"Protocol"~~ "Practice agreement" means a written or electronic statement, jointly developed by the collaborating patient care team physician(s) and the licensed nurse practitioner(s) that ~~directs and~~ describes the procedures to be followed and the ~~delegated medical~~ acts appropriate to the specialty practice area to be performed by the licensed nurse practitioner(s) in the care and management of patients. The practice agreement also describes the prescriptive authority of the nurse practitioner, if applicable.

**18VAC90-30-90. Certifying agencies.**

A. The boards shall accept the professional certification by examination of the following:

1. ~~American College of Nurse-Midwives~~ Midwifery Certification Council Board;
2. American Nurses' Credentialing Center;
3. ~~Council on Certification of Nurse Anesthetists~~ National Board of Certification and Recertification for Nurse Anesthetists;
4. Pediatric Nursing Certification Board;
5. National Certification Corporation ~~for the Obstetric, Gynecologic and Neonatal Nursing Specialties~~; and
6. American Academy of Nurse Practitioners.

B. The boards may accept professional certification from other certifying agencies on recommendation of the Committee of the Joint Boards of Nursing and Medicine provided the agency meets the definition of a national certifying body set forth in 18VAC90-30-10 and that the professional certification is awarded on the basis of:

1. Completion of an approved educational program as defined in 18VAC90-30-10; and
2. Achievement of a passing score on an examination.

**18VAC90-30-100. Renewal of licensure.**

A. Licensure of a nurse practitioner shall be renewed:

1. Biennially at the same time the license to practice as a registered nurse in Virginia is renewed; or
2. If licensed as a nurse practitioner with a multistate licensure privilege to practice in Virginia as a registered nurse, a licensee born in even-numbered years shall renew his license by the last day of the birth month in even-numbered years and a licensee born in odd-numbered years shall renew his license by the last day of the birth month in odd-numbered years.

B. The renewal notice of the license shall be ~~mailed sent~~ to the last known address of record of each nurse practitioner. Failure to receive the renewal notice shall not relieve the licensee of the responsibility for renewing the license by the expiration date.

C. The licensed nurse practitioner shall attest to compliance with continuing competency requirements of current professional certification or continuing education as prescribed in 18VAC90-30-105 and the license renewal fee prescribed in 18VAC90-30-50.

D. The license shall automatically lapse if the licensee fails to renew by the expiration date. Any person practicing as a nurse practitioner during the time a license has lapsed shall be subject to disciplinary actions by the boards.

**18VAC90-30-105. Continuing competency requirements.**

A. In order to renew a license biennially, a nurse practitioner initially licensed on or after May 8, 2002, shall hold current professional certification in the area of specialty practice from one of the certifying agencies designated in 18VAC90-30-90.

B. In order to renew a license biennially ~~on or after January 1, 2004~~, nurse practitioners licensed prior to May 8, 2002, shall meet one of the following requirements:

1. Hold current professional certification in the area of specialty practice from one of the certifying agencies designated in 18VAC90-30-90; or
2. Complete at least 40 hours of continuing education in the area of specialty practice approved by one of the certifying agencies designated in 18VAC90-30-90 or approved by Accreditation Council for Continuing Medical Education (ACCME) of the American Medical Association as a Category I Continuing Medical Education (CME) course.

C. The nurse practitioner shall retain evidence of compliance and all supporting documentation for a period of four years following the renewal period for which the records apply.

D. The boards shall periodically conduct a random audit of its licensees to determine compliance. The nurse practitioners selected for the audit shall provide the evidence of compliance and supporting documentation within 30 days of receiving notification of the audit.

E. The boards may delegate the authority to grant an extension or exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

Part III

Practice of Licensed Nurse Practitioners

**18VAC90-30-120. Practice of licensed nurse practitioners other than certified registered nurse ~~midwives~~ anesthetists.**

A. A nurse practitioner licensed in a category other than certified registered nurse ~~midwife~~ anesthetist shall be authorized to ~~engage in practices constituting the practice of medicine~~ render care in collaboration and consultation with and under the medical direction and supervision of a licensed patient care team physician as part of a patient care team.

---

# Regulations

---

~~B. The practice of all licensed nurse practitioners shall be based on specialty education preparation as a nurse practitioner; an advanced practice registered nurse in accordance with standards of the applicable certifying organization and written protocols as defined in 18VAC90-30-10, as identified in 18VAC90-30-90. A nurse practitioner licensed in the category of a certified nurse midwife shall practice in accordance with the Standards for the Practice of Midwifery (Revised 2011) defined by the American College of Nurse-Midwives.~~

~~C. The licensed nurse practitioner shall maintain a copy of the written protocol and shall make it available to the boards upon request. The written protocol shall include the nurse practitioner's authority for signatures, certifications, stamps, verifications, affidavits, referral to physical therapy, and endorsements provided it is:~~

- ~~1. In accordance with the specialty license of the nurse practitioner and with the scope of practice of the supervising physician;~~
- ~~2. Permitted by § 54.1-2957.02 or applicable sections of the Code of Virginia; and~~
- ~~3. Not in conflict with federal law or regulation.~~

~~D. A certified registered nurse anesthetist shall practice in accordance with the functions and standards defined by the American Association of Nurse Anesthetists (Scope and Standards for Nurse Anesthesia Practice, Revised 2005) and under the medical direction and supervision of a doctor of medicine or a doctor of osteopathic medicine or the medical direction and supervision of a dentist in accordance with rules and regulations promulgated by the Board of Dentistry.~~

~~E. For purposes of this section, the following definitions shall apply:~~

~~"Collaboration" means the process by which a nurse practitioner, in association with a physician, delivers health care services within the scope of practice of the nurse practitioner's professional education and experience and with medical direction and supervision, consistent with this chapter.~~

~~"Medical direction and supervision" means participation in the development of a written protocol including provision for periodic review and revision; development of guidelines for availability and ongoing communications that provide for and define consultation among the collaborating parties and the patient; and periodic joint evaluation of services provided, e.g., chart review, and review of patient care outcomes. Guidelines for availability shall address at a minimum the availability of the collaborating physician proportionate to such factors as practice setting, acuity, and geography.~~

## **18VAC90-30-121. Practice of nurse practitioners licensed as certified registered nurse midwives anesthetists.**

~~A. A nurse practitioner licensed as a certified nurse midwife shall be authorized to engage in practices constituting the~~

~~practice of medicine in collaboration and consultation with a licensed physician.~~

~~B. The practice of certified nurse midwives shall be based on specialty education preparation as a nurse practitioner and in accordance with standards of the applicable certifying organization and written protocols as defined in 18VAC90-30-10.~~

~~C. The licensed nurse practitioner shall maintain a copy of the written protocol and shall make it available to the boards upon request. The written protocol shall include the nurse practitioner's authority for signatures, certifications, stamps, verifications, affidavits, referral to physical therapy, and endorsements provided it is:~~

- ~~1. In accordance with the specialty license of the nurse practitioner and within the scope of practice of the supervising physician;~~
- ~~2. Permitted by § 54.1-2957.02 of the Code of Virginia or applicable sections of the Code of Virginia; and~~
- ~~3. Not in conflict with federal law or regulation.~~

~~D. A certified nurse midwife, in collaboration and consultation with a duly licensed physician, shall practice in accordance with the Standards for the Practice of Nurse-Midwifery (Revised 2003) defined by the American College of Nurse-Midwives.~~

~~E. For purposes of this section, the following definition shall apply:~~

~~"Collaboration and consultation" means practice in accordance with the Standards for the Practice of Midwifery (Revised 2003) defined by the American College of Nurse-Midwives to include participation in the development of a written protocol including provision for periodic review and revision; development of guidelines for availability and ongoing communications that provide for and define consultation among the collaborating parties and the patient; periodic joint evaluation of services provided; and review of patient care outcomes. Guidelines for availability shall address at a minimum the availability of the collaborating physician proportionate to such factors as practice setting, acuity, and geography.~~

~~A. A nurse practitioner licensed in a category of certified registered nurse anesthetist shall be authorized to render care under the supervision of a licensed doctor of medicine, osteopathy, podiatry, or dentistry.~~

~~B. The practice of a certified registered nurse anesthetist shall be based on specialty education preparation as an advanced practice registered nurse in accordance with standards of the applicable certifying organization and with the functions and standards defined by the American Association of Nurse Anesthetists (Standards for Nurse Anesthesia Practice, Revised 2013).~~

**18VAC90-30-122. Practice agreements.**

A. All nurse practitioners licensed in any category shall practice in accordance with a written or electronic practice agreement as defined in 18VAC90-30-10.

B. The written or electronic practice agreement shall include provision for:

1. The periodic review of patient charts or electronic patient records by a patient care team physician and may include provisions for visits to the site where health care is delivered in the manner and at the frequency determined by the patient care team;

2. Appropriate physician input in complex clinical cases and patient emergencies and for referrals; and

3. The nurse practitioner's authority for signatures, certifications, stamps, verifications, affidavits, and endorsements provided it is:

a. In accordance with the specialty license of the nurse practitioner and within the scope of practice of the patient care team physician;

b. Permitted by § 54.1-2957.02 or applicable sections of the Code of Virginia; and

c. Not in conflict with federal law or regulation.

C. The practice agreement shall be maintained by the nurse practitioner and provided to the boards upon request. For nurse practitioners providing care to patients within a hospital or health care system, the practice agreement may be included as part of documents delineating the nurse practitioner's clinical privileges or the electronic or written delineation of duties and responsibilities; however, the nurse practitioner shall be responsible for providing a copy to the boards upon request.

**DOCUMENTS INCORPORATED BY REFERENCE (18VAC90-30)**

~~Scope and Standards for Nurse Anesthesia Practice, revised 2005, American Association of Nurse Anesthetists.~~

~~Standards for the Practice of Midwifery, revised 2003, American College of Nurse-Midwives.~~

[Standards for Nurse Anesthesia Practice, revised 2013, American Association of Nurse Anesthetists.](#)

[Standards for the Practice of Midwifery, revised 2011, American College of Nurse-Midwives.](#)

V.A.R. Doc. No. R13-3349; Filed May 8, 2013, 11:11 a.m.

**Emergency Regulation**

**Title of Regulation: 18VAC90-40. Regulations for Prescriptive Authority for Nurse Practitioners (amending 18VAC90-40-10, 18VAC90-40-40, 18VAC90-40-60, 18VAC90-40-90, 18VAC90-40-110, 18VAC90-40-130; repealing 18VAC90-40-100).**

**Statutory Authority:** §§ 54.1-2400 and 54.1-2957.01 of the Code of Virginia.

**Effective Dates:** May 8, 2013, through May 7, 2014.

**Agency Contact:** Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4515, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

**Preamble:**

*Chapter 213 of the 2012 Acts of Assembly requires the Boards of Nursing and Medicine to promulgate regulations to implement provisions of the act with 280 days of its enactment. Therefore, the board is authorized to adopt emergency regulations establishing rules for practice of nurse practitioners in collaboration and consultation with a patient care team physician and revising the requirements for supervision and site visits.*

*Following the paradigm of the law, the regulations achieve the goal of increasing access chiefly by elimination of identified obstacles such as the current requirement for the physician to regularly practice or make site visits to the setting where nurse practitioners prescribe. Through appropriate collaboration and consultation, patient health and safety are protected by having an agreement between parties that includes the prescriptive authority for the nurse practitioner.*

*The emergency regulation revises requirements for prescriptive authority for nurse practitioners consistent with a model of collaboration and consultation with a patient care team physician working under a mutually agreed-upon practice agreement within a patient care team. The amended regulation revises terminology and criteria for practice consistent with changes to the Code of Virginia as enacted by Chapter 213 of the Acts of the Assembly.*

**Part I  
General Provisions**

**18VAC90-40-10. Definitions.**

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

"Boards" means the Virginia Board of Medicine and the Virginia Board of Nursing.

"Committee" means the Committee of the Joint Boards of Nursing and Medicine.

"Nonprofit health care clinics or programs" means a clinic organized in whole or in part for the delivery of health care services without charge or when a reasonable minimum fee is charged only to cover administrative costs.

"Nurse practitioner" means a an advanced practice registered nurse who has met the requirements for licensure as a nurse practitioner as stated in 18VAC90-30.

"Practice agreement" means a written or electronic agreement jointly developed by the supervising patient care team physician and the nurse practitioner for the practice of

---

# Regulations

---

the nurse practitioner that also describes and directs the prescriptive authority of the nurse practitioner, if applicable.

~~"Supervision" means that the physician documents being readily available for medical consultation with the licensed nurse practitioner or the patient, with the physician collaborating with the nurse practitioner for the agreed-upon course of treatment and medications prescribed.~~

## **18VAC90-40-40. Qualifications for initial approval of prescriptive authority.**

An applicant for prescriptive authority shall meet the following requirements:

1. Hold a current, unrestricted license as a nurse practitioner in the Commonwealth of Virginia; and
2. Provide evidence of one of the following:
  - a. Continued professional certification as required for initial licensure as a nurse practitioner; or
  - b. Satisfactory completion of a graduate level course in pharmacology or pharmacotherapeutics obtained as part of the nurse practitioner education program within the five years prior to submission of the application; or
  - c. Practice as a nurse practitioner for no less than 1000 hours and 15 continuing education units related to the area of practice for each of the two years immediately prior to submission of the application; or
  - d. Thirty contact hours of education in pharmacology or pharmacotherapeutics acceptable to the boards taken within five years prior to submission of the application. The 30 contact hours may be obtained in a formal academic setting as a discrete offering or as noncredit continuing education offerings and shall include the following course content:
    - (1) Applicable federal and state laws;
    - (2) Prescription writing;
    - (3) Drug selection, dosage, and route;
    - (4) Drug interactions;
    - (5) Information resources; and
    - (6) Clinical application of pharmacology related to specific scope of practice.
3. ~~Submit~~ Develop a practice agreement between the nurse practitioner and the supervising patient care team physician as required in 18VAC90-40-90. ~~The practice agreement must be approved by the boards prior to issuance of prescriptive authority;~~ and
4. File a completed application and pay the fees as required in 18VAC90-40-70.

## **18VAC90-40-60. Reinstatement of prescriptive authority.**

A. A nurse practitioner whose prescriptive authority has lapsed may reinstate within one renewal period by payment of the current renewal fee and the late renewal fee.

B. A nurse practitioner who is applying for reinstatement of lapsed prescriptive authority after one renewal period shall:

1. File the required application ~~and a new practice agreement~~;
2. Provide evidence of a current, unrestricted license to practice as a nurse practitioner in Virginia;
3. Pay the fee required for reinstatement of a lapsed authorization as prescribed in 18VAC90-40-70; and
4. If the authorization has lapsed for a period of two or more years, the applicant shall provide proof of:
  - a. Continued practice as a licensed nurse practitioner with prescriptive authority in another state; or
  - b. Continuing education, in addition to the minimal requirements for current professional certification, consisting of four contact hours in pharmacology or pharmacotherapeutics for each year in which the prescriptive authority has been lapsed in the Commonwealth, not to exceed a total of 16 hours.

C. An applicant for reinstatement of suspended or revoked authorization shall:

1. Petition for reinstatement and pay the fee for reinstatement of a suspended or revoked authorization as prescribed in 18VAC90-40-70;
2. Present evidence of competence to resume practice as a nurse practitioner with prescriptive authority; and
3. Meet the qualifications and resubmit the application required for initial authorization in 18VAC90-40-40.

### Part III

#### Practice Requirements

## **18VAC90-40-90. Practice agreement.**

A. A nurse practitioner with prescriptive authority may prescribe only within the scope of a the written or electronic practice agreement with a supervising patient care team physician ~~to be submitted with the initial application for prescriptive authority.~~

B. At any time there are changes in the ~~primary supervising patient care team~~ physician, authorization to prescribe, or scope of practice, the nurse practitioner shall submit a revised revise the practice agreement to the board and maintain the revised agreement.

C. The practice agreement shall contain the following:

1. A description of the prescriptive authority of the nurse practitioner within the scope allowed by law and the practice of the nurse practitioner.
2. An authorization for categories of drugs and devices within the requirements of § 54.1-2957.01 of the Code of Virginia.
3. The signatures of the primary supervising physician and any secondary physician who may be regularly called upon in the event of the absence of the primary physician signature of the patient care team physician who is

practicing with the nurse practitioner or a clear statement of the name of the patient care team physician who has entered into the practice agreement.

D. In accordance with § 54.1-2957.01 of the Code of Virginia, a physician shall not serve as a patient care team physician to more than six nurse practitioners with prescriptive authority at any one time.

**18VAC90-40-100. ~~Supervision and site visits. (Repealed.)~~**

~~A. In accordance with § 54.1-2957.01 of the Code of Virginia, physicians who enter into a practice agreement with a nurse practitioner for prescriptive authority shall supervise and direct, at any one time, no more than four nurse practitioners with prescriptive authority.~~

~~B. Except as provided in subsection C of this section, physicians shall regularly practice in any location in which the licensed nurse practitioner exercises prescriptive authority.~~

~~1. A separate practice setting may not be established for the nurse practitioner.~~

~~2. A supervising physician shall conduct a regular, random review of patient charts on which the nurse practitioner has entered a prescription for an approved drug or device.~~

~~C. Physicians who practice with a certified nurse midwife or with a nurse practitioner employed by or under contract with local health departments, federally funded comprehensive primary care clinics, or nonprofit health care clinics or programs shall:~~

~~1. Either regularly practice at the same location with the nurse practitioner or provide supervisory services to such separate practices by making regular site visits for consultation and direction for appropriate patient management. The site visits shall occur in accordance with the protocol, but no less frequently than once a quarter.~~

~~2. Conduct a regular, random review of patient charts on which the nurse practitioner has entered a prescription for an approved drug or device.~~

**18VAC90-40-110. Disclosure.**

A. The nurse practitioner shall include on each prescription written or dispensed his signature ~~and prescriptive authority number as issued by the boards~~ and the Drug Enforcement Administration (DEA) number, when applicable. If his practice agreement authorizes prescribing of only Schedule VI drugs and the nurse practitioner does not have a DEA number, he shall include the prescriptive authority number as issued by the boards.

B. The nurse practitioner shall disclose to patients at the initial encounter that he is a licensed nurse practitioner ~~and the name, address and telephone number of the supervising physician~~. Such disclosure may be included on a prescription pad or may be given in writing to the patient.

C. The nurse practitioner shall disclose, upon request of a patient or his legal representative, the name of the patient care

team physician and information regarding how to contact the patient care team physician.

Part IV  
Discipline

**18VAC90-40-130. Grounds for disciplinary action.**

A. The boards may deny approval of prescriptive authority, revoke or suspend authorization, or take other disciplinary actions against a nurse practitioner who:

1. Exceeds his authority to prescribe or prescribes outside of the written practice agreement with the ~~supervising patient care team~~ physician;
2. Has had his license as a nurse practitioner suspended, revoked or otherwise disciplined by the boards pursuant to 18VAC90-30-220;
3. Fails to comply with requirements for continuing competency as set forth in 18VAC90-40-55.

B. Unauthorized use or disclosure of confidential information received from the Prescription Monitoring Program shall be grounds for disciplinary action.

VA.R. Doc. No. R13-3350; Filed May 8, 2013, 11:12 a.m.

**BOARD OF LONG-TERM CARE ADMINISTRATORS**

**Fast-Track Regulation**

Title of Regulation: **18VAC95-20. Regulations Governing the Practice of Nursing Home Administrators (amending 18VAC95-20-10, 18VAC95-20-175, 18VAC95-20-220, 18VAC95-20-300, 18VAC95-20-310, 18VAC95-20-470).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 3, 2013.

Effective Date: July 18, 2013.

Agency Contact: Lisa Russell Hahn, Executive Director, Board of Long-Term Care Administrators, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4595, FAX (804) 527-4413, or email ltc@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations in accordance with the Administrative Process Act that are reasonable and necessary for the administration of a regulatory program.

Purpose: The overall purpose of the amended regulation is clarification and ease of compliance with requirements for licensure and maintenance of licensure. Regulations governing nursing home administrators are essential to oversee the competency and practices of those in charge of facilities with the most vulnerable citizens. An amendment to the standards of conduct section is intended to provide specific grounds for disciplinary action for conduct that is

---

# Regulations

---

clearly unprofessional to further protect the health, welfare, and safety of these citizens.

Rationale for Using Fast-Track Process: The fast-track process is being used because the changes are mostly technical and clarifying. There should be no controversy from these periodic review recommendations.

Substance: The substantive provisions include acceptance of continuing education courses approved or offered by government agencies, credit of 1,000 hours towards an administrator-in-training program for an applicant who has served as an assisted living administrator, and inclusion of general provisions of law as grounds for possible disciplinary action by the board.

Issues: The advantage to the public is assurance that the board will have sufficient grounds to discipline nursing home administrators who conduct their practices or obtain licensure in an unprofessional or illegal manner. Amendments will also clarify certain provisions and make the acquisition of continuing education more flexible and less costly. There are no disadvantages.

There are no advantages or disadvantages to the Commonwealth.

This action is in response to a periodic review of regulations.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. In addition to clarifying changes, the Board of Long-Term Care Administrators (Board) proposes to: 1) allow credit of 1,000 hours towards an administrator-in-training program for an applicant who has served as an assisted living administrator, 2) include acceptance of continuing education courses approved or offered by government agencies, and 3) add violating or cooperating with others in violating any of the provisions of Chapters 1 (§ 54.1-100 et seq.), 24 (§ 54.1-2400 et seq.) as grounds for possible disciplinary action by the Board.

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

Estimated Economic Impact. The current regulations state that the administrator-in-training program consists of 2,000 hours of continuous training in: 1) a nursing home licensed by the Virginia Board of Health or by a similar licensing body in another jurisdiction, 2) an institution operated by the Virginia State Mental Health, Mental Retardation and Substance Abuse Services Board in which long-term care is provided, 3) a certified nursing home owned or operated by an agency of any city, county, or the Commonwealth or of the United States government, or 4) a certified nursing home unit that is located in and operated by a licensed hospital as defined in § 32.1-123 of the Code of Virginia, a state-operated hospital, or a hospital licensed in another jurisdiction. The regulations do allow applicants who have been employed full time for four of the past five consecutive years immediately prior to

application as an assistant administrator or director of nursing in one of the above-described types of facilities to request approval to receive a maximum 1,000 hours of credit toward the total 2,000 required hours of continuous training.

In addition to experience in the above-described types of facilities, the Board proposes to allow applicants who have been employed full time for four of the past five consecutive years immediately prior to application as the licensed administrator of an assisted living facility to request approval to receive a maximum 1,000 hours of credit toward the total 2,000 required hours of continuous training. The Board believes this experience is sufficient to be at least equivalent to the training. Since this proposed amendment would significantly reduce the burden for those with experience as a licensed administrator of an assisted living facility to pursue becoming a licensed nursing home administrator, it may encourage some such individuals to pursue licensure who may otherwise not have, consequently moderately adding to the pool of qualified applicants. Given the potential reduction in cost in acquiring licensure without significant risk to the competency of licensees, this proposed change should produce a net benefit.

Under the current regulations, in order for continuing education to be approved by the Board, it must be related to health care administration and be approved by the National Association of Long Term Care Administrator Boards or by an accredited institution. The Board proposes to also allow continuing education offered or approved by a government agency. The proposed amendment will allow administrators who attend training offered by state or federal agencies to count such courses as continuing education. This may moderately reduce the cost of obtaining continuing education for licensees.

The current regulations list several causes under which the Board may refuse to admit a candidate to an examination, refuse to issue or renew a license or approval to an applicant, suspend a license for a stated period of time or indefinitely, reprimand a licensee, place a licensee on probation with such terms and conditions and for such time as it may designate, impose a monetary penalty, or revoke a license. The Board proposes to add to the list of causes violating or cooperating with others in violating any of the provisions of Chapters 1 (§ 54.1-100 et seq.) and 24 (§ 54.1-2400 et seq.). Other boards within the Department of Health Professions already include similar references to violations of Chapters 1 and 24 as grounds for discipline. Adding this language will enable the Board to more easily take action if there is evidence that the applicant or licensee has materially misrepresented facts in an application for licensure or willfully refused to furnish the Board with records in the course of an investigation.

Businesses and Entities Affected. The proposed amendments potentially affect the 790 licensed nursing home administrators, approximately 100 applicants for licensure,

223 preceptors, and 67 administrators-in-training, as well as nursing homes and providers of continuing education.<sup>1</sup>

**Localities Particularly Affected.** The proposed amendments do not disproportionately affect particular localities.

**Projected Impact on Employment.** The proposal amendments are unlikely to significantly affect total employment.

**Effects on the Use and Value of Private Property.** The proposal to allow administrator-in-training program applicants who have been employed full time for four of the past five consecutive years as the licensed administrator of an assisted living facility to request approval to receive a maximum 1,000 hours of credit toward the total 2,000 required hours of continuous training may encourage some such individuals to pursue nursing home administration, increasing the supply of qualified nursing home administrators. The potential moderate increase in supply of qualified nursing home administrators may moderately increase the value of some private nursing homes.

**Small Businesses: Costs and Other Effects.** The proposal to allow administrator-in-training program applicants who have been employed full time for four of the past five consecutive years as the licensed administrator of an assisted living facility to request approval to receive a maximum 1,000 hours of credit toward the total 2,000 required hours of continuous training may encourage some such individuals to pursue nursing home administration, increasing the supply of qualified nursing home administrators. The potential moderate increase in supply of qualified nursing home administrators may moderately reduce costs for some small private nursing homes.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed amendments are unlikely to adversely affect small businesses.

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

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

<sup>1</sup> Source for numbers: Department of Health Professions

**Agency's Response to Economic Impact Analysis:** The Board of Long-Term Care Administrators concurs with the analysis of the Department of Planning and Budget for amendments to 18VAC95-20 relating to changes recommended pursuant to a periodic review of regulations.

**Summary:**

*The amendments (i) allow credit of 1,000 hours towards an administrator-in-training program for an applicant who has served as an assisted living administrator, (ii) provide that the board will accept continuing education courses approved or offered by government agencies, and (iii) add violating or cooperating with others in violating any of the provisions of Chapters 1 (§ 54.1-100 et seq.) and 24 (§ 54.1-2400 et seq.) of the Code of Virginia as grounds for possible disciplinary action by the board.*

Part I  
General Provisions

**18VAC95-20-10. Definitions.**

A. The following words and terms when used in this chapter shall have the definitions ascribed to them in § 54.1-3100 of the Code of Virginia:

- Board
- Nursing home
- Nursing home administrator

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

"Accredited institution" means any degree-granting college or university accredited by an accrediting body approved by the United States Department of Education or any diploma-granting program approved by the Virginia Board of Nursing.

"A.I.T." means a person enrolled in the administrator-in-training program in nursing home administration in a licensed nursing home.

"Administrator-of-record" means the licensed nursing home administrator designated in charge of the general administration of the facility and identified as such to the facility's licensing agency.

"Approved sponsor" means an individual, business or organization approved by the National Association of Long Term Care Administrator Boards or by an accredited

---

# Regulations

---

~~education~~ institution to offer continuing education programs in accordance with this chapter.

"Continuing education" means the educational activities which serve to maintain, develop, or increase the knowledge, skills, performance and competence recognized as relevant to the nursing home administrator's professional responsibilities.

"Full time" means employment of at least 35 hours per week.

"Hour" means ~~60~~50 minutes of participation in a program for obtaining continuing education.

"Internship" means a practicum or course of study as part of a degree or post-degree program designed especially for the preparation of candidates for licensure as nursing home administrators that involves supervision by an accredited college or university of the practical application of previously studied theory.

"National examination" means a test used by the board to determine the competence of candidates for licensure as administered by the National Association of Long Term Care Administrator Boards or any other examination approved by the board.

"Preceptor" means a nursing home administrator currently licensed and registered or recognized by a nursing home administrator licensing board to conduct an administrator-in-training (A.I.T.) program.

~~"State examination" means a test used by the Board of Long Term Care Administrators to determine competency of a candidate relevant to regulations and laws in Virginia governing nursing home administration.~~

## **18VAC95-20-175. Continuing education requirements.**

A. In order to renew a nursing home administrator license, an applicant shall attest on his renewal application to completion of 20 hours of approved continuing education for each renewal year.

1. Up to 10 of the 20 hours may be obtained through Internet or self-study courses and up to 10 continuing education hours in excess of the number required may be transferred or credited to the next renewal year.

2. A licensee is exempt from completing continuing education requirements and considered in compliance on the first renewal date following initial licensure.

B. In order for continuing education to be approved by the board, it shall be related to health care administration and shall be approved or offered by the National Association of Long Term Care Administrator Boards ~~or by~~ (NAB), an accredited institution, or a government agency.

C. Documentation of continuing education.

1. The licensee shall retain in his personal files for a period of three renewal years complete documentation of continuing education including evidence of attendance or participation as provided by the approved sponsor for each course taken.

2. Evidence of attendance shall be an original document provided by the approved sponsor and shall include:

a. Date or dates the course was taken;

b. Hours of attendance or participation;

c. Participant's name; and

d. Signature of an authorized representative of the approved sponsor.

3. If contacted for an audit, the licensee shall forward to the board by the date requested a signed affidavit of completion on forms provided by the board and evidence of attendance or participation as provided by the approved sponsor.

D. The board may grant an extension of up to one year or an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the administrator, such as a certified illness, a temporary disability, mandatory military service, or officially declared disasters.

## Part III

### Requirements for Licensure

#### **18VAC95-20-220. Qualifications for initial licensure.**

One of the following sets of qualifications is required for licensure as a nursing home administrator:

1. Degree and practical experience. The applicant shall (i) hold a baccalaureate or higher degree in a health care-related field that meets the requirements of 18VAC95-20-221 from an accredited ~~college or university~~ institution; (ii) have completed not less than a 320-hour internship that addresses the Domains of Practice as specified in 18VAC95-20-390 in a licensed nursing home as part of the degree program under the supervision of a preceptor; and (iii) have received a passing grade on the national examination;

2. Certificate program. The applicant shall (i) hold a baccalaureate or higher degree from an accredited college or university; (ii) successfully complete a program with a minimum of 21 semester hours study in a health care-related field that meets the requirements of 18VAC95-20-221 from an accredited ~~college or university~~ institution; (iii) successfully complete not less than a 400-hour internship that addresses the Domains of Practice as specified in 18VAC95-20-390 in a licensed nursing home as part of the certificate program under the supervision of a preceptor; and (iv) have received a passing grade on the national examination; or

3. Administrator-in-training program. The applicant shall have (i) successfully completed an A.I.T. program which meets the requirements of Part IV (18VAC95-20-300 et seq.) of this chapter and (ii) received a passing grade on the national examination.

## Part IV

## Administrator-In-Training Program

**18VAC95-20-300. Administrator-in-training qualifications.**

A. To be approved as an administrator-in-training, a person shall:

1. Have received a passing grade on a total of 60 semester hours of education from an accredited ~~college or university~~ institution;
2. Obtain a preceptor to provide training;
3. Submit the fee prescribed in 18VAC95-20-80;
4. Submit the application provided by the board; and
5. Submit additional documentation as may be necessary to determine eligibility of the applicant and the number of hours required for the A.I.T. program.

B. With the exception of school transcripts, all required parts of the application package shall be submitted at the same time. An incomplete package shall be retained by the board for ~~one~~ one year after which time the application shall be destroyed and a new application and fee shall be required.

**18VAC95-20-310. Required hours of training.**

A. The A.I.T. program shall consist of 2,000 hours of continuous training in a facility as prescribed in 18VAC95-20-330 to be completed within 24 months. An extension may be granted by the board on an individual case basis. The board may reduce the required hours for applicants with certain qualifications as prescribed in subsection B and C of this section.

B. An A.I.T. applicant with prior health care work experience may request approval to receive a maximum 1,000 hours of credit toward the total 2,000 hours as follows:

1. The applicant shall have been employed full time for four of the past five consecutive years immediately prior to application as an assistant administrator or director of nursing in a training facility as prescribed in 18VAC95-20-330, or as the licensed administrator of an assisted living facility;
2. The applicant with experience as a hospital administrator shall have been employed full time for three of the past five years immediately prior to application as a hospital administrator-of-record or an assistant hospital administrator in a hospital setting having responsibilities in all of the following areas:
  - a. Regulatory;
  - b. Fiscal;
  - c. Supervisory;
  - d. Personnel; and
  - e. Management; or
3. The applicant who holds a license as a registered nurse shall have held an administrative level supervisory position for at least four of the past five consecutive years, in a training facility as prescribed in 18VAC95-20-330.

C. An A.I.T. applicant with the following educational qualifications shall meet these requirements:

1. An applicant with a master's or a baccalaureate degree in a health care-related field that meets the requirements of 18VAC95-20-221 with no internship shall complete 320 hours in an A.I.T. program;
2. An applicant with a master's degree in a field other than health care shall complete 1,000 hours in an A.I.T. program;
3. An applicant with a baccalaureate degree in a field other than health care shall complete 1,500 hours in an A.I.T. program; or
4. An applicant with 60 semester hours of education in an accredited college or university shall complete 2,000 hours in an A.I.T. program.

D. An A.I.T. shall be required to serve weekday, evening, night and weekend shifts and to receive training in all areas of nursing home operation.

## Part V

## Refusal, Suspension, Revocation, and Disciplinary Action

**18VAC95-20-470. Unprofessional conduct.**

The board may refuse to admit a candidate to an examination, refuse to issue or renew a license or approval to any applicant, suspend a license for a stated period of time or indefinitely, reprimand a licensee, place his license on probation with such terms and conditions and for such time as it may designate, impose a monetary penalty, or revoke a license for any of the following causes:

1. Conducting the practice of nursing home administration in such a manner as to constitute a danger to the health, safety, and well-being of the residents, staff, or public;
2. Failure to comply with federal, state, or local laws and regulations governing the operation of a nursing home;
3. Conviction of a felony or any misdemeanor involving abuse, neglect or moral turpitude;
4. ~~Failure to comply with any regulations of the board~~ Violating or cooperating with others in violating any of the provisions of Chapters 1 (§ 54.1-100 et seq.), 24 (§ 54.1-2400 et seq.), and this chapter or regulations of the board;  
or
5. Inability to practice with skill or safety.

VA.R. Doc. No. R13-3311; Filed May 10, 2013, 9:35 a.m.

**BOARD OF PHARMACY****Proposed Regulation**

**Title of Regulation: 18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-10, 18VAC110-20-240, 18VAC110-20-250, 18VAC110-20-270).**

**Statutory Authority: §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.**

---

# Regulations

---

## Public Hearing Information:

June 18, 2013 - 9:15 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 201, Board Room 2, Richmond, VA

## Public Comment Deadline: August 2, 2013.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4416, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of Chapter 24 (§ 54.1-2400 et seq.) of Title 54.1 of the Code of Virginia. Section 54.1-2400 provides the Board of Pharmacy the authority to promulgate regulations to administer the regulatory system.

The specific authority to issue licenses and permits to pharmacists and pharmacies and to control the sale and dispensing of prescription drugs is found in §§ 54.1-3300.1 and 54.1-3307 of the Code of Virginia.

Purpose: Regulations of the Board of Pharmacy address requirements for filing prescriptions and pharmacist verification of data entry into an automated data processing system. While the regulations satisfy the handling of prescriptions intended to be dispensed that day, pharmacists are experiencing increased requests from patients to place prescriptions for routine medications on hold until the patient is in need of the prescribed drug.

Current regulations do not specifically address when the data entry of these prescriptions must be performed. Some pharmacies store these prescriptions in a single file until needed. Some pharmacies perform data entry of the prescription and file by the date of entry into the computer, which is noncompliant with the current regulation, but find it burdensome to retrieve and move the prescription to the file associated with the date of initial dispensing. When the data entry is performed on a separate date than the date of initial dispensing, a pharmacist may not be verifying the accuracy of the data entered at the time of entry.

The lack of regulation on this issue may contribute to misplacing the prescription and may impede patients from obtaining their medication when needed. Dispensing of prescriptions fraudulently due to improper handling of the prescriptions and possible dispensing errors resulting from data entry being performed on a separate date from the date of initial dispensing without pharmacist verification of the accuracy of the data may also occur because of lack of regulation. Therefore, the board has promulgated amendments to regulations regarding on-hold prescriptions to address issues of public health and safety.

Substance: The following sections of the regulations were identified as having issues to be addressed in the promulgation of amended regulations:

18VAC110-20-240 - The current requirement that all prescriptions shall be filed chronologically by date of initial

dispensing is problematic when filing on-hold prescriptions, which are prescriptions presented by the patient to the pharmacist and maintained by the pharmacist for days or weeks until the patient needs the prescription to be dispensed. Currently the regulation requires a pharmacist to physically retrieve the prescription from the file that it was originally maintained in on the date of receipt and relocate it to the file associated with the date of initial dispensing. This requirement creates an undue burden on practicing pharmacists, particularly in community pharmacies where on-hold prescriptions are more frequently received. Therefore, the proposed regulation creates a less burdensome filing requirement for on-hold prescriptions.

Current regulations do not specifically address when data entry of the on-hold prescription must be performed and how the prescription must be maintained prior to the initial dispensing. Therefore, the following concerns may exist: (i) if data entry and proper filing for the on-hold prescription is not performed on or about the date of receipt then the prescription may be misplaced, which may impede a patient from readily obtaining the drug when needed; or (ii) the possibility for the drug being diverted and dispensed fraudulently either at the receiving pharmacy or another pharmacy is increased. Proposed regulations address data entry requirements and maintenance of on-hold prescriptions.

18VAC110-20-250 - The current regulation requires pharmacists making use of an automated data processing system to document on a daily printout or logbook that the information entered into the computer each time a pharmacist fills a prescription for a drug is correct. The proposed regulation requires a pharmacist to document the fact that the information entered into the computer that day is correct, regardless of whether the prescription is dispensed that day.

18VAC110-20-270 - The proposed amendments ensure that the prospective drug review required of pharmacists prior to dispensing is conducted by the pharmacist at the time an on-hold prescription is filled.

Issues: The advantage to the public is assurance that on-hold prescriptions retained for patients have been reviewed for accuracy and appropriateness and have been filed in a manner that facilitates retrieval. There are no disadvantages. There are no advantages or disadvantages to the Commonwealth. This action is in response to a petition for rulemaking.

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

Summary of the Proposed Amendments to Regulation. The Board of Pharmacy (Board) proposes to amend its regulations to define on-hold prescriptions and to allow pharmacies to file prescriptions chronologically either by the date they are initially filled or by the date they are initially entered into an automated data system (if such a system is used by a pharmacy).

Result of Analysis. Benefits likely outweigh costs for implementing these proposed changes.

**Estimated Economic Impact.** Current regulations require that pharmacies file prescriptions chronologically by the date they are filled. For most prescriptions, this does not present any issues because most prescriptions are filled the same day that they are given to a pharmacy. Some prescriptions, however, are given to pharmacies to fill at a later date; current regulation requires that pharmacists retrieve these on-hold prescriptions from where they were filed when first presented and then move them to another file on the day they are actually filled. This requires extra work on the part of the pharmacist and likely increases the chance that a prescription is lost or misfiled (which can lead to delays in patients getting their prescriptions correctly filled). Additionally current regulations do not address when data entry and data verification must be performed for on-hold prescriptions.

In order to address these issues, the Board now proposes to amend its regulations to 1) add a definition for on-hold prescriptions, 2) allow pharmacies to file prescriptions either by the date they are initially dispensed or by the date that they are initially entered into the pharmacy's automated data processing system (which presumably is the date that patients with prescriptions that they don't need to fill immediately present their prescription to a pharmacy) and 3) require that the pharmacist on-duty when an on-hold prescription is entered in the automated data processing system verify the accuracy of the data entry and that the pharmacist on-duty who finally dispenses the on-hold prescription conduct the prospective drug review required by the Drug Control Act. No affected entity is likely to incur additional costs on account of these regulatory changes. Pharmacists will likely benefit from this change as it will reduce both the work and the confusion that may surround the handling of on-hold prescriptions. Patients may also benefit from these proposed changes as they may reduce the chance that their prescriptions may be misfiled or lost.

**Businesses and Entities Affected.** The Department of Health Professions (DHP) reports that there are 1,751 licensed pharmacies in the Commonwealth. Because pharmacies are not licensed by type, DHP does not know exactly how many of those 1,751 licensees are retail pharmacies that would be affected by these regulatory changes but it is likely that the vast majority are of this type.

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

**Projected Impact on Employment.** This proposed regulatory action is unlikely to have any effect on employment in the Commonwealth.

**Effects on the Use and Value of Private Property.** These proposed regulatory changes are unlikely to affect the use or value of private property in the Commonwealth.

**Small Businesses: Costs and Other Effects.** No small business is likely to incur any costs on account of this regulatory action.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** No small business is likely to incur any costs on account of this regulatory action.

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

**Legal Mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

**Agency's Response to Economic Impact Analysis:** The Board of Pharmacy concurs with the economic impact analysis of the Department of Planning and Budget on proposed amended regulations for 18VAC110-20 (Regulations Governing the Practice of Pharmacy) relating to regulations for on-hold prescriptions.

**Summary:**

*The proposed amendments (i) add a definition of "on-hold prescription," (ii) allow a prescription to be filed either by the date of initial dispensing or by the date it is entered into an automated data processing system, if the prescription is an on-hold prescription, until the patient needs the prescription, (iii) require verification of the accuracy of the prescription information entered into the data system by the pharmacist who enters the on-hold prescription, and (iv) require a prospective drug review by the pharmacist who subsequently dispenses the on-hold prescription.*

---

# Regulations

---

## Part I General Provisions

### 18VAC110-20-10. Definitions.

In addition to words and terms defined in §§ 54.1-3300 and 54.1-3401 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"ACPE" means the Accreditation Council for Pharmacy Education.

"Acquisition" of an existing entity permitted, registered or licensed by the board means (i) the purchase or transfer of all or substantially all of the assets of the entity or of any corporation that owns or controls the entity; (ii) the creation of a partnership by a sole proprietor or change in partnership composition; (iii) the acquiring of 50% or more of the outstanding shares of voting stock of a corporation owning the entity or of the parent corporation of a wholly owned subsidiary owning the entity, except that this shall not apply to any corporation the voting stock of which is actively traded on any securities exchange or in any over-the-counter market; or (iv) the merger of a corporation owning the entity, or of the parent corporation of a wholly owned subsidiary owning the entity, with another business or corporation.

"Alternate delivery site" means a location authorized in 18VAC110-20-275 to receive dispensed prescriptions on behalf of and for further delivery or administration to a patient.

"Beyond-use date" means the date beyond which the integrity of a compounded, repackaged, or dispensed drug can no longer be assured and as such is deemed to be adulterated or misbranded as defined in §§ 54.1-3461 and 54.1-3462 of the Code of Virginia.

"Board" means the Virginia Board of Pharmacy.

"CE" means continuing education as required for renewal of licensure by the Board of Pharmacy.

"CEU" means a continuing education unit awarded for credit as the equivalent of 10 contact hours.

"Chart order" means a lawful order for a drug or device entered on the chart or in a medical record of a patient by a prescriber or his designated agent.

"Compliance packaging" means packaging for dispensed drugs which is comprised of a series of containers for solid oral dosage forms and which is designed to assist the user in administering or self-administering the drugs in accordance with directions for use.

"Contact hour" means the amount of credit awarded for 60 minutes of participation in and successful completion of a continuing education program.

"Correctional facility" means any prison, penitentiary, penal facility, jail, detention unit, or other facility in which persons are incarcerated by government officials.

"DEA" means the United States Drug Enforcement Administration.

"Drug donation site" means a permitted pharmacy that specifically registers with the board for the purpose of receiving or redispensing eligible donated prescription drugs pursuant to § 54.1-3411.1 of the Code of Virginia.

"Electronic prescription" means a written prescription that is generated on an electronic application in accordance with 21 CFR Part 1300 and is transmitted to a pharmacy as an electronic data file.

"Expiration date" means that date placed on a drug package by the manufacturer or repacker beyond which the product may not be dispensed or used.

"Facsimile (FAX) prescription" means a written prescription or order which is transmitted by an electronic device over telephone lines which sends the exact image to the receiver (pharmacy) in a hard copy form.

"FDA" means the United States Food and Drug Administration.

"Floor stock" means a supply of drugs that have been distributed for the purpose of general administration by a prescriber or other authorized person pursuant to a valid order of a prescriber.

"Foreign school of pharmacy" means a school outside the United States and its territories offering a course of study in basic sciences, pharmacology, and pharmacy of at least four years in duration resulting in a degree that qualifies a person to practice pharmacy in that country.

"Forgery" means a prescription that was falsely created, falsely signed, or altered.

"FPGEC certificate" means the certificate given by the Foreign Pharmacy Equivalency Committee of NABP that certifies that the holder of such certificate has passed the Foreign Pharmacy Equivalency Examination and a credential review of foreign training to establish educational equivalency to board approved schools of pharmacy, and has passed approved examinations establishing proficiency in English.

"Generic drug name" means the nonproprietary name listed in the United States Pharmacopeia-National Formulary (USP-NF) or in the USAN and the USP Dictionary of Drug Names.

"Hospital" or "nursing home" means those facilities as defined in Title 32.1 of the Code of Virginia or as defined in regulations by the Virginia Department of Health.

"Inactive license" means a license which is registered with the Commonwealth but does not entitle the licensee to practice, the holder of which is not required to submit documentation of CE necessary to hold an active license.

"Long-term care facility" means a nursing home, retirement care, mental care or other facility or institution which provides extended health care to resident patients.

"NABP" means the National Association of Boards of Pharmacy.

"Nuclear pharmacy" means a pharmacy providing radiopharmaceutical services.

"On duty" means that a pharmacist is on the premises at the address of the permitted pharmacy and is available as needed.

"On-hold prescription" means a valid prescription that is received and maintained at the pharmacy for initial dispensing on a future date.

"Permitted physician" means a physician who is licensed pursuant to § 54.1-3304 of the Code of Virginia to dispense drugs to persons to whom or for whom pharmacy services are not reasonably available.

"Perpetual inventory" means an ongoing system for recording quantities of drugs received, dispensed or otherwise distributed by a pharmacy.

"Personal supervision" means the pharmacist must be physically present and render direct, personal control over the entire service being rendered or act being performed. Neither prior nor future instructions shall be sufficient nor, shall supervision rendered by telephone, written instructions, or by any mechanical or electronic methods be sufficient.

"Pharmacy closing" means that the permitted pharmacy ceases pharmacy services or fails to provide for continuity of pharmacy services or lawful access to patient prescription records or other required patient records for the purpose of continued pharmacy services to patients.

"Pharmacy technician trainee" means a person who is currently enrolled in an approved pharmacy technician training program and is performing duties restricted to pharmacy technicians for the purpose of obtaining practical experience in accordance with § 54.1-3321 D of the Code of Virginia.

"PIC" means the pharmacist-in-charge of a permitted pharmacy.

"Practice location" means any location in which a prescriber evaluates or treats a patient.

"Prescription department" means any contiguous or noncontiguous areas used for the compounding, dispensing and storage of all Schedule II through VI drugs and devices and any Schedule I investigational drugs.

"PTCB" means the Pharmacy Technician Certification Board, co-founded by the American Pharmaceutical Association and the American Society of Health System Pharmacists, as the national organization for voluntary examination and certification of pharmacy technicians.

"Quality assurance plan" means a plan approved by the board for ongoing monitoring, measuring, evaluating, and, if necessary, improving the performance of a pharmacy function or system.

"Radiopharmaceutical" means any drug that exhibits spontaneous disintegration of unstable nuclei with the

emission of nuclear particles or photons and includes any nonradioactive reagent kit or radionuclide generator that is intended to be used in the preparation of any such substance, but does not include drugs such as carbon-containing compounds or potassium-containing salts that include trace quantities of naturally occurring radionuclides. The term also includes any biological product that is labeled with a radionuclide or intended solely to be labeled with a radionuclide.

"Repackaged drug" means any drug removed from the manufacturer's original package and placed in different packaging.

"Robotic pharmacy system" means a mechanical system controlled by a computer that performs operations or activities relative to the storage, packaging, labeling, dispensing, or distribution of medications, and collects, controls, and maintains all transaction information.

"Safety closure container" means a container which meets the requirements of the federal Poison Prevention Packaging Act of 1970 (15 USC §§ 1471-1476), i.e., in testing such containers, that 85% of a test group of 200 children of ages 41-52 months are unable to open the container in a five-minute period and that 80% fail in another five minutes after a demonstration of how to open it and that 90% of a test group of 100 adults must be able to open and close the container.

"Satellite pharmacy" means a pharmacy which is noncontiguous to the centrally permitted pharmacy of a hospital but at the location designated on the pharmacy permit.

"Special packaging" means packaging that is designed or constructed to be significantly difficult for children under five years of age to open to obtain a toxic or harmful amount of the drug contained therein within a reasonable time and not difficult for normal adults to use properly, but does not mean packaging which all such children cannot open or obtain a toxic or harmful amount within a reasonable time.

"Special use permit" means a permit issued to conduct a pharmacy of a special scope of service that varies in any way from the provisions of any board regulation.

"Storage temperature" means those specific directions stated in some monographs with respect to the temperatures at which pharmaceutical articles shall be stored, where it is considered that storage at a lower or higher temperature may produce undesirable results. The conditions are defined by the following terms:

1. "Cold" means any temperature not exceeding 8°C (46°F). A refrigerator is a cold place in which temperature is maintained thermostatically between 2° and 8°C (36° and 46°F). A freezer is a cold place in which the temperature is maintained thermostatically between -20° and -10°C (-4° and 14°F).

---

# Regulations

---

2. "Room temperature" means the temperature prevailing in a working area.

3. "Controlled room temperature" means a temperature maintained thermostatically that encompasses the usual and customary working environment of 20° to 25°C (68° to 77°F); that results in a mean kinetic temperature calculated to be not more than 25°C; and that allows for excursions between 15° and 30°C (59° and 86°F) that are experienced in pharmacies, hospitals, and warehouses.

4. "Warm" means any temperature between 30° and 40°C (86° and 104°F).

5. "Excessive heat" means any temperature above 40°C (104°F).

6. "Protection from freezing" means where, in addition to the risk of breakage of the container, freezing subjects a product to loss of strength or potency, or to the destructive alteration of its characteristics, the container label bears an appropriate instruction to protect the product from freezing.

7. "Cool" means any temperature between 8° and 15°C (46° and 59°F).

"Terminally ill" means a patient with a terminal condition as defined in § 54.1-2982 of the Code of Virginia.

"Unit dose container" means a container that is a single-unit container, as defined in United States Pharmacopeia-National Formulary, for articles intended for administration by other than the parenteral route as a single dose, direct from the container.

"Unit dose package" means a container that contains a particular dose ordered for a patient.

"Unit dose system" means a system in which multiple drugs in unit dose packaging are dispensed in a single container, such as a medication drawer or bin, labeled only with patient name and location. Directions for administration are not provided by the pharmacy on the drug packaging or container but are obtained by the person administering directly from a prescriber's order or medication administration record.

"USP-NF" means the United States Pharmacopeia-National Formulary.

"Well-closed container" means a container that protects the contents from extraneous solids and from loss of the drug under the ordinary or customary conditions of handling, shipment, storage, and distribution.

## Part VI

### Drug Inventory and Records

#### **18VAC110-20-240. Manner of maintaining records, prescriptions, inventory records.**

A. Each pharmacy shall maintain the inventories and records of drugs as follows:

1. Inventories and records of all drugs listed in Schedules I and II shall be maintained separately from all other records of the pharmacy. Each pharmacy shall maintain a perpetual

inventory of all Schedule II drugs received and dispensed, with reconciliation at least monthly. Electronic monitoring at the pharmacy or by another entity that provides alerts for discrepancies between drugs received and drugs dispensed is acceptable provided such alerts are reviewed at least monthly.

2. Inventories and records of drugs listed in Schedules III, IV, and V may be maintained separately or with records of Schedule VI drugs but shall not be maintained with other records of the pharmacy.

3. All executed order forms, prescriptions, and inventories of Schedule II through V drugs shall be maintained at the same address as the stock of drugs to which the records pertain. If authorized by DEA, other records pertaining to Schedule II through V drugs, such as invoices, may be maintained in an off-site database or in secured storage. All records in off-site storage shall be retrieved and made available for inspection or audit within 48 hours of a request by the board or an authorized agent.

4. All inventories required by § 54.1-3404 of the Code of Virginia shall be signed and dated by the person taking the inventory and shall indicate whether the inventory was taken prior to the opening of business or after close of business. A 24-hour pharmacy with no opening or closing of business shall clearly document whether the receipt or distribution of drugs on the inventory date occurred before or after the inventory was taken.

5. Invoices or other records showing receipts of Schedule VI drugs shall be maintained, but may be stored in an electronic database or record as an electronic image that provides an exact, clearly legible, image of the document or in secured storage either on or off site. All records in off-site storage or database shall be retrieved and made available for inspection or audit within 48 hours of a request by the board or an authorized agent.

6. All records required by this section shall be filed chronologically and maintained for a period of not less than two years from the date of transaction.

#### B. Prescriptions.

1. A hard copy prescription shall be placed on file for every initial prescription dispensed and be maintained for two years from the date of last refill. All prescriptions shall be filed chronologically by date of initial dispensing or by date of initial entry into the automated data processing system in compliance with 18VAC110-20-250 if such a system is employed by the pharmacy.

2. Schedule II drugs. Prescriptions for Schedule II drugs shall be maintained in a separate prescription file.

3. Schedule III through V drugs. Prescriptions for Schedule III through V drugs shall be maintained either in a separate prescription file for drugs listed in Schedules III, IV, and V only or in such form that they are readily retrievable from the other prescriptions of the pharmacy. Prescriptions will

be deemed readily retrievable if, at the time they are initially filed, the face of the prescription is stamped in red ink in the lower right corner with the letter "C" no less than one inch high and filed in the prescription file for drugs listed in the usual consecutively numbered prescription file for Schedule VI drugs. However, if a pharmacy employs an automated data processing system or other electronic recordkeeping system for prescriptions which permits identification by prescription number and retrieval of original documents by prescriber's name, patient's name, drug dispensed, and date filled, then the requirement to mark the hard copy prescription with a red "C" is waived.

### C. Chart orders.

1. A chart order written for a patient in a hospital or long-term care facility, a patient receiving home infusion services, or a hospice patient pursuant to § 54.1-3408.01 A of the Code of Virginia shall be exempt from having to contain all required information of a written prescription provided:

- a. This information is contained in other readily retrievable records of the pharmacy; and
- b. The pharmacy maintains a current policy and procedure manual that sets out where this information is maintained and how to retrieve it and the minimum requirements for chart orders consistent with state and federal law and accepted standard of care.

2. A chart order may serve as the hard copy prescription for those patients listed in subdivision 1 of this subsection.

3. Requirements for filing of chart orders.

a. Chart orders shall be filed chronologically by date of initial dispensing with the following exception: If dispensing data can be produced showing a complete audit trail for any requested drug for a specified time period and each chart order is readily retrievable upon request, chart orders may be filed using another method. Such alternate method shall be clearly documented in a current policy and procedure manual.

b. If a single chart order contains both an order for a Schedule II drug and one or more orders for a drug in another schedule, where the Schedule II drug is not floor stocked, but is dispensed from the pharmacy pursuant to this order for the specific patient, the original order must be filed with records of dispensing of Schedule II drugs and a copy of the order placed in the file for other schedules.

### 18VAC110-20-250. Automated data processing records of prescriptions.

A. An automated data processing system may be used for the storage and retrieval of original and refill dispensing information for prescriptions instead of manual record keeping requirements, subject to the following conditions:

1. A prescription shall be placed on file as set forth in 18VAC110-20-240 B with the following provisions:

a. In lieu of a hard copy file for Schedule VI prescriptions, an electronic image of a prescription may be maintained in an electronic database provided it preserves and provides an exact image of the prescription that is clearly legible and made available within 48 hours of a request by a person authorized by law to have access to prescription information. Storing electronic images of prescriptions for Schedule II-V controlled substances instead of the hard copy shall only be authorized if such storage is allowed by federal law.

b. If the pharmacy system's automated data processing system fields are automatically populated by an electronic prescription, the automated record shall constitute the prescription and a hard copy or electronic image is not required.

c. For Schedule II-V controlled substances, electronic prescriptions shall be maintained in accordance with federal law and regulation.

2. Any computerized system shall provide retrieval (via computer monitor display or printout) of original prescription information for those prescriptions which are currently authorized for dispensing.

3. Any computerized system shall also provide retrieval via computer monitor display or printout of the dispensing history for prescriptions dispensed during the past two years.

4. ~~Documentation of the fact that the information entered into the computer each time a pharmacist fills a prescription for a drug is correct shall be provided by the individual pharmacist who makes use of such system indicating that the information entered into the computer system is correct for each on-hold prescription or for each prescription that is dispensed shall be provided by the individual pharmacist who makes use of such system.~~ If a printout is maintained of each day's prescription dispensing data or data entry of an on-hold prescription, the printout shall be verified, dated, and signed by the individual pharmacist who dispensed the prescription or verified the accuracy of the data entry. The individual pharmacist shall verify that the data indicated is correct and then sign the document in the same manner as his name appears on his pharmacist license (e.g., J. H. Smith or John H. Smith).

If a bound log book, or separate file is maintained rather than a printout, each individual pharmacist involved in dispensing shall sign a statement each day in the log, in the manner previously described, attesting to the fact that the dispensing information and data entry of on-hold prescriptions entered into the computer that day ~~has~~ have been reviewed by him and ~~is~~ are correct as shown.

B. Printout of dispensing data requirements. Any computerized system shall have the capability of producing a printout of any dispensing data which the user pharmacy is responsible for maintaining under the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia) and ~~such~~ any

---

# Regulations

---

data entry of on-hold prescriptions. Such printout shall be provided within 48 hours of a request of an authorized agent.

## Part VII

### Prescription Order and Dispensing Standards

#### **18VAC110-20-270. Dispensing of prescriptions; certification of completed prescriptions; supervision of pharmacy technicians.**

A. In addition to the acts restricted to a pharmacist in § 54.1-3320 A of the Code of Virginia, a pharmacist shall provide personal supervision of compounding of extemporaneous preparations by pharmacy technicians.

B. A pharmacist shall determine the number of pharmacy interns, pharmacy technicians, and pharmacy technician trainees he can safely and competently supervise at one time; however, no pharmacist shall supervise more than four persons acting as pharmacy technicians at one time.

C. After the prescription has been prepared and prior to the delivery of the order, the pharmacist shall inspect the prescription product to verify its accuracy in all respects, and place his initials on the record of dispensing as a certification of the accuracy of, and the responsibility for, the entire transaction. Such record showing verification of accuracy shall be maintained on a pharmacy record for the required time period of two years, unless otherwise specified in regulation.

D. If a pharmacist declines to fill a prescription for any reason other than the unavailability of the drug prescribed, he shall record on the back of the prescription the word "declined"; the name, address, and telephone number of the pharmacy; the date filling of the prescription was declined; and the signature of the pharmacist.

E. If a pharmacist determines from a prescriber or by other means, including the use of his professional judgment, that a prescription presented for dispensing is a forgery, the pharmacist shall not return the forged prescription to the person presenting it. The forged prescription may be given to a law-enforcement official investigating the forgery; or it shall be retained for a minimum of 30 days before destroying it, in the event it is needed for an investigative or other legitimate purpose.

F. An on-hold prescription shall be entered into the automated data processing system if such system is employed by the pharmacy, and the pharmacist on-duty shall verify the accuracy of the data entry at that time. The pharmacist subsequently dispensing the on-hold prescription on a future date shall, at a minimum, conduct a prospective drug review consistent with § 54.1-3319 A of the Code of Virginia. If an on-hold prescription is returned to a patient prior to the initial dispensing of the drug, the pharmacist shall delete the entry in the automated data processing system.

VA.R. Doc. No. R11-2768; Filed May 8, 2013, 11:22 a.m.

## Proposed Regulation

**Title of Regulation: 18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-490).**

**Statutory Authority:** §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.

### Public Hearing Information:

June 18, 2013 - 9:15 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 201, Board Room 2, Richmond, VA

**Public Comment Deadline:** August 2, 2013.

**Agency Contact:** Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4416, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

**Basis:** Regulations are promulgated under the general authority of Chapter 24 (§ 54.1-2400 et seq.) of Title 54.1 of the Code of Virginia. Section 54.1-2400 authorizes the Board of Pharmacy to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) that are reasonable and necessary to administer effectively the regulatory system.

The specific statutory authority for the Board of Pharmacy to regulate the practice of pharmacy, including regulations pertaining to the safety and integrity of drugs, is found in § 54.1-3307 of the Code of Virginia.

**Purpose:** The Board of Pharmacy received three petitions from hospital pharmacists requesting an amendment to 18VAC110-20-490. As one of the petitioners stated, automation has been designed and updated to improve drug storage, security, and safety while streamlining work processes and increasing efficiencies. Advancements in technology can accommodate verification requirements that currently require manual processes. The board has adopted changes to the process and parameters to decrease the amount of time required to comply with monthly audits. Certain software that analyzes automated dispensing machine transactions could substitute for some of the manual reconciliation process. Hospitals report that the software reports can more quickly and efficiently identify possible diversions from the machines. Taking advantage of technology to replace some of the manual processes appears to be advisable for public health and safety because it could allow pharmacists to spend more time focused on patient care and still continue to protect against diversion and to ensure drug security.

**Substance:** The petitioners requested modifications to 18VAC110-20-490 to change the requirement that automated dispensing devices (ADDs) must be manually inspected monthly by pharmacy personnel to verify proper storage, proper location of drugs within the device, expiration dates, the security of drugs, and validity of access codes. The proposed regulations reorganize requirements for use of ADDs in hospitals to clarify the process and also provide

exceptions from certain audits for devices with technology capable of monitoring, detection, reconciliation, and analysis.

**Issues:** The proposed changes are a significant advantage to pharmacists and the hospitals in which they work. If pharmacists are able to substitute electronic monitoring and reporting for manual procedures, the hours spent in compliance with current regulations can be redirected to tasks associated with patient care. The board does not perceive any disadvantages or risks associated with substitution of manual audits and inspections with reconciliation software that can detect possible diversion.

There are no advantages or disadvantages to the agency; pharmacy inspections will continue to include records required for automated dispensing devices.

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

Summary of the Proposed Amendments to Regulation. As a result of several petitions for rulemaking, the Board of Pharmacy (Board) proposes to amend its regulations to make requirements for verification of storage, location, expiration dates, drug security and access codes for automated dispensing devices (ADD) less burdensome. Specifically, the Board proposes to:

- 1) Re-organize the regulations so the rules for using ADDs are clear;
- 2) Make a distinction between audits and reviews (these words are used interchangeably in the current regulations) so that it is clear to pharmacies when they must take each action;
- 3) Allow pharmacies whose ADDs have the capacity to perpetually monitor schedule II-V drugs to limit their required monthly audit so that they are just auditing discrepancies or exceptions identified through the ADDs perpetual monitoring systems and
- 4) Provide an exception to the rules that require monthly inspection of ADDs to check proper storage, location of drugs, expiration dates and security of drugs within the ADD as well as the validity of access codes to dispense those drugs. Under these proposed regulations, pharmacies may forgo most parts of this monthly inspection so long as the ADD is capable of performing self-inspections that meet criteria set by the Board.

**Result of Analysis.** Benefits likely outweigh costs for implementing these proposed changes.

**Estimated Economic Impact.** Among the changes that the Board proposes for these regulations is a reorganization of the requirements for use of automated dispensing devices (ADD). These changes have no costs attached for any affected entities because no requirements are changing. Affected entities may, however, benefit from these changes as they make the requirements for ADD use easier to find or understand.

Currently, Board staff reports, these regulations use the terms audit and review interchangeably. As this can lead to

confusion, the Board proposes to separate usage of these terms in the regulatory text so that affected entities clearly know when they need to perform an audit and when they need to perform a review. Again, these changes will not impose any extra burden on any regulated entity so these entities will likely not incur any extra costs. To the extent that the current text is opaque as to what is required of affected entities, they will get the benefit of additional clarity from the changes that the Board now proposes.

Current regulations require a monthly audit to review distribution and administration of Schedule II through V drugs from any ADD. The Board proposes to allow pharmacies whose ADDs have perpetual inventory management software to only audit dispensing discrepancies and exceptions that are identified by the ADDs. Further, the Board proposes an exemption to monthly administration audits so long as the ADD reconciliation software provides a statistical analysis based on peer-to-peer comparisons of use for the ADD unit or department and the software provides monitoring of overrides and discrepancies. If suspicious activity is identified by the monthly reports generated through these statistical analyses, that activity would then be subject to a focused audit. Hospital pharmacies that have ADDs with software that would allow them to just audit discrepancies and suspicious behavior will likely benefit from staff time saved from having to perform monthly audits.

Current regulations require monthly inspections of ADDs to check proper storage, location of drugs, expiration dates and security of drugs within the ADD as well as the validity of access codes to dispense those drugs. The Board proposes an exemption to most parts of these inspections for ADDs so long as the ADD software performs: 1) at least daily monitoring of temperature controlled storage, 2) automatic identification and isolation of the location of each drug within the device, 3) electronic tracking of drug expiration dates and 4) electronic detection of when, and by whom, the device is opened. Pharmacies that meet the criteria for this exemption will still have to perform inspections of look-alike and sound-alike drugs within matrix drawers or open access areas of each ADD. These changes will again likely benefit affected hospital pharmacies by allowing less staff time to be used performing inspections.

**Businesses and Entities Affected.** The Department of Health Professions (DHP) reports that these proposed regulations will affect all hospital pharmacies that dispense drugs with ADDs. DHP does not know how many pharmacies that would be because the Board does not license pharmacies by type of practice.

**Localities Particularly Affected.** No locality will be particularly affected by these proposed regulations.

**Projected Impact on Employment.** This proposed regulatory action is unlikely to have any effect on employment in the Commonwealth.

---

# Regulations

---

Effects on the Use and Value of Private Property. These proposed regulatory changes are unlikely to affect the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. No small business is likely to incur any costs on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No small business is likely to incur any costs on account of this regulatory action.

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

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to Economic Impact Analysis: The Board of Pharmacy concurs with the analysis of the Department of Planning and Budget on proposed amended regulations for 18VAC110-20, Regulations Governing the Practice of Pharmacy, relating to regulations for automated dispensing devices.

Summary:

*As a result of several petitions for rulemaking, the Board of Pharmacy proposes to (i) reorganize the regulations for using automated dispensing devices (ADDs) for clarity; (ii) distinguish "audits" from "reviews" so pharmacies understand more clearly when each action is required; (iii) limit the required monthly audit for ADDs with perpetual monitoring systems to discrepancies or exceptions identified through the ADDs; and (iv) provide an exception to the monthly inspection of ADDs if the ADD is capable of*

*performing self-inspections that meet criteria set by the board.*

**18VAC110-20-490. Automated devices for dispensing and administration of drugs.**

A. A hospital may use automated devices for the dispensing and administration of drugs pursuant to § 54.1-3301 of the Code of Virginia and §§ 54.1-3401 and 54.1-3434.02 of the Drug Control Act and in accordance with 18VAC110-20-270, 18VAC110-20-420, or 18VAC110-20-460 as applicable. ~~The following conditions shall apply:~~

B. Policy and procedure manual; access codes.

1. Proper use of the automated dispensing devices and means of compliance with requirements shall be set forth in the pharmacy's policy and procedure manual.

2. Personnel allowed access to an automated dispensing device shall have a specific access code that records the identity of the person accessing the device. The device may verify access codes using biometric identification or other coded identification after the initial log-on in order to eliminate sharing or theft of access codes.

C. Distribution of drugs from the pharmacy.

1. Prior to removal of drugs from the pharmacy, a delivery record shall be generated for all drugs to be placed in an automated dispensing device which shall include the date; drug name, dosage form, and strength; quantity; hospital unit and a unique identifier for the specific device receiving the drug; initials of the person loading the automated dispensing device; and initials of the pharmacist checking the drugs to be removed from the pharmacy and the delivery record for accuracy.

2. At the time of loading any Schedule II through V drug, the person loading will verify that the count of that drug in the automated dispensing device is correct. Any discrepancy noted shall be recorded on the delivery record and immediately reported to the pharmacist in charge, who shall be responsible for reconciliation of the discrepancy or properly reporting of a loss.

D. Distribution of drugs from the device.

3. 1. Automated dispensing devices in hospitals shall be capable of producing a hard-copy record of distribution which shall show patient name, drug name and strength, dose withdrawn, ~~dose to be administered~~, date and time of withdrawal from the device, and identity of person withdrawing the drug. The record shall be filed in chronological order from date of issue.

2. If an automated dispensing device is used to obtain drugs for dispensing from an emergency room, a separate dispensing record is not required provided the automated record distinguishes dispensing from administration and records the identity of the physician who is dispensing.

E. Discrepancy reports. A discrepancy report shall be generated for each discrepancy in the count of a drug on hand

in the device. Each such report shall be resolved by the PIC or his designee within 72 hours of the time the discrepancy was discovered or, if determined to be a theft or an unusual loss of drugs, shall be immediately reported to the board in accordance with § 54.1-3404 E of the Drug Control Act.

#### F. Reviews and audits.

1. The PIC or his designee shall conduct at least a monthly review for compliance with written policy and procedures that are consistent with § 54.1-3434.02 A of the Drug Control Act for security and use of the automated dispensing devices, to include procedures for timely termination of access codes when applicable, accuracy of distribution from the device, and proper recordkeeping.

4. 2. The PIC or his designee shall conduct at least a monthly audit to review distribution and administration of Schedule II through V drugs from each automated dispensing device as follows:

a. The audit shall reconcile records of all quantities of Schedule II through V drugs dispensed from the pharmacy with records of all quantities loaded into each device to detect whether any drugs recorded as removed from the pharmacy were diverted rather than being placed in the proper device.

b. A discrepancy report shall be generated for each discrepancy in the count of a drug on hand in the device. Each such report shall be resolved by the PIC or his designee within 72 hours of the time the discrepancy was discovered or, if determined to be a theft or an unusual loss of drugs, shall be immediately reported to the board in accordance with § 54.1-3404 E of the Drug Control Act. If a pharmacy has an ongoing method for perpetual monitoring drugs in Schedule II through V to ensure drugs dispensed from the pharmacy have been loaded into the device and not diverted, such as with the use of perpetual inventory management software, then the audit required in this subsection may be limited to the discrepancies or exceptions as identified by the method for perpetually monitoring the drugs.

3. The PIC or his designee shall conduct at least a monthly audit to review administration of Schedule II through V drugs from each automated dispensing device as follows:

e. a. The audit shall include a review of a sample of administration records from each device per month for possible diversion by fraudulent charting. A sample The review shall include all Schedule II- through V drugs administered for a time period of not less than 24 consecutive hours during the audit period.

d. The audit shall include a check of medical records to ensure that a valid order exists for a random sample of doses recorded as administered.

e. The audit shall also check for compliance with written procedures for security and use of the automated

dispensing devices, accuracy of distribution from the device, and proper recordkeeping.

f. b. The hard-copy distribution and administration records printed out and reviewed in the audit shall be initialed and dated by the person conducting the audit. If nonpharmacist personnel conduct the audit, a pharmacist shall review the record and shall initial and date the record.

5. If an automated dispensing device is used to obtain drugs for dispensing from an emergency room, a separate dispensing record is not required provided the automated record distinguishes dispensing from administration and records the identity of the physician who is dispensing.

c. The PIC or his designee shall be exempt from requirements of this audit if reconciliation software that provides a statistical analysis is used to generate reports at least monthly. The statistical analysis shall be based on:

(1) Peer-to-peer comparisons of use for that unit or department; and

(2) Monitoring of overrides and unresolved discrepancies.

d. The report shall be used to identify suspicious activity, which includes, but is not limited to, usage beyond three standard deviations in peer-to-peer comparisons. A focused audit of the suspicious activity and individuals associated with the activity shall be performed whenever suspicious activity is identified from the reports.

4. The PIC or his designee shall maintain a record of compliance with the reviews and audits in accordance with subsection H of this section.

6. G. Inspections. Automated dispensing devices shall be inspected monthly by pharmacy personnel to verify proper storage, proper location of drugs within the device, expiration dates, the security of drugs and validity of access codes. The PIC or his designee shall maintain documentation of the inspection in accordance with subsection H of this section. With the exception of a monthly physical review of look-alike and sound-alike drugs stored within matrix drawers or open access areas within the device, such monthly inspection shall not require physical inspection of the device if the device is capable of and performs the following:

1. At least daily monitoring of refrigerator or freezer storage with documented temperature ranges, variances, and resolutions;

2. Automatic identification and isolation of the location of each drug within the device using a machine readable product identifier, such as barcode technology, and generation of a report verifying the applicable settings;

3. Electronic tracking of drug expiration dates and generation of proactive reports allowing for the replacement of drugs prior to their expiration date; and

4. Electronic detection of the opening of the device, identification of the person accessing the device, automatic denial of access to the device during malfunctions and mechanical errors, and generation of reports of any malfunction and mechanical error.

## H. Records.

~~7. Personnel allowed access to an automated dispensing device shall have a specific access code which records the identity of the person accessing the device.~~

~~8. Proper use of the automated dispensing devices and means of compliance with requirements shall be set forth in the pharmacy's policy and procedure manual.~~

~~9. 1. All records required by this section shall be filed in chronological order from date of issue and maintained for a period of not less than two years. Records shall be maintained at the address of the pharmacy providing services to the hospital except: a. Manual manual Schedule VI distribution records, reports auditing for indications of suspicious activity, and focused audits, all of which may be maintained in offsite storage or electronically as an electronic image that provides an exact image of the document that is clearly legible provided such offsite or electronic records are retrievable and made available for inspection or audit within 48 hours of a request by the board or an authorized agent.~~

~~b. 2. Distribution and delivery records and required signatures initials may be generated or maintained electronically provided:~~

~~(1) a. The system being used has the capability of recording an electronic signature that is a unique identifier and restricted to the individual required to initial or sign the record.~~

~~(2) b. The records are maintained in a read-only format that cannot be altered after the information is recorded.~~

~~(3) c. The system used is capable of producing a hard-copy printout of the records upon request.~~

~~e. 3. Schedule II- through V distribution and delivery records may only also be stored offsite or electronically as described in subdivisions 9 a and b of this section in compliance with requirements of subdivision 1 of this subsection and if authorized by DEA or in federal law or regulation.~~

~~4. Hard-copy distribution and administration records that are printed and reviewed in conducting required audits may be maintained at an off-site location or electronically provided they can be readily retrieved upon request; provided they are maintained in a read-only format that does not allow alteration of the records; and provided a separate log is maintained for a period of two years showing dates of audit and review, the identity of the automated dispensing device being audited, the time period covered by the audit and review, and the initials of all reviewers.~~

## TITLE 21. SECURITIES AND RETAIL FRANCHISING

### 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.

**Titles of Regulations: 21VAC5-10. General Administration - Securities Act (amending 21VAC5-10-40).**

**21VAC5-20. Broker-Dealers, Broker-Dealer Agents and Agents of the Issuer (amending 21VAC5-20-10, 21VAC5-20-30, 21VAC5-20-40, 21VAC5-20-50, 21VAC5-20-80, 21VAC5-20-90, 21VAC5-20-95, 21VAC5-20-110, 21VAC5-20-120, 21VAC5-20-130, 21VAC5-20-150, 21VAC5-20-160, 21VAC5-20-180, 21VAC5-20-190, 21VAC5-20-200, 21VAC5-20-220, 21VAC5-20-230, 21VAC5-20-260, 21VAC5-20-280, 21VAC5-20-330; adding 21VAC5-20-285).**

**21VAC5-30. Securities Registration (amending 21VAC5-30-50, 21VAC5-30-80).**

**21VAC5-40. Exempt Securities and Transactions (adding 21VAC5-40-180; repealing 21VAC5-40-40, 21VAC5-40-60, 21VAC5-40-80, 21VAC5-40-90).**

**21VAC5-45. Federal Covered Securities (amending 21VAC5-45-20).**

**21VAC5-80. Investment Advisors (amending 21VAC5-80-10, 21VAC5-80-30, 21VAC5-80-40, 21VAC5-80-50, 21VAC5-80-60, 21VAC5-80-70, 21VAC5-80-90, 21VAC5-80-100, 21VAC5-80-110, 21VAC5-80-130, 21VAC5-80-160, 21VAC5-80-170, 21VAC5-80-180, 21VAC5-80-190, 21VAC5-80-200, 21VAC5-80-215; adding 21VAC5-80-146; repealing 21VAC5-80-145).**

**21VAC5-100. Disclosure of Information or Documents by Commission (amending 21VAC5-100-10).**

**Statutory Authority:** §§ 12.1-13 and 13.1-523 of the Code of Virginia.

**Effective Date:** June 3, 2013.

**Agency Contact:** Hazel Stewart, Section Chief, Securities Division, State Corporation Commission, Tyler Building, 9th Floor, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9685, FAX (804) 371-9911, or email hazel.stewart@scc.virginia.gov.

**Background:** The Division of Securities and Retail Franchising (division) proposed changes to the securities regulations in Title 21 of the Virginia Administrative Code. As the division reviewed and revised these regulations, regulatory changes at the federal level dealing with the regulation of investment advisors occurred. These changes required the division to revise rules governing investment advisors under state jurisdiction including custody rules as advised by the North American Securities Administrators Association, Inc. (NASAA). This change and other conforming revisions to 21VAC5-80 allow Virginia to have regulations governing investment advisors that are the same as regulations in other states and ease compliance for new investment advisors resulting from the changes made to federal law governing investment advisors. In conjunction with those changes, the division made other revisions for clarity, made changes to names, cleaned up grammatical errors, and added necessary definitions, etc. Comprehensive changes were made to the regulations governing broker-dealers, particularly to 21VAC5-20-280 and 21VAC5-20-330. The following is a summary of the adopted regulations.

**Summary:**

*The adopted regulations delete the definition of and references to the National Association of Securities Dealers, Inc. (NASD) and substitute the new name Financial Industry Regulatory Authority, Inc. (FINRA). References to the Central Registration Depository (CRD) and Investment Advisor Registration Depository (IARD) were cross-referenced and made consistent throughout the Rules. Definitions were added to Chapter 10 (21VAC5-10) to provide further clarification to terms used in certain regulations. The division, for consistency purposes, revised other rules to comport with changes made to Chapter 10.*

*Substantial changes are made to 21VAC5-20-260, 21VAC5-20-280, and 21VAC5-20-330, which regulate broker-dealer activity. Amendments to 21VAC5-20-260 clean up the language to conform with division policy that broker-dealers are required to annually inspect their Virginia offices and change references to "supervisor" to the more specific "principal."*

*Comprehensive revisions to 21VAC5-20-280 include the following:*

- 1. 21VAC5-20-280 A 3 further defines the term "reasonable basis" for broker-dealers that make securities recommendations;*
- 2. 21VAC5-20-280 A 10 allows a broker-dealer to deliver a prospectus to an investor by electronic means if the investor opts into the broker-dealer's program for such delivery;*
- 3. 21VAC5-20-280 A 15 combines provisions from former 21VAC5-20-280 E and adds other examples of known broker-dealer manipulative, deceptive, or fraudulent practices into one subdivision. By combining the provisions into one subdivision, broker-dealers will*

*be able to review and revise supervision and compliance procedures by referencing most applicable regulations in one subdivision;*

*4. 21VAC5-20-280 A 27 through 40 revise and relocate provisions governing broker-dealer business conduct currently found in 21VAC5-20-280 E 6 and G;*

*5. 21VAC5-20-280 B 6, 7, and 8 conform to the changes to 21VAC5-20-280 A, prohibit a broker-dealer agent from failing to comply with continuing education requirements, and prohibit broker-dealer agents from failing to properly identify the broker-dealer under which the broker-dealer agent is registered;*

*6. 21VAC5-280 C moves provisions governing examination and qualifications requirements for broker-dealer agents to 21VAC5-20-150; and*

*7. 21VAC5-20-280 F is moved from 21VAC5-20-280 to a new section numbered 21VAC5-20-285. The provisions of 21VAC5-20-280 G are moved to 21VAC5-20-280 A 40. 21VAC5-20-280 H is already covered in the Securities Act and is repealed. A new section 21VAC5-20-285 is added. This is not new language however, as provisions pertaining to the notice currently required to be provided by broker-dealers offering and selling designated securities to customers and is, therefore, not prohibited business conduct, originally included in 21VAC5-20-280 F, it is moved to new 21VAC5-20-285.*

*21VAC5-20-330 addresses the networking arrangements between broker-dealers and financial institutions. The regulation addresses certain practices related to these networking arrangements, including:*

- 1. Reviews of the provisions of the networking arrangement 90 days prior to implementation by division staff;*
- 2. 21VAC5-20-330 C 1 c allows a financial institution affiliate to register with the State Corporation Commission as a broker-dealer, which in turn, allows both the affiliate and the broker-dealer, under this contractual arrangement to dually employ agents; and*
- 3. 21VAC5-20-330 C 7 adds additional prohibited conduct provisions for only those broker-dealers conducting business under these contractual relationships, including accepting compensation from financial institutions, identifying the appropriate affiliations to the public, failing to follow the contract terms, and using nonregistered employees of the financial institution or any affiliate of the financial institution.*

*21VAC 5-30-80 adds the NASAA Church Extension Fund Securities guidelines to the list of adopted NASAA statements of policy.*

*21VAC5-40-40, 21VAC5-40-60, 21VAC5-40-80, and 21VAC543-40-90 are repealed due to the implementation of the National Securities Markets Improvement Act. New*

---

# Regulations

---

*section 21VAC5-40-180 covers those products listed on the national markets, such as the New York Stock Exchange or NASDAQ, that are still within the division's regulatory authority.*

*21VAC5-80-145 is repealed and replaced by new section 21VAC5-80-146. This is the new custody rule for investment advisors.*

*21VAC5-80-160 adds several new provisions to the investment advisor recordkeeping requirements to conform them to the new custody requirements in 21VAC5-80-146.*

*21VAC5-80-170 is the revised investment advisor supervision rule that parallels the supervision rule for broker-dealers found in 21VAC5-20-260.*

*Forms – Includes recent changes to certain uniform registration forms adopted by the Securities and Exchange Commission.*

*Several changes were made to the proposed regulations prior to adoption. Those revisions include the following:*

- 1. Removing the definition of and reference to the term "social media" in 21VAC5-10-40.*
- 2. Amending 21VAC5-20-30 A to add "or nonrenewal under § 13.1-505 E."*
- 3. Amending proposed 21VAC5-80-146 to add a family exemption. This provision is found in 21VAC5-80-146 C 6.*
- 4. Amending 21VAC5-20-260 F to remove the language "have not violated any" to "are in compliance with," and amending 21VAC5-80-170 F to conform this supervisory language in the complementary rule governing state-covered investment advisors.*
- 5. Amending 21VAC5-20-280 to (i) revise 21VAC5-20-280 A and B as requested by the Virginia Code Commission and (ii) clarify 21VAC5-20-280 A 31.*
- 6. Amending 21VAC5-20-330 B to add a reference to a Financial Industry Regulatory Authority rule, as requested by the Virginia Code Commission.*
- 7. Revising 21VAC5-20-330 C 2 and removing references to the term "social media" from 21VAC5-20-330 C 4.*
- 8. Adding "amended by SR-FINRA-2008-0026, effective December 15, 2008" to the list of "DOCUMENTS INCORPORATED BY REFERENCE (21VAC5-20)" at the end of the Rules as requested by the Virginia Code Commission.*

AT RICHMOND, MAY 13, 2013

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. SEC-2012-00038

Ex Parte: In the matter of  
Adopting a Revision to the Rules  
Governing the Virginia Securities Act

## ORDER ADOPTING AMENDED RULES

By order entered on December 21, 2012, all interested persons were ordered to take notice ("Order to Take Notice") that the State Corporation Commission ("Commission") would consider the adoption of revisions to Chapters 10, 20, 30, 40, 80 and 100 of Title 21 of the Virginia Administrative Code entitled Rules Governing the Virginia Securities Act ("Rules"). On January 4, 2013, the Division of Securities and Retail Franchising ("Division") e-mailed the Order to Take Notice of the proposed regulations to all interested parties pursuant to the Virginia Securities Act ("Act"), § 13.1-501 et seq. of the Code of Virginia.

The Order to Take Notice described the proposed regulations and afforded interested parties an opportunity to file comments with the Office of the Clerk of the Commission ("Clerk") on or before March 1, 2013. The Financial Services Institute, Inc. ("FSI"), the Securities Industry and Financial Markets Association ("SIFMA"), Barry Emswiler, S. Brian Farmer, and Robert P. Howard filed timely comments. No request for a hearing was filed with the Clerk.

Of the five filed comments, most were generally supportive of the proposed regulations. However, some commenters suggested changes or disagreed with certain of the proposed revisions.

FSI disagreed with the proposed revisions to 21 VAC 5-80-170, stating that the proposed revisions would add a new annual physical inspection requirement, and the new requirement would be burdensome and non-uniform.

SIFMA filed several comments regarding the proposed regulations, including: (1) its concern regarding the proposed definition of social media, particularly that the definition conflicts with state law governing privacy, and (2) the revision of 21 VAC 5-20-260 F regarding supervision.

Mr. Emswiler commented that the proposed revisions to custody requirements in

Rule 21 VAC 5-80-146 no longer provide for an exemption for family trusts as does the current exemption.

Mr. Farmer, on behalf of the Virginia-based law firm of Hirschler Fleischer, filed two comments regarding proposed Rule 21 VAC 5-80-146. These comments concerned: (1) the departure from Rule 206(4)-2 of the Investment Advisers Act of 1940, as amended, and the additional cost imposed by a requirement that private hedge fund advisors engage an independent party under proposed Rule 21 VAC 5-80-146 to review the underlying assets of the fund, and (2) a request to revise the definition of "independent party" in clauses 3 and 4 of proposed Rule 21 VAC 5-80-146 to allow a private fund advisor to engage the same administrator for multiple private funds managed by the private fund advisor.

Mr. Howard, on behalf of the law firm of Murphy & McGonigle, filed comments requesting that the Commission: (1) define the term "annually" in proposed Rules

21 VAC 5-20-260 and 21 VAC 5-80-170; (2) clarify its expectations regarding the types of information that a broker-dealer should consider to ensure that its recommendation of a security to a customer is suitable under 21 VAC 5-20-280 A 3; (3) define the term "unreasonable"; and (4) provide for an exemption for family trusts in proposed Rule 21 VAC 5-80-146.

The Division filed its Response to the Comments with the Clerk on April 12, 2013.<sup>[1]</sup> As a result of these comments and its final review of the proposed Rules, the Division recommended that the proposed Rules be further revised as follows:

(1) Remove the definition of and reference to the term "social media" in Rule

21 VAC 5-10-40.

(2) Amend 21 VAC 5-20-30 A to add "or non-renewal under § 13.1-505 E."

(3) Amend proposed Rule 21 VAC 5-80-146 to add a family exemption. This provision

is found in subdivision C 6 of the Rule.

(4) Amend Rule 21 VAC 5-20-260 F to remove the language "have not violated any" to "are

in compliance with," based on the SIFMA comment. Amend Rule 21 VAC 5-80-170 F to conform this supervisory language in the complementary rule governing state-covered investment advisors.

(5) Amend 21 VAC 5-20-280 to: (a) revise subsections A and B as requested by the Virginia

Code Commission, and (b) clarify subdivision A 31.

(6) Amend Rule 21 VAC 5-20-330 B to add a reference to a Financial Industry Regulatory

Authority rule, as requested by the Virginia Code Commission.

(7) Amend Rule 21 VAC 5-20-330 revising subdivision C 2 and removing references to

the term "social media" from subdivision C 4.

(8) Add "amended by SR-FINRA-2008-0026, effective December 15, 2008" to the list of

"DOCUMENTS INCORPORATED BY REFERENCE (21VAC5-20)" at the end of the Rules as requested by the Virginia Code Commission.

The Division did not recommend that the Commission make the following requested revisions:

(1) Mr. Farmer's requested revision to Rule 21 VAC 5-80-146 to allow private hedge fund advisors to engage the same independent party to review multiple hedge funds or to add a definition for the term "independent party." The Division stated that the proposed regulation focuses on private hedge funds that would fall under state regulatory authority, and noted that investment advisors regulated by the states are not governed by the Investment Advisers Act of 1940. With

regard to adding a definition for the term "independent party," the Division stated that the proposed definition is derived from the definition used by all the states on the uniform registration form for all state investment advisors, and adding the language suggested by Mr. Farmer would cause the proposed Rule not to be uniform with other state regulations.

(2) Mr. Howard's requested revisions to: (a) Rule 21 VAC 5-20-260 and 21 VAC 5-80-170 to add a definition for the term "annually," (b) Rule 21 VAC 5-20-280 A 3 to clarify the broker-dealer information gathering requirements to determine customer suitability, and (c) 21 VAC 5-20-280 A 15 d to add a definition for the term "unreasonable." Regarding Mr. Howard's request to define "annually," the Division stated that defining it in the manner suggested by the commenter would permit a broker-dealer or investment advisor to avoid conducting reviews in the first two years. Further, the Division points out that the same language has been in the regulation for many years and there have been no issues to date with the plain reading of the clause. Regarding Mr. Howard's second suggested revision, the Division states that the state and federal regulatory authorities impose substantially the same requirements on broker-dealers to determine the suitability of investments for their customers. Finally, regarding Mr. Howard's request to add a definition for the term "unreasonable," the Division pointed out that this term has been in the Commission's regulations for many years, and is not defined specifically because the industry standard changes or is different based on industry practice in a particular area, the type of product offered, and the method for which the product is being offered.

In addition, in response to FSI's comment stating that the proposed revision to

21 VAC 5-80-170 would add a new annual physical inspection requirement, the Division stated that the proposed revisions only shift the requirement from subsection E to subsection F.

NOW THE COMMISSION, upon consideration of the proposed amendments to the

Rules, the comments filed, and the Division's response and recommendations, finds that the proposed amendments to the Rules should be adopted, as revised and appended hereto.

Accordingly, IT IS ORDERED THAT:

(1) The proposed Rules, as attached hereto, and made a part hereof, are hereby ADOPTED effective June 3, 2013.

(2) This matter is dismissed from the Commission's docket, and the papers herein shall be placed in the file for ended causes.

(3) AN ATTESTED COPY of this Order shall be sent to each of the following by regular mail by the Division to: Mr. Chris Hayes, Financial Services Institute, Inc., 607 14th Street, N.W., Suite 750, Washington, D.C. 20005; Mr. Barry Emswiler, 12708 Sayers Creek Lane, Herndon, Virginia

---

# Regulations

---

20170; Nancy Donohoe Lancia, Managing Director, State Government Affairs, SIFMA, 120 Broadway, 35th Floor, New York, New York 10271; Mr. S. Brian Farmer, Hirschler Fleischer, 2100 East Cary Street, Richmond, Virginia 23223; and Robert P. Howard, Jr., Murphy & McGonigle, 555 18th Street N.W., Washington, D.C. 20004; the North American Securities Administrators Association, Inc., 750 First Street, N.E., Suite 1140, Washington, D.C. 20002; and a copy shall be delivered to the Commission's Division of Information Resources and Office of General Counsel.

(4) The Commission's Division of Information Resources shall cause a copy of this Order,

together with the adopted amendments to Chapters 10, 20, 30 40, 80 and 100 of Title 21, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(5) The Commission's Division of Information Resources shall make available this Order and the attached adopted amendments on the Commission's website: <http://www.scc.virginia.gov/case>.

---

<sup>1</sup> The Division attached an exhibit to the Response proposing revisions that resulted from the comments and from its final review of the proposed regulations.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

## **21VAC5-10-40. Definitions.**

As used in this title, the following regulations and forms pertaining to securities, instructions and orders of the commission, the following meanings shall apply:

"Act" means the Securities Act contained in Chapter 5 (§ 13.1-501 et seq.) of Title 13.1 of the Code of Virginia.

"Applicant" means a person on whose behalf an application for registration or a registration statement is filed.

"Application" means all information required by the forms prescribed by the commission as well as any additional information required by the commission and any required fees.

"Bank Holding Company Act of 1956" (12 USC § 1841 et seq.) means the federal statute of that name as now or hereafter amended.

"Boiler room tactics" mean operations or high pressure tactics utilized in connection with the promotion of speculative offerings by means of an intensive telephone campaign or unsolicited calls to persons not known by or having an account with the salesman or broker-dealer represented by him, whereby the prospective purchaser is encouraged to make a hasty decision to invest, irrespective of his investment needs and objectives.

"Breakpoint" means the dollar level of investment necessary to qualify a purchaser for a discounted sales charge on a quantity purchase of open-end management company shares.

"Commission" means State Corporation Commission.

"CRD" means the Central Registration Depository operated by FINRA as the central licensing and registration system for the United States securities industry and its regulators.

"Division" means Division of Securities and Retail Franchising of the Virginia State Corporation Commission.

"Federal covered advisor" means any person who is registered or required to be registered under § 203 of the Investment Advisers Act of 1940 as an "investment adviser."

"FINRA" means the Financial Industry Regulatory Authority, Inc. or any of its predecessors.

"IARD" means the Investment Advisor Registration Depository operated by FINRA as the central licensing and registration system for the United States securities industry and its regulators.

"Investment Advisers Act of 1940" (15 USC § 80b-1 et seq.) means the federal statute of that name as now or hereafter amended.

Notwithstanding the definition in § 13.1-501 of the Act, "investment advisor representative" as applied to a federal covered advisor only includes an individual who has a "place of business" (as that term is defined in rules or regulations promulgated by the SEC) in this Commonwealth and who either:

1. Is an "investment advisor representative" as that term is defined in rules or regulations promulgated by the SEC; or
2. a. Is not a "supervised person" as that term is defined in the Investment Advisers Act of 1940; and  
b. Solicits, offers or negotiates for the sale of or sells investment advisory services on behalf of a federal covered advisor.

"Investment Company Act of 1940" (15 USC § 80a-1 et seq.) means the federal statute of that name as now or hereafter amended.

"NASAA" means the North American Securities Administrators Association, Inc.

~~"NASD" means the National Association of Securities Dealers, Inc., or its successor, the Financial Industry Regulatory Authority, Inc. (FINRA).~~

"Notice" or "notice filing" means, with respect to a federal covered advisor or federal covered security, all information required by the regulations and forms prescribed by the commission and any required fee.

"Qualified investment advisor representative" means a person who possesses the requisite skill, knowledge, and experience to be designated to supervise other investment advisor representatives. A qualified investment advisor

representative shall comply with the examination or qualification requirements pursuant to 21VAC5-80-130.

"Registrant" means an applicant for whom a registration or registration statement has been granted or declared effective by the commission.

"SEC" means the United States Securities and Exchange Commission.

"Securities Act of 1933" (15 USC § 77a et seq.) means the federal statute of that name as now or hereafter amended.

"Securities Exchange Act of 1934" (15 USC § 78a et seq.) means the federal statute of that name as now or hereafter amended.

[ ~~"Social media" means various online technologies that integrate social interaction and content creation using highly accessible and scalable communication techniques including, but not limited to, blogs, message boards, podcasts, texts, tweets, wikis, and vlogs. Examples of social media include, but are not limited to, Facebook, LinkedIn, Wikipedia, MySpace, Gather.com, YouTube, and Second Life.~~ ]

"Solicitation" means an offer to one or more persons by any of the following means or as a result of contact initiated through any of these means:

1. Television, radio, [ ~~social media,~~ ] or any broadcast medium;
2. Newspaper, magazine, periodical, or any other publication of general circulation;
3. Poster, billboard, Internet posting, or other communication posted for the general public;
4. Brochure, flier, handbill, or similar communication, unless the offeror has a substantial preexisting business relationship or close family or personal relationship with each of the offerees;
5. Seminar or group meeting, unless the offeror has a substantial preexisting business relationship or close family or personal relationship with each of the offerees; or
6. Telephone, facsimile, mail, delivery service, or electronic communication, unless the offeror has a substantial preexisting business relationship or close family or personal relationship with each of the offerees.

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

## FORMS (21VAC5-10)

### Broker-Dealer and Agent Forms

~~Form BD - Uniform Application for Broker Dealer Registration (2/98).~~

[Form BD - Uniform Application for Broker-Dealer Registration \(rev.1/08\).](#)

Form S.A.11 - Broker-Dealer's Surety Bond (rev. 7/99).

Form S.A.2 - Application for Renewal of a Broker-Dealer's Registration (rev. 7/99).

Form S.D.4 - Application for Renewal of Registration as an Agent of an Issuer (1997).

Form S.D.4.A - Non-NASD Broker-Dealer or Issuer Agents to be Renewed Exhibit (1974).

Form S.D.4.B - Non-NASD Broker-Dealer or Issuer Agents to be Canceled with no disciplinary history (1974).

Form S.D.4.C - Non-NASD Broker-Dealer or Issuer Agents to be Canceled with disciplinary history (1974).

~~Form BDW - Uniform Notice of Termination or Withdrawal of Registration as a Broker-Dealer (rev. 4/89).~~

[Form BDW - Uniform Notice of Termination or Withdrawal of Registration as a Broker-Dealer \(rev. 4/07\).](#)

~~Rev. Form U - Uniform Application for Securities Industry Registration or Transfer (11/97).~~

~~Rev. Form U - Uniform Termination Notice for Securities Industry Registration (11/97).~~

[Rev. Form U4 - Uniform Application for Securities Industry Registration or Transfer \(rev. 5/09\).](#)

[Rev. Form U5 - Uniform Termination Notice for Securities Industry Registration \(rev. 5/09\).](#)

Investment Advisor and Investment Advisor Representative  
Forms

~~Form ADV - Uniform Application for Registration of Investment Advisors (rev. 1/01).~~

~~Form ADV-W - Notice of Withdrawal from Registration as an Investment Advisor (rev. 1/01).~~

Form ADV, Uniform Application for Registration of Investment Advisors (rev. 10/12).

[Part IA.](#)

[Part IB.](#)

[Part 2.](#)

[Form ADV-W - Notice of Withdrawal from Registration as an Investment Advisor \(rev. 11/10\).](#)

Surety Bond Form (rev. 7/99).

~~Rev. Form U - Uniform Application for Securities Industry Registration or Transfer (11/97).~~

~~Rev. Form U - Uniform Termination Notice for Securities Industry Registration (11/97).~~

[Rev. Form U - Uniform U4 - Uniform Application for Securities Industry Registration or Transfer \(rev. 5/09\).](#)

[Rev. Form U - Uniform U5 - Uniform Termination Notice for Securities Industry Registration \(rev. 5/09\).](#)

Form S.A.3 - Affidavit for Waiver of Examination (rev. 7/99).

---

# Regulations

---

Form S.A.15 - Investment Advisor Representative Multiple Employment Agreement (eff. 7/07).

Form S.A.16 - Agent Multiple Employment Agreement (eff. 7/07).

~~Form IA XRF - Cross Reference Between ADV Part II, ADV Part 1A/1B, Schedule F, Contract and Brochure (eff. 7/10).~~

## Securities Registration and Notice Filing Forms

~~Form U - Uniform Application to Register Securities (7/81).~~

~~Form U - Uniform Consent to Service of Process (7/81).~~

~~Form U a - Uniform Form of Corporate Resolution (rev. 7/99).~~

[Form U-1 - Uniform Application to Register Securities \(7/81\).](#)

[Form U-2 - Uniform Consent to Service of Process \(7/81\).](#)

[Form U-2-a - Uniform Form of Corporate Resolution \(rev. 7/99\).](#)

Form S.A.4 - Registration by Notification - Original Issue (rev. 11/96).

Form S.A.5 - Registration by Notification - Non-Issuer Distribution (rev. 11/96).

Form S.A.6 - Registration by Notification - Pursuant to 21VAC5-30-50 Non-Issuer Distribution "Secondary Trading" (1989).

Form S.A.8 - Registration by Qualification (7/91).

~~Form S.A.10 - Request for Refund Affidavit (Unit Investment Trust) (rev. 7/99).~~

Form S.A.12 - Escrow Agreement (1971).

Form S.A.13 - Impounding Agreement (rev. 7/99).

Form VA - Parts 1 and 2 - Notice of Limited Offering of Securities (rev. 11/96).

Form NF - Uniform Investment Company Notice Filing (4/97).

## Part I Broker-Dealers

### **21VAC5-20-10. Application for registration as a broker-dealer.**

A. Application for registration as a broker-dealer by a ~~NASD FINRA~~ member shall be filed in compliance with all requirements of ~~the NASAA/NASD Central Registration Depository system~~ CRD and in full compliance with forms and regulations prescribed by the commission and shall include all information required by such forms.

B. An application shall be deemed incomplete for ~~purposes of applying for~~ registration as a broker-dealer by a ~~NASD FINRA~~ member unless the applicant submits the following executed forms, fee, and information ~~are submitted~~:

1. Form BD.

2. Statutory fee payable to ~~the NASD~~ FINRA in the amount of \$200 pursuant to § 13.1-505 F of the Act.

3. ~~Any other information the commission may require~~ Evidence of approved FINRA membership.

4. Evidence of at least one qualified agent registration pending on CRD.

5. Any other information the commission may require.

C. Application for registration ~~as for~~ any ~~other~~ non-FINRA member broker-dealer shall be filed with the commission at its Division of Securities and Retail Franchising or such other entity designated by the commission on and in full compliance with forms prescribed by the commission and shall include all information required by such forms.

D. An application shall be deemed incomplete for ~~purposes of applying for~~ registration as a non-FINRA member broker-dealer unless the applicant submits the following executed forms, fee, and information ~~are submitted~~ to the commission:

1. Form BD.

2. Statutory fee payable to the Treasurer of Virginia in the amount of \$200 pursuant to § 13.1-505 F of the Act.

3. Financial statements required by 21VAC5-20-80.

4. Evidence of exam requirements for principals required by 21VAC5-20-70.

5. ~~Any other information the commission may require~~ Evidence of at least one qualified individual with an agent registration pending with the division on behalf of the broker-dealer.

6. Any other information the commission may require.

E. The commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

### **21VAC5-20-30. Renewals.**

A. To renew its registration, a ~~NASD FINRA~~ member broker-dealer will be billed by ~~the NASAA/NASD Central Registration Depository~~ CRD the statutory fee of \$200 prior to the annual expiration date. A ~~renewal~~ of registration renewal shall be granted as a matter of course upon payment of the proper fee unless the registration was, or the renewal would be, subject to revocation under § 13.1-506 [or nonrenewal under § 13.1-505 E].

B. Any ~~other~~ non-FINRA broker-dealer shall file with the commission at its Division of Securities and Retail Franchising the following items at least 30 days prior to the expiration of registration:

1. Application for Renewal of a Broker-Dealer's Registration (Form S.A.2) accompanied by the statutory fee of \$200.

2. Financial Statements:

a. The most recent certified financial statements prepared by an independent accountant in accordance with generally accepted accounting principles, as promulgated by the American Institute of Certified Public Accountants. "Certified Financial Statements," "Financial Statements" and "Independent Accountant" shall have the same definition as those terms are defined under subsection B of 21VAC5-20-80.

b. If the most recent certified financial statements precede the date of renewal by more than 120 days, the registrant must submit: ~~(1) The the~~ certified financial statements required by subdivision 2 a of this subsection within 60 days after the date of the financial statements; ~~and,~~

~~(2) A copy of the most recent Part II or Part II A filing of Form X 17A 5 prepared in accordance with Securities Exchange Act Rule 17a 5 (17 CFR 240.17a 5).~~

c. Whenever the commission so requires, an interim financial report shall be filed as of the date and within the period specified in the commission's request.

**21VAC5-20-40. Updates and amendments.**

A. A ~~NASD~~ FINRA member broker-dealer shall update its Form BD as required by Form BD instructions and shall file all such amendments on and in compliance with all requirements of ~~the NASAA/NASD Central Registration Depository system~~ CRD and in full compliance with the regulations prescribed by the commission.

B. Any ~~other non-FINRA member~~ broker-dealer shall update its Form BD as required by Form BD instructions and shall file all such amendments with the commission at its Division of Securities and Retail Franchising.

C. All broker-dealers must have at least one agent registered in Virginia as long as the firm maintains its registration.

**21VAC5-20-50. Termination of registration.**

A. When a ~~NASD~~ FINRA member broker-dealer desires to terminate its registration, it shall file Form BDW in compliance with all requirements of ~~the NASAA/NASD Central Registration Depository system~~ CRD and in full compliance with the regulations prescribed by the ~~Commission~~ commission.

B. Any ~~other non-FINRA member~~ broker-dealer shall file a Form BDW with the ~~Commission~~ commission at its Division of Securities and Retail Franchising.

**21VAC5-20-80. Financial statements and reports.**

A. All financial statements required for registration of broker-dealers shall be prepared in accordance with generally accepted accounting principles, as promulgated by the American Institute of Certified Public Accountants.

B. Definitions:

"Certified financial statements" ~~shall be defined as~~ means those financial statements examined and reported upon with an opinion expressed by an independent accountant and shall include at least the following information:

1. Date of report, manual signature, city and state where issued, and identification without detailed enumeration of the financial statements and schedules covered by the report;

2. Representations as to whether the audit was made in accordance with generally accepted auditing standards and designation of any auditing procedures deemed necessary by the accountant under the circumstances of the particular case which may have been omitted, and the reason for their omission; nothing in this section however shall be construed to imply authority for the omission of any procedure which independent accountants would ordinarily employ in the course of an audit for the purpose of expressing the opinions required under this section;

3. Statement of the opinion of the accountant in respect to the financial statements and schedules covered by the report and the accounting principles and practices reflected therein, and as the consistency of the application of the accounting principles, or as to any changes in such principles which would have a material effect on the financial statements;

4. Any matters to which the accountant takes exception shall be clearly identified, the exemption thereto specifically and clearly stated, and, to the extent practicable, the effect of each such exception on the related financial statements given.

"Financial statements" ~~shall be defined as~~ means those reports, schedules and statements, prepared in accordance with generally accepted accounting principles and which contain at least the following information unless the context otherwise dictates:

1. Statement of Financial Condition or Balance Sheet;

2. Statement of Income;

3. Statement of ~~Changes in Financial Position~~ Cash Flows;

4. Statement of Changes in Stockholder's/Partner's/Proprietor's/Member's Equity;

5. Statement of Changes in Liabilities Subordinated to Claims of General Creditors;

6. Schedule of the Computation of Net Capital Under Rule 15c3-1 of the Securities Exchange Act of 1934 (17 CFR 240.15c3-1);

7. Schedule of the Computation for Determination of the Reserve Requirements under Exhibit A of Rule 15c3-3 and Information Relating to the Possession and Control Requirements under Rule 15c3-3 of the Securities Exchange Act of 1934 (17 CFR 240.15c3-3).

---

# Regulations

---

"Independent accountant" ~~shall be defined as~~ means any certified public accountant in good standing and entitled to practice as such under the laws of the accountant's principal place of business or residence, and who is, in fact, not controlled by, or under common control with, the entity or person being audited; ~~for~~.

1. For purposes of this definition, an accountant will be considered not independent with respect to any person or any of its parents, its subsidiaries, or other affiliates in which, during the period of the accountant's professional engagements to examine the financial statements being reported on ~~or at~~ the date of the report, the accountant or the firm or a member thereof had, or was committed to acquire, any direct financial interest or any material indirect financial interest; or in which, during the period of the accountant's professional ~~engagement~~ engagements to examine the financial statements being reported on, at the date of the report or during the period covered by the financial statements, the accountant or the firm or a member thereof was connected as a promoter, underwriter, voting trustee, director, officer, or employee, ~~except that a~~.

2. A firm will not be deemed not independent in regard to a particular person if a former officer or employee of such person is employed by the firm and such individual has completely disassociated himself from the person and its affiliates covering any period of employment by the person.

3. For partners in the firm participating in the audit or located in an office of the firm participating in a significant portion of the audit; and in determining whether an accountant may in fact be not independent with respect to a particular person, the commission will give appropriate consideration to all relevant circumstances, including evidence bearing on all relationships between the accountant and that person or any affiliate thereof, and will not confine itself to the relationships existing in connection with the filing of reports with the commission.

"Review of financial statements" ~~shall be defined as~~ means those financial statements ~~prepared~~ reviewed by an independent accountant, and shall include at least the following:

1. Date of report, manual signature, city and state where issued, and identification without detailed enumeration of the financial statements and schedules covered by the report;
2. Representations that the review was performed in accordance with standards established by the American Institute of Certified Public Accountants;
3. Representations that the accountant is not aware of any material modification that should be made to the financial statements in order for them to be in conformity with generally accepted accounting principles, other than those modifications, if any, indicated in the accountant's report.

"Unaudited financial statements" ~~shall be defined as~~ means those financial statements prepared in a format acceptable to the commission not accompanied by the statements and representations as set forth in the definitions of "certified financial statements" or "review of financial statements" of this subsection, and shall include an oath or affirmation that such statement or report is true and correct to the best knowledge, information, and belief of the person making such oath or affirmation; ~~such~~. The oath or affirmation shall be made before a person authorized to administer ~~such the~~ oath or affirmation, and shall be made by an officer of the entity for whom the financial statements were prepared.

## C. Requirements for broker-dealers:

1. Every broker-dealer applicant ~~that is~~ subject to the Securities Exchange Act of 1934 shall file with the commission at its Division of Securities and Retail Franchising upon its request any financial information ~~that is~~ required to be provided to the SEC, or its designee, under the Securities Exchange Act of 1934.

2. All other broker-dealer applicants not subject to subdivision 1 of this subsection, unless exempted under subdivision 3 of this subsection, shall file financial statements as of a date within 90 days prior to the date of filing its application for registration, ~~which~~. The statements need not be audited provided that the applicant shall also file audited financial statements as of the end of the most recent fiscal year end.

3. Those broker-dealer applicants ~~which have been~~ in operation for a period of time less than 12 months, and for which audited financial statements have not been prepared or are not available, and ~~which~~ are not registered with the SEC, a national securities association or a national securities exchange, shall be permitted to file ~~a review of~~ financial statements ~~prepared~~ reviewed by an independent accountant provided the following conditions are met:

- a. ~~Such The~~ financial statements shall be as of a date within 30 days prior to the date of filing an application for registration; and
- b. ~~Such The~~ financial statements shall be ~~prepared~~ reviewed by an independent accountant as defined under subsection B of this section and in accordance with the definitions of "financial statements" and "review of financial statements" in subsection B and in accordance with subdivision 3 of this subsection.

## Part II

### Broker-Dealer Agents

#### **21VAC5-20-90. Application for registration as a broker-dealer agent.**

A. Application for registration as an agent of a ~~NASD~~ FINRA member shall be filed on and in compliance with all requirements of ~~the NASAA/NASD Central Registration Depository system~~ CRD and in full compliance with the forms and regulations prescribed by the commission. The

application shall include all information required by such forms.

An application shall be deemed incomplete for ~~purposes of applying for~~ registration as a broker-dealer agent unless the applicant submits the following executed forms, fee, and information ~~are submitted~~:

1. Form ~~U-4~~ U4.
2. The statutory fee made payable to FINRA in the amount of \$30. ~~The check must be made payable to the NASD.~~
3. Evidence in the form of a ~~NASD~~ FINRA exam report of passing within the two-year period immediately preceding the date of the application: (i) the Uniform Securities Agent State Law Examination, Series 63; (ii) the Uniform Combined State Law Examination, Series 66; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.
4. Any other information the commission may require.

B. Application for registration for ~~all other non-FINRA member~~ broker-dealer agents shall be filed on and in compliance with all requirements and forms prescribed by the commission.

An application shall be deemed incomplete for ~~purposes of applying~~ for registration as a broker-dealer agent unless the applicant submits the following executed forms, fee, and information ~~are submitted~~:

1. Form ~~U-4~~ U4.
2. The statutory fee in the amount of \$30. The check must be made payable to the Treasurer of Virginia.
3. Evidence in the form of a ~~NASD~~ FINRA exam report of passing within the two-year period immediately preceding the date of the application: (i) the Uniform Securities Agent State Law Examination, Series 63; (ii) the Uniform Combined State Law Examination, Series 66; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.
4. Any other information the commission may require.

C. The commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

**21VAC5-20-95. Employment of an agent by more than one broker-dealer.**

A. In accordance with § 13.1-504 B of the Act, an agent may be employed by more than one broker-dealer if all of the following conditions are satisfied:

1. Each employing broker-dealer is under common ownership and control as defined in subsection B of this section or as provided in subdivision C 2 c under 21VAC5-20-330.
2. Each employing broker-dealer is registered in accordance with 21VAC5-20-10.
3. Each employing broker-dealer consents in writing to the employment of the agent by each of the other employing broker-dealers.
4. Each employing broker-dealer agrees to be responsible for the employment activity of the agent.
5. The agent is registered in accordance with 21VAC5-20-90 by and on behalf of each employing broker-dealer.
6. Each employing broker-dealer executes an Agent Multiple Employment Agreement (Form S.A.16), and the executed agreement is filed with the commission at its Division of Securities and Retail Franchising prior to the agent transacting business in Virginia on behalf of such broker-dealer.
7. A new Agent Multiple Employment Agreement is executed and filed with the commission at its Division of Securities and Retail Franchising within 15 days after any information in a current agreement on file with the commission becomes materially deficient, incomplete or inaccurate.

B. The term "common ownership and control" as used in this section means ~~possession of the same individual or individuals possess~~ at least a 50% ownership interest in each employing broker-dealer ~~by the same individual or individuals.~~

**21VAC5-20-110. Renewals.**

A. To renew the ~~registration(s)~~ registration or registrations of its broker-dealer ~~agent(s)~~ agent or agents, a ~~NASD~~ FINRA member broker-dealer will be billed by ~~the NASAA/NASD Central Registration Depository system~~ CRD the statutory fee of \$30 per broker-dealer agent. A renewal of ~~registration(s)~~ registration or registrations shall be granted as a matter of course upon payment of the proper ~~fee(s)~~ fee or fees unless the registration was, or the renewal would be, subject to revocation under § 13.1-506 of the Code of Virginia.

B. ~~Any other~~ A non-FINRA member broker-dealer shall file with the commission at its Division of Securities and Retail Franchising the following items at least 30 days prior to the expiration of registration.

1. Agents to be Renewed (Form S.D.4.A) accompanied by the statutory fee of \$30 for each agent whose registration is

---

# Regulations

---

to be renewed. The check must be made payable to the Treasurer of Virginia.

2. If applicable, Agents to be Canceled with clear records (Form S.D.4.B).

3. If applicable, Agents to be Canceled without clear records (Form S.D.4.C).

## **21VAC5-20-120. Updates and amendments.**

A broker-dealer agent shall amend or update Form ~~U-4~~ U4 as required by the "Amendment Filings" provisions set forth under "How to Use Form ~~U-4~~ U4." All filings shall be made ~~with the NASAA/NASD Central Registration Depository system~~ on CRD for agents of ~~NASD~~ FINRA member firms or with the commission at its Division of Securities and Retail Franchising for all other broker-dealer agents.

## **21VAC5-20-130. Termination of registration.**

A. When a broker-dealer agent terminates ~~a connection~~ his registration with a broker-dealer, or a broker-dealer terminates ~~connection with an agent~~ agent's registration, the broker-dealer shall file notice of such termination on Form ~~U-5~~ U5 within 30 calendar days of the date of termination. All filings shall be made ~~with the NASAA/NASD Central Registration Depository system~~ on CRD for agents of ~~NASD~~ FINRA member firms or with the commission at its Division of Securities and Retail Franchising for all other broker-dealer agents.

B. If an agent learns that the broker-dealer has not filed the appropriate notice, the agent may file notice with the commission at its Division of Securities and Retail Franchising. The commission may terminate the agent's registration if the commission determines that a broker-dealer (i) is no longer in existence, (ii) has ceased conducting securities business, or (iii) cannot reasonably be located.

## **21VAC5-20-150. Examination/qualification.**

A. An individual applying for registration as a broker-dealer agent shall be required to show evidence of passing within the two-year period immediately preceding the date of the application: (i) the Uniform Securities Agent State Law Examination, Series 63; (ii) the Uniform Combined State Law Examination, Series 66; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.

B. Any individual who ~~has met~~ meets the qualifications set forth in subsection A of this section and ~~has been~~ is registered in any state jurisdiction requiring registration within the two-year period immediately preceding the date of the filing of an application shall not be required to comply with the examination requirement set forth in subsection A of this section, except that the commission may require additional examinations for any individual found to have violated any federal or state securities laws.

C. Any registered agent or agent in the process of applying for registration renewal shall further demonstrate his business knowledge by complying with the applicable continuing education requirements set forth in any of the following:

1. Rule 1250 of the FINRA By Laws, as such provisions existed on October 17, 2011;

2. Rule 345 A of the NYSE Rules, as such provisions existed on July 1, 1995;

3. Rule G-3(h) of the Municipal Securities Rulemaking Board, as such provisions existed on July 1, 1995;

4. Rule 341 A of the NYSE Market Rules, as such provisions existed on May 14, 2012;

5. Rule 9.3A of the Chicago Board of Options Exchange, Inc., as such provisions existed on July 1, 1995; or

6. Article VI, Rule 11 of the Chicago Stock Exchange, Inc., as such provisions existed on July 1, 1995.

### Part III

#### Agents of the Issuer

## **21VAC5-20-160. Application for registration as an agent of the issuer.**

A. Application for registration as an agent of the issuer shall be filed on and in compliance with all requirements and forms prescribed by the commission.

B. An application shall be deemed incomplete ~~for purposes of applying~~ for registration as an agent of the issuer unless the following executed forms, fee and information are submitted:

1. Form ~~U-4~~ U4.

2. The statutory fee in the amount of \$30. The check must be made payable to the Treasurer of Virginia.

3. Evidence in the form of a ~~NASD~~ FINRA exam report of passing within the two-year period immediately preceding the date of the application: (i) the Uniform Securities Agent State Law Examination, Series 63; (ii) the Uniform Combined State Law Examination, Series 66, ~~and the General Securities Representative Examination, Series 7;~~ or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.

4. Any individual who meets the qualifications set forth in subdivision B 3 of this section and has been registered in any state jurisdiction as an agent requiring registration within the two-year period immediately preceding the date of the filing of an application shall not be required to comply with the examination requirements requirement set forth in subdivision B 3 of this section, except that the Director of Securities and Retail Franchising may require additional examinations for any individual found to have violated any federal or state securities laws.

5. Any other information the commission may require.

C. The commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

**21VAC5-20-180. Renewals.**

An issuer, on behalf of its ~~agent(s)~~ agent or agents, shall file with the ~~Commission~~ commission at its Division of Securities and Retail Franchising at least 30 days prior to the expiration of registration ~~an Agents to be Renewed Form~~ a registration renewal form (Form S.D.4) accompanied by the statutory fee of \$30 for each agent whose registration is to be renewed. The check must be made payable to the Treasurer of Virginia.

**21VAC5-20-190. Updates and amendments.**

An agent of the issuer shall amend or update ~~his/her~~ his Form ~~U-4~~ U4 as required by the "Amendment Filings" provisions set forth under "How to Use Form ~~U-4~~ U4." Filings shall be made with the ~~Commission~~ commission at its Division of Securities and Retail Franchising.

**21VAC5-20-200. Termination of registration.**

When an agent of the issuer terminates ~~a connection~~ his registration with an issuer, or an issuer terminates ~~connection~~ with an agent agent's registration, the issuer shall file notice of such termination on Form ~~U-5~~ U5 within 30 calendar days of the date of termination. Filings shall be made with the ~~Commission~~ commission at its Division of Securities and Retail Franchising.

**21VAC5-20-220. Examination/qualification; waiver of examination requirement.**

A. Except as described in subsection B of this section, an individual applying for registration as an agent of the issuer shall be required to provide evidence in the form of a ~~NASD~~ FINRA exam report of passing: (i) the Uniform Securities Agent State Law Examination, Series 63; (ii) the Uniform Combined State Law Examination, Series 66, ~~and the General Securities Representative Examination, Series 7;~~ or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.

B. The commission may, in a registered offering ~~that is~~ not being made to the general public or in a Small Company Offering Registration, waive the examination requirement for an officer or director of an issuer that is a corporation, or a general partner of an issuer ~~that is of~~ a limited partnership or a manager of an issuer that is a limited liability company who:

1. Will receive no commission or similar remuneration directly or indirectly in connection with the offer or sale of the issuer's securities; and

2. In the case of a small company offering registration, agrees to deliver to each prospective purchaser of a security to be issued by such issuer, at or before the time the offering document is required to be delivered, a copy of "A Consumer's Guide to Small Business Investments" prepared by NASAA (see CCH NASAA Reports ¶3676) and the application to register the agent is accompanied by an executed Affidavit Regarding Offers of Small Company Offering Registration (SCOR) Securities by Issuer Agents.

Part IV

Broker-Dealer and Agent Regulations

**21VAC5-20-230. Notice of civil, criminal, administrative or arbitrational action.**

A. An applicant or a registrant shall notify the commission:

1. Within 30 calendar days of the date any complaint, pleading or notice is served or received giving notice of any civil, criminal or administrative charge or any arbitration proceeding or any formal order of investigation, including any such charge, proceeding or order by a self-regulatory organization registered under the Securities Exchange Act of 1934, against the applicant or registrant which directly or indirectly relates to the registration or sale of securities to any activity as a broker-dealer or agent or to any activity in which a breach of trust is alleged.

2. Within 30 calendar days of the date filed, any answer, reply or response to the complaint, pleading or notice referred to in subdivision 1 of this subsection.

3. Within 30 calendar days of the date of any decision, order or sanction rendered, or any appeal filed with respect to such decision, order or sanction, in regard to the complaint, pleading or notice referred to in subdivision 1 of this subsection.

B. A registrant who is a ~~NASD~~ FINRA member broker-dealer or is associated with a ~~NASD~~ FINRA member broker-dealer may file the notification required by subsection A of this section either with the commission's Division of Securities and Retail Franchising or on and in compliance with all requirements of the ~~NASAA/NASD Central Registration Depository system~~ CRD.

C. One copy of any item referred to in subdivision 1, 2 or 3 of this subsection shall be filed with the commission promptly following a request for same.

**21VAC5-20-260. Supervision of agents.**

A. A broker-dealer shall be responsible for the acts, practices, and conduct of its agents in connection with the sale of securities until such time as the agents have been properly terminated as provided by ~~21VAC5-20-60~~ 21VAC5-20-130.

---

# Regulations

---

B. Every broker-dealer shall exercise diligent supervision over the securities activities of all of its agents.

C. Every agent employed by a broker-dealer shall be subject to the supervision of a ~~supervisor~~ principal designated by such broker-dealer. ~~The supervisor may be the broker-dealer in the case of a sole proprietor, or a partner, officer, office manager or any qualified agent in the case of entities other than sole proprietorships.~~ All designated supervisors principals designated by the broker-dealer shall exercise reasonable supervision over the securities activities of all of the agents under their responsibility.

D. As part of its responsibility under this section, every broker-dealer shall establish, maintain and enforce written procedures, a copy of which shall be kept in each business office, which shall (i) set forth the procedures adopted by the broker-dealer to comply with the Act and regulations, including but not limited to the following duties imposed by this section, and (ii) state at which business office or offices the broker-dealer keeps and maintains the records required by 21VAC5-20-240:

1. The review and written approval by the designated supervisor of the opening of each new customer account;
2. The frequent examination of all customer accounts to detect and prevent irregularities or abuses;
3. The prompt review and written approval by a designated supervisor of all securities transactions by agents and all correspondence pertaining to the solicitation or execution of all securities transactions by agents;
4. The review and written approval by the designated supervisor of the delegation by any customer of discretionary authority with respect to the customer's account to the broker-dealer or to a stated agent or agents of the broker-dealer and the prompt written approval of each discretionary order entered on behalf of that account; and
5. The prompt review and written approval of the handling of all customer complaints.

E. Every broker-dealer who has designated more than one ~~supervisor~~ principal pursuant to subsection C of this section shall designate ~~from among its partners, officers, or other qualified agents,~~ a person principal or group of persons principals, independent from ~~the designated business supervisor or supervisors~~ those that conduct direct agent supervision who shall: supervise and periodically review the activities of the principals designated pursuant to subsection C of this section.

1. ~~Supervise and periodically review the activities of these supervisors designated pursuant to subsection C of this section; and~~
2. ~~No less often than annually conduct a physical inspection of each business office of the broker-dealer to insure that the written procedures and compliance requirements are enforced.~~

All ~~supervisors~~ principals designated pursuant to ~~this subsection~~ subsections C and E shall exercise reasonable supervision over ~~the supervisors~~ those individuals under their responsibility to ensure compliance with ~~this subsection~~ these subsections.

F. Every broker-dealer shall no less often than annually conduct a physical inspection of each business office of the broker-dealer to ensure (i) the agent or agents at the respective business office [have not violated any are in compliance with the ] statutory provisions of the Act or regulations promulgated by the commission and (ii) the written procedures and compliance requirements of the broker-dealer are enforced.

For purposes of this section, the term "principal" means, but is not limited to, an individual engaged directly in (i) the management, direction, or supervision on a regular or continuous basis on behalf of such broker-dealer of the following activities: sales, training, research, investment advice, underwriting, private placements, advertising, public relations, trading, maintenance of books or records, financial operations; or (ii) the training of persons associated with such broker-dealer for the management, direction, or supervision on a regular or continuous basis of any such activities.

## **21VAC5-20-280. Prohibited business conduct.**

A. Every broker-dealer ~~[ and agent registered or required to be registered pursuant to § 13.1 505 of the Act ]~~ is required to observe high standards of commercial honor and just and equitable principles of trade in the conduct of [ his its ] business. The acts and practices described below [ in this rule, among others, ] are considered contrary to such standards and may constitute grounds for denial, suspension, or revocation of registration or such other action authorized by the Act. [ The conduct set forth in subsections A through C of this section is not exhaustive. ] No broker-dealer who is registered or required to be registered shall:

1. Engage in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers or in the payment upon request of free credit balances reflecting completed transactions of any of its customers, or take any action that directly or indirectly interferes with a customer's ability to transfer his account; provided that the account is not subject to any lien for moneys owed by the customer or other bona fide claim, including, but not limited to, seeking a judicial order or decree that would bar or restrict the submission, delivery or acceptance of a written request from a customer to transfer his account;
2. Induce trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;
3. Recommend to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer ~~based upon reasonable inquiry concerning the~~

customer's investment objectives, financial situation, risk tolerance and needs, and any other relevant information known by the broker-dealer. The reasonable basis to recommend any such transaction to a customer shall be based upon the risks associated with a particular security, and the information obtained through the diligence and inquiry of the broker-dealer to ascertain the customer's investment profile. A customer's investment profile includes, but is not limited to, the customer's investment objectives, financial situation, risk tolerance and needs, tax status, age, other investments, investment experience, investment time horizon, liquidity needs, and any other relevant information known by the broker-dealer or of which the broker-dealer is otherwise made aware in connection with such recommendation;

4. Execute a transaction on behalf of a customer without authority to do so or, when securities are held in a customer's account, fail to execute a sell transaction involving those securities as instructed by a customer, without reasonable cause;

5. Exercise any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders;

6. Execute any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account, or fail, prior to or at the opening of a margin account, to disclose to a noninstitutional customer the operation of a margin account and the risks associated with trading on margin at least as comprehensively as required by NASD FINRA Rule 2344 2264;

7. Fail to segregate customers' free securities or securities held in safekeeping;

8. Hypothecate a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by Rules of the SEC;

9. Enter into a transaction with or for a customer at a price not reasonably related to the current market price of a security or receiving an unreasonable commission or profit;

10. Fail to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus, by the following means: (i) hard copy prospectus delivery or (ii) electronic prospectus delivery.

When a broker-dealer delivers a prospectus electronically, it must first allow its clients to affirmatively opt-in to the

program. The acknowledgement of the opt-in may be by any written or electronic means, but the broker-dealer is required to acknowledge the opt-in. For any client that chooses not to opt-in to electronic delivery, the broker-dealer shall continue to deliver to the client a hard copy of the prospectus;

11. Introduce customer transactions on a "fully disclosed" basis to another broker-dealer that is not exempt under § 13.1-514 B 6 of the Act;

12. a. Charge unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of moneys due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;

b. Charge a fee based on the activity, value or contents (or lack thereof) of a customer account unless written disclosure pertaining to the fee, which shall include information about the amount of the fee, how imposition of the fee can be avoided and any consequence of late payment or nonpayment of the fee, was provided no later than the date the account was established or, with respect to an existing account, at least 60 days prior to the effective date of the fee;

13. Offer to buy from or sell to any person any security at a stated price unless the broker-dealer is prepared to purchase or sell at the price and under such conditions as are stated at the time of the offer to buy or sell;

14. Represent that a security is being offered to a customer "at a market" or a price relevant to the market price unless the broker-dealer knows or has reasonable grounds to believe that a market for the security exists other than that made, created or controlled by the broker-dealer, or by any person for whom he is acting or with whom he is associated in the distribution, or any person controlled by, controlling or under common control with the broker-dealer;

15. ~~Effect any transaction in or~~ Offer, induce the purchase or sale of, ~~or effect any transaction in~~, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to:

a. Effecting any transaction in a security which involves no change in the beneficial ownership thereof;

b. Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; however, nothing in this

---

# Regulations

---

subdivision shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customers;

c. Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in the security or raising or depressing the price of the security, for the purpose of inducing the purchase or sale of the security by others;

d. Entering into a transaction with a customer in any security at an unreasonable price or at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;

e. Contradicting or negating the importance of any information contained in a prospectus or other offering materials that would deceive or mislead or using any advertising or sales presentation in a deceptive or misleading manner;

f. Leading a customer to believe that the broker-dealer or agent is in possession of material, nonpublic information that would affect the value of the security;

g. Engaging in a pattern or practice of making contradictory recommendations to different investors of similar investment objective for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstances of each investor;

h. Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution by, among other things, (i) transferring securities to a customer, another broker-dealer or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees or (ii) parking or withholding securities;

i. Effecting any transaction in or inducing the purchase or sale of any security by means of any manipulative, deceptive, or other fraudulent device or contrivance including but not limited to the use of boiler room tactics or use of fictitious or nominee accounts;

j. Failing to comply with any prospectus delivery requirements promulgated under federal law or the Act;

k. Failing to promptly provide the most current prospectus or the most recently filed periodic report filed under § 13 of the Securities Exchange Act when requested to do so by a customer;

l. Marking any order tickets or confirmations as unsolicited when in fact the transaction was solicited; or

m. Failing to comply with the following provisions in connection with the solicitation of a purchase or sale of a designated security:

(1) Failing to disclose to the customer the bid and ask price at which the broker-dealer effects transactions with individual, retail customers of the designated security as

well as its spread in both percentage and dollar amounts at the time of solicitation and on the trade confirmation documents; or

(2) Failing to include with the confirmation, the notice disclosure contained under 21VAC5-20-285, except the following shall be exempt from this requirement:

(a) Transactions in which the price of the designated security is \$5.00 or more, exclusive of costs or charges; however, if the designated security is a unit composed of one or more securities, the unit price divided by the number of components of the unit other than warrants, options, rights, or similar securities must be \$5.00 or more, and any component of the unit that is a warrant, option, right, or similar securities, or a convertible security must have an exercise price or conversion price of \$5.00 or more;

(b) Transactions that are not recommended by the broker-dealer or agent;

(c) Transactions by a broker-dealer: (i) whose commissions, commission equivalents, and mark-ups from transactions in designated securities during each of the preceding three months, and during 11 or more of the preceding 12 months, did not exceed 5.0% of its total commissions, commission-equivalents, and mark-ups from transactions in securities during those months; and (ii) who has not executed principal transactions in connection with the solicitation to purchase the designated security that is the subject of the transaction in the preceding 12 months; and

(d) Any transaction or transactions that, upon prior written request or upon its own motion, the commission conditionally or unconditionally exempts as not encompassed within the purposes of this section;

(3) For purposes of this section, the term "designated security" means any equity security other than a security:

(a) Registered, or approved for registration upon notice of issuance, on a national securities exchange and makes transaction reports available pursuant to 17 CFR 11Aa3-1 under the Securities Exchange Act of 1934;

(b) Authorized, or approved for authorization upon notice of issuance, for quotation in the NASDAQ system;

(c) Issued by an investment company registered under the Investment Company Act of 1940;

(d) That is a put option or call option issued by The Options Clearing Corporation; or

(e) Whose issuer has net tangible assets in excess of \$4,000,000 as demonstrated by financial statements dated within no less than 15 months that the broker-dealer has reviewed and has a reasonable basis to believe are true and complete in relation to the date of the transaction with the person; and

(i) In the event the issuer is other than a foreign private issuer, are the most recent financial statements for the issuer that have been audited and reported on by an independent public accountant in accordance with the provisions of 17 CFR 210.2-02 under the Securities Exchange Act of 1934; or

(ii) In the event the issuer is a foreign private issuer, are the most recent financial statements for the issuer that have been filed with the SEC; furnished to the SEC pursuant to 17 CFR 240.12g3-2(b) under the Securities Exchange Act of 1934; or prepared in accordance with generally accepted accounting principles in the country of incorporation, audited in compliance with the requirements of that jurisdiction, and reported on by an accountant duly registered and in good standing in accordance with the regulations of that jurisdiction.

16. Guarantee a customer against loss in any securities account of the customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for the customer;

17. Publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless the broker-dealer believes that the transaction was a bona fide purchase or sale of the security; or which purports to quote the bid price or asked price for any security, unless the broker-dealer believes that the quotation represents a bona fide bid for, or offer of, the security;

18. Use any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;

19. Fail to make reasonably available upon request to any person expressing an interest in a solicited transaction in a security, not listed on a registered securities exchange or quoted on an automated quotation system operated by a national securities association approved by regulation of the commission, a balance sheet of the issuer as of a date within 18 months of the offer or sale of the issuer's securities and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, the names of the issuer's proprietor, partners or officers, the nature of the enterprises of the issuer and any available information reasonably necessary for evaluating the desirability or lack of desirability of investing in the securities of an issuer. All transactions in securities

described in this subdivision shall comply with the provisions of § 13.1-507 of the Act;

20. Fail to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of the security, the existence of control to the customer, and if disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

21. Fail to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member;

22. Fail or refuse to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written request or complaint;

23. Fail to clearly and separately disclose to its customer, prior to any security transaction, providing investment advice for compensation or any materially related transaction that the customer's funds or securities will be in the custody of an investment advisor or contracted custodian, in a manner that does not provide Securities Investor Protection Corporation protection, or equivalent third-party coverage over the customer's assets;

24. Market broker-dealer services that are associated with financial institutions in a manner that is misleading or confusing to customers as to the nature of securities products or risks;

25. In transactions subject to breakpoints, fail to:

- a. Utilize advantageous breakpoints without reasonable basis for their exclusion;
- b. Determine information that should be recorded on the books and records of a member or its clearing firm, which is necessary to determine the availability and appropriateness of breakpoint opportunities; or
- c. Inquire whether the customer has positions or transactions away from the member that should be considered in connection with the pending transaction, and apprise the customer of the breakpoint opportunities;

26. Use a certification or professional designation in connection with the offer, sale, or purchase of securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees in such a way as to mislead any person.

- a. The use of such certification or professional designation includes, but is not limited to, the following:
  - (1) Use of a certification or designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

---

# Regulations

---

(2) Use of a nonexistent or self-conferred certification or professional designation;

(3) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; or

(4) Use of a certification or professional designation that was obtained from a designating or certifying organization that:

(a) Is primarily engaged in the business of instruction in sales and/or marketing;

(b) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(c) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(d) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

b. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subdivision 26 a (4) of this subsection, when the organization has been accredited by:

(1) The American National Standards Institute;

(2) The Institute for Credentialing Excellence (formerly the National Commission for Certifying Agencies); or

(3) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales and/or marketing.

c. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

(1) Use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(2) The manner in which those words are combined.

d. For purposes of this section, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency when that job title:

(1) Indicates seniority within the organization; or

(2) Specifies an individual's area of specialization within the organization.

For purposes of this subdivision d, "financial services regulatory agency" includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under § 3 (a)(1) of the Investment Company Act of 1940 (15 USC § 80a-3(a)(1)).

e. Nothing in this regulation shall limit the commission's authority to enforce existing provisions of law;₂

27. Represent that securities will be listed or that application for listing will be made on a securities exchange or the NASDAQ system or other quotation system without reasonable basis in fact for the representation;

28. Falsify or alter so as to make false or misleading any record or document or any information provided to the commission;

29. Negotiate, facilitate, or otherwise execute a transaction on behalf of an investor involving securities issued by a third party pursuant to a claim for exemption under subsection B of § 13.1-514 of the Act unless the broker-dealer intends to report the securities owned and the value of such securities on at least a quarterly basis to the investor;

30. Offer or sell securities pursuant to a claim for exemption under subsection B of § 13.1-514 of the Act without having first verified the information relating to the securities offered or sold, which shall include, but not be limited to, ascertaining the risks associated with investing in the respective security;

31. [~~Hold itself out~~ Allow any person to represent or utilize its name] as a trading platform [~~for a registered broker-dealer~~] without conspicuously disclosing the name of the registered broker-dealer [~~when representing the broker-dealer~~] in effecting or attempting to effect purchases and sales of securities;

32. Fail to advise the customer, both at the time of solicitation and on the confirmation, of any and all compensation related to a specific securities transaction to be paid to the agent including commissions, sales charges, or concessions;

33. Fail to disclose, both at the time of solicitation and on the confirmation in connection with a principal transaction, a short inventory position in the firm's account of more than 3.0% of the issued and outstanding shares of that class of securities of the issuer;

34. Conduct sales contests in a particular security without regard to an investor's suitability;

35. Fail or refuse to promptly execute sell orders in connection with a principal transaction after a solicited purchase by a customer;

36. Solicit a secondary market transaction when there has not been a bona fide distribution in the primary market;

37. Compensate an agent in different amounts for effecting sales and purchases in the same security;

38. Fail to provide each customer with a statement of account with respect to all securities in the account, containing a value for each such security based on the closing market bid on a date certain for any month in which activity has occurred in a customer's account, but in no event less than three months;

39. Fail to comply with any applicable provision of the FINRA Rules or any applicable fair practice or ethical standard promulgated by the SEC or by a self-regulatory organization approved by the SEC; or

40. Engage in any conduct that constitutes a dishonest or unethical practice including, but not limited to, forgery, embezzlement, nondisclosure, incomplete disclosure or material omissions or untrue statements of material facts, manipulative or deceptive practices, or fraudulent course of business.

B. [ Every agent is required to observe high standards of commercial honor and just and equitable principles of trade in the conduct of his business. The acts and practices described below are considered contrary to such standards and may constitute grounds for denial, suspension, or revocation of registration or such other action authorized by the Act. ] No agent who is registered or required to be registered shall:

1. Engage in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer;

2. Effect any securities transaction not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transaction is authorized in writing by the broker-dealer prior to execution of the transaction;

3. Establish or maintain an account containing fictitious information in order to execute a transaction which would otherwise be unlawful or prohibited;

4. Share directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents;

5. Divide or otherwise split the agent's commissions, profits or other compensation from the purchase or sale of securities in this state with any person not also registered as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control; ~~or~~

6. Engage in conduct specified in subdivision A 2, 3, 4, 5, 6, 10, 15, 16, 17, 18, 23, 24, 25, 26, 28, 30, 31, 32, 34, 35, 36, 39, or 26 40 of this section;

7. Fail to comply with the continuing education requirements under 21VAC5-20-150 C; or

8. Hold oneself out as representing any person other than the broker-dealer with whom the agent is registered and, in the case of an agent whose normal place of business is not on the premises of the broker-dealer, failing to conspicuously disclose the name of the broker-dealer for whom the agent is registered when representing the dealer in effecting or attempting to effect the purchases or sales of securities.

~~C. It shall be deemed a demonstration of a lack of business knowledge by an agent insofar as business knowledge is required for registration by § 13.1-505 A 3 of the Act, if an agent fails to comply with any of the applicable continuing education requirements set forth in any of the following and such failure has resulted in an agent's denial, suspension, or revocation of a license, registration, or membership with a self-regulatory organization.~~

~~1. Schedule C to the National Association of Securities Dealers By Laws, Part XII of the National Association of Securities Dealers, as such provisions existed on July 1, 1995;~~

~~2. Rule 345 A of the New York Stock Exchange, as such provisions existed on July 1, 1995;~~

~~3. Rule G 3(h) of the Municipal Securities Rulemaking Board, as such provisions existed on July 1, 1995;~~

~~4. Rule 341 A of the American Stock Exchange, as such provisions existed on July 1, 1995;~~

~~5. Rule 9.3A of the Chicago Board of Options Exchange, as such provisions existed on July 1, 1995; or~~

~~6. Article VI, Rule 9 of the Chicago Stock Exchange, as such provisions existed on July 1, 1995;~~

~~7. Rule 9.27(C) of the Pacific Stock Exchange, as such provisions existed on July 1, 1995; or~~

~~8. Rule 640 of the Philadelphia Stock Exchange, as such provisions existed on July 1, 1995.~~

~~Each or all of the education requirements standards listed above may be changed by each respective entity and if so changed will become a requirement if the change does not materially reduce the educational requirements expressed above or reduce the investor protection provided by the requirements.~~

~~D. C.~~ No person shall publish, give publicity to, or circulate any notice, circular, advertisement, newspaper article, letter, investment service or communication which, though not purporting to offer a security for sale, describes the security, for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

~~E. The purpose of this subsection is to identify practices in the securities business which are generally associated with~~

---

# Regulations

---

schemes to manipulate and to identify prohibited business conduct of broker-dealers or sales agents.

~~1. Entering into a transaction with a customer in any security at an unreasonable price or at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.~~

~~2. Contradicting or negating the importance of any information contained in a prospectus or other offering materials with intent to deceive or mislead or using any advertising or sales presentation in a deceptive or misleading manner.~~

~~3. In connection with the offer, sale, or purchase of a security, falsely leading a customer to believe that the broker-dealer or agent is in possession of material, nonpublic information which would affect the value of the security.~~

~~4. In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors of similar investment objective for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstances of each investor.~~

~~5. Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution by, among other things, (i) transferring securities to a customer, another broker-dealer or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees or (ii) parking or withholding securities.~~

~~6. Although nothing in this subsection precludes application of the general antifraud provisions against anyone for practices similar in nature to the practices discussed below, the following subdivisions a through f specifically apply only in connection with the solicitation of a purchase or sale of OTC (over the counter) unlisted non-NASDAQ equity securities:~~

~~a. Failing to advise the customer, both at the time of solicitation and on the confirmation, of any and all compensation related to a specific securities transaction to be paid to the agent including commissions, sales charges, or concessions.~~

~~b. In connection with a principal transaction, failing to disclose, both at the time of solicitation and on the confirmation, a short inventory position in the firm's account of more than 3.0% of the issued and outstanding shares of that class of securities of the issuer; however, subdivision 6 of this subsection shall apply only if the firm is a market maker at the time of the solicitation.~~

~~c. Conducting sales contests in a particular security.~~

~~d. After a solicited purchase by a customer, failing or refusing, in connection with a principal transaction, to promptly execute sell orders.~~

~~e. Soliciting a secondary market transaction when there has not been a bona fide distribution in the primary market.~~

~~f. Engaging in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same security.~~

~~7. Effecting any transaction in, or inducing the purchase or sale of any security by means of any manipulative, deceptive or other fraudulent device or contrivance including but not limited to the use of boiler room tactics or use of fictitious or nominee accounts.~~

~~8. Failing to comply with any prospectus delivery requirements promulgated under federal law or the Act.~~

~~9. In connection with the solicitation of a sale or purchase of an OTC unlisted non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under § 13 of the Securities Exchange Act when requested to do so by a customer.~~

~~10. Marking any order tickets or confirmations as unsolicited when in fact the transaction was solicited.~~

~~11. For any month in which activity has occurred in a customer's account, but in no event less than every three months, failing to provide each customer with a statement of account with respect to all OTC non-NASDAQ equity securities in the account, containing a value for each such security based on the closing market bid on a date certain; however, this subdivision shall apply only if the firm has been a market maker in the security at any time during the month in which the monthly or quarterly statement is issued.~~

~~12. Failing to comply with any applicable provision of the Rules of Fair Practice of the NASD or any applicable fair practice or ethical standard promulgated by the SEC or by a self-regulatory organization approved by the SEC.~~

~~13. In connection with the solicitation of a purchase or sale of a designated security:~~

~~a. Failing to disclose to the customer the bid and ask price, at which the broker-dealer effects transactions with individual, retail customers, of the designated security as well as its spread in both percentage and dollar amounts at the time of solicitation and on the trade confirmation documents; or~~

~~b. Failing to include with the confirmation, the notice disclosure contained in subsection F of this section, except the following shall be exempt from this requirement:~~

~~(1) Transactions in which the price of the designated security is \$5.00 or more, exclusive of costs or charges; however, if the designated security is a unit composed of one or more securities, the unit price divided by the number of components of the unit other than warrants, options, rights, or similar securities must be \$5.00 or~~

more, and any component of the unit that is a warrant, option, right, or similar securities, or a convertible security must have an exercise price or conversion price of \$5.00 or more.

(2) Transactions that are not recommended by the broker-dealer or agent.

(3) Transactions by a broker-dealer: (i) whose commissions, commission equivalents, and mark ups from transactions in designated securities during each of the preceding three months, and during 11 or more of the preceding 12 months, did not exceed 5.0% of its total commissions, commission equivalents, and mark ups from transactions in securities during those months; and (ii) who has not executed principal transactions in connection with the solicitation to purchase the designated security that is the subject of the transaction in the preceding 12 months.

(4) Any transaction or transactions that, upon prior written request or upon its own motion, the commission conditionally or unconditionally exempts as not encompassed within the purposes of this section.

e. For purposes of this section, the term "designated security" means any equity security other than a security:

(1) Registered, or approved for registration upon notice of issuance, on a national securities exchange and makes transaction reports available pursuant to 17 CFR 11Aa3-1 under the Securities Exchange Act of 1934;

(2) Authorized, or approved for authorization upon notice of issuance, for quotation in the NASDAQ system;

(3) Issued by an investment company registered under the Investment Company Act of 1940;

(4) That is a put option or call option issued by The Options Clearing Corporation; or

(5) Whose issuer has net tangible assets in excess of \$4,000,000 as demonstrated by financial statements dated within no less than 15 months that the broker or dealer has reviewed and has a reasonable basis to believe are true and complete in relation to the date of the transaction with the person, and

(a) In the event the issuer is other than a foreign private issuer, are the most recent financial statements for the issuer that have been audited and reported on by an independent public accountant in accordance with the provisions of 17 CFR 210.2-02 under the Securities Exchange Act of 1934; or

(b) In the event the issuer is a foreign private issuer, are the most recent financial statements for the issuer that have been filed with the SEC; furnished to the SEC pursuant to 17 CFR 240.12g3-2(b) under the Securities Exchange Act of 1934; or prepared in accordance with generally accepted accounting principles in the country of incorporation, audited in compliance with the requirements of that jurisdiction, and reported on by an

accountant duly registered and in good standing in accordance with the regulations of that jurisdiction.

F. Customer notice requirements follow:

~~IMPORTANT CUSTOMER NOTICE READ CAREFULLY~~

You have just entered into a solicited transaction involving a security which may not trade on an active national market. The following should help you understand this transaction and be better able to follow and protect your investment.

Q. What is meant by the BID and ASK price and the spread?

A. The BID is the price at which you could sell your securities at this time. The ASK is the price at which you bought. Both are noted on your confirmation. The difference between these prices is the "spread," which is also noted on the confirmation, in both a dollar amount and a percentage relative to the ASK price.

Q. How can I follow the price of my security?

A. For the most part, you are dependent on broker-dealers that trade in your security for all price information. You may be able to find a quote in the newspaper, but you should keep in mind that the quote you see will be for dealer-to-dealer transactions (essentially wholesale prices and will not necessarily be the prices at which you could buy or sell).

Q. How does the spread relate to my investments?

A. The spread represents the profit made by your broker-dealer and is the amount by which your investment must increase (the BID must rise) for you to break even. Generally, a greater spread indicates a higher risk.

Q. How do I compute the spread?

A. If you bought 100 shares at an ASK price of \$1.00, you would pay \$100 (100 shares X \$1.00 = \$100). If the BID price at the time you purchased your stock was \$.50, you could sell the stock back to the broker-dealer for \$50 (100 shares X \$.50 = \$50). In this example, if you sold at the BID price, you would suffer a loss of 50%.

Q. Can I sell at any time?

A. Maybe. Some securities are not easy to sell because there are few buyers, or because there are no broker-dealers who buy or sell them on a regular basis.

Q. Why did I receive this notice?

A. The laws of some states require your broker-dealer or sales agent to disclose the BID and ASK price on your confirmation and include this notice in some instances. If the BID and ASK were not explained to you at the time you discussed this investment with your broker, you may have further rights and remedies under both state and federal law.

Q. Where do I go if I have a problem?

---

# Regulations

---

~~A. If you cannot work the problem out with your broker-dealer, you may contact the Virginia State Corporation Commission or the securities commissioner in the state in which you reside, the United States Securities and Exchange Commission, or the National Association of Securities Dealers, Inc.~~

~~G. No broker dealer or agent shall engage in any conduct that constitutes a dishonest or unethical practice, including, but not limited to, forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, manipulative or deceptive practices, or fraudulent course of business.~~

~~H. No broker dealer or agent shall engage in any conduct specified in subsection A, B, C, D, E, or G of this section which shall be grounds under the Act for imposition of a penalty, denial of a pending application, refusal to renew, revocation of an effective registration, or any other action the Act shall allow.~~

## **21VAC5-20-285. Customer notice for designated securities.**

A. Broker-dealers that solicit the purchase and sale of designated securities shall provide the following notice to customers:

### IMPORTANT CUSTOMER NOTICE-READ CAREFULLY

You have just entered into a solicited transaction involving a security which may not trade on an active national market. The following should help you understand this transaction and be better able to follow and protect your investment.

Q. What is meant by the BID and ASK price and the spread?

A. The BID is the price at which you could sell your securities at this time. The ASK is the price at which you bought. Both are noted on your confirmation. The difference between these prices is the "spread," which is also noted on the confirmation, in both a dollar amount and a percentage relative to the ASK price.

Q. How can I follow the price of my security?

A. For the most part, you are dependent on broker-dealers that trade in your security for all price information. You may be able to find a quote in the newspaper, but you should keep in mind that the quote you see will be for dealer-to-dealer transactions (essentially wholesale prices and will not necessarily be the prices at which you could buy or sell).

Q. How does the spread relate to my investments?

A. The spread represents the profit made by your broker-dealer and is the amount by which your investment must increase (the BID must rise) for you to break even. Generally, a greater spread indicates a higher risk.

Q. How do I compute the spread?

A. If you bought 100 shares at an ASK price of \$1.00, you would pay \$100 (100 shares X \$1.00 = \$100). If the BID price at the time you purchased your stock was \$.50, you could sell the stock back to the broker-dealer for \$50 (100 shares X \$.50 = \$50). In this example, if you sold at the BID price, you would suffer a loss of 50%.

Q. Can I sell at any time?

A. Maybe. Some securities are not easy to sell because there are few buyers, or because there are no broker-dealers who buy or sell them on a regular basis.

Q. Why did I receive this notice?

A. The laws of some states require your broker-dealer or sales agent to disclose the BID and ASK price on your confirmation and include this notice in some instances. If the BID and ASK were not explained to you at the time you discussed this investment with your broker, you may have further rights and remedies under both state and federal law.

Q. Where do I go if I have a problem?

A. If you cannot work the problem out with your broker-dealer, you may contact the Virginia State Corporation Commission or the securities commissioner in the state in which you reside, the United States Securities and Exchange Commission, or FINRA.

B. For the purpose of this section, the term "designated security" shall be defined as in subdivision A 15 m 3 under 21VAC5-20-280.

## **21VAC5-20-330. Model rules for sales of securities at financial institutions.**

A. This section applies exclusively to broker-dealer services conducted by broker-dealers and their agents on the premises of a financial institution where retail deposits are taken or through an affiliate of the financial institution.

This section does not alter or abrogate a broker-dealer's obligation to comply with other applicable laws, rules, or regulations that may govern the operations of broker-dealers and their agents, including but not limited to, supervisory obligations. ~~This~~ Broker-dealers are responsible for the acts, practices, and conduct of their agents in connection with the offer and sale of securities. Additionally, this section does not apply to broker-dealer services provided to nonretail customers.

B. For purposes of this section, the following terms have the meanings indicated:

"Affiliate" means (i) an entity that a financial institution owns, in whole or in part or (ii) an entity that is a subsidiary of the financial institution's parent company.

"Broker-dealer services" means the investment banking or securities business as defined in paragraph ~~(p)~~ (u) of Article I of the ~~By-Laws of the NASD~~ FINRA By-Laws [ , amended by SR-FINRA-2008-0026, effective December 15, 2008 ].

"Financial institution" means federal and state-chartered banks, savings and loan associations, savings banks, credit unions, and the service corporations of such institutions located in Virginia.

"Networking arrangement" means a contractual or other arrangement between a broker-dealer and a financial institution by which the broker-dealer conducts broker-dealer services on the premises of the financial institution where retail deposits are taken or through an affiliate of the financial institution.

C. Standards for broker-dealer conduct. No broker-dealer shall conduct broker-dealer services ~~on the premises of a financial institution where retail deposits are taken~~ pursuant to a networking arrangement unless the broker-dealer and its agents comply with the following requirements:

1. Setting. Wherever practical, broker-dealer services shall be conducted in a physical location distinct from the area in which the financial institution's retail deposits are taken. In those situations where there is insufficient space to allow separate areas, the broker-dealer has a heightened responsibility to distinguish its services from those of the financial institution. In all situations, the broker-dealer shall identify its services in a manner that clearly distinguishes those services from the financial institution's retail deposit-taking activities. The broker-dealer's name shall be clearly displayed in the area in which the broker-dealer conducts its services.

2. a. Networking arrangements. There shall be a written agreement between the financial institution and its associated broker-dealer that shall ~~[ be filed with the commission at its Division of Securities and Retail Franchising at least 90 days prior to its effective date, which shall include ]~~, at a minimum, [ address ] the [ areas ~~items~~ ] listed below. [ The written agreement shall be filed with the commission at its Division of Securities and Retail Franchising at least 90 days prior to its effective date. ]

- (1) A description of the responsibilities of each party, including the features of the sales program and the roles of registered and unregistered personnel;
- (2) A description of the responsibilities of broker-dealer personnel authorized to make investment sales or recommendations;
- (3) A description of how referrals to associated broker-dealer personnel will be made;
- (4) A description of compensation arrangements for unregistered personnel;
- (5) A description of training to be provided to both registered and unregistered personnel;
- (6) A description of broker-dealer office audits to be conducted by the broker-dealer, including frequency, reports associated with financial institutions and records to be reviewed; ~~and~~

(7) Authority of the financial institution and regulators to have access to relevant records of the broker-dealer and the financial institution in order to evaluate compliance with the agreement; ~~and~~

(8) A statement identifying whether the broker-dealer will offer or sell securities issued pursuant to an exemption from registration under 21VAC5-45-20 (Regulation D, Rule 506, 15 USC § 77r(b)(4)(D), 17 CFR 230.506).

b. Program management. The program's management of the broker-dealer's networking arrangements shall address and include at a minimum, those items listed below.

- (1) A description of relevant referral activities and compensation arrangements;
- (2) A description of appropriate training requirements for various classes of personnel;
- (3) The scope and frequency of compliance reviews and the manner and frequency of reporting to broker-dealer compliance supervisors and the financial institution compliance management group;
- (4) The process of verifying that security purchases and sales are being conducted in accordance with the written networking agreement;
- (5) The permissible use of financial institution and broker-dealer customer information, including how compliance with Virginia and federal law and with the broker-dealer's privacy policies will be achieved; ~~and~~
- (6) The existence of any potential conflicts of interest between the broker-dealer activities and the financial institution and its affiliates and appropriate disclosure of the conflicts that result from the relationship; ~~and~~
- (7) A description of the method in which the broker-dealer will determine the suitability of the securities for its customers and a description of the supervisory procedures imposed for the offer and sale of securities issued pursuant to an exemption from registration under 21VAC5-45-20 (Regulation D, Rule 506, 15 USC § 77r(b)(4)(D), 17 CFR 230.506).

c. If a financial institution has a networking arrangement with a registered broker-dealer, an affiliate of the financial institution may also be registered as a broker-dealer and may also employ agents that are registered with the broker-dealer with which there is a networking arrangement. If the financial institution's affiliate is a registered broker-dealer, and both the affiliate and the broker-dealer operating under a networking arrangement employs dual agents, both the broker-dealer and the affiliate are equally responsible for the supervision of the agents. The agents must be registered for both the broker-dealer and the affiliate.

3. Customer disclosure and written acknowledgment.

---

# Regulations

---

a. At or prior to the time that a customer's securities brokerage account is opened by a broker-dealer on the premises of a financial institution where retail deposits are taken, the broker-dealer or its agents shall:

(1) Disclose, orally and in writing, that the securities products purchased or sold in a transaction with the broker-dealer:

(a) Are not insured by the Federal Deposit Insurance Corporation ("FDIC") or the National Credit Union Administration ("NCUA");

(b) Are not deposits or other obligations of the financial institution and are not guaranteed by the financial institution; and

(c) Are subject to investment risks, including possible loss of principal invested.

(2) Make reasonable efforts to obtain from each customer during the account opening process a written acknowledgment of the disclosures required by subdivision C 3 a (1).

(3) Provide written disclosures that are conspicuous, easy to comprehend and presented in a clear and concise manner.

(4) Disclose, orally and in writing, that the broker-dealer and the financial institution are separate entities, and when mutual funds or other securities are bought through the broker-dealer, the client is doing business with the broker-dealer and not with the financial institution.

(5) Disclose, orally and in writing that the broker-dealer and the financial institution will likely receive compensation as a result of the purchase of securities or advisory services by the client through the broker-dealer.

b. If broker-dealer services include any written or oral representations concerning insurance coverage, other than FDIC insurance coverage, then clear and accurate written or oral explanations of the coverage must also be provided to the customers when such representations are first made.

#### 4. Communications with the public.

a. All of the broker-dealer's confirmations and account statements must indicate clearly that the broker-dealer services are provided by the broker-dealer. Such indication may include the name of the financial institution or any of the financial institution's affiliates, but the name of the broker-dealer shall be in print larger than the name of the financial institution.

b. Advertisements and sales literature that announce the location of a financial institution where broker-dealer services are provided by the broker-dealer or its agents, or that are distributed by the broker-dealer or its agents on the premises of a financial institution, must disclose that securities products: are not insured by the FDIC; are not deposits or other obligations of the financial

institution and are not guaranteed by the financial institution; and are subject to investment risks, including possible loss of the principal invested. The shorter logo format described in subdivision C 4 d may be used to provide these disclosures.

c. Recommendations by a broker-dealer or its agents concerning nondeposit investment products with a name similar to that of a financial institution must only occur pursuant to policies and procedures reasonably designed to minimize risk of customer confusion.

d. The following shorter logo format disclosures may be used by a broker-dealer or its agents in advertisements and sales literature, including material published, or designed for use, in radio or television broadcasts, automated teller machine ("ATM") screens, billboards, signs, [ ~~social media~~ ] posters and brochures, to comply with the requirements of subdivision C 4 b provided that such disclosures are displayed in a conspicuous manner:

(1) Not FDIC insured;

(2) No bank guarantee;

(3) May lose value.

e. As long as the omission of the disclosures required by subdivision C 4 b would not cause the advertisement or sales literature to be misleading in light of the context in which the material is presented, the disclosures are not required with respect to messages contained in:

(1) Radio broadcasts of 30 seconds or less;

(2) Electronic signs, including billboard-type signs that are electronic, time and temperature signs and ticker tape signs, but excluding messages contained in such media as television, on-line computer services, or ATMs; and

(3) Signs, such as banners and posters [ ~~or social media~~ ], when used only as location indicators.

5. Notification of termination. The broker-dealer must promptly notify the financial institution if any agent of the broker-dealer who is employed by the financial institution is terminated for cause by the broker-dealer.

6. Referral fees paid to unregistered financial institution employees. Unregistered financial institution employees may only receive a one-time nominal fee of a fixed dollar amount for each customer referral, and only if the payment is not contingent on whether the referral results in an investment activity or a transaction.

#### 7. Prohibited conduct.

In addition to the provisions of subsections A and B of 21VAC5-20-280, unless otherwise specified herein, broker-dealers and broker-dealer agents offering broker-dealer services in association with a financial institution or an affiliate of the financial institution, pursuant to a networking arrangement, shall not:

(1) Accept or receive compensation directly or indirectly from the financial institution for broker-dealer services provided;

(2) Identify themselves as being affiliated with the financial institution or any of the financial institution's affiliated companies;

(3) Fail to follow the terms of a networking agreement between a financial institution or any affiliated company of the financial institution concerning the offer and sale of securities; and

(4) Use nonregistered employees of the financial institution or any affiliate of the financial institution to solicit investors.

**DOCUMENTS INCORPORATED BY REFERENCE (21VAC5-20)**

Rule 1250 of FINRA By-Laws, Continuing Education Requirements, amended by SR-FINRA-2011-013, eff. October 17, 2011, Financial Industry Regulatory Authority, Inc.

Rule 345 A of the New York Stock Exchange Rules, Continuing Education for Registered Persons, effective as existed July 1, 1995, New York Stock Exchange.

Rule G-3(h) of the Municipal Securities Rulemaking Board, Classification of Principals and Representatives; Numerical Requirements; Testing; Continuing Education Requirements, effective as existed July 1, 1995, Municipal Securities Rulemaking Board.

Rule 341A of the New York Stock Exchange Market Rules, Continuing Education for Registered Persons, effective as existed May 14, 2012, New York Stock Exchange.

Rule 9.3A of the Chicago Board Options Exchange, Continuing Education for Registered Persons, effective as existed July 1, 1995, Chicago Board Options Exchange.

Article VI, Rule 11 of the Rules of the Chicago Stock Exchange, Inc., Continuing Education for Registered Persons, effective as existed July 1, 1995, Chicago Stock Exchange, Inc.

FINRA, Rule 2264, Margin Disclosure Statement, amended by SR-FINRA-2011-065, eff. December 5, 2011.

Article I, Paragraph u of FINRA By-Laws [ , amended by SR-FINRA-2008-0026, effective December 15, 2008 ].

**21VAC5-30-50. Requirements for registration statements relating to nonissuer distributions.**

A. The requirements for a registration statement filed pursuant to § 13.1-508 of the Act relating to securities to be offered and sold pursuant to a nonissuer distribution (i.e., "secondary trading") are:

1. a. The registration statement shall contain the issuer's most recent 10-K Annual Report and 10-Q Quarterly Report filed with the SEC pursuant to § 13 or § 15(d) of

the Securities Exchange Act of 1934 (15 USC § 78m or o(d)).

b. The registration statement pertaining to the securities of a Canadian issuer which have been registered pursuant to the Multijurisdictional Disclosure System described by the SEC in Release No. 33-6841 shall contain the issuer's most recent Annual Information Form (plus the issuer's latest audited fiscal year-end financial statements) and Quarterly Report as filed with the appropriate Canadian regulatory authority.

2. If within 12 months of the date of filing the registration statement any 8-K Current Report has been filed with the SEC pursuant to § 13 or § 15(d) of the Securities Exchange Act of 1934, then a copy of each such report shall be filed with the registration statement.

3. If within 12 months of the date of filing the registration statement any Form 10 general form for registration of securities has been filed with the SEC pursuant to § 12(d) or (g) of the Securities Exchange Act of 1934, then a copy of each such form shall be filed with the registration statement.

4. If within 12 months of the date of filing the registration statement a registration statement has been filed with the SEC pursuant to § 6 of the Securities Act of 1933 (15 USC § 77f), then a copy of each such registration statement shall be filed with this registration statement.

B. For purposes of this section, the word "registered" as used in § 13.1-508 A 2 (i) of the Act shall mean registered pursuant to this Act, the Securities Act of 1933 or the Securities Exchange Act of 1934.

C. The requirement for delivery of a prospectus under § 13.1-508 D of the Act, with respect to securities registered pursuant to this section, shall be met by compliance with 21VAC5-20-280 A 49 10.

D. A registration statement filed pursuant to this section need not comply with 21VAC5-30-40.

**21VAC5-30-80. Adoption of NASAA statements of policy.**

The commission adopts the following NASAA statements of policy that shall apply to the registration of securities in the Commonwealth. It will be considered a basis for denial of an application if an offering fails to comply with an applicable statement of policy. While applications not conforming to a statement of policy shall be looked upon with disfavor, where good cause is shown, certain provisions may be modified or waived by the commission.

1. Options and Warrants, as amended March 31, 2008.
2. Underwriting Expenses, Underwriter's Warrants, Selling Expenses and Selling Security Holders, as amended March 31, 2008.
3. Real Estate Programs, as amended May 7, 2007.
4. Oil and Gas Programs, as amended May 7, 2007.

---

# Regulations

---

5. Cattle-Feeding Programs, as adopted September 17, 1980.
6. Unsound Financial Condition, as amended March 31, 2008.
7. Real Estate Investment Trusts, as amended May 7, 2007.
8. Church Bonds, as adopted April 29, 1981.
9. Small Company Offering Registrations, as adopted April 28, 1996.
10. NASAA Guidelines Regarding Viatical Investment, as adopted October 1, 2002.
11. Corporate Securities Definitions, as amended March 31, 2008.
12. Church Extension Fund Securities, as amended April 18, 2004.

## DOCUMENTS INCORPORATED BY REFERENCE (21VAC5-30)

Statement of Policy Regarding Church Extension Fund Securities, adopted April 17, 1994, amended April 18, 2004, North American Securities Administrators Association, Inc.

### **21VAC5-40-40. Nasdaq/National Market System exemption. (Repealed.)**

~~In accordance with § 13.1-514 A 12 of the Act, the following are exempt from the securities registration requirements of the Act: any security listed or approved for listing upon notice of issuance on the National Association of Securities Dealers Automated Quotation National Market System (Nasdaq/National Market System); any other security of the same issuer that is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing.~~

- ~~1. The Commission shall have authority by rule or order to deny, suspend or revoke the exemption created by this section as to a specific issue or category of securities when necessitated by the public interest and for the protection of investors.~~
- ~~2. The Commission may rescind this section by order if it determines that the Nasdaq/National Market System's requirements for listing or maintenance of securities of an issuer as set forth in the Memorandum of Understanding: The Uniform Model Marketplace Exemption from State Securities Registration Requirements, adopted April 28, 1990, by membership of the North American Securities Administrators Association, Inc., published in The Commerce Clearing House NASAA Reports, paragraph 2351, have been so changed or insufficiently applied that the protection of investors contemplated by the exemption no longer is afforded.~~
- ~~3. The Commission may rescind this section by order if it determines that the NASD has not provided on a timely basis to the Commission upon its request materially complete prospectuses in the form most recently filed with~~

~~the SEC as well as any other relevant information the Commission may deem to be necessary pertaining to initial public offerings that the NASD ordinarily obtains in regulating issuers listed on the Nasdaq/National Market System, based on agreement with the Commission concerning the information to be provided.~~

### **21VAC5-40-60. Chicago Board Options Exchange. (Repealed.)**

~~A. In accordance with § 13.1-514 A 12 of the Act, the following are exempt from the securities registration requirements of the Act: securities listed or approved for listing upon issuance on the Chicago Board Options Exchange, Inc. ("CBOE"); securities of the same issuer that are of senior or substantially equal rank; securities called for by subscription rights or warrants so listed or approved; or warrants or rights to purchase or subscribe to any of the foregoing.~~

~~B. The State Corporation Commission shall have authority by rule or order to deny, suspend or revoke the exemption created by this rule as to a specific issue or category of securities when necessitated by the public interest and for the protection of investors.~~

~~C. The State Corporation Commission may rescind this rule by order if it determines that CBOE's requirements for listing or maintenance of securities of an issuer as set forth in the "Memorandum of Understanding Between the North American Securities Administrators Association, Inc., and the Chicago Board Options Exchange, Inc.," approved May 30, 1991, by membership of the North American Securities Administrators Association, Inc., published in the Commerce Clearing House, "NASAA Reports," paragraph 801 et seq., have been so changed or insufficiently applied that the protection of investors contemplated by the exemption no longer is afforded.~~

~~D. The State Corporation Commission may rescind this rule by order if it determines that CBOE has not provided on a timely basis to the State Corporation Commission upon its request materially complete prospectuses in the form most recently filed with the Securities and Exchange Commission as well as other relevant information the State Corporation Commission may deem to be necessary pertaining to initial public offerings, all linked securities and entities whose securities' values underlie Contingent Value Rights that CBOE ordinarily obtains in regulating issuers listed on CBOE, based on agreement with the State Corporation Commission concerning the information to be provided.~~

### **21VAC5-40-80. Philadelphia Stock Exchange, Inc. (Repealed.)**

~~A. In accordance with § 13.1-514 A 12 of the Act, the following are exempt from the securities registration requirements of the Act: securities listed or approved for listing upon notice of issuance on Tier I of the Philadelphia Stock Exchange, Inc. (the Exchange); securities of the same issuer that are of senior or substantially equal rank; securities~~

called for by subscription rights or warrants so listed or approved; or warrants or rights to purchase or subscribe to any of the foregoing.

B. The State Corporation Commission shall have authority by rule or order to deny, suspend or revoke the exemption created by this rule as to a specific issue or category of securities when necessitated by the public interest and for the protection of investors.

C. The State Corporation Commission may rescind this rule by order if it determines that the Exchange's requirements for listing or maintenance of securities of an issuer as set forth in the "Memorandum of Understanding Between the North American Securities Administrators Association, Inc. and the Philadelphia Stock Exchange, Inc.," approved October 12, 1994, by membership of the North American Securities Administrators Association, Inc., published in the Commerce Clearing House, "NASAA Reports," paragraph 2941 et seq., have been so changed or insufficiently applied that the protection of investors contemplated by the exemption no longer is afforded.

D. The State Corporation Commission may rescind this rule by order if it determines that the Exchange has not provided on a timely basis to the State Corporation Commission upon its request materially complete prospectuses in the form most recently filed with the Securities and Exchange Commission as well as other relevant information the State Corporation Commission may deem to be necessary pertaining to initial public offerings that the Exchange ordinarily obtains in regulating issuers listed on the Exchange, based on agreement with the State Corporation Commission concerning the information to be provided.

**21VAC5-40-90. Pacific Stock Exchange, Inc. (Repealed.)**

A. In accordance with § 13.1-514 A 12 of the Act, the following are exempt from the securities registration requirements of the Act: securities listed or approved for listing upon notice of issuance on Tier I of the Pacific Stock Exchange, Inc. (the Exchange); securities of the same issuer that are of senior or substantially equal rank; securities called for by subscription rights or warrants so listed or approved; or warrants or rights to purchase or subscribe to any of the foregoing.

B. The State Corporation Commission shall have authority by rule or order to deny, suspend or revoke the exemption created by this rule as to a specific issue or category of securities when necessitated by the public interest and for the protection of investors.

C. The State Corporation Commission may rescind this rule by order if it determines that the Exchange's requirements for listing or maintenance of securities of an issuer as set forth in the "Memorandum of Understanding Between the North American Securities Administrators Association, Inc. and the Pacific Stock Exchange, Inc.," approved October 12, 1994, by membership of the North American Securities Administrators Association, Inc., published in the Commerce Clearing

House, "NASAA Reports," paragraph 2841 et seq., have been so changed or insufficiently applied that the protection of investors contemplated by the exemption no longer is afforded.

D. The State Corporation Commission may rescind this rule by order if it determines that the Exchange has not provided on a timely basis to the State Corporation Commission upon its request materially complete prospectuses in the form most recently filed with the Securities and Exchange Commission as well as other relevant information the State Corporation Commission may deem to be necessary pertaining to initial public offerings that the Exchange ordinarily obtains in regulating issuers listed on the Exchange, based on agreement with the State Corporation Commission concerning the information to be provided.

**21VAC5-40-180. Certain options, warrants, and rights.**

In accordance with § 13.1-514 A 12 of the Act, the following securities are exempt from the securities registration requirements of the Act:

1. A put or a call option contract, a warrant, or a subscription right on or with respect to a federal covered security so specified in § 18 (b)(1) of the Securities Act of 1933 (15 USC § 77r(b)(1)) or by rule adopted under that provision;
2. An option or similar derivative security on a security or index of securities or foreign currencies issued by a clearing agency registered under the Securities Act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange, or a facility of a national securities association registered under the Securities Exchange Act of 1934 or an offer or sale of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or
3. An option or a derivative security designated by the SEC under § 9 (b) of the Securities Act of 1934 (15 USC § 78i(b)).

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

FORMS (21VAC5-40)

Form D, Notice of Exempt Offering of Securities, U.S. Securities and Exchange Commission, SEC1972, (eff. 9/08).

[Form D, Notice of Exempt Offering of Securities, U.S. Securities and Exchange Commission, SEC1972 \(rev. 2/12\).](#)

# Regulations

## 21VAC5-45-20. Offerings conducted pursuant to Rule 506 of federal Regulation D (17 CFR 230.506): Filing requirements and issuer-agent exemption.

A. An issuer offering a security that is a covered security under § 18 (b)(4)(D) of the Securities Act of 1933 (15 USC § 77r(b)(4)(D)) shall file with the commission no later than 15 days after the first sale of such federal covered security in this Commonwealth:

1. A notice on SEC Form D (17 CFR 239.500), as filed with the SEC.
2. A filing fee of \$250 payable to the Treasurer of Virginia.

B. An amendment filing shall contain a copy of the amended SEC Form D. No fee is required for an amendment.

C. For the purpose of this chapter, SEC "Form D" is the document, as adopted by the SEC and in effect on ~~September 15, 2008~~ February 27, 2012, entitled "Form D, Notice of Exempt Offering of Securities."

D. Pursuant to § 13.1-514 B 13 of the Act, an agent of an issuer who effects transactions in a security exempt from registration under the Securities Act of 1933 pursuant to rules and regulations promulgated under § 4(2) thereof (15 USC § 77d(2)) is exempt from the agent registration requirements of the Act.

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

### FORMS (21VAC5-45)

~~Form D, Notice of Exempt Offering of Securities, U.S. Securities and Exchange Commission, SEC1972, (eff. 9/08).~~

[Form D, Notice of Exempt Offering of Securities, U.S. Securities and Exchange Commission, SEC1972 \(rev. 2/12\).](#)

#### Part I

Investment Advisor Registration, Notice Filing for Federal Covered Advisors, Expiration, Renewal, Updates and Amendments, Terminations and Merger or Consolidation

## 21VAC5-80-10. Application for registration as an investment advisor and notice filing as a federal covered advisor.

A. Application for registration as an investment advisor shall be filed in compliance with all requirements of ~~the Investment Advisor Registration Depository (IARD) system~~ IARD and in full compliance with forms and regulations prescribed by the commission and shall include all information required by such forms.

B. An application shall be deemed incomplete for ~~purposes of applying for~~ registration as an investment advisor unless

the applicant submits the following executed forms, fee, and information ~~are submitted~~:

1. Form ADV Parts ~~I 1~~ and ~~II 2~~ submitted to ~~the~~ IARD system.
2. The statutory fee made payable to FINRA in the amount of \$200 submitted to ~~the IARD system pursuant to § 13.1-505 F of the Act.~~
3. A copy of the client agreement.
4. A copy of the firm's supervisory and procedures manual as required by 21VAC5-80-170.
5. Copies of all advertising materials.
6. Copies of all stationery and business cards.
7. A signed affidavit stating that an investment advisor domiciled in Virginia has not conducted investment advisory business prior to registration, and for investment advisors domiciled outside of Virginia an affidavit stating that the advisor has fewer than six clients in ~~any~~ the prior 12-month period.

### ~~8. The following financial statements:~~

- ~~a. A trial balance of all ledger account;~~
- ~~b. A statement of all client funds or securities that are not segregated;~~
- ~~c. A computation of the aggregate amount of client ledger debit balances;~~
- ~~d. A statement as to the number of client accounts;~~
- ~~e. Financial statements prepared in accordance with generally accepted accounting principles that shall include a balance sheet, income statement, and statement of cash flow.~~

8. An audited or certified balance sheet prepared in accordance with generally accepted accounting practices reflecting the financial condition of the investment advisor not more than 90 days prior to the date of such filing.

9. A copy of the firm's disaster recovery plan as required by 21VAC5-80-160 F.

10. ~~At Evidence of at least one qualified individual must have a~~ with an investment advisor representative registration pending on ~~the IARD system~~ on behalf of the investment advisor ~~prior to the grant of registration.~~

~~11. Form IA-XRF, "Cross Reference Between ADV Part II, ADV Part 1A/1B, Schedule F, Contract and Brochure."~~

~~12. 11.~~ Any other information the commission may require.

For purposes of this section, the term "net worth" means an excess of assets over liabilities, as determined by generally accepted accounting principles, ~~but~~ Net worth shall not include ~~as assets:~~ prepaid expenses (except as to items properly classified as assets under generally accepted accounting principles), deferred charges such as deferred income tax charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized

debt discount and expense, all other assets of intangible nature, home furnishings, automobiles, and any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

C. The commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

D. Every person who transacts business in this Commonwealth as a federal covered advisor shall file a notice as prescribed in subsection E of this section in compliance with all requirements of the ~~Investment Advisor Registration Depository (IARD) system~~ IARD.

E. A notice filing for a federal covered advisor shall be deemed incomplete unless the federal covered advisor submits the following executed forms, fee, and information are submitted:

1. Form ADV Parts 1 and 2.
2. ~~The statutory~~ A fee made payable to FINRA in the amount of \$200 ~~submitted to the IARD system.~~

**21VAC5-80-30. Renewals.**

A. To renew its registration, an investment advisor will be billed by ~~the IARD system~~ the statutory fee of \$200 prior to the annual expiration date. A renewal of registration shall be granted as of course upon payment of the proper fee together with any surety bond that the commission may require pursuant to 21VAC5-80-180 B unless the registration was, or the renewal would be, subject to revocation under § 13.1-506 of the Act.

B. To renew its notice filing, a federal covered advisor will be billed by ~~the IARD system~~ the ~~statutory~~ fee of \$200 prior to the annual expiration date. A renewal of notice filing shall be granted as a matter of course upon payment of the proper fee.

**21VAC5-80-40. Updates and amendments.**

A. An investment advisor or federal covered advisor shall ~~update its Form ADV as required by item 4, "When am I required to update my Form ADV?" of Form ADV: General Instructions and shall file all such information with the IARD system~~ file electronically on IARD, in accordance with Form ADV instructions, any amendments to the investment advisor's Form ADV.

1. An amendment will be considered to be filed promptly if filed within 30 days of the event that requires the filing of the amendment; and

2. Within 90 days of the end of the investment advisor's fiscal year, an investment advisor must file electronically on IARD an Annual Updating Amendment to the Form ADV.

3. An investment advisor is prohibited from using an amendment until it receives notice of acceptance from the commission through IARD.

B. An investment advisor shall file the balance sheet as prescribed by Part ~~H~~ 2A, Item ~~44~~ 18 of Form ADV, unless excluded from such requirement, with the commission at its Division of Securities and Retail Franchising within 90 days of the investment advisor's fiscal year end. Any investment advisor who is registered in the state in which it maintains its principal place of business shall file with the commission at its Division of Securities and Retail Franchising any financial documents required to be filed by the state within 10 days of the time it must file these documents in such state.

C. A federal covered advisor shall maintain all other-than-Annual Amendments to Part H 2 of Form ADV at its principal place of business and shall make a copy available to the commission at its Division of Securities and Retail Franchising within five days of its request.

**21VAC5-80-50. Termination of registration and notice filings.**

When an investment advisor or federal covered advisor desires to terminate its registration or notice filing, it shall file Form ADV-W ~~with the on IARD system.~~ Notice of termination by a federal covered advisor shall be effective upon receipt by the commission or at a later date specified in the notice.

**21VAC5-80-60. Investment advisor merger or consolidation.**

In any merger, consolidation, or reorganization of an investment advisor or federal covered advisor, the surviving or new entity shall amend or file, as the case may be, a new application for registration or notice filing together with the proper fee ~~with the on IARD system.~~

For each investment advisor representative of the new or surviving entity who will transact business in this Commonwealth, an application for registration together with the proper fee or fees must also be filed ~~with the on IARD system~~ in full compliance with the forms prescribed by the commission. The foregoing filing requirement applies to each investment advisor representative who has a place of business located in the Commonwealth and who is connected with a federal covered advisor that is the new or surviving entity to the merger or consolidation.

---

# Regulations

---

## Part II

Investment Advisor Representative Registration, Expiration, Updates and Amendments, Termination, and Changing Connection from One Investment Advisor to Another

### **21VAC5-80-70. Application for registration as an investment advisor representative.**

A. Application for registration as an investment advisor representative shall be filed in compliance with all requirements of ~~the NASAA/NASD Central Registration Depository system CRD~~ and in full compliance with forms and regulations prescribed by the commission. The application shall include all information required by such forms.

B. An application shall be deemed incomplete ~~for purposes of applying~~ for registration as an investment advisor representative unless the following executed forms, fee and information are submitted:

1. Form ~~U-4~~ U4.
2. The statutory fee made payable to FINRA in the amount of \$30. ~~The check must be made payable to the NASD.~~
3. Evidence of passing: (i) the Uniform Investment Adviser Law Examination, Series 65; (ii) the Uniform Combined State Law Examination, Series 66, and the General Securities Representative Examination, Series 7; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.
4. All individuals listed on Part 1 of Form ADV in Schedule A and Item 2. A. of Part 1B as having supervisory ~~or control~~ responsibilities of the investment advisor shall take and pass the examinations as required in subdivision 3 of this subsection, and register as a representative of the investment advisor.
5. Any other information the commission may require.

C. The commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

### **21VAC5-80-90. Renewals.**

To renew the registration of its investment advisor representatives, an investment advisor or federal covered advisor will be billed by ~~the IARD system~~ the statutory fee of \$30 per investment advisor representative. A renewal of registration shall be granted as a matter of course upon payment of the proper fee or fees unless the registration was, or the renewal would be, subject to revocation under § 13.1-506 of the Act.

### **21VAC5-80-100. Updates and amendments.**

An investment advisor representative shall amend or update Form ~~U-4~~ U4 as required by the ~~"General Instructions" of Form U-4 Instructions.~~ "Amendment Filings" provisions set forth under "How to Use Form U4." All filings shall be made in compliance with all requirements of ~~the NASAA/NASD Central Registration Depository system CRD.~~

### **21VAC5-80-110. Termination of registration.**

A. When an investment advisor representative terminates ~~a connection~~ his registration with an investment advisor, or an investment advisor terminates ~~connection with~~ an investment advisor ~~representative~~ representative's registration, the investment advisor shall file ~~with the NASAA/NASD Central Registration Depository system~~ notice of such termination on Form ~~U-5~~ U5 within 30 calendar days of the date of termination. All filings shall be made on CRD.

B. When an investment advisor representative terminates ~~a connection~~ his registration with a federal covered advisor, the federal covered advisor shall file ~~with the NASAA/NASD Central Registration Depository system~~ notice of such termination on Form ~~U-5~~ U5 within 30 calendar days of the date of termination. All filings shall be made on CRD.

C. If a representative learns that the investment advisor has not filed the appropriate notice, the representative may file notice with the commission at its Division of Securities and Retail Franchising. The commission may terminate the representative's registration if the commission determines that an investment advisor (i) is no longer in existence, (ii) has ceased conducting securities business, or (iii) cannot reasonably be located.

### **21VAC5-80-130. Examination/qualification.**

A. An individual applying for registration as an investment advisor representative shall be required to provide evidence of passing within the two-year period immediately preceding the date of the application: (i) the Uniform Investment Adviser Law Examination, Series 65; (ii) the Uniform Combined State Law Examination, Series 66 and the General Securities Representative Examination, Series 7; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.

B. Any individual who has been registered as an investment advisor or investment advisor representative in any state jurisdiction requiring the registration and qualification of investment advisors or investment advisor representatives within the two-year period immediately preceding the date of the filing of an application shall not be required to satisfy the examination requirements set forth in subsection A of this section, except that the commission may require additional examinations for any individual found to have violated any federal or state securities laws.

C. The examination requirements shall not apply to an individual who currently holds one of the following professional designations:

1. Certified Financial Planner (CFP) issued by the Certified Financial Planner Board of Standards, Inc.;
2. Chartered Financial Consultant (ChFC) awarded by The American College, Bryn Mawr, Pennsylvania;
3. Personal Financial Specialist (PFS) administered by the American Institute of Certified Public Accountants;
4. Chartered Financial Analyst (CFA) granted by the Association for Investment Management and Research;
5. Chartered Investment Counselor (CIC) granted by the Investment Counsel Association of America; or
6. Such other professional designation, after reasonable notice and subject to review by the commission, as the Director of the Division of Securities and Retail Franchising designates.

D. In lieu of meeting the examination requirement described in subsection A of this section, an applicant who meets all the qualifications set forth below may file with the commission at its Division of Securities and Retail Franchising an executed Affidavit for Waiver of Examination (Form S.A.3).

1. No more than one other individual connected with the applicant's investment advisor is utilizing the waiver at the time the applicant files Form S.A.3.
2. The applicant is, and has been for at least the five years immediately preceding the date on which the application for registration is filed, actively engaged in the investment advisory business.
3. The applicant has been for at least the two years immediately preceding the date on which the application is filed the president, chief executive officer or chairman of the board of directors of an investment advisor organized in corporate form or the managing partner, member, trustee or similar functionary of an investment advisor organized in noncorporate form.
4. The investment advisor or advisors referred to in subdivision 3 of this subsection has been actively engaged in the investment advisory business and during the applicant's tenure as president, chief executive officer, chairman of the board of directors, or managing partner, member, trustee or similar functionary had at least \$40 million under management.
5. The applicant verifies that he has read and is familiar with the investment advisor and investment advisor representative provisions of the Act and the provisions of Parts I through V of this chapter.
6. The applicant verifies that none of the questions in Item 14 (disciplinary history) on his Form ~~U-4~~ U4 have been, or need be, answered in the affirmative.

Part III

Investment Advisor, Federal Covered Advisor and Investment Advisor Representative Regulations

**21VAC5-80-145. Custody requirements for investment advisors. (Repealed.)**

~~A. For purposes of this section, the following definitions shall apply:~~

~~1. "Custody" means holding directly or indirectly, client funds or securities, or having any authority to obtain possession of them (which may include possession of a user ID and password).~~

~~a. Custody includes:~~

~~(1) Possession of client funds or securities unless received inadvertently and returned to the sender promptly, but in any case within three business days of receiving them;~~

~~(2) Any arrangement (including a general power of attorney) under which the investment advisor is permitted to withdraw client funds or securities maintained with a custodian upon the investment advisor's instruction to the custodian; and~~

~~(3) Any capacity (such as general partner of a limited partnership, managing member of a limited liability company, or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives the investment advisor or the investment advisor's supervised person legal ownership of or access to client funds or securities.~~

~~b. Receipt of client's securities or checks drawn by clients and made payable to unrelated third parties will not meet the definition of custody if forwarded to the third party within 24 hours of receipt and the advisor maintains the following records:~~

~~(1) A ledger or other listing of all securities or funds held or obtained, including the following information:~~

~~(a) Issuer;~~

~~(b) Type of security and series;~~

~~(c) Date of issue;~~

~~(d) For debt instruments, the denomination, interest rate and maturity date;~~

~~(e) Certificate number, including alphabetical prefix or suffix;~~

~~(f) Name in which registered;~~

~~(g) Date given to the advisor;~~

~~(h) Date sent to client or sender;~~

~~(i) Form of delivery to client or sender, or copy of the form of delivery to client or sender; and~~

~~(j) Mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return.~~

---

# Regulations

---

2. "Independent representative" means a person who:

- a. Acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle and by law or contract is obliged to act in the best interest of the advisory client or the limited partners, members, or other beneficial owners;
- b. Does not control, is not controlled by, and is not under common control with the investment advisor; and
- c. Does not have, and has not had within the past two years, a material business relationship with the investment advisor.

3. "Qualified custodian" means the following independent institutions or entities that are not affiliated with the advisor by any direct or indirect common control and have not had a material business relationship with the advisor in the previous two years:

- a. A bank or savings association that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act, 12 USC § 1813;
- b. A registered broker-dealer holding the client assets in customer accounts;
- c. A registered futures commission merchant registered under § 4f(a) of the Commodity Exchange Act, 7 USC § 6f(a), holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and
- d. A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

## B. Requirements.

1. If the investment advisor is registered or required to be registered, it is unlawful and deemed to be a fraudulent, deceptive, or manipulative act, practice, or course of business under § 13.1-503 of the Virginia Securities Act for the investment advisor to have custody of client funds or securities unless:

- a. The investment advisor notifies the commission in writing that the investment advisor has or may have custody. Such notification is required on Form ADV submitted to the IARD system;
- b. A qualified custodian maintains those funds and securities in a separate account for each client under that client's name or in accounts that contain only investment advisor's clients' funds and securities, under the

investment advisor's name as agent or trustee for the clients;

c. If the investment advisor opens an account with a qualified custodian on his client's behalf, either under the client's name or under the investment advisor's name as agent, the investment advisor must notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information;

d. At least quarterly, the investment advisor sends a copy of the qualified custodian's account statements or a proprietary account statement to each client for whom the investment advisor has custody of funds or securities, identifying the amount of funds and of each security of which the investment advisor has custody at the end of the period and setting forth all transactions during that period and if proprietary account statements are utilized or the advisor has custody pursuant to subdivision A 1 a (3) of this section and does not comply with subdivision 4 of this subsection;

(1) An independent certified public accountant verifies all client funds and securities by actual examination at least once during each calendar year at a time chosen by the accountant without prior notice or announcement to the advisor and that is irregular from year to year, and files a copy of the auditor's report and financial statements with the commission within 30 days after the completion of the examination, along with a letter stating that it has examined the funds and securities and describing the nature and extent of the examination;

(2) The independent certified public accountant, upon finding any material discrepancies during the course of the examination, notifies the commission within one business day of the finding, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the Division of Securities and Retail Franchising;

(3) If the investment advisor is a general partner of a limited partnership (or managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle), the account statements required under subdivision 1 d of this subsection must be sent to each limited partner (or member or other beneficial owner or their independent representative); and

(4) A client may designate an independent representative to receive, on his behalf, notices and account statements as required under subdivisions 1 c and d of this subsection.

2. An advisor who has custody as defined in subdivision A 1 a (2) of this section by having fees directly deducted from client accounts shall provide the following safeguards:

- a. ~~The investment advisor must have written authorization from the client to deduct advisory fees from the account held with the qualified custodian.~~
  - b. ~~Each time a fee is directly deducted from a client account, the investment advisor must concurrently:~~
    - (1) ~~Unless a qualified custodian is calculating the fee, send the qualified custodian an invoice of the amount of the fee to be deducted from the client's account; and~~
    - (2) ~~Send the client an invoice itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee. The invoice will notify the client that the custodian will not be checking the accuracy of the fees and this responsibility is the client's.~~
  - e. ~~The investment advisor notifies the commission in writing that the investment advisor intends to use the safeguards provided above. Such notification is required to be given on Schedule F of the Form ADV.~~
  - d. ~~An investment advisor having custody solely because it meets the definition of custody as defined in subdivision A 1 a (2) of this section and who complies with the safekeeping requirements in subdivisions 1 and 2 of this subsection will not be required to meet the financial requirements for custodial advisors as set forth in 21VAC5-80-180 and subdivisions 1 d (1) and (2) of this subsection provided the investment advisor sends a copy of the qualified custodian's account statements in accordance with subdivision 1 d of this subsection.~~
3. ~~An investment advisor who has custody as defined in subdivision A 1 a (3) of this section and who does not meet the exception provided in subdivision C 3 of this section must, in addition to the safeguards set forth in subdivisions 1 a through d of this subsection, also comply with the following:~~
- a. ~~Hire a qualified independent party to review all fees, expenses, and capital withdrawals from the pooled accounts.~~
  - b. ~~Send all invoices or receipts to the qualified independent party, detailing the amount of the fee, expenses, or capital withdrawal and the method of calculation such that the qualified independent party can:~~
    - (1) ~~Determine that the payment is in accordance with the pooled investment vehicle standards (generally the partnership agreement or membership agreement); and~~
    - (2) ~~Forward, to the qualified custodian, approval for payment of the invoice with a copy to the investment advisor.~~
  - e. ~~For purposes of this section, a qualified independent party means a person who:~~
    - (1) ~~Is engaged by an investment advisor to act as a financially qualified gatekeeper for the payment of fees,~~

- expenses, and capital withdrawals from the pooled investment (Examples would include an independent CPA or an attorney);
  - (2) ~~Does not control and is not controlled by and is not under common control with the investment advisor, either directly or indirectly; and~~
  - (3) ~~Does not have, and has not had within the past two years, any other material business relationship with the investment advisor.~~
  - d. ~~The investment advisor notifies the commission in writing that the investment advisor intends to use the safeguards provided above. Such notification is required to be given on Schedule F of the Form ADV.~~
  - e. ~~An investment advisor having custody solely because it meets the definition of custody as defined in subdivision A 1 a (3) of this section and who complies with the safekeeping requirements in subdivisions 1 and 3 of this subsection will not be required to meet the financial requirements for custodial advisors as set forth in 21VAC5-80-180.~~
4. ~~When a trust retains an investment advisor, investment advisor representative, or employee, director, or owner of an investment advisor as trustee, and the investment advisor acts as the investment advisor to that trust, the investment advisor shall:~~
- a. ~~Notify the commission in writing that the investment advisor intends to use the safeguards provided below. Such notification is required to be given on Form ADV submitted to the IARD system.~~
  - b. ~~Send to the grantor of the trust, the attorney for the trust if it is a testamentary trust, the co-trustee (other than the investment advisor; investment advisor representative; or employee, director, or owner of the investment advisor); or a defined beneficiary of the trust, at the same time that it sends any invoice to the qualified custodian, an invoice showing the amount of the trustees' fee or investment management or advisory fee, the value of the assets on which the fees were based, and the specific manner in which the fees were calculated. The invoice will notify the recipient that the custodian will not be checking the accuracy of the fees and that the responsibility is either the grantor's, trust's attorney's, co-trustee's or beneficiary's.~~
  - e. ~~Enter into a written agreement with a qualified custodian that specifies the qualified custodian will not deliver trust securities to the investment advisor, any investment advisor representative or employee, director, or owner of the investment advisor, nor will transmit any funds to the investment advisor; any investment advisor representative or employee; director or owner of the investment advisor, except that the qualified custodian may pay trustees' fees to the trustee and investment~~

---

# Regulations

---

management or advisory fees to investment advisor, provided that:

(1) ~~The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the co trustee (other than the investment advisor; investment advisor representative; or employee, director, or owner of the investment advisor); or a defined beneficiary of the trust has authorized the qualified custodian in writing to pay those fees;~~

(2) ~~The statements for those fees show the amount of the fees for the trustee and, in the case of statements for investment management or advisory fees, show the value of the trust assets on which the fee is based and the manner in which the fee was calculated; and~~

(3) ~~The qualified custodian agrees to send to the grantor of the trust, the attorneys for a testamentary trust, the co trustee (other than the investment advisor; investment advisor representative; or employee, director, or owner of the investment advisor); or a defined beneficiary of the trust, at least quarterly, a statement of all disbursements from the account of the trust, including the amount of investment management fees paid to the investment advisor and the amount of trustees' fees paid to the trustee.~~

d. ~~Except as otherwise set forth in subdivision 4 d (1) of this subsection, the qualified custodian may transfer funds or securities, or both, of the trust only upon the direction of the trustee (who may be the investment advisor; investment advisor representative; or employee, director, or owner of the investment advisor), who the investment advisor has duly accepted as an authorized signatory. The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the co trustee (other than the investment advisor; investment advisor representative; or employee, director, or owner of the investment advisor); or a defined beneficiary of the trust, must designate the authorized signatory for management of the trust. The direction to transfer funds or securities, or both, can only be made to the following:~~

(1) ~~To a trust company, bank trust department, or brokerage firm independent of the investment advisor for the account of the trust to which the assets relate;~~

(2) ~~To the named grantors or to the named beneficiaries of the trust;~~

(3) ~~To a third person independent of the investment advisor in payment of the fees or charges of the third person including, but not limited to:~~

(a) ~~Attorney's, accountant's, or qualified custodian's fees for the trust; and~~

(b) ~~Taxes, interest, maintenance, or other expenses, if there is property other than securities or cash owned by the trust;~~

(4) ~~To third persons independent of the investment advisor for any other purpose legitimately associated with the management of the trust; or~~

(5) ~~To a broker dealer in the normal course of portfolio purchases and sales, provided that the transfer is made on payment against delivery basis or payment against trust receipt.~~

e. ~~An investment advisor having custody solely because it meets the definition of custody as defined in subdivision A 1 a (3) of this section and who complies with the safekeeping requirements in subdivisions 1 and 4 of this subsection, will not be required to meet the financial requirements for custodial advisors as set forth in 21VAC5-80-180.~~

## C. Exceptions.

1. ~~With respect to shares of an open end company as defined in § 5(a)(1) of the Investment Company Act of 1940, 15 USC § 80a-5(a)(1) (mutual fund), the investment advisor may use the mutual fund's transfer agent in lieu of a qualified custodian for purposes of complying with subsection B of this section.~~

2. ~~Certain privately offered securities.~~

a. ~~An investment advisor is not required to comply with subsection B of this section with respect to securities that are:~~

(1) ~~Acquired from the unaffiliated issuer in a transaction or chain of transactions not involving any public offering;~~

(2) ~~Uncertificated, and ownership thereof is recorded only on books of the issuer or its transfer agent in the name of the client; and~~

(3) ~~Transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.~~

b. ~~Notwithstanding subdivision 2 a of this subsection, the provisions of subdivision 2 of this subsection are available with respect to securities held for the account of a limited partnership (or limited liability company, or other type of pooled investment vehicle) only if the limited partnership is audited, the audited financial statements are distributed, as described in subdivision 3 of this subsection and the investment advisor notifies the commission in writing that the investment advisor intends to provide audited financial statements, as described above. Such notification is required to be given on Schedule F of the Form ADV.~~

3. ~~The investment advisor is not required to comply with subdivision B 1 d (1) through (3) of this section with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) that is subject to audit at least annually and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial~~

owners) within 120 days of the end of its fiscal year. The investment advisor shall also notify the commission in writing that the investment advisor intends to employ the use of the audit safeguards described above. Such notification is required to be given on Schedule F of the Form ADV.

4. The investment advisor is not required to comply with this section with respect to the account of an investment company registered under the Investment Company Act of 1940, 15 USC §§ 80a-1 to 80a-64.

5. The investment advisor is not required to comply with safekeeping requirements of subsection B of this section or the net worth and bonding requirements of 21VAC5-80-180 if the investment advisor has custody solely because the investment advisor, investment advisor representative or employee, director, or owner of the investment advisor is a trustee for a beneficial trust, if all of the following conditions are met for each trust:

a. The beneficial owner of the trust is a parent, a grandparent, a spouse, a sibling, a child, a grandchild, or other family relative designated as the legal beneficiary of the trustee. These relationships shall include "step" relationships.

b. For each account under subdivision 5 a of this subsection the investment advisor complies with the following:

(1) Provide a written statement to each beneficial owner of the account setting forth a description of the requirements of subsection B of this section and the reasons why the investment advisor will not be complying with those requirements.

(2) Obtain from each beneficial owner a signed and dated statement acknowledging the receipt of the written statement required under subdivision 5 b (1) of this subsection.

(3) Maintain a copy of both documents described in subdivisions 5 b (1) and (2) of this subsection until the account is closed or the investment advisor is no longer trustee.

6. Any investment advisor who intends to have custody of client funds or securities but is not able to utilize a qualified custodian as defined in subdivision A 3 of this section shall first obtain specific approval, in writing, from the commission and comply with all of the applicable safekeeping provisions under subsection B of this section including taking responsibility for those provisions that are designated to be performed by a qualified custodian.

Part III

Investment Advisor, Federal Covered Advisor, and Investment Advisor Representative Regulations

**21VAC5-80-146. Custody of client funds or securities by investment advisors.**

A. For purposes of this section the following definitions shall apply:

"Control" means the power, directly or indirectly, to direct the management or policies of a person whether through ownership of securities, by contract, or otherwise. Control includes:

1. Each of the investment advisor's officers, partners, or directors exercising executive responsibility (or persons having similar status or functions) is presumed to control the investment advisor;

2. A person is presumed to control a corporation if the person: a. Directly or indirectly has the right to vote 25% or more of a class of the corporation's voting securities; or

b. Has the power to sell or direct the sale of 25% or more of a class of the corporation's voting securities;

3. A person is presumed to control a partnership if the person has the right to receive upon dissolution, or has contributed, 25% or more of the capital of the partnership;

4. A person is presumed to control a limited liability company if the person:

a. Directly or indirectly has the right to vote 25% or more of a class of the interests of the limited liability company;

b. Has the right to receive upon dissolution, or has contributed, 25% or more of the capital of the limited liability company;

c. Is an elected manager of the limited liability company; or

5. A person is presumed to control a trust if the person is a trustee or managing agent of the trust.

"Custody" means holding directly or indirectly, client funds or securities, or having any authority to obtain possession of them or has the ability to appropriate them. The investment advisor has custody if a related person holds, directly or indirectly, client funds or securities, or has any authority to obtain possession of them, in connection with advisory services the investment advisor provides to clients.

1. Custody includes:

a. Possession of client funds or securities unless the investment advisor receives them inadvertently and returns them to the sender promptly but in any case within three business days of receiving them;

b. Any arrangement (including general power of attorney) under which the investment advisor is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment advisor's instruction to the custodian; and

---

# Regulations

---

c. Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives the investment advisor or its supervised person legal ownership of or access to client funds or securities.

2. Receipt of checks drawn by clients and made payable to third parties will not meet the definition of custody if forwarded to the third party within three business days of receipt and the investment advisor maintains the records required under 21VAC5-80-160 A 23;

"Independent certified public accountant" means a certified public accountant that meets the standards of independence described in Rule 2-01(b) and (c) of Regulation S-X (17 CFR 210.2-01(b) and (c)).

"Independent party" means a person that:

1. Is engaged by the investment advisor to act as a gatekeeper for the payment of fees, expenses, and capital withdrawals from the pooled investment;

2. Does not control and is not controlled by and is not under common control with the investment advisor;

3. Does not have, and has not had within the past two years, a material business relationship with the investment advisor; and

4. Shall not negotiate or agree to have material business relations or commonly controlled relations with an investment advisor for a period of two years after serving as the person engaged in an independent party agreement.

"Independent representative" means a person who:

1. Acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle and by law or contract is obliged to act in the best interest of the advisory client or the limited partners, members, or other beneficial owners;

2. Does not control, is not controlled by, and is not under common control with investment advisor; and

3. Does not have, and has not had within the past two years, a material business relationship with the investment advisor.

"Qualified custodian" means:

1. A bank or savings association that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act;

2. A broker-dealer registered in this jurisdiction and with the SEC holding the client assets in customer accounts;

3. A registered futures commission merchant registered under Section 4f(a) of the Commodity Exchange Act, holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the

purchase or sale of a commodity for future delivery and options thereon; and

4. A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

"Related person" means any person, directly or indirectly, controlling or controlled by the investment advisor, and any person that is under common control with the investment advisor.

B. Requirements: It is unlawful and deemed to be a fraudulent, deceptive, or manipulative act, practice, or course of business for an investment advisor, registered or required to be registered, to have custody of client funds or securities unless:

1. The investment advisor notifies the commission promptly in writing that the investment advisor has or may have custody. Such notification is required to be given on Form ADV.

2. A qualified custodian maintains those funds and securities:

a. In a separate account for each client under that client's name; or

b. In accounts that contain only the investment advisor's clients' funds and securities, under the investment advisor's name as agent or trustee for the clients, or, in the case of a pooled investment vehicle that the investment advisor manages, in the name of the pooled investment vehicle.

3. If an investment advisor opens an account with a qualified custodian on its client's behalf, under the client's name, under the name of the investment advisor as agent, or under the name of a pooled investment vehicle, the investment advisor must notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information. If the investment advisor sends account statements to a client to which the investment advisor is required to provide this notice, and the investment advisor must include in the notification provided to that client and in any subsequent account statement the investment advisor sends that client a statement urging the client to compare the account statements from the custodian with those from the investment advisor.

4. The investment advisor has a reasonable basis, after due inquiry, for believing that the qualified custodian sends an account statement, at least quarterly, to each client for which it maintains funds or securities, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period.

5. If the investment advisor or a related person is a general partner of a limited partnership (or managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle):

a. The account statements required under subdivision 4 of this subsection must be sent to each limited partner (or member or other beneficial owner), and

b. The investment advisor must:

(1) Enter into a written agreement with an independent party who is obliged to act in the best interest of the limited partners, members, or other beneficial owners to review all fees, expenses and capital withdrawals from the pooled accounts;

(2) Send all invoices or receipts to the independent party, detailing the amount of the fee, expenses or capital withdrawal and the method of calculation such that the independent party can:

(a) Determine that the payment is in accordance with the pooled investment vehicle standards (generally the partnership agreement or membership agreement); and

(b) Forward, to the qualified custodian, approval for payment of the invoice with a copy to the investment advisor.

6. An independent certified public accountant, pursuant to a written agreement between the investment advisor and the independent certified public accountant, verifies by actual examination at least once during each calendar year the client funds and securities of which the investment advisor has custody. The time will be chosen by the independent certified public accountant without prior notice or announcement to the investment advisor and will be irregular from year to year. The written agreement must provide for the first examination to occur within six months of becoming subject to this subdivision, except that, if the investment advisor maintains client funds or securities pursuant to this section as a qualified custodian, the agreement must provide for the first examination to occur no later than six months after obtaining the internal control report. The written agreement must require the independent certified public accountant to:

a. File a certificate on Form ADV-E with the commission within 120 days of the time chosen by the independent certified public accountant in subdivision 6 of this subsection, stating that it has examined the funds and securities and describing the nature and extent of the examination;

b. Upon finding any material discrepancies during the course of the examination, notify the commission within one business day of the finding, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the commission; and

c. Upon resignation or dismissal from, or other termination of, the engagement, or upon removing itself

or being removed from consideration for being reappointed, file within four business days Form ADV-E accompanied by a statement that includes:

(1) The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent certified public accountant; and

(2) An explanation of any problems relating to examination scope or procedure that contributed to such resignation, dismissal, removal, or other termination.

7. If the investment advisor maintains, or if the investment advisor has custody because a related person maintains, client funds or securities pursuant to this section as a qualified custodian in connection with advisory services the investment advisor provides to clients:

a. The independent certified public accountant the investment advisor retains to perform the independent verification required by subdivision 6 of this subsection must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by the Public Company Accounting Oversight Board in accordance with its rules; and

b. The investment advisor must obtain, or receive from its related person, within six months of becoming subject to this subdivision and thereafter no less frequently than once each calendar year a written internal control report prepared by an independent certified public accountant:

(1) The internal control report must include an opinion of an independent certified public accountant as to whether controls have been placed in operation as of a specific date, are suitably designed, and are operating effectively to meet control objectives relating to custodial services, including the safeguarding of funds and securities held by either the investment advisor or a related person on behalf of the investment advisors clients, during the year;

(2) The independent certified public accountant must verify that the funds and securities are reconciled to a custodian other than the investment advisor or the investment advisors related person; and

(3) The independent certified public accountant must be registered with and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by the Public Company Accounting Oversight Board in accordance with its rules.

8. A client may designate an independent representative to receive on his behalf notices and account statements as required under subdivisions 3 and 4 of this subsection.

C. Exceptions:

1. With respect to shares of an open-end company as defined in Section 5(a)(1) of the Investment Company Act of 1940 ("mutual fund"), the investment advisor may use the mutual fund's transfer agent in lieu of a qualified

---

# Regulations

---

custodian for purposes of complying with subsection B of this section;

2. Certain privately offered securities are exempt, including:

a. The investment advisor is not required to comply with subdivision B 2 of this section with respect to securities that are:

(1) Acquired from the issuer in a transaction or chain of transactions not involving any public offering;

(2) Uncertificated and ownership thereof is recorded only on the books of the issuer or its transfer agent in the name of the client; and

(3) Transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

b. Notwithstanding subdivision 2 a of this subsection, the provisions of this subdivision 2 are available with respect to securities held for the account of a limited partnership (or limited liability company, or other type of pooled investment vehicle) only if the limited partnership is audited, and the audited financial statements are distributed, as described in subdivision 4 of this subsection and the investment advisor notifies the commission in writing that the investment advisor intends to provide audited financial statements as described above. Such notification is required to be provided on Form ADV.

3. Notwithstanding subdivision B 6 of this section, an investment advisor is not required to obtain an independent verification of client funds and securities maintained by a qualified custodian if all of the following are met:

a. The investment advisor has custody of the funds and securities solely as a consequence of its authority to make withdrawals from client accounts to pay its advisory fee;

b. The investment advisor has written authorization from the client to deduct advisory fees from the account held with the qualified custodian;

c. Each time a fee is directly deducted from a client account, the investment advisor concurrently:

(1) Sends the qualified custodian or if subdivision B 5 of this section applies sends the independent party designated pursuant to subdivision B 5 b (2) of this section, an invoice or statement of the amount of the fee to be deducted from the client's account; and

(2) Sends the client an invoice or statement itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee. The invoice will notify the client that the custodian will not be checking the accuracy of the fees and this responsibility is the client's.

d. The investment advisor notifies the commission in writing that the investment advisor intends to use the safeguards provided above. Such notification is required to be given on Form ADV.

Check Item 9.A. on Form ADV Part 1A as "No" if the only reason the investment advisors have custody is because they engage in direct fee deduction. Item 2.I. of Form ADV Part 1B asks detailed questions that are more useful in determining associated risk.

4. An investment advisor is not required to comply with subdivisions B 3 and B 4 of this section and shall be deemed to have complied with subdivision B 6 of this section with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) if each of the following conditions are met:

a. The advisor sends to all limited partners (or members or other beneficial owners) at least quarterly, a statement, showing:

(1) The total amount of all additions to and withdrawals from the fund as a whole as well as the opening and closing value of the fund at the end of the quarter based on the custodian's records;

(2) A listing of all long and short positions on the closing date of the statement in accordance with FASB Rule Accounting Standards Codification (ASC) 946-210-50; [ and ]

(3) The total amount of additions to and withdrawals from the fund by the investor as well as the total value of the investor's interest in the fund at the end of the quarter.

The listing in subdivision 4 a (2) of this subsection follows FASB Rule Accounting Standards Codification (ASC) 946-210-50-6 whereby long and short positions representing more than 5.0% of the net assets of the fund must be reported as outlined in subsection 50-6 of the FASB Rule. All provisions of subsection 50-6 in the FASB Rule apply to the position disclosure required on the quarterly customer statement. This is the same reporting format required by Rule 13F under the Securities Exchange Act of 1934 for investment managers' annual reports.

b. At least annually the fund is subject to an audit and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) and the commission within 120 days of the end of its fiscal year;

c. The audit is performed by an independent certified public accountant that is registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by the Public Company Accounting Oversight Board in accordance with its rules;

d. Upon liquidation, the advisor distributes the fund's final audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) and the commission promptly after the completion of such audit;

e. The written agreement with the independent certified public accountant must require the independent certified public accountant to, upon resignation or dismissal from, or other termination of, the engagement, or upon removing itself or being removed from consideration for being reappointed, notify the commission within four business days accompanied by a statement that includes:

(1) The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent certified public accountant; and

(2) An explanation of any problems relating to audit scope or procedure that contributed to such resignation, dismissal, removal, or other termination.

f. The investment advisor must also notify the commission in writing that the investment advisor intends to employ the use of the statement delivery and audit safeguards described above. Such notification is required to be given on Form ADV.

5. The investment advisor is not required to comply with this section with respect to the account of an investment company registered under the Investment Company Act of 1940.

[ 6. When a supervised person of an advisor serves as the executor, conservator, or trustee for an estate, conservatorship, or personal trust solely because the supervised person has been appointed in these capacities as a result of a family or personal relationship with the decedent, beneficiary, or grantor (but not a relationship resulting from a past or present client relationship with the advisor), the advisor will not be required to comply with the requirements of subsection B of this section if the advisor complies with the following:

a. Provides a written statement to each beneficial owner of the account setting forth a description of the requirements of subsection B of this section and includes the reasons why the investment advisor will not be required to comply with those requirements.

b. Obtains from each beneficial owner a signed and dated statement acknowledging the receipt of the written statement required under subdivision 6 a of this subsection.

c. Maintains a copy of both documents described in subdivisions 6 a and b of this subsection until the account is closed or the investment advisor is no longer executor, conservator, or trustee. ]

D. Delivery to related persons. Sending an account statement under subdivision B 5 of this section or distributing audited financial statements under subdivision C 4 of this section shall not satisfy the requirements of this section if such account statements or financial statements are sent solely to limited partners (or members or other beneficial owners) that themselves are limited partnerships (or limited liability companies, or another type of pooled investment vehicle) and are related persons.

**21VAC5-80-160. Recordkeeping requirements for investment advisors.**

A. Every investment advisor registered or required to be registered under the Act shall make and keep true, accurate and current the following books, ledgers and records, except an investment advisor having its principal place of business outside this Commonwealth and registered or licensed, and in compliance with the applicable books and records requirements, in the state where its principal place of business is located, shall only be required to make, keep current, maintain and preserve such of the following required books, ledgers and records as are not in addition to those required under the laws of the state in which it maintains its principal place of business:

1. A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

2. General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.

3. A memorandum of each order given by the investment advisor for the purchase or sale of any security, of any instruction received by the investment advisor from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment advisor who recommended the transaction to the client and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank, broker or dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.

4. All check books, bank statements, canceled checks and cash reconciliations of the investment advisor.

5. All bills or statements (or copies of), paid or unpaid, relating to the business as an investment advisor.

6. All trial balances, financial statements prepared in accordance with generally accepted accounting principles which shall include a balance sheet, income statement and such other statements as may be required pursuant to 21VAC5-80-180, and internal audit working papers

---

# Regulations

---

relating to the investment advisor's business as an investment advisor.

7. Originals of all written communications received and copies of all written communications sent by the investment advisor relating to (i) any recommendation made or proposed to be made and any advice given or proposed to be given; (ii) any receipt, disbursement or delivery of funds or securities; and (iii) the placing or execution of any order to purchase or sell any security; however, (a) the investment advisor shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment advisor, and (b) if the investment advisor sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than 10 persons, the investment advisor shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if the notice, circular or advertisement is distributed to persons named on any list, the investment advisor shall retain with a copy of the notice, circular or advertisement a memorandum describing the list and the source thereof.

8. A list or other record of all accounts which list identifies the accounts in which the investment advisor is vested with any discretionary power with respect to the funds, securities or transactions of any client.

9. All powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment advisor, or copies thereof.

10. All written agreements (or copies thereof) entered into by the investment advisor with any client, and all other written agreements otherwise related to the investment advisor's business as an investment advisor.

11. A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media that the investment advisor circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment advisor), and if the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation.

12. a. A record of every transaction in a security in which the investment advisor or any investment advisory representative of the investment advisor has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment advisor nor any investment advisory representative of the investment advisor has any direct or indirect influence or control; and

(ii) transactions in securities which are direct obligations of the United States. The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker, dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment advisor or investment advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

b. For purposes of this subdivision 12, the following definitions will apply. The term "advisory representative" means any partner, officer or director of the investment advisor; any employee who participates in any way in the determination of which recommendations shall be made; any employee who, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment advisor prior to the effective dissemination of the recommendations:

(1) Any person in a control relationship to the investment adviser;

(2) Any affiliated person of a controlling person; and

(3) Any affiliated person of an affiliated person.

"Control" means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with the company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the ownership interest of a company shall be presumed to control the company.

c. An investment advisor shall not be deemed to have violated the provisions of this subdivision 12 because of his failure to record securities transactions of any investment advisor representative if the investment advisor establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

13. a. Notwithstanding the provisions of subdivision 12 of this subsection, where the investment advisor is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment advisor or any investment advisory representative of such investment advisor has, or by reason of such transaction acquires, any direct or indirect beneficial ownership,

except (i) transactions effected in any account over which neither the investment advisor nor any investment advisory representative of the investment advisor has any direct or indirect influence or control; and (ii) transactions in securities which are direct obligations of the United States. The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker, dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment advisor or investment advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

b. An investment advisor is "primarily engaged in a business or businesses other than advising investment advisory clients" when, for each of its most recent three fiscal years or for the period of time since organization, whichever is less, the investment advisor derived, on an unconsolidated basis, more than 50% of (i) its total sales and revenues, and (ii) its income (or loss) before income taxes and extraordinary items, from such other business or businesses.

c. For purposes of this subdivision 13, the following definitions will apply. The term "advisory representative," when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, means any partner, officer, director or employee of the investment advisor who participates in any way in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons, who obtain information concerning securities recommendations being made by the investment advisor prior to the effective dissemination of the recommendations or of the information concerning the recommendations:

- (1) Any person in a control relationship to the investment advisor;
- (2) Any affiliated person of a controlling person; and
- (3) Any affiliated person of an affiliated person.

d. An investment advisor shall not be deemed to have violated the provisions of this subdivision 13 because of his failure to record securities transactions of any investment advisor representative if he establishes that he instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

14. A copy of each written statement and each amendment or revision, given or sent to any client or prospective client of such investment advisor in accordance with the provisions of 21VAC5-80-190 and a record of the dates that each written statement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

15. For each client that was obtained by the advisor by means of a solicitor to whom a cash fee was paid by the advisor, the following:

- a. Evidence of a written agreement to which the advisor is a party related to the payment of such fee;
- b. A signed and dated acknowledgement of receipt from the client evidencing the client's receipt of the investment advisor's disclosure statement and a written disclosure statement of the solicitor; and
- c. A copy of the solicitor's written disclosure statement. The written agreement, acknowledgement and solicitor disclosure statement will be considered to be in compliance if such documents are in compliance with Rule 275.206(4)-3 of the Investment Advisers Act of 1940.

For purposes of this regulation, the term "solicitor" means any person or entity who, for compensation, acts as an agent of an investment advisor in referring potential clients.

16. All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including but not limited to electronic media that the investment advisor circulates or distributes directly or indirectly, to two or more persons (other than persons connected with the investment advisor); however, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this subdivision.

17. A file containing a copy of all written communications received or sent regarding any litigation involving the investment advisor or any investment advisor representative or employee, and regarding any written customer or client complaint.

18. Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to the client.

19. Written procedures to supervise the activities of employees and investment advisor representatives that are

---

# Regulations

---

reasonably designed to achieve compliance with applicable securities laws and regulations.

20. A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self regulatory organization and that pertains to the registrant or its investment advisor representatives, which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

21. Any records documenting dates, locations and findings of the investment advisor's annual review of these policies and procedures conducted pursuant to subdivision ~~E-2~~ F of 21VAC5-80-170.

22. ~~Form IA XRF, "Cross Reference Between ADV Part H, ADV Part 1A/1B, Schedule F, Contract and Brochure."~~ Copies, with original signatures of the investment advisor's appropriate signatory and the investment advisor representative, of each initial Form U4 and each amendment to Disclosure Reporting Pages (DRPs U4) must be retained by the investment advisor (filing on behalf of the investment advisor representative) and must be made available for inspection upon regulatory request.

23. Where the advisor inadvertently held or obtained a client's securities or funds and returned them to the client within three business days or has forwarded third party checks within three business days of receipt, the advisor will be considered as not having custody but shall keep the following record to identify all securities or funds held or obtained relating to the inadvertent custody:

A ledger or other listing of all securities or funds held or obtained, including the following information:

- a. Issuer;
- b. Type of security and series;
- c. Date of issue;
- d. For debt instruments, the denomination, interest rate and maturity date;
- e. Certificate number, including alphabetical prefix or suffix;
- f. Name in which registered;
- g. Date given to the advisor;
- h. Date sent to client or sender;
- i. Form of delivery to client or sender, or copy of the form of delivery to client or sender; and
- j. Mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return.

24. If an investment advisor obtains possession of securities that are acquired from the issuer in a transaction or chain of transactions not involving any public offering that comply with the exception from custody under

subdivision C 2 of 21VAC5-80-146, the advisor shall keep the following records;

- a. A record showing the issuer or current transfer agent's name address, phone number, and other applicable contract information pertaining to the party responsible for recording client interests in the securities; and
- b. A copy of any legend, shareholder agreement, or other agreement showing that those securities that are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

B. 1. If an investment advisor subject to subsection A of this section has custody or possession of securities or funds of any client, the records required to be made and kept under subsection A of this section shall also include:

- 1- a. A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for such accounts and all other debits and credits to the accounts.
- 2- b. A separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits.
- 3- c. Copies of confirmations of all transactions effected by or for the account of any client.
- 4- d. A record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount or interest of each client, and the location of each security.
- 5- e. A copy of any records required to be made and kept under ~~21VAC5-80-145~~ 21VAC5-80-146.
- f. A copy of any and all documents executed by the client (including a limited power of attorney) under which the advisor is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the advisor's instruction to the custodian.
- g. A copy of each of the client's quarterly account statements as generated and delivered by the qualified custodian. If the advisor also generates a statement that is delivered to the client, the advisor shall also maintain copies of such statements along with the date such statements were sent to the clients.
- h. If applicable to the advisor's situation, a copy of the special examination report verifying the completion of the examination by an independent certified public accountant and describing the nature and extent of the examination.
- i. A record of any finding by the independent certified public accountant of any material discrepancies found during the examination.
- j. If applicable, evidence of the client's designation of an independent representative.

2. If an investment advisor has custody because it advises a pooled investment vehicle, as defined in 21VAC5-80-146 A in the definition of custody in clause 1 c, the advisor shall also keep the following records:

a. True, accurate, and current account statements;

b. Where the advisor complies with 21VAC5-80-146 C 4, the records required to be made and kept shall include:

(1) The date or dates of the audit;

(2) A copy of the audited financial statements; and

(3) Evidence of the mailing of the audited financial to all limited partners, members, or other beneficial owners within 120 days of the end of its fiscal year.

c. Where the advisor complies with 21VAC5-80-146 B 5, the records required to be made and kept shall include:

(1) A copy of the written agreement with the independent party reviewing all fees and expenses, indicating the responsibilities of the independent third party.

(2) Copies of all invoices and receipts showing approval by the independent party for payment through the qualified custodian.

C. Every investment advisor subject to subsection A of this section who renders any investment advisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment advisor, make and keep true, accurate and current:

1. Records showing separately for each client the securities purchased and sold, and the date, amount and price of each purchase and sale.

2. For each security in which any client has a current position, information from which the investment advisor can promptly furnish the name of each client and the current amount or interest of the client.

D. Any books or records required by this section may be maintained by the investment advisor in such manner that the identity of any client to whom the investment advisor renders investment advisory services is indicated by numerical or alphabetical code or some similar designation.

E. Every investment advisor subject to subsection A of this section shall preserve the following records in the manner prescribed:

1. All books and records required to be made under the provisions of subsection A through subdivision C 1, inclusive, of this section, except for books and records required to be made under the provisions of subdivisions A 11 and A 16 of this section, shall be maintained in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on record, the first two years of which shall be maintained in the principal office of the investment advisor.

2. Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment advisor and of any predecessor, shall be maintained in the principal office of the investment advisor and preserved until at least three years after termination of the enterprise.

3. Books and records required to be made under the provisions of subdivisions A 11 and A 16 of this section shall be maintained in an easily accessible place for a period of not less than five years, the first two years of which shall be maintained in the principal office of the investment advisor, from the end of the fiscal year during which the investment advisor last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media.

4. Books and records required to be made under the provisions of subdivisions A 17 through A 22, inclusive, of this section shall be maintained and preserved in an easily accessible place for a period of not less than five years, from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment advisor, or for the time period during which the investment advisor was registered or required to be registered in the state, if less.

5. Notwithstanding other record preservation requirements of this subsection, the following records or copies shall be required to be maintained at the business location of the investment advisor from which the customer or client is being provided or has been provided with investment advisory services: (i) records required to be preserved under subdivisions A 3, A 7 through A 10, A 14 and A 15, A 17 through A 19, subsections B and C, and (ii) the records or copies required under the provision of subdivisions A 11 and A 16 of this section which records or related records identify the name of the investment advisor representative providing investment advice from that business location, or which identify the business locations' physical address, mailing address, electronic mailing address, or telephone number. The records will be maintained for the period described in this subsection.

F. Every investment advisor shall establish and maintain a written disaster recovery plan that shall address at a minimum:

1. The identity of individuals that will conduct or wind down business on behalf of the investment advisor in the event of death or incapacity of key persons;

2. Means to provide notification to clients of the investment advisor and to those states in which the advisor is registered of the death or incapacity of key persons;

a. Notification shall be provided to the Division of Securities and Retail Franchising via the IARD/CRD

---

# Regulations

---

system within 24 hours of the death or incapacity of key persons.

b. Notification shall be given to clients within five business days from the death or incapacity of key persons.

3. Means for clients' accounts to continue to be monitored until an orderly liquidation, distribution or transfer of the clients' portfolio to another advisor can be achieved or until an actual notice to the client of investment advisor death or incapacity and client control of their assets occurs;

4. Means for the credit demands of the investment advisor to be met; and

5. Data backups sufficient to allow rapid resumption of the investment advisor's activities.

G. An investment advisor subject to subsection A of this section, before ceasing to conduct or discontinuing business as an investment advisor, shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section, and shall notify the commission in writing of the exact address where the books and records will be maintained during such period.

H. 1. The records required to be maintained pursuant to this section may be immediately produced or reproduced by photograph on film or, as provided in subdivision 2 of this subsection, on magnetic disk, tape or other computer storage medium, and be maintained for the required time in that form. If records are preserved or reproduced by photographic film or computer storage medium, the investment advisor shall:

a. Arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record;

b. Be ready at all times to promptly provide any facsimile enlargement of film or computer printout or copy of the computer storage medium which the commission by its examiners or other representatives may request;

c. Store separately from the original one other copy of the film or computer storage medium for the time required;

d. With respect to records stored on computer storage medium, maintain procedures for maintenance of, and access to, records so as to reasonably safeguard records from loss, alteration, or destruction; and

e. With respect to records stored on photographic film, at all times have available, for the commission's examination of its records, facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

2. Pursuant to subdivision 1 of this subsection, an advisor may maintain and preserve on computer tape or disk or other computer storage medium records which, in the ordinary course of the advisor's business, are created by the

advisor on electronic media or are received by the advisor solely on electronic media or by electronic transmission.

I. Any book or record made, kept, maintained, and preserved in compliance with SEC Rules 17a-3 (17 CFR 240.17a-3) and 17a-4 (17 CFR 240.17a-4) under the Securities Exchange Act of 1934, which is substantially the same as the book, or other record required to be made, kept, maintained, and preserved under this section shall be deemed to be made, kept, maintained, and preserved in compliance with this section.

J. For purposes of this section, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client; and "discretionary power" shall not include discretion as to the price at which or the time when a transaction is or is to be effected if, before the order is given by the investment advisor, the client has directed or approved the purchase or sale of a definite amount of the particular security.

K. For purposes of this section, "principal place of business" and "principal office" mean the executive office of the investment advisor from which the officers, partners, or managers of the investment advisor direct, control, and coordinate the activities of the investment advisor.

L. Every investment advisor registered or required to be registered in this Commonwealth and has its principal place of business in a state other than the Commonwealth shall be exempt from the requirements of this section to the extent provided by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290), provided the investment advisor is licensed in such state and is in compliance with such state's recordkeeping requirements.

## **21VAC5-80-170. Supervision of investment advisor representatives.**

A. An investment advisor shall be responsible for the acts, practices, and conduct of its investment advisor representatives in connection with advisory services until such time as the investment advisor representatives have been properly terminated as provided by 21VAC5-80-110.

B. Every investment advisor shall exercise diligent supervision over the advisory activities of all of its investment advisor representatives.

C. Every investment advisor representative employed by an investment advisor shall be subject to the supervision of a supervisor designated by such investment advisor. The supervisor may be the investment advisor in the case of a sole proprietor, or a partner, officer, office manager or any qualified investment advisor representative in the case of entities other than sole proprietorships. All designated supervisors shall exercise reasonable supervision over the advisory activities of all investment advisor representatives under their responsibility.

D. As part of its responsibility under this section, every investment advisor, except entities employing no more than

one investment advisor representative, shall establish, maintain and enforce written procedures, a copy of which shall be kept in each business office, which shall set forth the procedures adopted by the investment advisor to comply with the Act and associated regulations, which shall include but not be limited to the following duties imposed by this section; provided that an investment advisor having its principal place of business outside this Commonwealth and registered or licensed, and in compliance with the applicable books and records requirements, in the state where its principal place of business is located, shall only be required to make, keep current, maintain and preserve such of the following required books, ledgers and records as are not in addition to those required under the laws of the state in which it maintains its principal place of business:

1. The review and written approval by the designated supervisor of the opening of each new client account;
2. The frequent examination of all client accounts to detect and prevent irregularities or abuses;
3. The prompt review and written approval by a designated supervisor of all advisory transactions by investment advisor representatives and of all correspondence pertaining to the solicitation or execution of all advisory transactions by investment advisor representatives;
4. The prompt review and written approval of the handling of all client complaints.

E. Every investment advisor who has designated more than one supervisor pursuant to subsection C of this section shall designate from among its partners, officers, or other qualified investment advisor representatives, a person or group of persons, independent from the designated business supervisor or supervisors who shall: ~~1. Supervise and periodically review the activities of the supervisors designated pursuant to subsection C of this section; and 2. No less often than annually, conduct a physical inspection of each business office under his supervision to ensure that the written procedures and compliance requirements are being enforced.~~ All supervisors designated pursuant to this subsection E shall exercise reasonable supervision over the supervisors under their responsibility to ~~insure~~ ensure compliance with this subsection.

F. Every investment advisor who has more than one business office where its investment advisor representatives offer investment advisory related services shall no less often than annually, conduct an independent physical inspection of each business office under his supervision to ensure (i) the investment advisor representative at the respective business office [ has not violated any is in compliance with the ] statutory provision of the Act or associated regulations promulgated by the commission and (ii) the written procedures and compliance requirements are being enforced.

**21VAC5-80-180. Requirements for surety bonds and financial reporting.**

A. Investment advisors required to provide a balance sheet pursuant to Part ~~H~~ 2A, Item ~~44~~ 18 of Form ADV must demonstrate a net worth in excess of \$25,000. In the case of an investment advisor that is registered in the state in which it maintains its principal place of business, its balance sheet must demonstrate that it is in compliance with the state's net worth or net capital requirements (as the case may be).

B. Investment advisors who maintain their principal place of business in the Commonwealth of Virginia and are subject to subsection A of this section, whose net worth drops below \$25,001, must notify the Division of Securities and Retail Franchising within 24 hours of initial awareness of the discrepancy and immediately take action to establish a net worth in excess of \$25,000 or obtain a surety bond in the penalty amount of \$25,000. The surety bond form must be utilized. Additionally, within 24 hours after transmitting such notice, the investment advisor shall file a report with the Division of Securities and Retail Franchising of its financial condition, including the following:

1. A trial balance of all ledger accounts.
2. A computation of net worth.
3. A statement of all client funds or securities which are not segregated.
4. A computation of the aggregate amount of client ledger debit balances.
5. A statement as to the number of client accounts.

C. An investment advisor registered in the state in which it maintains its principal place of business and subject to subsection A of this section whose net worth or net capital (as the case may be) drops below the state's requirement, must notify the Division of Securities and Retail Franchising within 24 hours of initial awareness of the discrepancy and immediately take action to establish a net worth or net capital that is in compliance with the state's requirement. Additionally, within 24 hours after transmitting such notice, the investment advisor shall file a report with the Division of Securities and Retail Franchising of its financial condition, including the following:

1. A trial balance of all ledger accounts.
2. A computation of net worth or net capital.
3. A statement of all client funds or securities which are not segregated.
4. A computation of the aggregate amount of client ledger debit balances.
5. A statement as to the number of client accounts.

**21VAC5-80-190. Disclosure requirements.**

A. For purposes of compliance with § 13.1-505.1 of the Act, a copy of Part ~~H~~ 2 of Form ADV must be given to clients of investment advisors, ~~or a brochure containing such information may be utilized.~~

---

# Regulations

---

B. The investment advisor or its registered representatives shall deliver the disclosure information required by this section to an advisory client or prospective advisory client:

1. Not less than 48 hours prior to entering into any investment advisory contract with such client or prospective client, or
2. At the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five calendar days after entering into the contract.

C. The investment advisor, or its registered representatives, shall offer to deliver the disclosure information required by this section to an advisory client or prospective advisory client annually, within 90 days of any investment advisor's fiscal year end.

D. A copy of Part ~~H~~ 2 of Form ADV ~~or the brochure~~ to be given to clients must be filed by investment advisors with the commission at its Division of Securities and Retail Franchising not later than the time of its use.

~~E. If an investment advisor renders substantially different types of investment advisory services to different advisory clients, any information required by Part II of Form ADV may be omitted from the statement furnished to an advisory client or prospective advisory client if such information is applicable only to a type of investment advisory service or fee which is not rendered or charged, or proposed to be rendered or charged to that client or prospective client.~~

~~F.~~ E. An investment advisor and its representative who receives compensation for assisting a client in the selection of another investment advisor may only assist that client in the selection of another investment advisor pursuant to a written agreement between the assisting investment advisor and the other investment advisor. The written agreement must describe the assisting activities and compensation, contain the assisting investment advisor's undertaking to perform consistent with the other investment advisor's instructions, and require that the assisting investment advisor representative provide the prospective clients with written disclosure documents of the assisting investment advisor and the other investment advisor. The disclosure document of an investment advisor who assists clients in the selection of another investment advisor shall always contain the following information in addition to other information required by subsection A of ~~of~~ this section:

1. The name of the assisting investment advisor representative;
2. The name of the other investment advisor;
3. The nature of the relationship, including any affiliation between the assisting investment advisor representative and the other investment advisor;
4. A statement that the assisting investment advisor representative will be compensated for his services by the other investment advisor;

5. The terms of such compensation arrangement, including a description of the compensation paid to the assisting investment advisor representative;

6. Compensation differentials charged to clients above the normal other investment advisor's fee, as a result of the cost of obtaining clients by compensating the assisting investment advisor representative.

## **21VAC5-80-200. Dishonest or unethical practices.**

A. An investment advisor or federal covered advisor is a fiduciary and has a duty to act primarily for the benefit of his clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment advisor or federal covered advisor and his clients and the circumstances of each case, an investment advisor or federal covered advisor who is registered or required to be registered shall not engage in unethical practices, including the following:

1. Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation, risk tolerance and needs, and any other information known or acquired by the investment advisor or federal covered advisor after reasonable examination of the client's financial records.
2. Placing an order to purchase or sell a security for the account of a client without written authority to do so.
3. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party authorization from the client.
4. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.
5. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.
6. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment advisor or federal covered advisor, or a financial institution engaged in the business of loaning funds or securities.
7. Loaning money to a client unless the investment advisor or federal covered advisor is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment advisor or federal covered advisor.

8. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment advisor or federal covered advisor, or misrepresenting the nature of the advisory services being offered or fees to be charged for the services, or omission to state a material fact necessary to make the statements made regarding qualifications services or fees, in light of the circumstances under which they are made, not misleading.

9. Providing a report or recommendation to any advisory client prepared by someone other than the investment advisor or federal covered advisor without disclosing that fact. This prohibition does not apply to a situation where the advisor uses published research reports or statistical analyses to render advice or where an advisor orders such a report in the normal course of providing service.

10. Charging a client an unreasonable advisory fee in light of the fees charged by other investment advisors or federal covered advisors providing essentially the same services.

11. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment advisor or federal covered advisor or any of his employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

a. Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; or

b. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the advisor or his employees.

12. Guaranteeing a client that a specific result will be achieved as a result of the advice which will be rendered.

13. Directly or indirectly using any advertisement that does any one of the following:

a. Refers to any testimonial of any kind concerning the investment advisor or investment advisor representative or concerning any advice, analysis, report, or other service rendered by the investment advisor or investment advisor representative;

b. Refers to past specific recommendations of the investment advisor or investment advisor representative that were or would have been profitable to any person; except that an investment advisor or investment advisor representative may furnish or offer to furnish a list of all recommendations made by the investment advisor or investment advisor representative within the immediately preceding period of not less than one year if the advertisement or list also includes both of the following:

(1) The name of each security recommended, the date and nature of each recommendation, the market price at that time, the price at which the recommendation was to

be acted upon, and the most recently available market price of each security; and

(2) A legend on the first page in prominent print or type that states that the reader should not assume that recommendations made in the future will be profitable or will equal the performance of the securities in the list;

c. Represents that any graph, chart, formula, or other device being offered can be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making that person's own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in the advertisement the limitations thereof and the risks associated to its use;

d. Represents that any report, analysis, or other service will be furnished for free or without charge, unless the report, analysis, or other service actually is or will be furnished entirely free and without any direct or indirect condition or obligation;

e. Represents that the commission has approved any advertisement; or

f. Contains any untrue statement of a material fact, or that is otherwise false or misleading.

For the purposes of this section, the term "advertisement" includes any notice, circular, letter, or other written communication addressed to more than one person, or any notice or other announcement in any electronic or paper publication, by radio or television, or by any medium, that offers any one of the following:

(i) Any analysis, report, or publication concerning securities;

(ii) Any analysis, report, or publication that is to be used in making any determination as to when to buy or sell any security or which security to buy or sell;

(iii) Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or

(iv) Any other investment advisory service with regard to securities.

14. Disclosing the identity, affairs, or investments of any client to any third party unless required by law or an order of a court or a regulatory agency to do so, or unless consented to by the client.

15. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment advisor has custody or possession of such securities or funds, when the investment advisor's action is subject to and does not comply with the safekeeping requirements of ~~21VAC5-80-145~~ 21VAC5-80-146.

---

## Regulations

---

16. Entering into, extending or renewing any investment advisory contract unless the contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the investment advisor or federal covered advisor and that no assignment of such contract shall be made by the investment advisor or federal covered advisor without the consent of the other party to the contract.

17. Failing to clearly and separately disclose to its customer, prior to any security transaction, providing investment advice for compensation or any materially related transaction that the customer's funds or securities will be in the custody of an investment advisor or contracted custodian in a manner that does not provide Securities Investor Protection Corporation protection, or equivalent third-party coverage over the customer's assets.

18. Using a certification or professional designation in connection with the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees in such a way as to mislead any person.

a. The use of such certification or professional designation includes, but is not limited to, the following:

(1) Use of a certification or designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

(2) Use of a nonexistent or self-conferred certification or professional designation;

(3) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; or

(4) Use of a certification or professional designation that was obtained from a designating or certifying organization that:

(a) Is primarily engaged in the business of instruction in sales and/or marketing;

(b) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(c) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(d) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

b. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subdivision 18 a (4) of this subsection, when the organization has been accredited by:

(1) The American National Standards Institute;

(2) The Institute for Credentialing Excellence (formerly the National Commission for Certifying Agencies); or

(3) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales and/or marketing.

c. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

(1) Use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(2) The manner in which those words are combined.

d. For purposes of this section, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:

(1) Indicates seniority within the organization; or

(2) Specifies an individual's area of specialization within the organization.

For purposes of this subdivision d, "financial services regulatory agency" includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under § 3 (a)(1) of the Investment Company Act of 1940 (15 USC § 80a-3(a)(1)).

e. Nothing in this regulation shall limit the commission's authority to enforce existing provisions of the law.

B. An investment advisor representative is a fiduciary and has a duty to act primarily for the benefit of his clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment advisor representative and his clients and the circumstances of each case, an investment advisor representative who is registered or required to be registered shall not engage in unethical practices, including the following:

1. Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the

recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the investment advisor representative after reasonable examination of the client's financial records.

2. Placing an order to purchase or sell a security for the account of a client without written authority to do so.

3. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party authorization from the client.

4. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

5. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.

6. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment advisor representative, or a financial institution engaged in the business of loaning funds or securities.

7. Loaning money to a client unless the investment advisor representative is engaged in the business of loaning funds or the client is an affiliate of the investment advisor representative.

8. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment advisor representative, or misrepresenting the nature of the advisory services being offered or fees to be charged for the services, or omission to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

9. Providing a report or recommendation to any advisory client prepared by someone other than the investment advisor or federal covered advisor who the investment advisor representative is employed by or associated with without disclosing that fact. This prohibition does not apply to a situation where the investment advisor or federal covered advisor uses published research reports or statistical analyses to render advice or where an investment advisor or federal covered advisor orders such a report in the normal course of providing service.

10. Charging a client an unreasonable advisory fee in light of the fees charged by other investment advisor representatives providing essentially the same services.

11. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment advisor representative which could reasonably be expected to impair the rendering of unbiased and objective advice including:

a. Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; or

b. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the investment advisor representative.

12. Guaranteeing a client that a specific result will be achieved as a result of the advice which will be rendered.

13. Directly or indirectly using any advertisement that does any one of the following:

a. Refers to any testimonial of any kind concerning the investment advisor or investment advisor representative or concerning any advice, analysis, report, or other service rendered by the investment advisor or investment advisor representative;

b. Refers to past specific recommendations of the investment advisor or investment advisor representative that were or would have been profitable to any person; except that an investment advisor or investment advisor representative may furnish or offer to furnish a list of all recommendations made by the investment advisor or investment advisor representative within the immediately preceding period of not less than one year if the advertisement or list also includes both of the following:

(1) The name of each security recommended, the date and nature of each recommendation, the market price at that time, the price at which the recommendation was to be acted upon, and the most recently available market price of each security; and

(2) A legend on the first page in prominent print or type that states that the reader should not assume that recommendations made in the future will be profitable or will equal the performance of the securities in the list;

c. Represents that any graph, chart, formula, or other device being offered can be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making that person's own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in the advertisement the limitations thereof and the risks associated with its use;

d. Represents that any report, analysis, or other service will be furnished for free or without charge, unless the report, analysis, or other service actually is or will be

---

# Regulations

---

furnished entirely free and without any direct or indirect condition or obligation;

e. Represents that the commission has approved any advertisement; or

f. Contains any untrue statement of a material fact, or that is otherwise false or misleading.

For the purposes of this section, the term "advertisement" includes any notice, circular, letter, or other written communication addressed to more than one person, or any notice or other announcement in any electronic or paper publication, by radio or television, or by any medium, that offers any one of the following:

(i) Any analysis, report, or publication concerning securities;

(ii) Any analysis, report, or publication that is to be used in making any determination as to when to buy or sell any security or which security to buy or sell;

(iii) Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or

(iv) Any other investment advisory service with regard to securities.

14. Disclosing the identity, affairs, or investments of any client to any third party unless required by law or an order of a court or a regulatory agency to do so, or unless consented to by the client.

15. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment advisor representative other than a person associated with a federal covered advisor has custody or possession of such securities or funds, when the investment advisor representative's action is subject to and does not comply with the safekeeping requirements of ~~21VAC5-80-145~~ 21VAC5-80-146.

16. Entering into, extending or renewing any investment advisory or federal covered advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the investment advisor representative and that no assignment of such contract shall be made by the investment advisor representative without the consent of the other party to the contract.

17. Failing to clearly and separately disclose to its customer, prior to any security transaction, providing investment advice for compensation or any materially related transaction that the customer's funds or securities will be in the custody of an investment advisor or contracted custodian in a manner that does not provide

Securities Investor Protection Corporation protection, or equivalent third-party coverage over the customer's assets.

18. Using a certification or professional designation in connection with the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees in such a way as to mislead any person.

a. The use of such certification or professional designation includes, but is not limited to, the following:

(1) Use of a certification or designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

(2) Use of a nonexistent or self-conferred certification or professional designation;

(3) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; or

(4) Use of a certification or professional designation that was obtained from a designating or certifying organization that:

(a) Is primarily engaged in the business of instruction in sales and or marketing;

(b) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(c) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(d) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

b. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subdivision 18 a (4) of this subsection, when the organization has been accredited by:

(1) The American National Standards Institute;

(2) The Institute for Credentialing Excellence (formerly the National Commission for Certifying Agencies); or

(3) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales and/or marketing.

c. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special

certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

- (1) Use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and
- (2) The manner in which those words are combined.

d. For purposes of this section, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:

- (1) Indicates seniority within the organization; or
- (2) Specifies an individual's area of specialization within the organization.

For purposes of this subdivision d, "financial services regulatory agency" includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under § 3(a)(1) of the Investment Company Act of 1940 (15 USC § 80a-3(a)(1)).

e. Nothing in this regulation shall limit the commission's authority to enforce existing provisions of law.

C. The conduct set forth in subsections A and B of this section is not all inclusive. Engaging in other conduct such as nondisclosure, incomplete disclosure, or deceptive practices may be deemed an unethical business practice except to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290 (96)).

D. The provisions of this section shall apply to federal covered advisors to the extent that fraud or deceit is involved, or as otherwise permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290 (96)).

**21VAC5-80-215. Exemption for certain private advisors.**

A. For purposes of this section, the following definitions shall apply:

1. "Value of primary residence" means the fair market value of a person's primary residence, subtracted by the amount of debt secured by the property up to its fair market value.
2. "Private fund advisor" means an investment advisor who provides advice solely to one or more qualifying private funds.
3. "Qualifying private fund" means a private fund that meets the definition of a qualifying private fund in SEC Rule 203(m)-1, 17 CFR 275.203(m)-1.
4. "3(c)(1) fund" means a qualifying private fund that is eligible for the exclusion from the definition of an investment company under § 3(c)(1) of the Investment Company Act of 1940, 15 USC § 80a-3(c)(1).

5. "Venture capital fund" means a private fund that meets the definition of a venture capital fund in SEC Rule 203(l)-1, 17 CFR 275.203(l)-1.

B. Subject to the additional requirements of subsection C of this section, a private fund advisor shall be exempt from the registration requirements of § 13.1-504 of the Act if the private fund advisor satisfies each of the following conditions:

1. Neither the private fund advisor nor any of its advisory affiliates are subject to a disqualification as described in Rule 262 of SEC Regulation A, 17 CFR 230.262;
2. The private fund advisor files with the commission each report and amendment thereto that an exempt reporting advisor is required to file with the Securities and Exchange Commission pursuant to SEC Rule 204-4, 17 CFR 275.204-4; and
3. The private fund advisor pays a notice fee in the amount of \$250.

C. In order to qualify for the exemption described in subsection B of this section, a private fund advisor who advises at least one (3)(c)(1) fund that is not a venture capital fund shall, in addition to satisfying each of the conditions specified in subsection B of this section, comply with the following requirements:

1. The private fund advisor shall advise only those 3(c)(1) funds (other than venture capital funds) whose outstanding securities (other than short-term paper) are beneficially owned entirely by persons who, after deducting the value of the primary residence from the person's net worth, would each meet the definition of a qualified client in SEC Rule 205-3, 17 CFR 275.205-3, at the time the securities are purchased from the issuer;
2. At the time of purchase, the private fund advisor shall disclose the following in writing to each beneficial owner of a 3(c)(1) fund that is not a venture capital fund:
  - a. All services, if any, to be provided to individual beneficial owners;
  - b. All duties, if any, the investment advisor owes to the beneficial owners; and
  - c. Any other material information affecting the rights or responsibilities of the beneficial owners; and
3. The private fund advisor shall obtain on an annual basis audited financial statements of each 3(c)(1) fund that is not a venture capital fund, and shall deliver a copy of such audited financial statements to each beneficial owner of the fund.

D. If a private fund advisor is registered with the Securities and Exchange Commission, the advisor shall not be eligible for this exemption and shall comply with the notice filing requirements applicable to federal covered investment advisors in § 13.1-504 of the Act.

---

# Regulations

---

E. A person is exempt from the registration requirements of § 13.1-504 of the Act if he is employed by or associated with an investment advisor that is exempt from registration in this Commonwealth pursuant to this section and does not otherwise act as an investment advisor representative.

F. The report filings described in subdivision B 2 of this section shall be made electronically ~~through the~~ on IARD ~~system~~. A report shall be deemed filed when the report and the notice fee required by subdivision B 3 of this section are filed and accepted by ~~the IARD system~~ on the commission's behalf.

G. An investment advisor who becomes ineligible for the exemption provided by this section must comply with all applicable laws and regulations requiring registration or notice filing within 90 days from the date the investment advisor's eligibility for this exemption ceases.

H. An investment advisor to a 3(c)(1) fund (other than a venture capital fund) that has one or more beneficial owners who are not qualified clients as described in subdivision C 1 of this section is eligible for the exemption contained in subsection B of this section if the following conditions are satisfied:

1. The subject fund existed prior to May 7, 2012;
2. As of May 7, 2012, the subject fund ceases to accept beneficial owners who are not qualified clients, as described in subdivision C 1 of this section;
3. The investment advisor discloses in writing the information described in subdivision C 2 of this section to all beneficial owners of the fund; and
4. As of May 7, 2012, the investment advisor delivers audited financial statements as required by subdivision C 3 of this section.

## DOCUMENTS INCORPORATED BY REFERENCE (21VAC5-80)

Rule 946-210-50, Accounting Standards Codification, Financial Accounting Standards Board, Norwalk, Connecticut (December 31, 2008).

## **21VAC5-100-10. Rule governing disclosure Disclosure of confidential information.**

A. This section governs the disclosure by the commission of information or documents obtained or prepared by any member, subordinate or employee of the commission in the course of any examination or investigation conducted pursuant to the provisions of the Securities Act (§ 13.1-501 et seq. of the Code of Virginia). It is designed to implement the provisions of §§ 13.1-518 and 13.1-567 that permit disclosure of information to governmental and quasi-governmental entities approved by rule of the commission.

B. The Director of the Division of Securities and Retail Franchising or ~~his~~ the director's designee is hereby authorized to disclose information to the entities enumerated in subsections D, E, and F of this section. Disclosure shall be

made only for the purpose of aiding in the detection or prevention of possible violations of law or to further administrative, legislative or judicial action resulting from possible violations of law. As a condition precedent to disclosure a writing shall be obtained from the receiving entity undertaking that it will exercise reasonable measures to preserve the confidential nature of the information.

C. Disclosure may be made only under the following circumstances:

1. In response to an entity's request for information relating to a specific subject or person.
2. By disseminating to an entity information which may indicate a possible violation of law within the administrative, regulatory or enforcement responsibility of that entity.
3. To participate in a centralized program or system designed to collect and maintain information pertaining to possible violations of securities, investment advisory, retail franchising or related laws.
4. To the extent necessary for participation in coordinated examinations or investigations.

D. The following are approved governmental entities (including any agencies, bureaus, commissions, divisions or successors thereof) of the United States:

1. Board of Governors of the Federal Reserve System or any Federal Reserve Bank.
2. Commodity Futures Trading Commission.
3. Congress of the United States, including either House, or any committee or subcommittee thereof.
4. Department of Defense.
5. Department of Housing ~~&~~ and Urban Development.
6. Department of Justice.
7. Department of Treasury.
8. Federal Deposit Insurance Corporation.
9. Office of Thrift Supervision.
10. Federal Trade Commission.
11. Postal Service.
12. Securities ~~&~~ and Exchange Commission.
13. Comptroller of the Currency.
14. Federal Bureau of Investigation.
15. Any other federal agency or instrumentality which demonstrates a need for access to confidential information.
16. Virginia General Assembly, including the House or the Senate, or any committee or subcommittee thereof.

E. The following are approved nonfederal governmental entities:

1. The securities or retail franchising regulatory entity of any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto

Rico, state legislative bodies and state and local law-enforcement entities involved in the detection, investigation or prosecution of violations of law.

2. The securities or retail franchising regulatory entity of any foreign country, whether such entity is on a national, provincial, regional, state or local level, and law-enforcement entities within such countries.

F. The following are approved quasi-governmental entities:

- ~~1. American Stock Exchange.~~
- ~~2. Chicago Board Options Exchange.~~
- ~~3. Midwest Stock Exchange.~~
4. 1. Municipal Securities Rulemaking Board.
5. 2. National Association of Attorneys General.
- ~~6. National Association of Securities Dealers, Inc.~~
- ~~7. New York Stock Exchange.~~
8. 3. ~~North American Securities Administrators Association, Inc. NASAA.~~
- ~~9. Pacific Stock Exchange.~~
- ~~10. Philadelphia Stock Exchange.~~
11. 4. Securities Investor Protection Corporation.
- ~~12. 5. National White Collar Crime Center.~~
- ~~13. 6. National Association of Securities Dealers Regulation, Inc. FINRA.~~
14. 7. Any other quasi-governmental entity ~~which~~ that demonstrates a need for access to confidential information.

V.A.R. Doc. No. R13-3073; Filed May 14, 2013, 6:20 p.m.



**TITLE 24. TRANSPORTATION AND MOTOR VEHICLES**

**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: **24VAC15-10. Standards and Procedures Governing Intrastate Rail Rates in Virginia (repealing 24VAC15-10-10 through 24VAC15-10-510).**

Statutory Authority: §§ 12.1-13 and 56-99.2 of the Code of Virginia.

Effective Date: July 1, 2013.

Agency Contact: Wayne N. Smith, Senior Counsel, Office of General Counsel, State Corporation Commission, P.O. Box

1197, Richmond, VA 23218, telephone (804) 371-9671, FAX (804) 371-9449, or email wayne.smith@scc.virginia.gov.

Summary:

*The federal statute authorizing state regulation of intrastate rail rates has been repealed, eliminating the legal authority for the State Corporation Commission to enforce the regulations. Therefore, this regulatory action repeals the existing Standards and Procedures Governing Intrastate Rail Rates in Virginia (24VAC15-10).*

AT RICHMOND, May 6, 2013

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. CLK-2013-00004

Ex Parte: In re: Repealing Standards and Procedures Governing Intrastate Rail Rates

**ORDER REPEALING RULES**

On January 31, 2013, the State Corporation Commission ("Commission") docketed this proceeding to consider the repeal of the Standards and Procedures Governing Intrastate Rail Rates in Virginia ("Standards and Procedures").<sup>1</sup> The Standards and Procedures were adopted in 1990 in accordance with § 56-99.2 of the Code of Virginia ("Code") and federal law then in effect.<sup>2</sup> As discussed in the Notice Order, Congress has repealed the federal statute underlying the Commission's adoption of the Standards and Procedures.<sup>3</sup> Since Congress has repealed the federal statutory basis, the Commission determined that the Standards and Procedures set forth in Title 24 of the Virginia Administrative Code should be considered for repeal.<sup>4</sup>

As directed by the Notice Order, the Commission's Division of Information Resources arranged for publication of a copy of the Notice Order in the Virginia Register of Regulations.<sup>5</sup> As further provided by the Notice Order, the Commission's Office of General Counsel mailed notice to the registered agents of all railroads operating in Virginia.<sup>6</sup>

In response to the published notice, the Commission received one comment. In comments filed March 15, 2013, Norfolk Southern Corporation agreed that the Standards and Procedures should be repealed.<sup>7</sup>

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that reasonable notice of the proposal to repeal the Standards and Procedures was provided and interested persons were provided an opportunity to comment and to request a hearing. The Commission further finds that the statutory basis for the Standards and Procedures is no longer in effect and that repeal effective July 1, 2013, is appropriate.

ACCORDINGLY, IT IS ORDERED THAT:

- (1) As provided by §§ 12.1-13, 12.1-28, and related provisions of the Code of Virginia, the Standards and Procedures Governing Intrastate Rail Rates in Virginia codified as Chapter 10 of Title 24 of the Virginia

---

# Regulations

---

Administrative Code, set forth in 24 VAC 15-10-10 through 24 VAC 15-10-510, are repealed effective July 1, 2013.

(2) The Commission's Division of Information Resources forthwith shall cause a copy of this Order to be forwarded to the Virginia Registrar for publication in the Virginia Register of Regulations and shall make available this Order on the Commission's website: <http://www.scc.virginia.gov/case>.

(3) This case is dismissed from the Commission's docket, and the Clerk of the Commission shall place the case in closed status in the records of the Commission.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to the Commission's Office of General Counsel, Division of Information Resources, and Division of Utility and Rail Safety.

---

<sup>1</sup> Commonwealth of Virginia, ex rel. State Corporation Commission Ex Parte, in re: Repealing Standards and Procedures Governing Intrastate Rail Rates, Case No. CLK-2013-00004, Order for Notice and Comment, Doc. Con. Center No. 130130100 (Jan. 31, 2013), 29:13 VA.R. 1735 Feb. 25, 2013 ("Notice Order").

<sup>2</sup> Commonwealth of Virginia, ex rel. State Corporation Commission Ex Parte, in re: Adoption of Standards and Procedures to Administer the Staggers Rail Act of 1980, Case No. RRR-1983-00003, Order Adopting Regulations, 1990 S.C.C. Ann. Rept. 363 (Jan. 30, 1990) codified at 24 VAC 15-10-10 through 24 VAC 15-10-510.

<sup>3</sup> ICC Termination Act of 1995, Pub. L. No. 104-88, Sec. 102, 109 Stat. 803, 804, codified as 49 U.S.C. § 701 nt. repealing Staggers Rail Act of 1980, Pub. L. No. 96-448, Sec. 214, 94 Stat. 1895, 1913-15 (1980).

<sup>4</sup> Notice Order at 1-2, 29:13 VA.R. 1735-36.

<sup>5</sup> Memorandum Mar. 1, 2013, to the Document Control Center filed in Case No. CLK-2013-00004, Doc. Con. Cen. No. 130310035.

<sup>6</sup> Memorandum Jan. 31, 2013, to the Document Control Center filed in Case No. CLK-2013-00004, Doc. Con. Cen. No. 1301310124.

<sup>7</sup> Letter of Mar. 12, 2013, from John M. Scheib, Norfolk Southern Corporation, to Joel H. Peck, Clerk, State Corporation Commission, filed in Case No. CLK-2013-00004.

---

# GOVERNOR

---

## EXECUTIVE ORDER NUMBER 64 (2013)

### **Continuing the Public Safety Memorial Commission**

#### Importance of the Initiative

Every day, throughout our Commonwealth, the courageous men and women of our public safety community dedicate their lives to protecting their neighbors and communities. These brave men and women work tirelessly to make our streets and communities safer.

Unfortunately, every year we mourn the loss of members of Virginia's public safety community. We must forever honor the selfless dedication of these valiant Virginians and their willingness to serve without hesitation. It is essential that we recognize the incalculable human cost to maintain public safety.

Virginia is one of only six states that does not have a statewide Public Safety Memorial to serve as an enduring acknowledgement of the ultimate sacrifice made by the brave men and women who serve their communities and Commonwealth. A Public Safety Memorial will serve as hallowed ground to forever honor and respect Virginia's fallen heroes.

#### The Public Safety Memorial Commission

Recognizing the importance of commemorating the courage and integrity of our public safety officers, the Public Safety Memorial Commission was established to design an appropriate memorial to forever remember the sacrifice of Virginia's fallen heroes. Since 2007, the Public Safety Memorial Commission has made tremendous strides, but much work remains to be done.

Virginia's Public Safety Memorial will recognize all public safety officials who have lost their lives in the line of duty. Public safety officers, for the purpose of this Memorial, include law enforcement officers, firefighters, jail and correctional officers, members of the Virginia National Guard and Virginia Defense Force, emergency management and hazardous materials personnel, ABC enforcement agents, volunteer rescue squad members, emergency medical services personnel, conservation police, marine resource officers, state park rangers, and forest wardens.

Through Executive Order 89 (July 2009) issued by former Governor Timothy Kaine, the designated site of the Public Safety Memorial is Darden Garden on Capitol Square in downtown Richmond. Located between the Virginia General Assembly Building and the historic boundary of the original Capitol grounds, the Memorial will stand proudly with the other monuments on Capitol Square. The names of those who made the ultimate sacrifice will be at the seat of our government along with those who shaped the history of our Commonwealth.

Accordingly, so that it may complete this Memorial and ensure its future, I hereby continue the Public Safety Memorial Commission to honor these men and women who have died while serving our Commonwealth.

#### Composition of the Commission

The Public Safety Memorial Commission shall be chaired by the Secretary of Public Safety or her designee. Recognizing that these efforts will require the work of individuals across a broad spectrum of professions and expertise, the Commission shall consist of the Secretary of Administration or her designee and representatives from state agencies, the General Assembly, and members of the public safety community, appointed by the Governor and serving at my pleasure. Additional members may be appointed at my discretion.

Members of the Commission shall serve without compensation, but they may receive reimbursement for expenses incurred in the discharge of their official duties.

#### Charge for the Commission

I hereby direct the Commission to continue its efforts, in partnership with the Virginia Public Safety Foundation, to construct an appropriate Memorial to properly honor and respect those who have made the ultimate sacrifice serving the citizens of the Commonwealth. The Public Safety Memorial Commission's responsibilities shall include:

- Provide leadership and assist the Public Safety Foundation as it works to secure the funds necessary to construct and maintain the Public Safety Memorial;
- Identify and resolve engineering or logistical challenges posed by the selected site in the Darden Garden location on Capitol Square;
- Approve any design modifications for engineering, financial, or other reasons;
- Take other steps as may be deemed necessary and appropriate to facilitate the establishment of this Memorial; and
- Make recommendations to the Governor to ensure the future of the lasting memorial.

I further direct that all agencies of the Commonwealth provide any assistance that may be requested by the Commission. Staff support for the Commission shall be provided by the Office of the Secretary of Public Safety and such other agencies as may be designated by the Secretary of Public Safety.

An estimated 100 hours of staff time will be required to support the work of the Commission and costs are estimated to be \$2,000. Necessary funding to support the Commission and its staff shall be provided from federal funds, private contributions, and state funds appropriated for the same purposes as the Commission, as authorized by § 2.2-135 of

---

# Governor

---

the Code of Virginia, as well as any other private sources of funding that may be identified.

Effective Date of the Executive Order

This Executive Order shall become effective upon its signing and shall remain in effect for one year from its signing unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 9th day of May, 2013.

/s/ Robert F. McDonnell  
Governor

---

# GENERAL NOTICES/ERRATA

---

## STATE BOARD OF ELECTIONS

### Notice of Periodic and Small Business Impact Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Elections is currently reviewing each of the regulations listed below to determine whether it should be terminated, amended, or retained in its current form. The review of each regulation will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia. Each regulation will be reviewed to determine 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.

#### 1VAC20-50, Candidate Qualification

#### 1VAC20-60, Election Administration

#### 1VAC20-80, Recounts and Contested Elections

Agency Contact: Myron McClees, Policy Analyst, State Board of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8949, FAX (804) 371-0194, or email [myron.mcclees@sbe.virginia.gov](mailto:myron.mcclees@sbe.virginia.gov).

#### 1VAC20-10, Public Participation Guidelines

#### 1VAC20-20, General Administration

#### 1VAC20-40, Voter Registration

#### 1VAC20-70, Absentee Voting

#### 1VAC20-90, Campaign Finance and Political Advertisements

Agency Contact: Martha Brissette, Policy Analyst, State Board of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8925, FAX (804) 371-0194, or email [martha.brissette@sbe.virginia.gov](mailto:martha.brissette@sbe.virginia.gov).

The comment period begins June 3, 2013, and ends June 24, 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 the agency contacts listed above.

Comments must include the commenter's name and address (physical or email) information in order that the agency may contact the commenter if needed for clarification. 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 ENVIRONMENTAL QUALITY AND DEPARTMENT OF CONSERVATION AND RECREATION

### Public Meeting and Public Comment

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the development of an Implementation Plan (IP) for bacteria and sediment total maximum daily loads (TMDLs). Following are the "impaired" stream, the length of the impaired segment, and the reason for the impairment: Ore Branch, all, bacteria; Roanoke River, 29.56 miles, bacteria; Back Creek, 9.88 miles, bacteria; Mason Creek, 7.56 miles, bacteria; Mudlick Creek, 7.28 miles, bacteria; Murray Run, 3.22 miles, bacteria; Peters Creek, 7.14 miles, bacteria; Tinker Creek, 19.34 miles, bacteria; Carvin Creek, 5.36 miles, bacteria; Glade Creek, 12.59 miles, bacteria; Laymantown Creek, 2.07 miles, bacteria; Lick Run, 9.37 miles, bacteria; and Roanoke River, 20.04 miles, sediment. These portions of the Roanoke River watershed are located in Bedford, Botetourt, Floyd, Franklin, Craig, Montgomery, and Roanoke counties; Roanoke City; and Salem. The TMDL studies for these stream impairments were completed in February 2006, March 2006, and March 2004 and can be found, respectively, in the Bacteria TMDLs for Wilson Creek, Ore Branch, and Roanoke River Watersheds, Virginia report (available at <http://www.deq.virginia.gov/portals/0/DEQ/Water/TMDL/apptmdls/roankrvr/uroanec.pdf>), the Benthic TMDL Development for the Roanoke River, Virginia report (available at <http://www.deq.virginia.gov/portals/0/DEQ/Water/TMDL/apptmdls/roankrvr/uroanbc.pdf>), and the Fecal Coliform Total Maximum Daily Load Development for Glade Creek, Tinker Creek, Carvin Creek, Laymantown Creek, and Lick Run report (available at <http://www.deq.virginia.gov/portals/0/DEQ/Water/TMDL/apptmdls/roankrvr/tinkerfc.pdf>).

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

The first public meeting to discuss the development of the IP for the bacteria and sediment TMDLs is an Open House format and will be held on Tuesday, June 11, 2013, from 3 p.m. to 8 p.m. at the Roanoke Civic Center, 710 Williamson Road, Roanoke, VA 24016. At this meeting, development of the implementation plan to restore water quality in the Upper Roanoke River watershed will be discussed, and citizens will learn how they can be part of the public participation process. Directions to the Roanoke Civic Center: From I-581, take exit 4E for US-460 E/Orange Avenue. Merge onto US-460

---

## General Notices/Errata

---

E/Orange Avenue NW. Turn right onto Williamson Road NE. The Roanoke Civic Center will be on the right.

DEQ accepts written comments by email, fax, or postal mail. The 30-day public comment period on the information presented at the meeting will end on July 11, 2013. Questions or information requests should be addressed to Mary Dail with the Virginia Department of Environmental Quality. Written comments and inquiries should include the name, address, and telephone number of the person submitting the comments and should be sent to Mary Dail, Virginia Department of Environmental Quality, 3019 Peters Creek Road, Roanoke, VA 24019, telephone (540) 562-6715, FAX (540) 562-6725, or email mary.dail@deq.virginia.gov.

### STATE BOARD OF HEALTH

#### Notice of Periodic and Small Business Impact Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Health is currently reviewing each of the regulations listed below to determine whether it should be terminated, amended, or retained in its current form. The review of each regulation will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia. Each regulation will be reviewed to determine 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.

#### 12VAC5-170, Prohibiting the Taking of Fish for Human Consumption from the North Fork of the Holston River

Agency Contact: David Trump, M.D., Director of the Office of Epidemiology, Department of Health, 109 Governor Street,

Richmond, VA 23219, telephone (804) 864-7901, or email david.trump@vdh.virginia.gov.

#### 12VAC5-407, Regulations for the Submission of Health Maintenance Organization Quality of Care Performance Information

Agency Contact: Debbie Condrey, Director of the Office of Information Management, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7118, or email debbie.condrey@vdh.virginia.gov.

#### 12VAC5-450, Rules and Regulations Governing Campgrounds

#### 12VAC5-501, Rules and Regulations Governing the Construction and Maintenance of Migrant Labor Camps

Agency Contact: Allen Knapp, Director of the Office of Environmental Health Services, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7458, or email allen.knapp@vdh.virginia.gov.

The comment period begins June 3, 2013, and ends June 24, 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 the agency contacts listed above.

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.

### COMMISSION ON LOCAL GOVERNMENT

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

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

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

STATE AND FEDERAL MANDATES ON LOCAL GOVERNMENTS  
 Approved Schedule of Assessment Periods – July 2013 through June 2014  
 For Executive Agency Assessment of Cataloged Mandates

AGENCY	CATALOG NUMBER	ASSESSMENT PERIOD
Mandate Short Title		
<b>ARTS, VIRGINIA COMMISSION FOR THE</b>		
Project Grants	SOE.VCA003	7/1/13 to 8/31/13
<b>EDUCATION, DEPARTMENT OF</b>		
Local School Division Policies	SOE.DOE026	7/1/13 to 8/31/13
Student Achievement and Graduation Requirements	SOE.DOE061	7/1/13 to 8/31/13
Internet Use Policy	SOE.DOE105	8/1/13 to 9/30/13
Charter School Applications	SOE.DOE119	8/1/13 to 9/30/13
Enrollment of Children Placed in Foster Care	SOE.DOE125	10/1/13 to 11/30/13
Minute of Silence	SOE.DOE135	10/1/13 to 11/30/13
<b>ELECTIONS, STATE BOARD OF</b>		
Municipalities to Pay Expenses of May Elections	SOA.SBE008	1/1/14 to 3/31/14
<b>EMERGENCY MANAGEMENT, DEPARTMENT OF</b>		
Local Emergency Operations Plan	SPS.VDEM003	3/1/14 to 5/31/14
<b>GAME AND INLAND FISHERIES, DEPARTMENT OF</b>		
Model Ordinances for Hunting with Bow and Arrow	SNR.DGIF006	2/1/14 to 4/30/14
<b>HEALTH, VIRGINIA DEPARTMENT OF</b>		
Public Water System Permit	SHHR.VDH019	7/1/13 to 9/30/13
<b>JUVENILE JUSTICE, DEPARTMENT OF</b>		
Social Services Collaboration in Transition Planning for the Release of Certain Juveniles	SPS.DJJ010	8/1/13 to 10/31/13
<b>TAXATION, DEPARTMENT OF</b>		
Tax Exemption for Certified Pollution Control Equipment and Facilities	SFIN.TAX014	3/1/14 to 5/31/14

**STATE BOARD OF SOCIAL SERVICES**  
**Notice of Periodic and Small Business Impact Review**

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Social Services is conducting a periodic review of **22VAC40-670, Degree Requirements for Social Work Occupational Group** and **22VAC40-675, Personnel Policies for Local Departments of Social Services**. The review of the regulations will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia.

The purpose of the review is to determine whether each of these regulations should be terminated, amended, or retained in its current form.

Public comment is sought on the review of any issue relating to each 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.

---

## General Notices/Errata

---

The comment period begins June 3, 2013, and ends June 24, 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 Lori Schamerhorn, Associate Director Senior, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7264, FAX (804) 726-7028, or email [lori.schamerhorn@dss.virginia.gov](mailto:lori.schamerhorn@dss.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.

### Virginia Child Support Guidelines Review Panel to Hold Public Hearing

The Virginia Child Support Guidelines Review Panel (Panel) is undertaking its statutory responsibility to examine and review the child support guidelines found in §§ 20-108.1 and 20-108.2 of the Code of Virginia.

The Panel has scheduled a public hearing on Monday, June 17, 2013, at 10 a.m. to hear the suggestions and concerns of interested citizens in addressing the guidelines. The location of the meeting is Virginia State Capitol, House Room 1, Capitol Square, Richmond, VA 23219.

The hearing seeks comment from the public about the guidelines, which define financial obligations of parents for their children.

Documents for the public hearing will be posted under the public hearing documents tab at <http://dls.state.va.us/GROUPS/childsupport/meetings/061713/materials.htm>.

The hearing will begin at 10 a.m. Registration of speakers will begin at 9:30 a.m. In order to give everyone a chance to speak, each speaker is asked to limit comments to three minutes. Speakers are encouraged to provide a written copy of their comments. The written copy may contain more detail than the three-minute public presentation.

The Panel also encourages written comment by mail, fax, or email. Comments may be mailed by June 10, 2013, to Alice G. Burlinson, Senior Assistant Attorney General, Division of Child Support Enforcement, 4504 Starkey Road SW, Suite 103, Roanoke, VA 24018-8518, telephone (540) 776-2779, FAX (540) 776-2797, or email [vaguidelinespanel@dss.virginia.gov](mailto:vaguidelinespanel@dss.virginia.gov).

## VIRGINIA CODE COMMISSION

### Code of Virginia Title Recodifications

The Virginia Code Commission, which is responsible for publishing and maintaining the Code of Virginia, is considering placing Title 23, Educational Institutions, on its work plan as the commission's next recodification project to begin in 2014, followed by Title 36, Housing, in 2016. Neither title has been recodified since its enactment as part of the current Code of Virginia of 1950.

Generally, the commission selects a title to recodify based on the need to logically reorganize content, modernize language, and reflect current Code of Virginia style and numbering schemes. To the extent practical, the commission avoids making substantive changes to the statutory text. In the event a substantive change is made, the change is highlighted and explained in the final report.

Other titles presented as recodification candidates in the future include Titles 8.01 (Civil Remedies and Procedure), 22.1 (Education), 40.1 (Labor and Employment), 45.1 (Mines and Mining), and 55 (Property and Conveyances).

The commission is currently working on Title 33.1, Highways, Bridges and Ferries, assisted by an advisory panel of practitioners experienced in this area. Work on proposed Title 33.2, Highways and Other Surface Transportation Systems, is expected to be finalized by the end of 2013 with resulting legislation introduced at the 2014 Session of the General Assembly. More information on title recodifications can be found on the commission's website: [http://codecommission.dls.virginia.gov/title\\_33\\_1.shtml](http://codecommission.dls.virginia.gov/title_33_1.shtml).

Send comments to Jane Chaffin at [jchaffin@dls.virginia.gov](mailto:jchaffin@dls.virginia.gov) or General Assembly Building, 2nd Floor, 201 North Ninth Street, Richmond, VA 23219, by June 18, 2013.

### 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](mailto: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.

