



# VIRGINIA

## REGISTER OF REGULATIONS

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# VIRGINIA REGISTER INFORMATION PAGE

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**THE VIRGINIA REGISTER OF REGULATIONS** is an official state publication issued every other week throughout the year. Indexes are published quarterly, and are cumulative for the year. The *Virginia Register* has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in the *Virginia Register*. In addition, the *Virginia Register* is a source of other information about state government, including petitions for rulemaking, emergency regulations, executive orders issued by the Governor, 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 18 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**; **Carlos L. Hopkins**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **Christopher R. Nolen**; **Timothy Oksman**; **Charles S. Sharp**; **Robert L. Tavenner**.

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.

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## PUBLICATION SCHEDULE AND DEADLINES

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

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### May 2014 through June 2015

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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
30:23	June 25, 2014	July 14, 2014
30:24	July 9, 2014	July 28, 2014
30:25	July 23, 2014	August 11, 2014
30:26	August 6, 2014	August 25, 2014
31:1	August 20, 2014	September 8, 2014
31:2	September 3, 2014	September 22, 2014
31:3	September 17, 2014	October 6, 2014
31:4	October 1, 2014	October 20, 2014
31:5	October 15, 2014	November 3, 2014
31:6	October 29, 2014	November 17, 2014
31:7	November 12, 2014	December 1, 2014
31:8	November 25, 2014 ( <b>Tuesday</b> )	December 15, 2014
31:9	December 10, 2014	December 29, 2014
31:10	December 23, 2014 ( <b>Tuesday</b> )	January 12, 2015
31:11	January 7, 2015	January 26, 2015
31:12	January 21, 2015	February 9, 2015
31:13	February 4, 2015	February 23, 2015
31:14	February 18, 2015	March 9, 2015
31:15	March 4, 2015	March 23, 2015
31:16	March 18, 2015	April 6, 2015
31:17	April 1, 2015	April 20, 2015
31:18	April 15, 2015	May 4, 2015
31:19	April 29, 2015	May 18, 2015
31:20	May 13, 2015	June 1, 2015
31:21	May 27, 2015	June 15, 2015

\*Filing deadlines are Wednesdays unless otherwise specified.

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# PETITIONS FOR RULEMAKING

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## TITLE 1. ADMINISTRATION VIRGINIA RETIREMENT SYSTEM

### Agency Decision

Title of Regulation: None Specified.

Statutory Authority: § 51.1-124.22 of the Code of Virginia.

Name of Petitioner: John J. Fisher.

Nature of Petitioner's Request: Mr. Fisher petitions the Virginia Retirement System (VRS) to promulgate regulations related to the purchase of prior service credit. Mr. Fisher requests specifically that such regulations include the following stipulations:

- To give notice and inform VRS members that they will be required to purchase all types of prior service from the most recent to the oldest in chronological order;
- To give notice and inform VRS members that they will be required to purchase prior service that they simply looked into purchasing in the past, even if they did not purchase the service;
- To give notice and inform VRS members what a "Purchase of service contract" is and what is required to validate the service contract; and
- To give notice and inform VRS members how VRS determines prior service "eligibility" for its members.

Agency Decision: Request denied.

Statement of Reason for Decision: VRS staff thoroughly discussed the issues outlined in the request and, consistent with longstanding VRS Board practice regarding the rulemaking process, a decision was made not to initiate rulemaking in response to the petition. The primary reasoning for the decision is that purchase of prior service policies and procedures are communicated through the VRS website, employee and employer handbooks, and periodic employer updates. Moreover, if members have questions concerning the purchase of prior service, they may obtain clarification through the VRS customer contact center.

This decision was communicated to the VRS Board of Trustees at its meeting on April 17, 2014, and the board supported the decision. Nevertheless, while the request for rulemaking has been denied, the matter has been taken under advisement. VRS staff has organized a working group to conduct a thorough review of the procedures for the purchase of prior service and will be making recommendations for changes in this area in the near future.

Agency Contact: Brian J. Goodman, Legal Affairs and Compliance Coordinator, Virginia Retirement System, 1200 East Main Street, Richmond, VA 23219, telephone (804) 344-3140, or email bgoodman@varetire.org.

VA.R. Doc. No. R14-16; Filed April 28, 2014, 3:58 p.m.

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF NURSING

#### Initial Agency Notice

Title of Regulation: 18VAC90-20. Regulations Governing the Practice of Nursing.

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

Name of Petitioner: Ashley Church.

Nature of Petitioner's Request: To amend the listing of approved providers of continuing education for nurses to include trainings or courses offered through grant funding by other state agencies.

Agency Plan for Disposition of Request: In accordance with Virginia law, the petition to amend the listing of approved providers was posted on the Virginia Regulatory Townhall at [www.townhall.virginia.gov](http://www.townhall.virginia.gov). It has also been filed with the Register of Regulations for publication on May 19, 2014. Comment on the petition from interested parties is requested until June 16, 2014. Following receipt of all comments on the petition, the request will be considered by the Board of Nursing at its meeting on July 15, 2014, to decide whether to make any changes to the regulatory language.

Public Comment Deadline: June 16, 2014.

Agency Contact: Elaine Yeatts, Agency Regulator Coordinator, Department of Health Professions, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-4688, or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

VA.R. Doc. No. R14-28; Filed April 21, 2014, 10:02 a.m.

### BOARD OF PHYSICAL THERAPY

#### Initial Agency Notice

Title of Regulation: 18VAC112-20. Regulations Governing the Practice of Physical Therapy.

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

Name of Petitioner: Frederick Tarantino.

Nature of Petitioner's Request: To define an accredited educational program in physical therapy as one that reviews applicants convicted of prior criminal acts on a case-by-case basis to the extent that doing so does not conflict with the laws of Virginia.

Agency Plan for Disposition of Request: In accordance with Virginia law, the petition has been filed with the Register of Regulations and will be published on May 19, 2014. Comment on the petition may be sent by email, regular mail, or posted on the Virginia Regulatory Townhall at [www.townhall.virginia.gov](http://www.townhall.virginia.gov); comment will be requested until June 18, 2014. Following receipt of all comments on the petition to amend regulations, the board will decide whether to make any changes to the regulatory language. This matter

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# Petitions for Rulemaking

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will be on the board's agenda for its meeting scheduled for July 15, 2014.

Public Comment Deadline: June 18, 2014.

Agency Contact: Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-4688, or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

VA.R. Doc. No. R14-32; Filed April 29, 2014, 10:03 a.m.

## BOARD OF VETERINARY MEDICINE

### Initial Agency Notice

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

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

Name of Petitioner: Alysoun Ann Mahoney.

Nature of Petitioner's Request: To amend 18VAC150-20-121, Requirements for licensure by endorsement for veterinary technicians, to require completion of training in animal behavior through a certified applied animal behaviorist.

Agency Plan for Disposition of Request: The petition will be published on May 19, 2014, in the Virginia Register of Regulations and also posted on the Virginia Regulatory Townhall at [www.townhall.virginia.gov](http://www.townhall.virginia.gov) to receive public comment ending June 18, 2014. Following receipt of all comments on the petition to amend regulations, the board will decide whether to make any changes to the regulatory language. This matter will be on the board's agenda for its first meeting after the comment period, which is scheduled for October 22, 2014.

Public Comment Deadline: June 18, 2014.

Agency Contact: Elaine Yeatts, Agency Regulator Coordinator, Department of Health Professions, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-4688, or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

VA.R. Doc. No. R14-29; Filed April 24, 2014, 11:19 a.m.

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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

#### **Withdrawal of Notice of Intended Regulatory Action**

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Social Services has WITHDRAWN the Notice of Intended Regulatory Action for amending **22VAC40-160, Fee Requirements for Processing Applications**, which was published in [26:5 VA.R. 452 November 9, 2009](#). The board will consider instituting a new action.

Agency Contact: Karen H. Cullen, Division of Licensing Programs, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7152, FAX (804) 726-7132, TTY (800) 828-1120, or email [karen.cullen@dss.virginia.gov](mailto:karen.cullen@dss.virginia.gov).

VA.R. Doc. No. R10-2113; Filed April 22, 2014, 1:53 p.m.

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# REGULATIONS

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

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## Symbol Key

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

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## TITLE 2. AGRICULTURE

### DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

#### Proposed Regulation

**Title of Regulation:** 2VAC5-610. Rules Governing the Solicitation of Contributions (amending 2VAC5-610-10 through 2VAC5-610-80; adding 2VAC5-610-35).

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

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

**Public Comment Deadline:** July 18, 2014.

**Agency Contact:** Andres Alvarez, Director, Division of Consumer Protection, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 225-3821, FAX (804) 371-7479, TTY (800) 828-1120, or email [andres.alvarez@vdacs.virginia.gov](mailto:andres.alvarez@vdacs.virginia.gov).

**Basis:** Section 57-66 of the Code of Virginia authorizes the Board of Agriculture and Consumer Services to make rules and regulations for the enforcement of Chapter 5 (§ 57-48 et seq.) of Title 57 of the Code of Virginia regarding the solicitation of contributions.

**Purpose:** This regulation prescribes (i) the specific information charitable organizations must provide in order to complete a new or renewal registration or to receive an exemption from annual registration, (ii) the requirements for reporting contributions received, (iii) the information that professional solicitors and fund-raising counsel must provide in order to complete registration, (iv) the specific information that professional solicitors must disclose in the course of soliciting contributions, and (v) the requirements regarding the financial reports that must be filed with the Virginia Department of Agriculture and Consumer Services (VDACS).

According to the Internal Revenue Service (IRS), in 2008, Virginians donated approximately \$4.2 billion to charitable organizations. This regulation protects the welfare of Virginia's citizens through its registration, disclosure, and reporting requirements that assist VDACS in providing potential donors with information that can educate them regarding charitable donation decisions. This regulatory action will amend the regulation to (i) remove references to the Office of Consumer Affairs, (ii) update references to other state agencies, and (iii) reflect changes in IRS filing requirements. These amendments will improve the clarity of the regulation, making compliance for regulants easier.

Increased compliance will ultimately benefit the welfare of those citizens who make charitable donations.

**Substance:** The current regulation makes multiple references to the Office of Consumer Affairs, the former name of the program that was responsible for administering the Virginia Solicitation of Contributions law. In July 2012, as a result of the Governor's government reorganization efforts, certain responsibilities of the Office of Consumer Affairs were transferred to another agency, and the remaining responsibilities were consolidated into a new program in VDACS called the Office of Charitable and Regulatory Programs. The proposed amendments will remove references to the Office of Consumer Affairs, which no longer exists, and, where appropriate, replace those references with references to VDACS.

The current regulation also references multiple state agencies that have changed their names subsequent to 2002, when this regulation was last amended. The proposed amendments will replace those obsolete references with the current names of the appropriate state agencies.

Charitable organizations seeking to solicit contributions in Virginia must file, among other documents, a financial statement certified by an independent public accountant or a copy of IRS Form 990, Return of Organization Exempt from Income Tax. The IRS recently raised the threshold for organizations that are allowed to file the abbreviated Form 990-N from \$25,000 to \$50,000. The 2012 Session of the General Assembly removed references to the \$25,000 threshold so that Virginia law would not continue to require organizations with gross revenue between \$25,000 and \$50,000 to submit the Form 990 to VDACS when the IRS was not requiring that these organizations complete the Form 990. The proposed amendments replace the references to the former \$25,000 threshold that currently appear in the regulation with a general reference to the IRS Form 990-N filing threshold.

Currently, the regulation requires that if a charitable organization submits an IRS Form 990 to the agency, the form must be signed. The IRS now offers electronic filing. As such, organizations that file electronically do not generate a signed form. The proposed amendments acknowledge the electronic filing option by requiring organizations that file electronically to submit a copy of the IRS Receipt of Filing along with their unsigned IRS Form 990, 990-PF, or 990-EZ.

**Issues:** The proposed amendments will improve the clarity of the regulation, making compliance for regulants easier. Increased compliance will increase the information that the agency is able to provide to the public regarding charitable

organizations, ultimately benefitting those citizens who make charitable donations. This regulatory action poses no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Agriculture and Consumer Services (Board) proposes to amend the Rules Governing the Solicitation of Contributions in order to: 1) update references to the names of other state agencies, 2) update language to reflect current IRS filing requirements, 3) remove references to the defunct Office of Consumer Affairs, and 4) no longer require that charitable organization registration applications be notarized.

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

Estimated Economic Impact. The proposal to eliminate the notarization requirement will save charitable organizations a small amount of time in putting together their registration application package. In cases where charitable organizations do not have access to free notarization, this proposal could also save these organizations a small fee. Otherwise the proposed amendments do not change requirements, but are beneficial nonetheless in that there would be increased clarity and a reduction in the likelihood of confusion amongst readers of the regulation.

Businesses and Entities Affected. The proposed regulations pertain to the approximate 14,000 charitable organizations in the Commonwealth that have either registered with or been granted exemption by the Virginia Department of Agriculture and Consumer Services (Department), as well as the approximate 100 professional solicitors and 400 professional fundraising counselors that have registered with the Department.

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

Projected Impact on Employment. The proposal amendments are unlikely to significantly affect employment.

Effects on the Use and Value of Private Property. The proposal to no longer require that charitable organization registration applications be notarized will save a small amount of staff time for charitable organizations.

Small Businesses: Costs and Other Effects. The proposed amendments are unlikely to significantly affect small businesses.

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 affect real estate development costs.

Legal Mandate.

General: 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 Code of Virginia and Executive Order Number 14 (2010). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

- The projected number of businesses or other entities to whom the proposed 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.

Small Businesses: If the proposed regulation will have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include:

- An identification and estimate of the number of small businesses subject to the proposed regulation,
- The projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents,
- A statement of the probable effect of the proposed regulation on affected small businesses, and
- A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

Additionally, pursuant to § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules (JCAR) is notified at the time the proposed regulation is submitted to the Virginia Register of Regulations for publication. This analysis shall represent DPB's best estimate for the purposes of public review and comment on the proposed regulation.

Agency's Response to Economic Impact Analysis: The agency concurs with the analysis of the Department of Planning and Budget.

Summary:

*The proposed amendments (i) update references to the names of state agencies, (ii) update language to reflect current Internal Revenue Service filing requirements, (iii) remove obsolete references to the Office of Consumer Affairs, and (iv) remove the requirement that charitable organization registration applications be notarized.*

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# Regulations

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## Part I Definitions

### 2VAC5-610-10. Definitions.

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

"Agents" means one or more persons who transact some business or manage some affair for another, by the authority and on account of the latter, and who render an account of such business or affair to that other. The term "agents" shall include the term "subcontractors."

"Bona fide salaried officer or employee" means a person who is in an employer-employee relationship with a charitable organization and who is compensated exclusively by a fixed annual salary or hourly wage.

"Budget" means a financial plan of action that itemizes expected sources and amounts of income and expenses and that is ratified by the organization's ~~Board~~ board of ~~Directors~~ directors.

"Certified audited financial statements" means financial statements prepared by an independent certified public accountant with an opinion rendered in accordance with generally accepted accounting principles (GAAP). (See § 57-53 of the Code of Virginia, ~~Records to be kept by charitable organizations~~, and 2VAC5-610-80 B, ~~Financial standards~~.)

"Certified treasurer's report" means an income and expense statement and a balance sheet for the past fiscal year that have been prepared and signed by the organization's treasurer verifying that the report is accurate and true.

"Code" means Code of Virginia (1950), as amended.

"Commissioner" means the Commissioner of the Department of Agriculture and Consumer Services or a member of his staff to whom he may delegate his duties; ~~including, but not limited to, staff of the Office of Consumer Affairs.~~

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

"File with the commissioner" ~~and or~~ "receipt by the commissioner" means depositing the original of the document required to be filed, along with payment of the appropriate fee and all supporting documentation, with the ~~Office of Consumer Affairs, Washington Building, 1100 Bank Street, Richmond, Virginia 23219~~ department. ~~Such~~ The department shall deem such documents shall to be effective filed or received if complete (i) on the date deposited by hand at the stated address during regular business hours received by the department, or (ii) if sent by mail, on the date postmarked, if sent by mail, provided such the document is actually received by the Office of Consumer Affairs department subsequent to the mailing.

"Foundation," as referenced in subdivision A 1 of § 57-60 of the Code of Virginia (Exemptions), means a secondary

organization established to provide financial or program support for a primary organization with which it has an established identity.

"Gross contributions" means the total contributions received by the organization from all sources, regardless of geographic location, excluding government grants.

"Having an established identity with" means a relationship between two organizations such that if the primary organization ceased to exist, the secondary organization would also cease to exist.

"Health care institution" means any medical facility that is tax exempt under the Internal Revenue Code § 501(c)(3) and at least one of the following:

1. Licensed by the ~~State~~ Department of Health or by the ~~State Department of Mental Health, Mental Retardation and Substance Abuse Services~~ Department of Behavioral Health and Developmental Services;
2. Designated by the Health Care Financing Administration (HCFA) as a federally qualified health center;
3. Certified by HCFA as a rural health clinic; or
4. Wholly organized for the delivery of health care services without charge, including the delivery of dental, medical, or other health services where a reasonable minimum fee is charged to cover administrative costs.

"IRS" means the U.S. Department of the Treasury Internal Revenue Service.

"Local civic league or association" means a not-for-profit organization operated to further the common good of the city, town, or county that it is organized to serve.

"Local service club" means a not-for-profit organization that is organized for the purpose of providing educational services, recreational services, charitable services, or social welfare services to the city, town, or county in which such organization operates.

"Past fiscal year" means the most recently completed fiscal year.

"Primary address" means the bona fide physical street address of the organization or sole proprietor.

"Primary name" means the name under which an organization is incorporated, if incorporated, or, if not incorporated, has been issued a certificate, by the Virginia State Corporation Commission, to transact business in Virginia, if so certified, or, if neither incorporated nor certified to transact business in Virginia, the name by which the organization is commonly known or referred to, except that such name shall not be an assumed name, or a deceptive name, as described in subsection A of 2VAC5-610-80.

"Report," "register," and "submit" mean "file with the commissioner" as that phrase is defined in this section.

"Subcontractor" means any agent (but not an employee) of a professional solicitor who solicits under a contract or agreement on behalf of the professional solicitor for the

benefit of any charitable or civic organization with which the professional solicitor has a contract or agreement.

"Trade association" means an association of business organizations having similar issues and engaged in similar fields formed for mutual protection, exchange of ideas and statistics, and for maintenance of standards within their industry.

~~"Treasurer's report" means an income and expense statement and a balance sheet for the past fiscal year, which has been prepared by the organization's treasurer and verified by him as being accurate and true.~~

"Unified Registration Statement" means the form created by a committee organized by the National Association of Attorneys General and the National Association of State Charity Officials to consolidate the information and data requirements of all states requiring registration.

Part II

Rules Governing Charitable and Civic Organizations

**2VAC5-610-20. Initial registration.**

A. Documentation required. Except as provided in subsection B of this section, every charitable organization subject to registration, pursuant to § 57-49 of the Code of Virginia (~~Registration of charitable organizations~~), shall file an initial registration statement with the commissioner. Such registration shall not be considered complete unless accompanied by all supporting documentation as follows:

1. ~~FEE:~~ Fee. The appropriate fee ~~specified on Form 102, "Virginia Registration Statement for a Charitable Organization,"~~ in the amount prescribed in subsection E of § 57-49 of the Code of Virginia, made payable to "Treasurer of Virginia";
2. ~~FORM:~~ Form. The completed Form 102, "~~Virginia~~ "Registration Statement for a Charitable Organization," or the completed Unified Registration Statement, with all questions answered, with two ~~notarized~~ signatures on the form, as specified on the form, and with all required attachments;
3. ~~FINANCIAL REPORT:~~ Financial report. A copy of one of the following:
  - a. For all organizations with prior financial history:
    - (1) The ~~signed and~~ completed IRS Form 990, 990-PF, or 990-EZ, for the past fiscal year, with ~~Schedule A (Form 990)~~ Schedule B, and with all attachments, as filed with the IRS. The form must be signed or, if the form is filed electronically with the IRS, the organization must submit a copy of the IRS receipt of filing;
    - (2) Certified audited financial statements for the past fiscal year; or
    - (3) If the annual income of the organization ~~is less than \$25,000~~ qualifies the organization to file Form 990-N

with the IRS, a certified treasurer's report for the past fiscal year.

b. For a newly organized charitable organization that has no financial history, a budget for the current fiscal year shall be filed;

4. ~~KEY PERSONNEL:~~ Key personnel. A listing for the current fiscal year of the officers, directors, trustees, and principal salaried executive staff officer, including their names ~~and~~, addresses, ~~and~~ titles within the organization;
5. ~~CONTRACTS:~~ Contracts. A signed copy of any and all current contracts with any professional fund-raising counsel and any professional solicitor, as required in § 57-54 of the Code of Virginia (~~Contracts between charitable or civic organizations and professional fund raising counsel or professional solicitors~~);
6. ~~GOVERNING DOCUMENTS:~~ Governing documents. If the organization is incorporated, a copy of the certificate of incorporation, articles of incorporation, and any subsequent amendments to those documents; or, if unincorporated, any other governing documents;
7. ~~BYLAWS:~~ Bylaws. A copy of the organization's bylaws and any subsequent amendments to that document; and
8. ~~TAX EXEMPTION:~~ Tax exemption. If the charitable organization is listed with the IRS as tax exempt, a copy of the IRS determination letter and any subsequent notifications of modification, or, if exempt status is pending, a copy of the completed IRS application form as filed with the IRS.

B. Consolidated or "joint" registration. A statewide or national charitable or civic organization may file a consolidated, or "joint," registration with the commissioner, as described in subsection B of § 57-49 ~~B of the Code of Virginia (Registration of charitable organizations)~~, on behalf of its local chapters, which shall not be considered complete unless accompanied by all supporting documentation specified in subsection A of this section, if:

1. The parent organization shares a group IRS exemption status with its chapters and all financial reporting is consolidated in the parent organization's IRS Form 990, Form 990-PF, or Form 990-EZ, or in its certified audited financial statements, or; if the organization's annual income ~~is under \$25,000~~ qualifies the organization to file Form 990-N with the IRS, in its certified treasurer's report; or
2. Each chapter has its own separate IRS exemption status, but the organization's articles of incorporation or bylaws state that all financial matters are managed by the parent organization and all financial reporting is consolidated in the parent organization's IRS Form 990, Form 990-PF, or Form 990-EZ, or in its certified audited financial statements, or; if its annual income ~~is under \$25,000~~ qualifies the organization to file Form 990-N with the IRS, in its certified treasurer's report.

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# Regulations

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C. Standard of reporting contributions. Any person required to report contributions, pursuant to § 57-49 of the Code of Virginia (~~Registration of charitable organizations~~):

1. Shall report the gross contributions when the solicitation does not include goods or services;
2. Shall report as gross contributions the valuation of any goods or services solicited for resale. Such valuation shall be determined as prescribed in the American Institute of Certified Public Accountants (AICPA) standards for reporting donated goods and services;
3. Shall report the gross contributions when the solicitation includes the sale or donation of tickets for use by third parties, or when the goods or services sold are of nominal value; and
4. Shall report contributions, which may be for net contributions only, when received from special events including, but not limited to, dinners, dances, carnivals, raffles, and bingo games, when the goods or services offered are of more than nominal value in return for a payment higher than the direct cost of the goods or services provided.

## 2VAC5-610-30. Annual registration.

A. Documentation required. Except as provided in subsection B of this section, every charitable organization subject to registration, pursuant to § 57-49 of the Code of Virginia (~~Registration of charitable organizations~~), shall file an annual registration renewal with the commissioner on or before the 15th day of the fifth calendar month following the end of the organization's fiscal year. Such registration shall not be considered complete unless accompanied by all supporting documentation, as follows:

1. ~~FEE:~~ Fee. The appropriate annual fee, ~~specified on Form 102, "Virginia Registration Statement for a Charitable Organization," in the amount prescribed in subsection E of § 57-49 of the Code of Virginia,~~ made payable to "Treasurer of Virginia";
2. ~~FORM:~~ Form. The completed Form 102, "Virginia Registration Statement for a Charitable Organization," or the completed Unified Registration Statement, with all questions answered, with two ~~notarized~~ signatures on the form, as specified on the form, and with all required attachments;
3. ~~FINANCIAL REPORT:~~ Financial report. A copy of one of the following:
  - a. The ~~signed and~~ completed IRS Form 990, Form 990-PF, or Form 990-EZ, for the past fiscal year, with ~~Schedule A (Form 990) all schedules,~~ as required ~~by the IRS, except Schedule B,~~ and with all attachments, as filed with the IRS. The form must be signed, or if the form is filed electronically with the IRS, the organization must submit a copy of the IRS receipt of filing;
  - b. Certified audited financial statements for the past fiscal year; or

c. If the annual income of the organization ~~is less than \$25,000~~ qualifies the organization to file Form 990-N with the IRS, a certified treasurer's report for the past fiscal year;

4. ~~KEY PERSONNEL:~~ Key personnel. A listing for the current fiscal year of the officers, directors, trustees, and principal salaried executive staff officer, including their names ~~and~~, addresses, ~~and titles within the organization;~~
5. ~~CONTRACTS:~~ Contracts. A signed copy of any and all current contracts with any professional fund-raising counsel and any professional solicitor, as required by § 57-54 of the Code of Virginia (~~Contracts between charitable or civic organizations and professional fund-raising counsel or professional solicitors~~);
6. ~~GOVERNING DOCUMENTS:~~ Governing documents. If the organization is incorporated, a copy of any certificate of incorporation, any articles of incorporation, or amendments to these documents, not previously filed with the commissioner; or, if unincorporated, any amendments to the governing documents not previously filed with the commissioner;
7. ~~BYLAWS:~~ Bylaws. A copy of any bylaws, or amendments to that document, not previously filed with the commissioner; and
8. ~~TAX EXEMPTION:~~ Tax exemption. If the organization is listed with the IRS as tax exempt, a copy of any IRS determination letter or subsequent notifications of modification, not previously filed with the commissioner.

B. Consolidated, or "joint," registration. A statewide or national charitable or civic organization may file a consolidated, or "joint," registration with the commissioner, as described in subsection B of § 57-49 B of the Code of Virginia (~~Registration of charitable organizations~~), on behalf of its local chapters, which shall not be considered complete unless accompanied by all supporting documentation specified in subsection A of this section, if:

1. The parent organization shares a group IRS exemption status with its chapters and all financial reporting is consolidated in the parent organization's IRS Form 990, Form 990-PF, or Form 990-EZ, or in its certified audited financial statements, or, if the organization's annual income ~~is under \$25,000~~ qualifies the organization to file Form 990-N with the IRS, in its certified treasurer's report; or
2. Each chapter has its own separate IRS exemption status, but the organization's articles of incorporation or bylaws state that all financial matters are managed by the parent organization and all financial reporting is consolidated in the parent organization's IRS Form 990, Form 990-PF, or Form 990-EZ, or in its certified audited financial statements, or, if its annual income ~~is under \$25,000~~ qualifies the organization to file Form 990-N with the IRS, in its certified treasurer's report.

C. Standard of reporting contributions. Any person required to report contributions, pursuant to § 57-49 of the Code of Virginia (~~Registration of charitable organizations~~):

1. Shall report the gross contributions when the solicitation does not include goods or services;
2. Shall report as gross contributions the valuation of any goods or services solicited for resale. Such valuation shall be determined as prescribed in the American Institute of Certified Public Accountants (AICPA) standards for reporting donated goods and services;
3. Shall report the gross contributions when the solicitation includes the sale or donation of tickets for use by third parties, or when the goods or services sold are of nominal value; and
4. Shall report contributions, which may be reported as the net contributions only, when received from special events including, but not limited to, dinners, dances, carnivals, raffles, and bingo games, when the goods or services offered are of more than nominal value in return for a payment higher than the direct cost of the goods or services provided.

D. Extension of time to file. Any charitable organization that cannot complete its registration renewal on or before the 15th day of the fifth calendar month following the end of the organization's fiscal year, may request in writing, as provided in subsection E of § 57-49 of the Code of Virginia (~~Registration of charitable organizations~~), an extension of time to file. Payment of fees is not required with such a request. Fees are due when the registration is filed. A charitable organization may request an extension of time to file, and an extension may be granted under the following conditions:

1. The charitable organization shall send a ~~letter~~ written request to the commissioner, stating that the organization is requesting an extension of time to file its registration renewal. If the organization has requested, from the IRS, an extension of time to file its IRS Form 990, Form 990-PF, or Form 990-EZ, the organization may send to the commissioner a copy of the IRS extension request, in lieu of the ~~letter~~ written request.
2. If no time period is specified in the written request for extension of time to file, the commissioner shall grant an extension of time to file of 90 days.
3. If the charitable organization is unable to complete its registration renewal within the time period granted by the commissioner in the extension of time to file, the charitable organization may request an additional extension of time to file.
4. In any case, the extension or total of all extensions requested from and granted by the commissioner shall be for no longer than six months after the 15th day of the fifth calendar month following the end of the organization's fiscal year.

5. The organization's registration shall lapse if the annual renewal is not filed by the 15th day of the fifth calendar month following the end of the organization's fiscal year and no extension of time to file is requested from and granted by the commissioner, or if the annual renewal is not filed by the end of the extension period granted. If the organization's registration lapses, the organization shall file an initial registration (and pay the initial registration fee in addition to the annual registration fee), as prescribed by 2VAC5-610-20.

**2VAC5-610-35. Disclosures required of charitable or civic organizations.**

A. Primary name. The charitable or civic organization shall include in all solicitations the primary name under which it is registered with the commissioner.

B. Use of another charitable or civic organization's name in an appeal by a charitable or civic organization. Pursuant to subsection C of § 57-57 of the Code of Virginia, if the charitable or civic organization uses the name of another charitable or civic organization in its own solicitation, it shall submit Form 121, "Consent to Solicit," for each charitable or civic organization named in its own solicitation.

C. Preprinted return addresses. Pursuant to subsection L of § 57-57 of the Code of Virginia, the preprinted address on any return envelope, prepared under the direction of the charitable or civic organization and provided to a potential donor that is not addressed to the charitable or civic organization's own primary address shall include the name of the business located at the address on the return envelope in the following format:

ABC Charity  
c/o XYZ Company  
111 Main Street (#)  
City, ST Zip Code

The name on line two may be the name of the professional fund-raising counsel or solicitor, a third party caging company or bank, a commercial mail receiving agency, or other receiver, but in any case must be the name of the company that actually resides at the preprinted address on the return envelope. This requirement does not apply to mail addressed to a United States Post Office box, rented from the U.S. Postal Service.

**2VAC5-610-40. Exemption from annual registration.**

A. Documentation required. Any charitable or civic organization claiming exemption from annual registration, pursuant to § 57-60 of the Code of Virginia (~~Exemptions~~), shall file with the commissioner an application for exemption from annual registration on Form 100, "Virginia Exemption Application for a Charitable or Civic Organization," indicating the category of the exemption claimed. Such filing shall not be considered complete unless accompanied by all supporting documentation, as follows:

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1. ~~FEE: A check for \$10, Fee.~~ Fee. A fee in the amount prescribed in subsection C of § 57-60 of the Code of Virginia, made payable to "Treasurer of Virginia";
2. ~~FORM: Form.~~ Form. The completed Form 100, "Virginia Exemption Application for a Charitable or Civic Organization" and applicable attachments, with all questions answered, and with an officer's ~~notarized~~ signature on the form;
3. ~~FINANCIAL REPORT: Financial report.~~ Financial report. A copy of one of the following:
  - a. For all organizations with prior financial history:
    - (1) The ~~signed and~~ completed IRS Form 990, 990-PF, or 990-EZ, for the past fiscal year, with ~~Schedule A (Form 990) all schedules,~~ as required by the IRS, except Schedule B, and with all attachments, as filed with the IRS. The form must be signed, or if the form is filed electronically with the IRS, the organization must submit a copy of the IRS receipt of filing;
    - (2) Certified audited financial statements for the past fiscal year; or
    - (3) If the organization's annual income ~~is less than \$25,000~~ qualifies the organization to file Form 990-N with the IRS, a certified treasurer's report for the past fiscal year;
  - b. For a newly organized charitable or civic organization that has no financial history, a budget for the current fiscal year shall be filed;
4. ~~KEY PERSONNEL: Key personnel.~~ Key personnel. A listing for the current fiscal year of the officers, directors, trustees, and principal salaried executive staff officer, including their names ~~and~~ addresses, and titles within the organization;
5. ~~CONTRACTS: Contracts.~~ Contracts. A signed copy of all current contracts with any professional fund-raising counsel and any professional solicitor, as required in § 57-54 of the Code of Virginia (~~Contracts between charitable or civic organizations and professional fund-raising counsel or professional solicitors;~~);
6. ~~GOVERNING DOCUMENTS: Governing documents.~~ Governing documents. Except as provided in subdivision B 2 of this section, if the organization is incorporated, a copy of the certificate of incorporation, articles of incorporation, and any subsequent amendments to those documents; or, if unincorporated, any other governing documents;
7. ~~BYLAWS: Bylaws.~~ Bylaws. Except as provided in subdivision B 2 of this section, a copy of the organization's bylaws and any subsequent amendments to that document; and
8. ~~TAX EXEMPTION: Tax exemption.~~ Tax exemption. If the organization is listed with the IRS as tax exempt, a copy of the IRS determination letter and any subsequent notifications of modification, or, if tax exempt status is pending, a copy of the completed IRS application form, as filed with the IRS.

B. Additional documentation required for specific categories of exemption. In addition to the documentation required in subsection A of this section, the organization shall submit the following documentation for the specific exemption application category named below:

1. Category A, Educational Institutions:
  - a. Educational institutions that do not confine solicitations to their student body, alumni, faculty, trustees, and their families, shall provide a copy of their accreditation certificate, as proof of qualification for this exemption.
  - b. Any foundation having an established identity with any accredited educational institution shall provide a copy of the institution's accreditation certificate, and a letter, written by the principal, dean, or the head of the institution by whatever name known, which states that the institution recognizes and corroborates the established identity.
2. Category B, Solicitation for a Named Individual: In the absence of articles of incorporation and bylaws, the charitable organization shall file a copy of the trust agreement or similar document that includes the following information:
  - a. The names of the persons who control the funds and the fund account;
  - b. The number of signatures required to extract funds from the fund account;
  - c. A statement that all contributions collected, without any deductions whatsoever, shall be turned over to the named beneficiary for his use; and
  - d. A statement in the event the named beneficiary dies naming those persons to whom any funds remaining will be distributed upon dissolution of the fund account.
3. Category C, Solicitations not to Exceed \$5,000: A copy of the organization's budget for the current calendar year, and copies of the certified treasurer's reports for the three previous calendar years, or for the calendar years of the organization's existence, if less than three years.
4. Category D, Membership Solicitation Only:
  - a. The charitable organization shall submit documentation of the dues structure for each class of members; and
  - b. The charitable organization shall submit copies of any membership recruitment correspondence, for the past two mailings.
5. Category E, Solicitations by a Nonresident Charitable Organization: A complete description of all solicitations to be conducted in Virginia by the organization.
6. Category F, Solicitations Confined to Five or Fewer Contiguous Cities and Counties:

- a. The organization applying for this exemption (applicant organization) shall submit a copy of each local solicitation permit with the application for exemption.
  - b. If the organization applying for this exemption (applicant organization) grants money to another charitable organization (grantee) that lies within the area covered by this exemption, but pays the grantee's money to the grantee's parent organization that lies outside the area covered by the exemption, then the applicant organization shall keep on file for three years a statement, prepared by the parent organization, that the grant funds are disbursed to the grantee.
7. Category G, Civic Organization: No additional documentation is required.
8. Category H, Health Care Institutions: The charitable organization shall submit a copy of one of the following in support of the category of application:
- a. The license issued by the ~~State Department of Health or by the State Department of Mental Health, Mental Retardation and Substance Abuse Services~~ Department of Behavioral Health and Developmental Services;
  - b. Documentation to show that the health institution has been designated by the Health Care Financing Administration (HCFA) as a federally qualified health center;
  - c. A copy of the HCFA-issued rural health clinic certificate;
  - d. A copy of the free clinic's purpose as stated in its governing documents; or
  - e. If applying as a supporting organization, a copy of the health care institution's documentation (as specified in subdivision 8 a, b, c, or d of this subsection) and a letter from the health care institution's president, or head by whatever name known, acknowledging that the supporting organization exists solely to support the health care institution. If more than one health care institution is supported, supply this documentation for each health care institution.
- For any year in which a federally qualified health center fails to qualify for such designation, that health center shall register on Form 102, "Virginia Registration Statement for a Charitable Organization," in accordance with § 57-49 of the Code of Virginia (~~Registration of charitable organization~~) and 2VAC5-610-20, or submit any other applicable exemption application, in accordance with § 57-60 of the Code of Virginia (~~Exemptions~~) and 2VAC5-610-40.
9. Category I, Nonprofit Debt Counseling Agencies: A copy of the nonprofit debt counseling license issued by the Virginia State Corporation Commission, pursuant to § ~~6-1-363.1~~ 6.2-2001 of the Code of Virginia.
10. Category J, Area Agencies on Aging: A copy of the agreement between the charitable organization and the

Virginia Department for ~~the~~ Aging and Rehabilitative Services, pursuant to subdivision A 6 of § 2.2-703-A-6 51.5-135 of the Code of Virginia, which designates the organization as an area agency on aging.

- 11. Category K, Trade Associations: No additional documentation required.
- 12. Category L, Labor Unions, Labor Associations, and Labor Organizations: No additional documentation required.
- 13. Category M, Virginia Area Health Education Centers: Copy of the consortium letter issued by the program.
- 14. Category N, Regional Emergency Medical Services Councils: Copy of the designation letter issued by the Commissioner of Health.
- 15. Category O, Nonprofit that Solicits Only through Grant Proposals: Copy of the IRS determination letter recognizing the organization as a § 501(c)(3) charitable organization.

C. Consolidated, or "joint," exemptions. A consolidated, or "joint," exemption from annual registration, as described in subsection C of § 57-60 ~~of~~ of the Code of Virginia (~~Exemptions~~), will apply to those local chapters, branches, or affiliates ~~which that~~ belong to a network membership. In this instance, the parent membership organization shall submit the consolidated application on behalf of its local chapters, branches, or affiliates, and, if exempted, shall submit a membership roster annually to the commissioner. If the exemption category is of a local nature, such as for civic organizations, the exemption shall apply to the local chapters, but not to the parent organization, if the parent organization, in this instance, is soliciting contributions statewide. In this instance, the parent organization shall file its own application for exemption under § 57-60 of the Code of Virginia (~~Exemptions~~), if applicable, or its own annual registration under § 57-49 of the Code of Virginia (~~Registration of charitable organizations~~).

~~D. Primary name. The charitable or civic organization shall include in all solicitations the primary name under which it is registered with the commissioner.~~

~~E. Use of another charitable or civic organization's name in an appeal by a charitable or civic organization. Pursuant to § 57-57 C of the Code of Virginia (Prohibited acts), if the charitable or civic organization uses the name of another charitable or civic organization in its own solicitation, it shall submit Form 121, "Consent to Solicit," for each charitable or civic organization named in its own solicitation.~~

~~F. Preprinted return addresses. Pursuant to § 57-57 L of the Code of Virginia (Prohibited acts), the preprinted address on any return envelope, prepared under the direction of the charitable or civic organization and provided to a potential donor, that is not addressed to the charitable or civic organization's own primary address shall include the name of~~

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the business located at the address on the return envelope in the following format:

ABC Charity  
c/o XYZ Company  
111 Main Street (#)  
City, ST Zip Code

The name on line two may be the name of the professional fund raising counsel or solicitor, a third party caging company or bank, a commercial mail receiving agency, or other receiver, but in any case must be the name of the company that actually resides at the preprinted address on the return envelope. This requirement does not apply to mail addressed to a United States Post Office box, rented from the U.S. Postal Service.

## **2VAC5-610-50. Discontinuance of solicitations in Virginia.**

A. Ceasing solicitations. If a charitable or civic organization ceases to solicit contributions in Virginia, the charitable or civic organization shall notify the commissioner on or before the 15th day of the fifth month following the end of the organization's fiscal year, and shall submit a copy of the signed and completed IRS Form 990, 990-PF, or 990-EZ, for the past fiscal year, with Schedule A (Form 990) all schedules, as required by the IRS, except Schedule B, and all attachments, as filed with the IRS, or certified audited financial statements for the past fiscal year, or, if the organization's annual income is less than \$25,000 qualifies the organization to file Form 990-N with the IRS, a certified treasurer's report for the past fiscal year. If the organization submits the IRS Form 990, 990-PF, or 990-EZ, the form must be signed, or if the form is filed electronically, the organization must submit a copy of the IRS receipt of filing.

B. Dissolution of a charitable or civic organization. Upon a charitable or civic organization's dissolution, the organization shall submit a copy of its certificate of dissolution and a statement showing the distribution of its funds. Such statement shall be a copy of the IRS Form 990, Form 990-PF, or Form 990-EZ, with Schedule A (Form 990) all schedules, as required by the IRS, except Schedule B, and with all attachments, as filed with the IRS upon dissolution, or certified audited financial statements, or, if annual income is less than \$25,000 qualifies the organization to file Form 990-N with the IRS, a certified treasurer's report, showing the distribution of its funds. If the organization submits the IRS Form 990, 990-PF, or 990-EZ, the form must be signed, or if the form is filed electronically, the organization must submit a copy of the IRS receipt of filing.

### Part III

#### Rules Governing a Professional Fund-Raising Counsel

## **2VAC5-610-60. Registration of a professional fund-raising counsel.**

A. Documentation required for registration. Any professional fund-raising counsel subject to registration,

pursuant to § 57-61 of the Code of Virginia (~~Registration of professional fund raising counsels and solicitors~~), shall file a registration statement with the commissioner. Such registration shall not be considered complete, unless accompanied by all supporting documentation, as follows:

1. ~~FEE: Annual fee of \$100; Fee.~~ An annual fee in the amount prescribed in subsection A of § 57-61 of the Code of Virginia, made payable to "Treasurer of Virginia";
2. ~~FORM: Form.~~ The completed Form 103, "Virginia Registration Statement for a Professional Fund-raising Fundraising Counsel," with all questions answered, and with an officer's notarized signature on the form; and
3. ~~CONTRACTS: Contracts.~~ A signed copy of any and all current contracts with charitable or civic organizations soliciting in Virginia, as required by § 57-54 of the Code of Virginia (~~Contracts between charitable or civic organizations and professional fund raising counsel or professional solicitors~~).

B. Preprinted return addresses. Pursuant to subsection L of § 57-57 ~~L of the Code of Virginia (Prohibited acts)~~, the preprinted address on any return envelope, prepared under the direction of the professional fund-raising counsel and provided to a potential donor, that is not addressed to the charitable or civic organization's own primary address shall include the name of the business located at the address on the return envelope in the following format:

ABC Charity  
c/o XYZ Company  
111 Main Street (#)  
City, ST Zip Code

The name on line two may be the name of the professional fund-raising counsel, a third party caging company or bank, a commercial mail-receiving agency, or other receiver, but in any case must be the name of the company that actually resides at the preprinted address on the return envelope. This requirement does not apply to mail addressed to a United States Post Office box, rented from the U.S. Postal Service.

### Part IV

#### Rules Governing a Professional Solicitor

## **2VAC5-610-70. Rules governing a professional solicitor.**

A. Documentation required for registration. Any professional solicitor subject to registration, pursuant to § 57-61 of the Code of Virginia (~~Registration of professional fund-raising counsel and solicitors~~), shall file a registration statement with the commissioner. In accordance with subsection A of § 57-61 ~~A of the Code of Virginia (Registration of professional fund-raising counsels and solicitors)~~, a professional solicitor may register for and pay a single fee on behalf of all its members, officers, agents (including any subcontractors), and employees. For any specific campaign, any agent or subcontractor not directly under contract or agreement to the registered professional solicitor must file its own registration. Such registration shall

not be considered complete unless accompanied by all supporting documentation as follows:

1. ~~FEE: Annual fee of \$500, and late filing fee of \$250, if applicable, Fee. An annual fee and late filing fee, if applicable, in the amount prescribed in subsection A of § 57-61 of the Code of Virginia,~~ made payable to "Treasurer of Virginia";
2. ~~FORM: Form.~~ The completed Form 104, "~~Virginia~~ "Registration Statement for a Professional Solicitor," with all questions answered, and with an officer's notarized signature on the form;
3. ~~BOND: Bond.~~ The completed Form 105, "~~Professional Solicitor's Bond,~~" in the sum of ~~\$20,000 prescribed in subsection B of § 57-61 of the Code of Virginia~~ with corporate surety authorized by the State Corporation Commission to act as a surety within the Commonwealth;
4. ~~GOVERNING DOCUMENTS: Governing documents.~~ A copy of the certificate and articles of incorporation, if the solicitor is incorporated, and, if a nonresident (foreign) partnership or corporation, the certificate ~~to do of authority to transact~~ business in Virginia, as required by the ~~Virginia~~ State Corporation Commission; and
5. ~~CONTRACTS: Contracts.~~ A signed copy of any and all current contracts with charitable or civic organizations soliciting in Virginia, as required by § 57-54 of the Code of Virginia ~~(Contracts between charitable or civic organizations and professional fund-raising counsel or professional solicitors),~~ and all current contracts with any agents or subcontractors hired to fulfill the terms of the contracts with those charitable or civic organizations.

B. Written authorization from charitable organizations. No professional solicitor or subcontractor shall solicit in the name of, or on behalf of, any charitable or civic organization unless such solicitor has filed with the commissioner one copy of a written authorization from two officers of such organization, as required in subsection F of § 57-57 of the Code of Virginia ~~(Prohibited acts).~~ Such written authorization shall be submitted on Form 121, "Consent to Solicit," or Form 120, "Solicitation Notice." Form 121, "Consent to Solicit," shall be submitted by the professional solicitor for each agent or subcontractor authorized by the charitable or civic organization to conduct the fund-raising campaign. Form 121, "Consent to Solicit," shall be submitted by the professional solicitor for each charitable or civic organization named in a fund-raising campaign, in addition to the charitable or civic organization with which the professional solicitor has a contract or agreement.

C. Disclosures.

1. Pursuant to § 57-55.2 of the Code of Virginia ~~(Charitable solicitation disclosure),~~ each professional solicitor shall, in the course of an oral solicitation:
  - a. Identify himself by:
    - (1) Disclosing his own real first name and surname;

- (2) Stating affirmatively that he is a "paid solicitor"; and
- (3) Disclosing the primary name under which the professional solicitor is registered with the commissioner or if he is employed by a subcontractor, disclosing the primary name of the subcontractor as identified on Form 121, "Consent to Solicit"; and

b. Identify his employing charitable or civic organization by disclosing the primary name, as registered with the commissioner, of the charitable or civic organization for which the solicitation is being made.

An example of the disclosure for a professional solicitor would be: "This is John Doe, a paid solicitor of XYZ Company. I'm calling on behalf of DEF Charity."

An example of the disclosure for a subcontractor would be: "This is John Doe, a paid solicitor of XYZ Company. I'm calling on behalf of DEF Charity."

An example of the disclosure for an employee of a subcontractor would be: "This is John Doe, a paid solicitor of ABC subcontractor. I'm calling on behalf of DEF Charity."

2. Pursuant to clause (iii) of § 57-55.2 of the Code of Virginia ~~(Charitable solicitation disclosure),~~ each professional solicitor shall, in the course of a written solicitation, include the following statement: "The professional solicitor conducting this campaign, (primary name of professional solicitor), files a financial report for each campaign it conducts. Copies of these financial reports are available from the Virginia ~~Office of Consumer Affairs~~ Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218." This statement shall be in bold typeface no smaller than 10-point with grammatically correct capitalization and lower case letters. The statement shall appear on the front side of the document on a portion that is retained by the potential donor.

3. Pursuant to subsection L of § 57-57 ~~E~~ of the Code of Virginia ~~(Prohibited acts),~~ the preprinted address on any return envelope, prepared under the direction of the professional solicitor and provided to a potential donor, that is not addressed to the charitable or civic organization's own primary address shall include the name of the business located at the address on the return envelope in the following format:

ABC Charity  
 c/o XYZ Company  
 111 Main Street (#)  
 City, ST Zip Code

The name on line two may be the name of the professional solicitor, a third party caging company or bank, a commercial mail-receiving agency, or other receiver, but in any case must be the name of the company that actually resides at the preprinted address on the return envelope. This requirement does not apply to mail addressed to a

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United States Post Office box, rented from the U.S. Postal Service.

## D. Contribution collection devices.

1. Pursuant to subsections A and D and clause (i) of subsection F of § 57-61 of the Code of Virginia (~~Registration of professional fund-raising counsel and solicitors~~), for a solicitation campaign employing collection devices including, but not limited to, vending machines or canisters, the professional solicitor shall maintain a record listing each establishment in which a collection device is placed including:

- a. The name of the establishment;
- b. The primary address of the establishment;
- c. The name of the person in the establishment who granted permission to place the collection device there;
- d. The date the collection device was placed in the establishment; and
- e. The date on which the collection device was removed.

2. The professional solicitor employing contribution collection devices shall comply with the disclosure provisions of subsection C of this section, and with the campaign documents provisions of subsection E of this section.

## E. Fund-raising campaign forms.

1. The professional solicitor shall submit Form 120, "Solicitation Notice," and Form 130, "Final Accounting Report," as required in subsections A and D of § 57-61 of the Code of Virginia (~~Registration of professional fund-raising counsel and solicitors~~), and such forms shall not be considered as filed unless all questions are answered and contain original signatures of all required parties.

2. The professional solicitor shall submit the completed Form 120, "Solicitation Notice":

- a. Prior to any fund-raising campaign; and
- b. Annually, on or before the anniversary of the contract date, for any continuous fund-raising campaign.

3. The professional solicitor shall submit an amended Form 120, "Solicitation Notice," within seven days of any changes to information previously submitted.

4. The professional solicitor shall submit, upon cancellation of a fund-raising campaign prior to any solicitations, a copy of the completed Form 120, "Solicitation Notice," previously filed, with a statement indicating that the campaign has been canceled. If a campaign is canceled after solicitations have begun, the professional solicitor shall notify the commissioner of the cancellation within seven days of the cancellation and submit Form 130, "Final Accounting Report," in accordance with subsection E of § 57-61 E of the Code of Virginia (~~Registration of professional fund-raising counsel and solicitors~~) and this section.

5. The professional solicitor shall submit Form 130, "Final Accounting Report":

a. Not later than 90 days after the completion date of the solicitation campaign, or in accordance with extensions granted pursuant to subsection E of § 57-61 E of the Code of Virginia (~~Registration of professional fund-raising counsel and solicitors~~), and any subsequent changes in the information submitted shall be reported every 90 days thereafter; for a fund-raising campaign of finite duration; and

b. On an annual basis, not later than 90 days after the anniversary of the contract date, or in accordance with extensions granted pursuant to subsection E of § 57-61 E of the Code of Virginia (~~Registration of professional fund-raising counsel and solicitors~~), for a continuous fund-raising campaign.

Form 130, "Final Accounting Report," shall not be considered as filed if the completed form does not contain original signatures or if any blanks are not filled in or attachments are missing. Any applicable late filing fees, pursuant to subsection E of § 57-61 E of the Code of Virginia (~~Registration of professional fund-raising counsel and solicitors~~), will continue to accrue until a completed Form 130, "Final Accounting Report," is filed.

6. The professional solicitor shall maintain during the solicitation, and for a period of three years thereafter, written commitments, on Form 132, "Commitment for Receipt of Donated Tickets," of each person or charitable or civic organization to accept tickets and specifying the number of persons on whose behalf tickets were to be accepted. Such completed forms shall be submitted after notice from the commissioner to produce such, pursuant to subsection M of § 57-57 of the Code of Virginia (~~Prohibited acts~~).

## F. Subcontractors.

### 1. Filing requirements.

a. Any subcontractor operating under a contract or agreement with a registered professional solicitor shall be treated as an agent of that professional solicitor and is not required to register.

b. Any agent (but not an employee) of a subcontractor operating under a contract or agreement with that subcontractor to solicit shall register separately.

### 2. Authorizations to solicit.

a. Subcontractors shall operate under a written contract and such contract shall be filed with the ~~Commissioner~~ commissioner, pursuant to subdivision A 5 of this section.

b. Subcontractors shall have written authorization from two officers of the charitable or civic organization to solicit on their behalf. Such authorization may be filed on Form 121, "Consent to Solicit."

3. Subcontractors shall keep records in accordance with subsection F of § 57-61 F of the Code of Virginia (~~Registration of professional fundraising counsels and solicitors~~) and shall furnish either the originals or copies to the registered professional solicitor.

Part V  
General Provisions

**2VAC5-610-80. General provisions.**

A. Deceptive names. No charitable or civic organization, professional solicitor, or other person shall solicit contributions using a word, name, symbol or device, or any combination thereof, or identifying itself or its client with a word, name, symbol or device, or any combination thereof, that is likely to cause confusion, or to cause mistake, or to deceive the public by:

1. Using a name that may cause an entity to be confused with or mistaken for another previously registered or exempt entity; or
2. Using a name that may cause a professional solicitor to be confused with or mistaken for a charitable or civic organization, or mistaken for having the status of a charitable or civic organization.

B. Financial standards. Fiscal records shall be kept in accordance with the standards and practices as specified in § 57-53 of the Code of Virginia (~~Records to be kept by charitable organizations~~), or generally accepted accounting principles and reporting practices of the organization's particular field as recognized by the American Institute of Certified Public Accountants.

C. Disclosure by for-profit organizations. Every professional solicitor that solicits contributions for a for-profit organization and every for-profit organization required to issue a written statement for contributions received shall include in the disclosure required by § 57-55.2:1 of the Code of Virginia (~~Solicitations by for-profit organizations~~) a statement that the contributors' donations are not tax-deductible on the contributors' income tax returns.

D. Filing on a holiday. When the date for the annual renewal of registration of a charitable organization, professional fundraising counsel, or professional solicitor falls on a Saturday, Sunday, or a state or federal holiday, filing shall be due on the next day that is not a Saturday, Sunday, or a state or federal holiday.

E. Change in information filed. Except as otherwise provided by the Code of Virginia or by this chapter, every registered charitable organization, professional fund-raising counsel, and professional solicitor shall report to the commissioner, in writing, any change in information previously filed with the commissioner, within seven days after the change occurs.

**NOTICE:** The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of

Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (2VAC5-610)

~~Request for Exemption from Annual Registration, OCA-100 (eff. 3/01).~~

~~Registration Statement for a Charitable Organization, OCA-102 (rev. 3/01).~~

~~Registration Statement for a Professional Fund-raising Counsel, OCA-103 (rev. 3/01).~~

~~Registration Statement for a Professional Solicitor, OCA-104 (rev. 3/01).~~

~~Professional Solicitor's Bond, OCA-105 (rev. 3/01).~~

~~Solicitation Notice, OCA-120 (rev. 3/01).~~

~~Consent to Solicit, OCA-121 (rev. 3/01).~~

~~Final Accounting Report, OCA-130 (rev. 3/01).~~

~~Schedule A, Accounting for All Ticketing Sales, Including Solicitation for Donated Tickets, OCA-131 Schedule A (eff. 3/01).~~

~~Commitment for Receipt of Donated Tickets, OCA-132 (rev. 3/01).~~

[Remittance Form and Virginia Exemption Application for a Charitable or Civic Organization, Form 100, OCRP-100 \(rev. 10/13\)](#)

[Remittance Form and Registration Statement for a Charitable Organization, Form 102, OCRP-102 \(rev. 10/13\)](#)

[Request for Extension of Time to File Annual Registration Renewal, OCRP-102-X \(eff. 10/13\)](#)

[Remittance Form and Registration Statement for a Professional Fundraising Counsel, Form 103, OCRP-103 \(rev. 10/12\)](#)

[Remittance Form and Registration Statement for a Professional Solicitor, Form 104, OCRP-104 \(rev. 10/12\)](#)

[Professional Solicitor's Bond, OCRP-105 \(rev. 10/12\)](#)

[Solicitation Notice, Form 120, OCRP-120 \(rev. 8/13\)](#)

[Consent to Solicit, Form 121, OCRP-121 \(rev. 11/12\)](#)

[Remittance Form - Professional Solicitor's Final Accounting Report Late Fees and Final Accounting Report, Form 130, OCRP-130 \(rev. 11/12\)](#)

[Schedule A - Accounting for All Ticket Sales, Including Solicitation for Donated Tickets, Form 131, OCRP-131 \(rev. 11/12\)](#)

[Commitment for Receipt of Donated Tickets, Form 132, OCRP-132 \(rev. 11/12\)](#)

VA.R. Doc. No. R13-3701; Filed April 25, 2014, 11:47 a.m.



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# Regulations

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## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### MARINE RESOURCES COMMISSION

**REGISTRAR'S NOTICE:** The Marine Resources Commission is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

#### Final Regulation

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

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

**Effective Date:** May 1, 2014.

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

#### Summary:

*The amendments establish (i) the 2014 recreational minimum landings size limit as 12.5 inches and the possession limit as 15 fish and (ii) the recreational season as May 19 through September 18 and October 18 through December 31.*

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

~~A. It shall be unlawful for any person fishing with hook and line, rod and reel, spear, gig, or other recreational gear to possess more than 20 black sea bass. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for that boat or vessel and shall be equal to the number of persons on board legally eligible to fish, multiplied by 20, during any open season described in subsection D of this section, except January 1 through the last day of February 2013 open season. The captain or operator of the boat or vessel shall be responsible for that boat or vessel possession limit. Any black sea bass taken after the possession limit has been reached shall be returned to the water immediately.~~

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

possession limit has been reached shall be returned to the water immediately.

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

~~D. C. The open recreational fishing seasons, in 2013, 2014 shall be from January 1 through the last day of February, May 19 through October 14, and from November 1 through December 31 May 19 through September 18 and October 18 through December 31.~~

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

VA.R. Doc. No. R14-4026; Filed April 30, 2014, 3:53 p.m.

#### Final Regulation

**Title of Regulation:** 4VAC20-1230. Pertaining to Restrictions on Shellfish (amending 4VAC20-1230-10, 4VAC20-1230-20, 4VAC20-1230-30; adding 4VAC20-1230-31, 4VAC20-1230-32).

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

**Effective Date:** May 1, 2014.

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

#### Summary:

*The amendments (i) clarify and add definitions; (ii) clarify the genus and species of oysters and clams; (iii) remove the 60-minute delivery period during which oysters may be transported over land without temperature control; (iv) establish a two-step procedure for an individual who uses ice to extend his harvest time; (v) clarify means of conveyance; and (vi) establish separate requirements for shellfish, oysters, and clams.*

#### 4VAC20-1230-10. Purpose.

The purpose of this chapter is to establish harvest times and handling procedures for shellfish, excluding seed oysters and seed clams, harvested for commercial purposes or any other use. ~~The time, from initial harvest to when temperature control of that harvest is required, begins once the first shellstock harvested is no longer submerged and extends to the time that any harvested oysters are placed in mechanical refrigeration or are continuously and completely covered by a layer of ice in a storage container that has been approved by the Virginia Department of Health, Division of Shellfish Sanitation.~~

#### 4VAC20-1230-20. Definitions.

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

"Clam" means any shellfish of the species *Mercenaria mercenaria* and genera *Noetia* and *Anadara*.

"Container" means any bag, box, sack, tote, or other receptacle that contains shellfish to be held, in any type of conveyance, for transport from the harvest area to the landing site and from the landing site to the point of sale or other use.

"Conveyance" means any form of transport, ~~either mechanical, such as a boat, or truck, or other vehicle, or nonmechanical trailer~~ that is used to transport shellfish from the harvest area to the landing site or from the landing site to a ~~certified dealer licensed buyer~~ or other use.

"Direct marketing" means any shellfish or shellstock that is landed and sold without shucking or postharvest processing.

"Harvest" means the act of removing any shellfish or shellstock from a designated harvest area and placing that shellfish or shellstock in a container or on or in a conveyance.

"Harvest time" means the time from initial harvest to when temperature control of that harvest is required. Harvest time begins once the first harvested shellstock is no longer submerged and extends to the time that any harvested shellstock is placed in Virginia Department of Health, Division of Shellfish Sanitation-approved temperature controlled storage.

"Layer" means a single thickness or coating spread out and covering an entire surface.

"Mechanical refrigeration" means storage in a container that is approved by the Virginia Department of Health, Division of Shellfish Sanitation and capable of cooling to and maintaining an ambient temperature of 45°F or less.

~~"Oysters" means those oysters~~ any shellfish of the species *Crassostrea virginica* that is 2-1/2 inches or greater in shell length.

"Restricted-use shellstock" means shellstock or shellfish harvested from approved shellfish growing areas that shall not be sold for raw consumption or directly marketed for raw consumption.

"Restricted-use shellstock tag" means a Virginia Marine Resources Commission-issued green tag that shall only be used by a ~~certified dealer licensed buyer~~ who has a current certificate of inspection as a shucker packer for shellstock or shellfish harvested from a single harvest area in any one day. Use of any such tag indicates that shellstock is intended for further processing prior to distribution to retail or food service.

~~"Seed clams" means those clams~~ any shellfish of the species *Mercenaria mercenaria* that is less than 30 mm in shell length and more than six months from harvest for human consumption.

~~"Seed oysters" mean those oysters~~ means any shellfish of the species *Crassostrea virginica* that is less than 2-1/2 inches in shell length and more than six months from harvest for human consumption.

"Shading" means to shelter by intercepting the direct rays of the sun to protect the shellfish from heat using a tarp or cover.

"Shellfish" or "shellstock" means all species of bivalve molluscan shellfish.

"Shucker packer" means a person who shucks and packs shellfish under a certificate of inspection issued by the Virginia Department of Health, Division of Shellfish Sanitation.

~~"Temperature control" means the use of ice or mechanical refrigeration, which is capable of lowering the temperature of the shellstock and maintaining it at 50°F (10°C) or less, as approved by the Virginia Department of Health, Division of Shellfish Sanitation.~~ "VDH-approved temperature controlled storage" means a container or conveyance that is equipped with mechanical refrigeration capable of maintaining 45°F or less or is continuously and completely covering shellfish with a layer of ice, according to procedures approved by the Virginia Department of Health, Division of Shellfish Sanitation.

**4VAC20-1230-30. Public health and warm water harvest restrictions for shellfish.**

A. No provisions in this chapter shall apply to seed clams or seed oysters.

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

C. From May 1 through September 30, any vessel used for the harvest of shellfish, from either public or private grounds, shall provide shading over the area that serves as storage for the shellfish when the shellfish are on board that vessel. All shellfish in the vessel shall be offloaded every day. Shading shall not be required for vessels transporting clam seed or seed oysters for replanting.

D. From May 1 through September 30, all shellfish shall be shaded during land-based deliveries.

~~E. From May 1 through September 30, all land-based deliveries of shellfish requiring more than 60 minutes after offloading is complete shall be made aboard trucks or conveyances equipped with mechanical refrigeration capable of maintaining 45°F or less, except that shellfish may be continuously and completely covered by a layer of ice, according to procedures approved by the Virginia Department of Health, Division of Shellfish Sanitation. Mechanically refrigerated containers of shellfish shall be in operation during transport. Any operator of a truck that is delivering shellfish using a truck not owned by a certified shellfish dealer shall possess a truck refrigeration certificate issued by the Virginia Department of Health, Division of Shellfish Sanitation. Upon receipt of any shellfish, certified shellfish dealers shall immediately place any shellfish received from the harvester under temperature control.~~

~~F. E.~~ From June 15 through August 31, it shall be unlawful for any person to leave the dock or shore, prior to one hour

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before sunrise, to harvest or attempt to harvest oysters shellfish from private grounds.

~~G. From May 1 to September 30, except for those persons permitted in accordance with subsection H or I of this section, it shall be lawful for any person to harvest oysters from open areas of public or private ground, provided those oysters are fully offloaded and placed into Virginia Department of Health, Division of Shellfish Sanitation approved mechanical refrigeration or continuously and completely covered by a layer of ice in a Virginia Department of Health, Division of Shellfish Sanitation approved storage container, only under the following designated curfew schedule that specifies an end to harvest time, by month:~~

- ~~1. May 1 through May 31, by 11 a.m.;~~
- ~~2. June 1 through June 30, by 10 a.m.;~~
- ~~3. July 1 through July 31, by 10 a.m.;~~
- ~~4. August 1 through August 31, by 10 a.m.; and~~
- ~~5. September 1 through September 30, by 12 p.m.~~

~~H. It shall only be lawful to harvest oysters from open areas of public or private ground, as an exception to the provisions of subsections G and I of this section, provided:~~

~~1. The harvester has applied for and been granted a permit by the Virginia Marine Resources Commission to harvest oysters after the designated curfew harvesting times as provided in subsection G of this section.~~

~~2. A Virginia Marine Resources Commission approved global positioning system tracking device shall be on board the harvest vessel or with the harvester and must be in continuous operation from the time that vessel or harvester leaves the dock or shore until the vessel or harvester returns to the dock or shore, and the oysters harvested are offloaded from that vessel or onto the dock or shore and placed into mechanical refrigeration or continuously and completely covered by a layer of ice in a storage container approved by the Virginia Department of Health, Division of Shellfish Sanitation.~~

~~3. The total time, from the time the vessel or harvester leaves the dock or shore until the oysters are placed in Virginia Department of Health, Division of Shellfish Sanitation approved mechanical refrigeration or continuously and completely covered by a layer of ice in a Virginia Department of Health, Division of Shellfish Sanitation approved storage container, shall not exceed the following:~~

- ~~a. Five hours during the months of May and September;~~
- ~~b. Three hours during the month of June; and~~
- ~~c. Two hours during the months of July and August.~~

~~I. It shall only be lawful to harvest oysters from open areas of public or private ground, as an exception to the provisions of subsections G and H of this section, provided:~~

~~1. The harvester has applied for and been issued a Virginia Department of Health, Division of Shellfish Sanitation~~

~~vessel approval certificate for mechanical refrigeration or icing in a storage container that is on board the vessel at all times during the harvest of oysters.~~

~~2. Oysters are placed in mechanical refrigeration or continuously and completely covered by a layer of ice in a storage container on board the vessel from the start of harvest and throughout the harvest period until the oysters are offloaded.~~

~~J. From May 1 through September 30, oysters may be harvested from open areas of private or public ground as restricted use shellstock, provided:~~

~~1. The harvester has been issued green restricted use shellstock tags by a Virginia Department of Health, Division of Shellfish Sanitation certified shucker packer and has tagged all oysters with restricted use shellstock tags;~~

~~2. The harvester does not possess on board the vessel any oysters designated for direct marketing or raw consumption; and~~

~~3. All oysters are harvested no later than 12 p.m. and placed in mechanical refrigeration or continuously and completely covered by a layer of ice in a storage container, both approved by the Virginia Department of Health Division of Shellfish Sanitation, by noon that same day.~~

~~K. From May 1 through September 30, a Bulk Seed Permit shall be obtained from the Virginia Marine Resources Commission for the harvest of any natural (wild) seed oysters that include oysters greater than 2 1/2 inches. Any person who harvests any natural (wild) seed oysters that include oysters greater than 2 1/2 inches and is not in possession of a Bulk Seed Permit issued by the Virginia Marine Resources Commission shall be in violation of this chapter.~~

~~L. Any person may handle oysters as part of a cage aquaculture operation for husbandry purposes after the designated harvesting times described in subsection G of this section, provided that person possesses a valid Cage Aquaculture Husbandry Permit from the Virginia Marine Resources Commission. Any person who handles oysters in cage oyster aquaculture operations after the designated harvesting times described in subsection G of this section and does not possess a Cage Oyster Aquaculture Husbandry Permit issued by the Virginia Marine Resources Commission shall be in violation of this chapter.~~

## **4VAC20-1230-31. Public health and warm water harvest restrictions for oysters.**

~~A. From May 1 through September 30, all land-based deliveries of oysters shall be made aboard trucks or other conveyances equipped with VDH-approved temperature controlled storage. Mechanically refrigerated containers for oysters shall be in operation during transport. Any operator of a truck who is delivering oysters, using a truck not owned by a licensed shellfish buyer, shall possess a truck refrigeration certificate issued by the Virginia Department of Health,~~

Division of Shellfish Sanitation. Upon receiving any oysters, licensed shellfish buyers shall immediately place any oysters received from any individual under temperature control.

B. From May 1 to September 30, it shall be unlawful for any individual to harvest oysters from open areas of public or private ground after any monthly curfew harvest time described in (i) subdivisions 1 through 5 of this subsection or (ii) subsections C and D of this section. All oysters shall be placed into trucks or other conveyances equipped with VDH-approved temperature controlled storage, no later than the following designated curfew harvest times, by month:

1. May 1 through May 31, by 11 a.m.;
2. June 1 through June 30, by 10 a.m.;
3. July 1 through July 31, by 10 a.m.;
4. August 1 through August 31, by 10 a.m.; and
5. September 1 through September 30, by 12 noon.

C. It shall be unlawful for any individual to harvest oysters from open areas of public or private ground, except as described in (i) subsection B or D of this section or (ii) subdivisions 1 through 3 of this subsection.

1. The individual has applied for and been granted a permit by the Virginia Marine Resources Commission to harvest oysters after the designated monthly curfew harvest times, as provided in subsection B of this section.

2. A Virginia Marine Resources Commission-approved global positioning system tracking device shall be on board the harvest vessel or with the individual and must be in continuous operation from the time that vessel or individual leaves the dock or shore until the vessel or individual returns to the dock or shore, and the oysters harvested are offloaded from that vessel or onto the dock or shore and placed into trucks or other conveyances equipped with VDH-approved temperature controlled storage.

3. The total time, from the time the vessel or individual leaves the dock or shore until the oysters are placed into trucks or other conveyances equipped with VDH-approved temperature controlled storage, shall not exceed the following amount of time, by month:

- a. Five hours during the months of May and September;
- b. Three hours during the month of June; and
- c. Two hours during the months of July and August.

D. It shall be unlawful for any individual to harvest oysters from open areas of public or private ground, except as described in (i) subsection B or C of this section or (ii) subdivisions 1 through 3 of this subsection.

1. The individual has applied for and has been issued a Virginia Department of Health, Division of Shellfish Sanitation vessel approval certificate for mechanical refrigeration or icing in a storage container that is on board the vessel at all times during the harvest of oysters:

2. The individual has applied for and has been issued a Marine Resources Commission shellfish harvester icing permit; and

3. Oysters are placed in VDH-approved temperature controlled storage on board the vessel from the start of harvest and throughout the harvest period until the oysters are offloaded.

E. From May 1 through September 30, it shall be unlawful for any individual to harvest oysters from open areas of public or private ground, as restricted-use shellstock, except as described in subdivisions 1 through 3 of this subsection.

1. The individual has been issued green restricted-use shellstock tags by a Virginia Department of Health, Division of Shellfish Sanitation-certified shucker packer and has tagged all oysters with restricted-use shellstock tags;

2. The individual does not possess on board the vessel any oysters designated for direct marketing or raw consumption; and

3. All oysters are harvested no later than 12 noon and are placed into trucks or other conveyances equipped with VDH-approved temperature controlled storage, no later than noon that same day.

F. From May 1 through September 30, it shall be unlawful for any individual to harvest any amount of natural (wild) seed oysters that include oysters greater than 2-1/2 inches, without first obtaining a valid bulk seed permit from the Virginia Marine Resources Commission. Any individual who harvests any natural (wild) seed oysters that include oysters greater than 2-1/2 inches and is not in possession of a valid bulk seed permit issued by the Virginia Marine Resources Commission shall be in violation of this chapter.

G. It shall be unlawful for any individual to handle oysters, as part of a cage aquaculture operation for husbandry purposes, after the designated harvesting times described in subsection B of this section without first obtaining a valid cage oyster aquaculture husbandry permit from the Virginia Marine Resources Commission. Any individual who handles oysters in cage oyster aquaculture operations after the designated harvesting times described in subsection B of this section and does not possess a valid cage oyster aquaculture husbandry permit issued by the Virginia Marine Resources Commission shall be in violation of this chapter.

#### **4VAC20-1230-32. Public health and warm water harvest restrictions for clams.**

From May 1 through September 30, all land-based deliveries of clams requiring more than 60 minutes after offloading is complete shall be made aboard trucks or other conveyances equipped with VDH-approved temperature controlled storage. Mechanically refrigerated containers for clams shall be in operation during transport. Any operator of a truck who is delivering clams using a truck not owned by a licensed shellfish buyer shall possess a truck refrigeration certificate

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issued by the Virginia Department of Health, Division of Shellfish Sanitation. Upon receiving any clams, licensed shellfish buyers shall immediately place any clams received from the individual under temperature control.

VA.R. Doc. No. R14-4027; Filed April 30, 2014, 4:40 p.m.

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## TITLE 8. EDUCATION

### STATE BOARD OF EDUCATION

#### Proposed Regulation

**Title of Regulation:** 8VAC20-131. Regulations Establishing Standards for Accrediting Public Schools in Virginia (amending 8VAC20-131-5, 8VAC20-131-50, 8VAC20-131-60, 8VAC20-131-110, 8VAC20-131-270, 8VAC20-131-280, 8VAC20-131-360).

**Statutory Authority:** § 22.1-253.13 of the Code of Virginia.

**Public Hearing Information:**

May 22, 2014 - 1 p.m. - James Monroe Building, 101 North 14th Street, 22nd Floor Conference Room, Richmond, Virginia 23219 (immediately following adjournment of the Board of Education business meeting).

**Public Comment Deadline:** July 18, 2014.

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

**Basis:** General regulatory authority for the State Board of Education is found in § 22.1-16 of the Code of Virginia. Authority for the State Board of Education to promulgate regulations governing standards for accrediting public schools is found in § 22.1-253.13:3 of the Code of Virginia.

**Purpose:** The purpose of the regulation is to improve the welfare of Virginia citizens by providing opportunities for all public school children to gain strong academic and career skills to become productive citizens and be prepared for postsecondary education and for employment. The amendments make the provisions of the emergency regulations adopted pursuant to Chapter 454 of the 2012 Acts of Assembly permanent.

**Substance:** The amendments to the Regulations Establishing the Standards for Accrediting Public Schools in Virginia (8VAC20-131) (i) require that students must earn a career and technical education credential that has been approved by the board in order to graduate with a Standard Diploma, which could include, but is not limited to, the successful completion of an industry certification, a state licensure examination, a national occupational competency assessment, or the Virginia workplace readiness skills assessment; (ii) incorporate the Modified Standard Diploma into the Standard Diploma and

establish credit accommodations for students with disabilities, which may include the following: approval of alternative courses to meet the standard credit requirements, modifications to the requirements for local school divisions to award locally awarded verified credits, approval of additional tests to earn a verified credit, adjusted cut scores required to earn verified credit, and allowance of work-based learning experiences; (iii) require that students pursuing a Standard or Advanced Studies Diploma successfully complete one virtual course, which may be a noncredit-bearing course; (iv) eliminate the Standard Technical Diploma and the Advanced Technical Diploma, which have not yet been implemented; and (v), consistent with the legislation, specify that the Advanced Studies Diploma shall be the recommended diploma for students pursuing baccalaureate study; however both the Standard Diploma and the Advanced Studies Diploma must prepare students for postsecondary education and the career readiness required by the Commonwealth's economy.

**Issues:** The primary advantage to the public, the agency, and the Commonwealth is that this regulatory action will ensure that the regulation comports with the Code of Virginia. There are no disadvantages to the public or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. Chapter 454 of the 2012 Acts of Assembly: 1) specifies that in order for students to graduate with a Standard Diploma, they must earn a career and technical education credential that has been approved by the Board of Education (Board), 2) requires that students pursuing a Standard or Advanced Studies Diploma successfully complete one virtual course, which may be a noncredit-bearing course, 3) eliminates the Standard Technical Diploma and the Advanced Technical Diploma, and 4) effectively eliminates the Modified Standard Diploma, and instead requires that the Board make provisions in the regulations for students with disabilities to earn a Standard Diploma.

Consequently, the Board proposes to amend these regulations to: 1) add the career and technical education credential requirement for the Standard Diploma, 2) add the virtual course requirement for the Standard Diploma and Advanced Studies Diploma, 3) remove the Standard Technical Diploma and the Advanced Technical Diploma, and 4) remove the Modified Standard Diploma and establish credit accommodations for students with disabilities to earn a Standard Diploma.

**Result of Analysis.** The benefits likely exceed the costs for proposed changes in that the proposed amendments conform the regulations to existing requirements in statute.

**Estimated Economic Impact.** Chapter 454 of the 2012 Acts of Assembly specifies that "requirements for the standard diploma shall include a requirement to earn a career and technical education credential that has been approved by the

Board, that could include, but not be limited to, the successful completion of an industry certification, a state licensure examination, a national occupational competency assessment, or the Virginia workplace readiness skills assessment." The Board proposes to place this requirement within these regulations. Since the precise attributes of the requirement are already in the Code of Virginia via the 2012 legislation, adding this requirement to the regulations will be beneficial in that it will add clarity, but will not otherwise change effective requirements.

The requirement that students pursuing a Standard or Advanced Studies Diploma successfully complete one virtual course, which may be a noncredit-bearing course, is also specified in the Code of Virginia via the 2012 legislation. Thus adding this requirement to the regulations will also be beneficial in that it will add clarity, but will not otherwise change effective requirements.

The Standard Technical Diploma and the Advanced Technical Diploma have not been implemented.<sup>1</sup> Thus their proposed removal from the regulations has no impact beyond the benefit of eliminating the chance that members of the public would be confused concerning their availability.

The Board proposes to meet the statutory requirement that it make provisions in the regulations for students with disabilities to earn a Standard Diploma by adding the following language to the regulations:

"3. The Board of Education shall establish, through guidelines, credit accommodations to the standard and verified credit requirements for a Standard Diploma. Such credit accommodations for students with disabilities may include:

- a. Approval of alternative courses to meet the standard credit requirements;
- b. Modifications to the requirements for local school divisions to award locally awarded verified credits;
- c. Approval of additional tests to earn a verified credit;
- d. Adjusted cut scores required to earn verified credit; and
- e. Allowance of work-based learning experiences.

The student's Individual Education Program (IEP) or 504 Plan would specify any credit accommodations that would be applicable for the student."

This proposed language is beneficial in that it provides some additional detail about what can be done in practice to help enable students with disabilities to earn a Standard Diploma.

**Businesses and Entities Affected.** These regulations affect the 132 public school divisions in the Commonwealth.

**Localities Particularly Affected.** These regulations do not disproportionately affect particular localities.

**Projected Impact on Employment.** The proposed amendments to these regulations are unlikely to affect employment.

**Effects on the Use and Value of Private Property.** The proposed amendments to these regulations are unlikely to significantly affect the use and value of private property.

**Small Businesses: Costs and Other Effects.** The proposed amendments to these regulations are unlikely to significantly affect small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed amendments to these regulations are unlikely to significantly affect small businesses.

**Real Estate Development Costs.** The proposed amendments to these regulations are unlikely to 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: Department of Education

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 APA process.

Summary:

*This regulatory action makes permanent certain provisions of the emergency regulations adopted pursuant to Chapter 454 of the 2012 Acts of Assembly. The amendments (i) add the career and technical education credential requirement for the Standard Diploma, (ii) add the virtual course*

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*requirement for the Standard Diploma and the Advanced Studies Diploma, (iii) eliminate the Standard Technical Diploma and the Advanced Technical Diploma, (iv) incorporate the Modified Standard Diploma into the Standard Diploma and establish credit accommodations for students with disabilities to earn a Standard Diploma, and (v) recommend the Advanced Studies Diploma for students pursuing baccalaureate study.*

## Part I Definitions and Purpose

### 8VAC20-131-5. Definitions.

The following words and terms apply only to these regulations and do not supersede those definitions used for federal reporting purposes or for the calculation of costs related to the Standards of Quality (§ 22.1-253.13:1 et seq. of the Code of Virginia). When used in these regulations, these words shall have the following meanings, unless the context clearly indicates otherwise:

"Accreditation" means a process used by the Virginia Department of Education (hereinafter "department") to evaluate the educational performance of public schools in accordance with these regulations.

"Additional test" means a test, including substitute tests approved by the Board of Education that students may use in lieu of a Standards of Learning test to obtain verified credit.

"Class period" means a segment of time in the school day that is approximately 1/6 of the instructional day.

"Combined school" means a public school that contains any combination of or all of the grade levels from kindergarten through grade 12. This definition does not include those schools defined as elementary, middle, or secondary schools.

"Credit accommodations" means adjustments to meet the standard and verified credit requirements for earning a Standard Diploma for students with disabilities.

"Elementary school" means a public school with any grades kindergarten through five.

"Eligible students" means the total number of students of school age enrolled in the school at a grade or course for which a Standards of Learning test is required unless excluded under the provisions of 8VAC20-131-30 ~~F~~ G and 8VAC20-131-280 D relative to limited English proficient (LEP) students.

"Enrollment" means the act of complying with state and local requirements relative to the registration or admission of a child for attendance in a school within a local school division. This term also means registration for courses within the student's home school or within related schools or programs.

"First time" means the student has not been enrolled in the school at any time during the current school year (for purposes of 8VAC20-131-60 with reference to students who transfer in during the school year).

"Four core areas" or "four core academic areas" means English, mathematics, science, and history and social science for purposes of testing for the Standards of Learning.

"Graduate" means a student who has earned a Board of Education recognized diploma, which includes the Advanced Studies Diploma, ~~Advanced Technical, the Standard Diploma, Standard Technical, Modified Standard, and the Special, and General Achievement diplomas~~ Diploma.

"Homebound instruction" means academic instruction provided to students who are confined at home or in a health care facility for periods that would prevent normal school attendance based upon certification of need by a licensed physician or a licensed clinical psychologist.

"Locally awarded verified credit" means a verified unit of credit awarded by a local school board in accordance with 8VAC20-131-110.

"Middle school" means a public school with any grades 6 through 8.

"Planning period" means one class period per day or the equivalent unencumbered of any teaching or supervisory duties.

"Recess" means a segment of free time exclusive of time provided for meals during the standard school day in which students are given a break from instruction.

"Reconstitution" means a process that may be used to initiate a range of accountability actions to improve pupil performance, curriculum, and instruction to address deficiencies that caused a school to be rated Accreditation Denied that may include, but not be limited to, restructuring a school's governance, instructional program, staff or student population.

"School" means a publicly funded institution where students are enrolled for all or a majority of the instructional day and:

1. Those students are reported in fall membership at the institution; and
2. At a minimum, the institution meets the preaccreditation eligibility requirements of these regulations as adopted by the Board of Education.

"Secondary school" means a public school with any grades 9 through 12.

"Standard school day" means a calendar day that averages at least five and one-half instructional hours for students in grades 1 through 12, excluding breaks for meals and recess, and a minimum of three instructional hours for students in kindergarten.

"Standard school year" means a school year of at least 180 teaching days or a total of at least 990 teaching hours per year.

"Standard unit of credit" or "standard credit" means credit awarded for a course in which the student successfully completes 140 clock hours of instruction and the requirements of the course. Local school boards may develop

alternatives to the requirement for 140 clock hours of instruction as provided for in 8VAC20-131-110.

"Standards of Learning (~~SOL~~) tests" or "SOL tests" means those criterion referenced assessments approved by the Board of Education for use in the Virginia assessment program that measure attainment of knowledge and skills required by the Standards of Learning.

"Student" means a person of school age as defined by § 22.1-1 of the Code of Virginia, a child with disabilities as defined in § 22.1-213 of the Code of Virginia, and a person with limited English proficiency in accordance with § 22.1-5 of the Code of Virginia.

"Student periods" means the number of students a teacher instructs per class period multiplied by the number of class periods taught.

"Verified unit of credit" or "verified credit" means credit awarded for a course in which a student earns a standard unit of credit and achieves a passing score on a corresponding end-of-course SOL test or an additional test approved by the Board of Education as part of the Virginia assessment program.

"Virginia assessment program" means a system used to evaluate student achievement that includes Standards of Learning tests and additional tests that may be approved from time to time by the Board of Education.

**8VAC20-131-50. Requirements for graduation.**

A. The requirements for a student to earn a diploma and graduate from a Virginia high school shall be those in effect when that student enters the ninth grade for the first time. Students shall be awarded a diploma upon graduation from a Virginia high school.

The Advanced Studies Diploma shall be the recommended diploma for students pursuing baccalaureate study. Both the Standard Diploma and the Advanced Studies Diploma shall prepare students for postsecondary education and the career readiness required by the Commonwealth's economy.

When students below the ninth grade successfully complete courses offered for credit in grades 9 through 12, credit shall be counted toward meeting the standard units required for graduation provided the courses are equivalent in content and academic rigor as those courses offered at the secondary level. To earn a verified unit of credit for these courses, students must meet the requirements of 8VAC20-131-110.

The following requirements shall be the only requirements for a diploma, unless a local school board has prescribed additional requirements that have been approved by the Board of Education. All additional requirements prescribed by local school boards that have been approved by the Board of Education remain in effect until such time as the local school board submits a request to the board to amend or discontinue them.

B. Requirements for a Standard Diploma.

1. Beginning with the ninth-grade class of ~~2011-2012~~ 2013-2014 and beyond, students shall earn the required standard and verified units of credit described in subdivision 2 of this subsection.

2. Credits required for graduation with a Standard Diploma.

Discipline Area	Standard Units of Credit Required	Verified Credits Required
English	4	2
Mathematics <sup>1</sup>	3	1
Laboratory Science <sup>2,6</sup>	3	1
History and Social Sciences <sup>3,6</sup>	3	1
Health and Physical Education	2	
Foreign Language, Fine Arts or Career and Technical Education <sup>7</sup>	2	
Economics and Personal Finance	1	
Electives <sup>4</sup>	4	
Student Selected Test <sup>5</sup>		1
<u>Career and Technical Education Credential<sup>8</sup></u>		
Total <sup>2</sup>	22	6

<sup>1</sup>Courses completed to satisfy this requirement shall include at least two different course selections from among: Algebra I, Geometry, Algebra, Functions, and Data Analysis, Algebra II, or other mathematics courses above the level of Algebra II. The board shall approve courses to satisfy this requirement.

<sup>2</sup>Courses completed to satisfy this requirement shall include course selections from at least two different science disciplines: earth sciences, biology, chemistry, or physics, or completion of the sequence of science courses required for the International Baccalaureate Diploma. The board shall approve courses to satisfy this requirement.

<sup>3</sup>Courses completed to satisfy this requirement shall include U.S. and Virginia History, U.S. and Virginia Government, and one course in either world history or geography or both. The board shall approve courses to satisfy this requirement.

<sup>4</sup>Courses to satisfy this requirement shall include at least two sequential electives as required by the Standards of Quality.

<sup>5</sup>A student may utilize additional tests for earning verified credit in computer science, technology, career and technical education, economics or other areas as prescribed by the board in 8VAC20-131-110.

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<sup>6</sup>Students who complete a career and technical education program sequence and pass an examination or occupational competency assessment in a career and technical education field that confers certification or an occupational competency credential from a recognized industry, or trade or professional association, or acquires a professional license in a career and technical education field from the Commonwealth of Virginia may substitute the certification, competency credential, or license for (i) the student-selected verified credit and (ii) either a science or history and social science verified credit when the certification, license, or credential confers more than one verified credit. The examination or occupational competency assessment must be approved by the Board of Education as an additional test to verify student achievement.

<sup>7</sup>Pursuant to § 22.1-253.13:4 of the Code of Virginia, credits earned for this requirement shall include one credit in fine or performing arts or career and technical education.

<sup>8</sup>Students shall earn a career and technical education credential approved by the Board of Education that could include, but not be limited to, the successful completion of an industry certification, a state licensure examination, a national occupational competency assessment, or the Virginia workplace readiness assessment.

<sup>9</sup>Students shall successfully complete one virtual course, which may be a noncredit-bearing course or a required or elective credit-bearing course that is offered online.

3. The Board of Education shall establish, through guidelines, credit accommodations to the standard and verified credit requirements for a Standard Diploma. Such credit accommodations for students with disabilities may include:

- a. Approval of alternative courses to meet the standard credit requirements;
- b. Modifications to the requirements for local school divisions to award locally awarded verified credits;
- c. Approval of additional tests to earn a verified credit;
- d. Adjusted cut scores required to earn verified credit; and
- e. Allowance of work-based learning experiences.

The student's Individual Education Program (IEP) or 504 Plan would specify any credit accommodations that would be applicable for the student.

Students completing the requirements for the Standard Diploma may be eligible to receive an honor deemed appropriate by the local school board as described in subsection ~~K~~ H of this section.

## C. Requirements for a Standard Technical Diploma.

~~1. Beginning with the ninth grade class of 2012-2013 and beyond, students shall earn the required standard and verified units of credit described in subdivision 2 of this subsection.~~

~~2. Credits required for graduation with a Standard Technical Diploma.~~

Discipline Area	Standard Units of Credit Required	Verified Credits Required
English	4	2
Mathematics <sup>1</sup>	3	1
Laboratory Science <sup>2,5</sup>	3	1
History and Social Sciences <sup>3,5</sup>	3	1
Health and Physical Education	2	
Fine Arts or Foreign Language	1	
Economics and Personal Finance	1	
Career and Technical Education <sup>4</sup>	4	
Electives	1	
Student Selected <sup>6</sup>		1
Total	22	6

<sup>1</sup>Courses completed to satisfy this requirement shall include at least three different course selections from among: Algebra I, Geometry, Algebra Functions and Data Analysis, or Algebra II or other mathematics courses above the level of Algebra II. The board shall approve courses to satisfy this requirement.

<sup>2</sup>Courses completed to satisfy this requirement shall include course selections from at least three different science disciplines from among: earth sciences, biology, chemistry, or physics, or completion of the sequence of science courses required for the International Baccalaureate Diploma. The board shall approve courses to satisfy this requirement.

<sup>3</sup>Courses completed to satisfy this requirement shall include U.S. and Virginia History, U.S. and Virginia Government, and one course in either world history or geography or both. The board shall approve courses to satisfy this requirement.

<sup>4</sup>Courses completed to satisfy this requirement must include a career concentration as approved by the board. If a career concentration includes a specific assessment approved by the board and the student is eligible to take the assessment, then the student must take this assessment.

<sup>5</sup>Students who complete a career and technical education program sequence and pass an examination or occupational competency assessment in a career and technical education field that confers certification or an occupational competency credential from a recognized industry or trade or professional association or acquires a professional license in a career and technical education field from the Commonwealth of Virginia may substitute the certification competency credential or license for (i) the student selected verified credit and (ii) either a science or history and social science verified credit when the certification license or

~~credential confers more than one verified credit. The examination or occupational competency assessment must be approved by the board as an additional test to verify student achievement.~~

~~<sup>6</sup>A student may utilize additional tests for earning verified credit in computer science, technology, career and technical education, economics or other areas as prescribed by the board in 8VAC20-131-110.~~

~~Students completing the requirements for the Standard Technical Diploma may be eligible to receive an honor deemed appropriate by the local school board as described in subsection K of this section.~~

~~D. C. Requirements for an Advanced Studies Diploma. Any student who meets the requirements for both the Advanced Studies and the Advanced Technical diploma may choose between these two diplomas.)~~

1. Beginning with the ninth-grade class of ~~2011-2012~~ 2013-2014 and beyond, students shall earn the required standard and verified units of credit described in subdivision 2 of this subsection.
2. Credits required for graduation with an Advanced Studies Diploma.

Discipline Area	Standard Units of Credit Required	Verified Credits Required
English	4	2
Mathematics <sup>1</sup>	4	2
Laboratory Science <sup>2</sup>	4	2
History and Social Sciences <sup>3</sup>	4	2
Foreign Language <sup>4</sup>	3	
Health and Physical Education	2	
Fine Arts or Career and Technical Education	1	
Economics and Personal Finance	1	
Electives	3	
Student Selected Test <sup>5</sup>		1
Total <sup>6</sup>	26	9

<sup>1</sup>Courses completed to satisfy this requirement shall include at least three different course selections from among: Algebra I, Geometry, Algebra II, or other mathematics courses above the level of Algebra II. The board shall approve courses to satisfy this requirement.

<sup>2</sup>Courses completed to satisfy this requirement shall include course selections from at least three different science disciplines from

among: earth sciences, biology, chemistry, or physics or completion of the sequence of science courses required for the International Baccalaureate Diploma. The board shall approve additional courses to satisfy this requirement.

<sup>3</sup>Courses completed to satisfy this requirement shall include U.S. and Virginia History, U.S. and Virginia Government, and two courses in either world history or geography or both. The board shall approve additional courses to satisfy this requirement.

<sup>4</sup>Courses completed to satisfy this requirement shall include three years of one language or two years of two languages.

<sup>5</sup>A student may utilize additional tests for earning verified credit in computer science, technology, career or technical education, economics or other areas as prescribed by the board in 8VAC20-131-110.

<sup>6</sup>Students shall successfully complete one virtual course, which may be a noncredit-bearing course, or may be a course required to earn this diploma that is offered online.

Students completing the requirements for the Advanced Studies Diploma may be eligible to receive an honor deemed appropriate by the local school board as described in subsection ~~K~~ H of this section.

~~E. Requirements for an Advanced Technical Diploma. Any student who meets the requirements for both the Advanced Studies and the Advanced Technical diploma may choose between these two diplomas.~~

1. Beginning with the ninth grade class of ~~2012-2013~~ 2013-2014 and beyond, students shall earn the required standard and verified units of credit described in subdivision 2 of this subsection.
2. Credits required for graduation with an Advanced Technical Diploma.

Discipline Area	Standard Units of Credit Required	Verified Credits Required
English	4	2
Mathematics <sup>1</sup>	4	2
Laboratory Science <sup>2</sup>	4	2
History and Social Sciences <sup>3</sup>	4	2
Foreign Language <sup>4</sup>	3	
Health and Physical Education	2	
Economics and Personal Finance	1	
Fine Arts or Career and Technical Education	1	
Career and Technical	3	

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Education <sup>5</sup>		
Student Selected Test <sup>6</sup>		4
Total	26	9

<sup>1</sup>Courses completed to satisfy this requirement shall include at least three different course selections from among: Algebra I, Geometry, Algebra II, or other mathematics courses above the level of Algebra II. The board shall approve courses to satisfy this requirement.

<sup>2</sup>Courses completed to satisfy this requirement shall include course selections from at least three different science disciplines from among: earth sciences, biology, chemistry, or physics or completion of the sequence of science courses required for the International Baccalaureate Diploma. The board shall approve courses to satisfy this requirement.

<sup>3</sup>Courses completed to satisfy this requirement shall include U.S. and Virginia History, U.S. and Virginia Government, and two courses in either world history or geography or both. The board shall approve courses to satisfy this requirement.

<sup>4</sup>Courses completed to satisfy this requirement shall include three years of one language or two years of two languages.

<sup>5</sup>Courses completed to satisfy this requirement must include a career concentration as approved by the board. If a career concentration includes a specific assessment approved by the board, and the student is eligible to take the assessment, then the student must take this assessment.

<sup>6</sup>A student may utilize additional tests for earning verified credit in computer science, technology, career or technical education, economics, or other areas as prescribed by the board in 8VAC20-131-110.

~~Students completing the requirements for the Advanced Technical Diploma may be eligible to receive an honor deemed appropriate by the local school board as described in subsection K of this section.~~

## F. Requirements for the Modified Standard Diploma.

1. Every student shall be expected to pursue a Standard Diploma, Standard Technical Diploma, Advanced Studies Diploma, or Advanced Technical Diploma. The Modified Standard Diploma program is intended for certain students at the secondary level who have a disability and are unlikely to meet the credit requirements for a Standard Diploma. Eligibility and participation in the Modified Standard Diploma program shall be determined by the student's Individualized Education Program (IEP) team including the student, where appropriate, at any point after the student's eighth grade year.

2. The school must secure the informed written consent of the parent/guardian and the student to choose this diploma program after review of the student's academic history and the full disclosure of the student's options.

3. The student who has chosen to pursue a Modified Standard Diploma shall also be allowed to pursue the Standard Diploma, Standard Technical Diploma, Advanced Studies Diploma, or Advanced Technical Diploma at any time throughout that student's high school

career, and the student must not be excluded from courses and tests required to earn these diplomas.

4. ~~Students pursuing the Modified Standard Diploma shall pass literacy and numeracy competency assessments prescribed by the board.~~

5. ~~Credits required for graduation with a Modified Standard Diploma.~~

Discipline Area	Standard Units of Credit Required
English	4
Mathematics <sup>1</sup>	3
Science <sup>2</sup>	2
History and Social Sciences <sup>3</sup>	2
Health and Physical Education	2
Fine Arts or Career and Technical Education	1
Electives <sup>4</sup>	6
Total	20

<sup>1</sup>Courses completed to satisfy this requirement shall include content from among applications of algebra, geometry, personal finance, and probability and statistics in courses that have been approved by the board.

<sup>2</sup>Courses completed shall include content from at least two of the following: applications of earth science, biology, chemistry, or physics in courses approved by the board.

<sup>3</sup>Courses completed to satisfy this requirement shall include one unit of credit in U.S. and Virginia History and one unit of credit in U.S. and Virginia Government in courses approved by the board.

<sup>4</sup>Courses to satisfy this requirement shall include at least two sequential electives in the same manner required for the Standard Diploma.

6. The student must meet any additional criteria established by the Board of Education.

G. ~~D.~~ In accordance with the requirements of the Standards of Quality, students with disabilities who complete the requirements of their Individualized Education Program (IEP) and do not meet the requirements for other diplomas shall be awarded Special Diplomas.

H. ~~E.~~ In accordance with the requirements of the Standards of Quality, students who complete prescribed programs of studies defined by the local school board but do not qualify for a Standard Diploma, Standard Technical, an Advanced Studies Diploma, Advanced Technical, Modified Standard, or a Special, or General Achievement diplomas Diploma shall be awarded Certificates of Program Completion. The requirements for Certificates of Program Completion are developed by local school boards in accordance with the Standards of Quality. ~~Students receiving a general~~

~~achievement diploma shall comply with 8VAC20-680, Regulations Governing the General Achievement Diploma.~~

~~F. E.~~ In accordance with the provisions of the compulsory attendance law and 8VAC20-360, Regulations Governing General Educational Development Certificates, students who do not qualify for diplomas may earn a high school equivalency credential.

~~F. G.~~ At a student's request, the local school board shall communicate or otherwise make known to institutions of higher education, potential employers, or other applicable third parties, in a manner that the local school board deems appropriate, that a student has attained the state's academic expectations by earning a Virginia diploma and that the value of such a diploma is not affected in any way by the accreditation status of the student's school.

~~K. H.~~ Awards for exemplary student performance. Students who demonstrate academic excellence and/or outstanding achievement may be eligible for one or more of the following awards:

1. Students who complete the requirements for an ~~Advanced Studies Diploma or Advanced Technical Diploma~~ with an average grade of "B" or better, and successfully complete college-level coursework that will earn the student at least nine transferable college credits in Advanced Placement (AP), International Baccalaureate (IB), Cambridge, or dual enrollment courses shall receive the Governor's Seal on the diploma.

2. Students who complete the requirements for a Standard Diploma, ~~Standard Technical Diploma, or an Advanced Studies Diploma or Advanced Technical Diploma~~ with an average grade of "A" shall receive a Board of Education Seal on the diploma.

3. The Board of Education's Career and Technical Education Seal will be awarded to students who earn a Standard Diploma, ~~Standard Technical Diploma, or an Advanced Studies Diploma or Advanced Technical Diploma~~ and complete a prescribed sequence of courses in a career and technical education concentration or specialization that they choose and maintain a "B" or better average in those courses; or (i) pass an examination or an occupational competency assessment in a career and technical education concentration or specialization that confers certification or occupational competency credential from a recognized industry, trade or professional association or (ii) acquire a professional license in that career and technical education field from the Commonwealth of Virginia. The Board of Education shall approve all professional licenses and examinations used to satisfy these requirements.

4. The Board of Education's Seal of Advanced Mathematics and Technology will be awarded to students who earn either a Standard Diploma, ~~Standard Technical Diploma, or an Advanced Studies Diploma or Advanced Technical Diploma~~ and (i) satisfy all of the mathematics

requirements for the Advanced Studies Diploma ~~or Advanced Technical Diploma~~ (four units of credit including Algebra II; two verified units of credit) with a "B" average or better; and (ii) either (a) pass an examination in a career and technical education field that confers certification from a recognized industry, or trade or professional association; (b) acquire a professional license in a career and technical education field from the Commonwealth of Virginia; or (c) pass an examination approved by the board that confers college-level credit in a technology or computer science area. The Board of Education shall approve all professional licenses and examinations used to satisfy these requirements.

5. The Board of Education's Seal for Excellence in Civics Education will be awarded to students who earn either a ~~Modified Standard Diploma, Standard Diploma, Standard Technical Diploma, or an Advanced Studies Diploma, or Advanced Technical Diploma~~ and (i) complete Virginia and United States History and Virginia and United States Government courses with a grade of "B" or higher; (ii) have good attendance and no disciplinary infractions as determined by local school board policies; and (iii) complete 50 hours of voluntary participation in community service or extracurricular activities. Activities that would satisfy the requirements of clause (iii) of this subdivision include: (a) volunteering for a charitable or religious organization that provides services to the poor, sick, or less fortunate; (b) participating in Boy Scouts, Girl Scouts, or similar youth organizations; (c) participating in JROTC; (d) participating in political campaigns or government internships, or Boys State, Girls State, or Model General Assembly; or (e) participating in school-sponsored extracurricular activities that have a civics focus. Any student who enlists in the United States military prior to graduation will be deemed to have met this community service requirement.

6. Students may receive other seals or awards for exceptional academic, career and technical, citizenship, or other exemplary performance in accordance with criteria defined by the local school board.

~~L. I.~~ Students completing graduation requirements in a summer school program shall be eligible for a diploma. The last school attended by the student during the regular session shall award the diploma unless otherwise agreed upon by the principals of the two schools.

~~M. J.~~ Students who complete Advanced Placement courses, college-level courses, or courses required for an International Baccalaureate Diploma shall be deemed to have completed the requirements for graduation under these standards provided they have earned the standard units of credit and earned verified units of credit in accordance with the requirements ~~of~~ for the Standard Diploma and the Advanced Studies Diploma, as specified in subsections B and C of this section.

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~~N.~~ K. Students shall be counseled annually regarding the opportunities for using additional tests for earning verified credits as provided in accordance with the provisions of 8VAC20-131-110, and the consequences of failing to fulfill the obligations to complete the requirements for verified units of credit.

## **8VAC20-131-60. Transfer students.**

A. The provisions of this section pertain generally to students who transfer into Virginia high schools. Students transferring in grades K-8 from Virginia public schools or nonpublic schools accredited by one of the approved accrediting constituent members of the Virginia Council for Private Education shall be given recognition for all grade-level work completed. The academic record of students transferring from all other schools shall be evaluated to determine appropriate grade placement in accordance with policies adopted by the local school board. The State Testing Identifier (STI) for students who transfer into a Virginia public school from another Virginia public school shall be retained by the receiving school.

B. For the purposes of this section, the term "beginning" means within the first 20 hours of instruction per course. The term "during" means after the first 20 hours of instruction per course.

C. Standard or verified units of credit earned by a student in a Virginia public school shall be transferable without limitation regardless of the accreditation status of the Virginia public school in which the credits were earned. Virginia public schools shall accept standard and verified units of credit from other Virginia public schools, Virginia's virtual learning program, Virtual Virginia, and state-operated programs. Standard units of credit also shall be accepted for courses satisfactorily completed in accredited colleges and universities when prior written approval of the principal has been granted or the student has been given credit by the previous school attended.

D. A secondary school shall accept credits toward graduation received from Virginia nonpublic schools accredited by one of the approved accrediting constituent members of the Virginia Council for Private Education (VCPE). The Board of Education will maintain contact with the VCPE and may periodically review its accrediting procedures and policies as part of its policies under this section.

Nothing in these standards shall prohibit a public school from accepting standard units of credit toward graduation awarded to students who transfer from all other schools when the courses for which the student receives credit generally match the description of or can be substituted for courses for which the receiving school gives standard credit, and the school from which the child transfers certifies that the courses for which credit is given meet the requirements of 8VAC20-131-110 A.

Students transferring into a Virginia public school shall be required to meet the requirements prescribed in 8VAC20-131-50 to receive a Standard ~~Standard Technical Diploma~~ or an Advanced Studies ~~Advanced Technical or Modified Standard Diploma~~, except as provided by subsection G of this section. To receive a Special Diploma or Certificate of Program Completion, a student must meet the requirements prescribed by the Standards of Quality.

E. The academic record of a student transferring from other Virginia public schools shall be sent directly to the school receiving the student upon request of the receiving school in accordance with the provisions of the 8VAC20-150, Management of the Student's Scholastic Record in the Public Schools of Virginia. The State Testing Identifier (STI) for students who transfer into a Virginia public school from another Virginia public school shall be retained by the receiving school.

F. The academic record of a student transferring into Virginia public schools from other than a Virginia public school shall be evaluated to determine the number of standard units of credit that have been earned, including credit from schools outside the United States, and the number of verified units of credit needed to graduate in accordance with subsection G of this section. Standard units of credit also shall be accepted for courses satisfactorily completed in accredited colleges and universities when the student has been given credit by the previous school attended.

Students transferring above the tenth grade from schools or other education programs that do not require or give credit for health and physical education shall not be required to take these courses to meet graduation requirements.

G. Students entering a Virginia public high school for the first time after the tenth grade shall earn as many credits as possible toward the graduation requirements prescribed in 8VAC20-131-50. However, schools may substitute courses required in other states in the same content area if the student is unable to meet the specific content requirements of 8VAC20-131-50 without taking a heavier than normal course load in any semester, by taking summer school, or by taking courses after the time when he otherwise would have graduated. In any event, no such student shall earn fewer than the following number of verified units, nor shall such students be required to take SOL tests or additional tests as defined in 8VAC20-131-110 for verified units of credit in courses previously completed at another school or program of study, unless necessary to meet the requirements listed in subdivisions 1 and 2 of this subsection:

1. For a Standard Diploma ~~or Standard Technical Diploma~~:
  - a. Students entering a Virginia high school for the first time during the ninth grade or at the beginning of the tenth grade shall earn credit as prescribed in 8VAC20-131-50;
  - b. Students entering a Virginia high school for the first time during the tenth grade or at the beginning of the

eleventh grade shall earn a minimum of four verified units of credit: one each in English, mathematics, history, and science. Students who complete a career and technical education program sequence may substitute a certificate, occupational competency credential or license for either a science or history and social science verified credit pursuant to 8VAC20-131-50; and

c. Students entering a Virginia high school for the first time during the eleventh grade or at the beginning of the twelfth grade shall earn a minimum of two verified units of credit: one in English and one of the student's own choosing.

2. For an Advanced Studies Diploma ~~or Advanced Technical Diploma~~:

a. Students entering a Virginia high school for the first time during the ninth grade or at the beginning of the tenth grade shall earn credit as prescribed in 8VAC20-131-50;

b. Students entering a Virginia high school for the first time during the tenth grade or at the beginning of the eleventh grade shall earn a minimum of six verified units of credit: two in English and one each in mathematics, history, and science and one of the student's own choosing; and

c. Students entering a Virginia high school for the first time during the eleventh grade or at the beginning of the twelfth grade shall earn a minimum of four verified units of credit: one in English and three of the student's own choosing.

H. Students entering a Virginia high school for the first time after the first semester of their eleventh grade year must meet the requirements of subdivision G 1 c or G 2 c of this section. Students transferring after 20 instructional hours per course of their senior or twelfth grade year shall be given every opportunity to earn a Standard, ~~Standard Technical, Diploma or an Advanced Studies Diploma, Advanced Technical, or Modified Standard Diploma~~. If it is not possible for the student to meet the requirements for a diploma, arrangements should be made for the student's previous school to award the diploma. If these arrangements cannot be made, a waiver of the verified unit of credit requirements may be available to the student. The Department of Education may grant such waivers upon request by the local school board in accordance with guidelines prescribed by the Board of Education.

I. Any local school division receiving approval to increase its course credit requirements for a diploma may not deny either the Standard, ~~Standard Technical, Diploma or the Advanced Studies Diploma, Advanced Technical, or Modified Standard Diploma~~ to any transfer student who has otherwise met the requirements contained in these standards if the transfer student can only meet the division's additional requirements by taking a heavier than normal course load in any semester, by taking summer school, or by taking courses after the time when he otherwise would have graduated.

J. The transcript of a student who graduates or transfers from a Virginia secondary school shall conform to the requirements of 8VAC20-160, Regulations Governing Secondary School Transcripts.

K. The accreditation status of a high school shall not be included on the student transcript provided to colleges, universities, or employers. The board expressly states that any student who has met the graduation requirements established in 8VAC20-131-50 and has received a Virginia diploma holds a diploma that should be recognized as equal to any other Virginia diploma of the same type, regardless of the accreditation status of the student's high school. It is the express policy of the board that no student shall be affected by the accreditation status of the student's school. The board shall take appropriate action, from time to time, to ensure that no student is affected by the accreditation status of the student's school.

**8VAC20-131-110. Standard and verified units of credit.**

A. The standard unit of credit for graduation shall be based on a minimum of 140 clock hours of instruction and successful completion of the requirements of the course. When credit is awarded in less than whole units, the increment awarded must be no greater than the fractional part of the 140 hours of instruction provided. If a school division elects to award credit on a basis other than the 140 clock hours of instruction required for a standard unit of credit defined in this subsection, the local school division shall develop a written policy approved by the superintendent and school board ~~which that~~ ensures:

1. That the content of the course for which credit is awarded is comparable to 140 clock hours of instruction; and
2. That upon completion, the student will have met the aims and objectives of the course.

B. A verified unit of credit for graduation shall be based on a minimum of 140 clock hours of instruction, successful completion of the requirements of the course, and the achievement by the student of a passing score on the end-of-course SOL test for that course or additional tests as described in this subsection. A student may also earn a verified unit of credit by the following methods:

1. In accordance with the provisions of the Standards of Quality, students may earn a standard and verified unit of credit for any elective course in which the core academic SOL course content has been integrated and the student passes the related end-of-course SOL test. Such course and test combinations must be approved by the Board of Education.
2. Upon the recommendation of the division superintendent and demonstration of mastery of course content and objectives, qualified students may receive a standard unit of credit and be permitted to sit for the relevant SOL test to

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earn a verified credit without having to meet the 140-clock-hour requirement.

3. Students who do not pass Standards of Learning tests in science or history and social science may receive locally awarded verified credits from the local school board in accordance with criteria established in guidelines adopted by the Board of Education.

C. The Board of Education may from time to time approve additional tests for the purpose of awarding verified credit. Such additional tests, which enable students to earn verified units of credit, must, at a minimum, meet the following criteria:

1. The test must be standardized and graded independently of the school or school division in which the test is given;
2. The test must be knowledge based;
3. The test must be administered on a multistate or international basis, or administered as part of another state's accountability assessment program; and
4. To be counted in a specific academic area, the test must measure content that incorporates or exceeds the SOL content in the course for which verified credit is given.

The Board of Education will set the score that must be achieved to earn a verified unit of credit on the additional test options.

D. With such funds as are appropriated by the General Assembly, the Board of Education will provide opportunities for students who meet criteria adopted by the board to have an expedited retake of a SOL test to earn verified credit ~~or to meet literacy and numeracy requirements for the Modified Standard Diploma.~~

## Part VII

### School and Community Communications

#### **8VAC20-131-270. School and community communications.**

A. Each school shall promote communication and foster mutual understanding with parents and the community. Each school shall:

1. Involve parents, citizens, community agencies, and representatives from business and industry in developing, disseminating, and explaining the biennial school plan; on advisory committees; in curriculum studies; and in evaluating the educational program.
2. Provide annually to the parents and the community the School Performance Report Card in a manner prescribed by the board. The information contained therein will be for the most recent three-year period. Such information shall include but not be limited to:
  - a. Virginia assessment program results by percentage of participation and proficiency and disaggregated by student subgroups.
  - b. The accreditation rating earned by the school.

c. Attendance rates for students.

d. Information related to school safety to include, but not limited to, incidents of crime and violence.

e. Information related to qualifications and educational attainment of the teaching staff.

f. In addition, secondary schools' School Performance Report Cards shall include the following:

- (1) Advanced Placement (AP) information to include percentage of students who take AP courses and percentage of students who take AP tests;
- (2) International Baccalaureate (IB) and Cambridge course information to include percentage of students who are enrolled in IB or Cambridge programs and percentage of students who receive IB or Cambridge Diplomas;
- (3) College-level course information to include percentage of students who take college-level courses including dual enrollment courses;
- (4) Number and percentage of (i) graduates by diploma type as prescribed by the Board of Education, (ii) certificates awarded to the senior class including GED credentials, and (iii) students who do not complete high school;
- (5) As a separate category on the school report card, the number of students obtaining board-approved industry certifications, and passing state licensure examinations, national occupational competency assessments and Virginia workplace readiness skills assessments while still in high school and the number of career and technical education completers who graduated; and
- (6) Number and percentage of drop-outs.

3. Cooperate with business and industry in formulating career and technical educational programs and conducting joint enterprises involving personnel, facilities, training programs, and other resources.

4. Encourage and support the establishment and/or continuation of a parent-teacher association or other organization and work cooperatively with it.

B. At the beginning of each school year, each school shall provide to its students' parents or guardians information on the availability of and source for receiving:

1. The learning objectives developed in accordance with the provisions of 8VAC20-131-70 to be achieved at their child's grade level or, in high school, a copy of the syllabus for each of their child's courses, and a copy of the school division promotion, retention, and remediation policies;
2. The Standards of Learning applicable to the child's grade or course requirements and the approximate date and potential impact of the child's next SOL testing; and
3. An annual notice to students in all grade levels of all requirements for Standard, Standard Technical, Diploma and Advanced Studies, Advanced Technical and Modified

~~Standard Diplomas~~ Diploma, and the board's policies on promotion and retention as outlined in 8VAC20-131-30.

The division superintendent shall report to the department compliance with this subsection through the preaccreditation eligibility procedures in 8VAC20-131-290.

Part VIII  
School Accreditation

**8VAC20-131-280. Expectations for school accountability.**

A. Schools will be accredited annually based on compliance with preaccreditation eligibility requirements and achievement of the school accountability requirements of 8VAC20-131-300 C.

B. Each school shall be accredited based, primarily, on achievement of the criteria established in 8VAC20-131-30 and in 8VAC20-131-50 as specified below:

1. The percentage of students passing the Virginia assessment program tests in the four core academic areas administered in the school with the accreditation rating calculated on a trailing three-year average that includes the current year scores and the scores from the two most recent years in each applicable academic area, or on the current year's scores, whichever is higher.
2. The percentage of students graduating from or completing high school based on a graduation and completion index prescribed by the Board of Education. The accreditation rating of any school with a twelfth grade shall be determined based on achievement of required SOL pass rates and percentage points on the board's graduation and completion index. School accreditation shall be determined by the school's current year index points or a trailing three-year average of index points that includes the current year and the two most recent years, whichever is higher. The Board of Education's graduation and completion index shall include weighted points for diploma graduates (100 points), GED recipients (75 points), students not graduating but still in school (70 points), and students earning certificates of program completion (25 points). The Board of Education's graduation and completion index shall account for all students in the graduating class's ninth-grade cohort, plus students transferring in, minus students transferring out and deceased students. Those students who are not included in one of the preceding categories will also be included in the index.
3. The number of students who successfully complete a remediation recovery program.
4. Schools, with grade configurations that do not house a grade or offer courses for which SOL tests or additional tests approved by the Board of Education as outlined in 8VAC20-131-110 are administered, will be paired with another school in the division housing one or more of the grades in which SOL tests are administered. The pairing of such schools will be made upon the recommendation of the

local superintendent. The schools should have a "feeder" relationship and the grades should be contiguous.

C. Subject to the provisions of 8VAC20-131-350, the governing school board of special purpose schools such as those provided for in § 22.1-26 of the Code of Virginia, Governor's schools, special education schools, alternative schools, or career and technical schools that serve as the student's school of principal enrollment may seek approval of an alternative accreditation plan from the Board of Education. Schools offering alternative education programs and schools with a graduation cohort of 50 or fewer students as defined by the graduation rate formula adopted by the board may request that the board approve an alternative accreditation plan to meet the graduation and completion index benchmark. Special purpose schools with alternative accreditation plans shall be evaluated on standards appropriate to the programs offered in the school and approved by the board prior to August 1 of the school year for which approval is requested. Any student graduating from a special purpose school with a ~~Standard, Standard Technical, Diploma or an Advanced Studies, Advanced Technical, or Modified Standard Diploma~~ must meet the requirements prescribed in 8VAC20-131-50.

In addition, pursuant to § 22.1-253.13:3 of the Code of Virginia, any school board, on behalf of one or more of its schools, may request the Board of Education for approval of an Individual School Accreditation Plan for the evaluation of the performance of one or more of its schools as authorized for special purpose schools.

D. When calculating the passing rates on Virginia assessment program tests for the purpose of school accreditation, the following tolerances for limited English proficient (LEP) and transfer students will apply:

1. The scores of LEP students enrolled in Virginia public schools fewer than 11 semesters may be removed from the calculation used for the purpose of school accreditation required by 8VAC20-131-280 B and 8VAC20-131-300 C. Completion of a semester shall be based on school membership days. Membership days are defined as the days the student is officially enrolled in a Virginia public school, regardless of days absent or present. For a semester to count as a completed semester, a student must have been in membership for a majority of the membership days of the semester. These semesters need not be consecutive.
2. In accordance with the provisions of 8VAC20-131-30, all students who transfer into Virginia public schools are expected to take and pass all applicable SOL tests in the content areas in which they receive instruction.
3. All students who transfer within a school division shall have their scores counted in the calculation of the school's accreditation rating. Students who transfer into a Virginia school from home instruction, or from another Virginia school division, another state, or another country, in grades kindergarten through 8 shall be expected to take all applicable SOL tests or additional tests approved by the

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board as outlined in 8VAC20-131-110. If the transfer takes place after the 20th instructional day following the opening of school, the scores on these tests may be used in calculating school accreditation ratings.

4. Students who transfer into a Virginia middle or high school from home instruction, or from another state or country, and enroll in a course for which there is an end-of-course SOL test, shall be expected to take the test or additional tests for that course approved by the board as outlined in 8VAC20-131-110. If the transfer takes place after 20 instructional hours per course have elapsed following the opening of school or beginning of the semester, if applicable, the scores on those tests may be used in calculating school accreditation ratings in the year the transfer occurs.

5. Students who enroll on the first day of school and subsequently transfer to a school outside of the division for a total amount of instructional time equal to or exceeding 50% of a current school year or semester, whether the transfer was a singular or multiple occurrence, and return during the same school year shall be expected to take any applicable SOL test. The scores of those tests may be used in calculating the school accreditation rating in the year in which the transfers occur.

E. The Board of Education may adopt special provisions related to the administration and use of any Virginia assessment program test in a content area. The Board of Education may adopt special provisions related to the administration and use of the graduation and completion index, as prescribed by the board. The Board of Education may also alter the inclusions and exclusions from the accreditation calculations by providing adequate notice to local school boards. The board may add new tests or discontinue the use of existing tests in the Virginia Assessment Program by providing adequate notice to local school boards.

F. As a prerequisite to the awarding of an accreditation rating as defined in 8VAC20-131-300, each new or existing school shall document, in a manner prescribed by the board, the following: (i) the division's promotion/retention policies developed in accordance with the requirements of 8VAC20-131-30, (ii) compliance with the requirements to offer courses that will allow students to complete the graduation requirements in 8VAC20-131-50, (iii) the ability to offer the instructional program prescribed in 8VAC20-131-70 through 8VAC20-131-100, (iv) the leadership and staffing requirements of 8VAC20-131-210 through 8VAC20-131-240, and (v) the facilities and safety provisions of 8VAC20-131-260. The division superintendent shall report to the department compliance with this subsection through the preaccreditation eligibility procedures in 8VAC20-131-290.

## 8VAC20-131-360. Effective date.

A. The provisions in 8VAC20-131-30 B relating to double testing and the provisions in 8VAC20-131-60 C relating to Virtual Virginia shall become effective July 31, 2009.

B. Graduation requirements prescribed in 8VAC20-131-50 B and ~~D C~~ for the Standard Diploma and the Advanced Studies Diploma shall become effective with the ninth-grade class of ~~2011-2012~~ 2013-2014.

~~C. Graduation requirements prescribed in 8VAC20-131-50 C and E shall become effective with the ninth grade class of 2012-2013.~~

~~D. C.~~ Schools with a graduating class shall meet prescribed thresholds on a graduation and completion rate index as prescribed in 8VAC20-131-280 and 8VAC20-131-300 for accreditation ratings earned in 2010-2011 and awarded in 2011-2012.

~~E. D.~~ Accreditation ratings prescribed in 8VAC20-131-300 C 1 a shall become effective with tests administered in 2010-2011 and 2011-2012 for ratings awarded in 2011-2012 and 2012-2013.

~~F. E.~~ Accreditation ratings prescribed in 8VAC20-121-300 C 1 c shall become effective with tests administered in 2012-2013 for ratings awarded in 2013-2014 and beyond.

~~G. F.~~ The Academic and Career Plan prescribed in 8VAC20-131-140 shall become effective in 2013-2014.

~~H. G.~~ Unless otherwise specified, the remainder of these regulations shall be effective beginning with the 2011-2012 academic year.

VA.R. Doc. No. R13-3304; Filed April 25, 2014, 5:08 p.m.



## TITLE 12. HEALTH

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

#### Final Regulation

**REGISTRAR'S NOTICE:** The Department of Medical Assistance Services is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The Department of Medical Assistance Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **12VAC30-70. Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services (amending 12VAC30-70-291, 12VAC30-70-301).**

**12VAC30-90. Methods and Standards for Establishing Payment Rates for Long-Term Care (amending 12VAC30-90-30, 12VAC30-90-36, 12VAC30-90-37, 12VAC30-90-40, 12VAC30-90-60, 12VAC30-90-264).**

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

Effective Date: June 18, 2014.

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

Summary:

*The Department of Medical Assistance Services shall implement rate changes effective July 1, 2013, affecting many providers as required by Chapter 806 of the 2013 Acts of Assembly.*

*Reimbursement changes affecting inpatient hospital services (12VAC30-70) include (i) amending 12VAC30-70-291 to calculate an indirect medical education (IME) factor for Virginia freestanding children's hospitals with greater than 50% Medicaid utilization in 2009 to comply with Item 307.OOOO of Chapter 806 of the 2013 Acts of Assembly, and (ii) amending 12VAC30-70-301 to eliminate rebasing for hospital disproportionate share hospital (DSH) payments in FY 2014 and to freeze DSH at the payment levels for FY 2013 eligible to comply with Item 307.DDDD of Chapter 806 of the 2013 Acts of Assembly.*

*Reimbursement changes affecting nursing facilities (12VAC30-90) include amendments to (i) change the nursing facility capital occupancy percentage requirement from 90% to 88% effective for dates of service on or after July 1, 2013, and (ii) implement the change in the occupancy percentage requirement and restore language that was inadvertently deleted in a prior regulatory package. These changes are mandated to comply with Item 307.CCCC of Chapter 806 of the 2013 Acts of Assembly.*

**12VAC30-70-291. Payment for indirect medical education costs.**

A. Hospitals shall be eligible to receive payments for indirect medical education (IME). Out-of-state cost reporting hospitals are eligible for this payment only if they have Virginia Medicaid utilization in the base year of at least 12% of total Medicaid days. These payments recognize the increased use of ancillary services associated with the educational process and the higher case-mix intensity of teaching hospitals. The payments for indirect medical education shall be made in estimated quarterly lump sum amounts and settled at the hospital's fiscal year end.

B. Final payment for IME shall be determined as follows:

1. Type One hospitals shall receive an IME payment equal to the hospital's Medicaid operating reimbursement times an IME percentage determined as follows:

IME Percentage for Type One Hospitals =  $[1.89 \times ((1 + r)^{0.405} - 1)] \times (\text{IME Factor})$

An IME factor shall be calculated for each Type One hospital and shall equal a factor that, when used in the calculation of the IME percentage, shall cause the resulting IME payments to equal what the IME payments would be with an IME factor of one, plus an amount equal to the difference between operating payments using the adjustment factor specified in subdivision B 1 of 12VAC30-70-331 and operating payments using an adjustment factor of one in place of the adjustment factor specified in subdivision B 1 of 12VAC30-70-331.

2. Type Two hospitals shall receive an IME payment equal to the hospital's Medicaid operating reimbursement times an IME percentage determined as follows:

IME Percentage for Type Two Hospitals =  $[1.89 \times ((1 + r)^{0.405} - 1)] \times 0.5695$

In both equations, r is the ratio of full-time equivalent residents to staffed beds, excluding nursery beds. The IME payment shall be calculated each year using the most recent reliable data regarding the number of full-time equivalent residents and the number of staffed beds, excluding nursery beds.

C. An additional IME payment shall be made for inpatient hospital services provided to Medicaid patients but reimbursed by capitated managed care providers. This payment shall be equal to the hospital's hospital specific operating rate per case, as determined in 12VAC30-70-311, times the hospital's HMO paid discharges times the hospital's IME percentage, as determined in subsection B of this section.

D. An additional IME payment not to exceed \$200,000 in total shall be apportioned among Type Two hospitals, excluding freestanding children's hospitals, with Medicaid NICU utilization in excess of 50% as reported to the Department of Medical Assistance Services as of March 1, 2004. These payments shall be apportioned based on each eligible hospital's percentage of Medicaid NICU patient days relative to the total of these days among eligible hospitals as reported by March 1, 2004.

E. An additional IME payment not to exceed \$500,000 in total shall be apportioned among Type Two hospitals, excluding freestanding children's hospitals, with Medicaid NICU days in excess of 4,500 as reported to the Department of Medical Assistance Services as of March 1, 2005, that do not otherwise receive an additional IME payment under subsection D of this section. These payments shall be apportioned based on each eligible hospital's percentage of Medicaid NICU patient days relative to the total of these days among eligible hospitals as reported by March 1, 2003.

F. Effective July 1, 2013, DMAS shall calculate an IME factor for Virginia freestanding children's hospitals with greater than 50% Medicaid utilization in 2009. Total

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payments for IME in combination with other payments for freestanding children's hospitals with greater than 50% Medicaid utilization in 2009 shall not exceed the federal uncompensated care cost limit to which disproportionate share hospital payments are subject.

## **12VAC30-70-301. Payment to disproportionate share hospitals.**

A. Payments to disproportionate share hospitals (DSH) shall be prospectively determined in advance of the state fiscal year to which they apply. The payments shall be made on a quarterly basis, shall be final, and shall not be subject to settlement except when necessary due to the limit in subsection D of this section.

B. Hospitals qualifying under the 14% inpatient Medicaid utilization percentage shall receive a DSH payment based on the hospital's type and the hospital's Medicaid utilization percentage.

1. Type One hospitals shall receive a DSH payment equal to:

a. The sum of (i) the hospital's Medicaid utilization percentage in excess of 10.5%, times 17, times the hospital's Medicaid operating reimbursement, times 1.4433 and (ii) the hospital's Medicaid utilization percentage in excess of 21%, times 17, times the hospital's Medicaid operating reimbursement, times 1.4433.

b. Multiplied by the Type One hospital DSH Factor. The Type One hospital DSH factor shall equal a percentage that when applied to the DSH payment calculation yields a DSH payment equal to the total calculated using the methodology outlined in subdivision 1 a of this subsection using an adjustment factor of one in the calculation of operating payments rather than the adjustment factor specified in subdivision B 1 of 12VAC30-70-331.

2. Type Two hospitals shall receive a DSH payment equal to the sum of (i) the hospital's Medicaid utilization percentage in excess of 10.5%, times the hospital's Medicaid operating reimbursement, times 1.2074 and (ii) the hospital's Medicaid utilization percentage in excess of 21%, times the hospital's Medicaid operating reimbursement, times 1.2074. Out-of-state cost reporting hospitals with Virginia utilization in the base year of less than 12% of total Medicaid days shall receive 50% of the payment described in this subsection.

C. Hospitals qualifying under the 25% low-income patient utilization rate shall receive a DSH payment based on the hospital's type and the hospital's low-income utilization rate.

1. Type One hospitals shall receive a DSH payment equal to the product of the hospital's low-income utilization in excess of 25%, times 17, times the hospital's Medicaid operating reimbursement.

2. Type Two hospitals shall receive a DSH payment equal to the product of the hospital's low-income utilization in excess of 25%, times the hospital's Medicaid operating reimbursement.

3. Calculation of a hospital's low-income patient utilization percentage is defined in 42 USC § 1396r-4(b)(3).

D. No DSH payments shall exceed any applicable limitations upon such payments established by federal law or regulations and § 1923(g) of the Social Security Act.

E. Each hospital's eligibility for DSH payment and the amount of the DSH payment shall be calculated at the time of each rebasing using the most recent reliable utilization data and projected operating reimbursement data available. The utilization data used to determine eligibility for DSH payment and the amount of the DSH payment shall include days for Medicaid recipients enrolled in capitated managed care programs. In years when DSH payments are not rebased in the way described above, the previous year's amounts shall be adjusted for inflation.

For freestanding psychiatric facilities licensed as hospitals, DSH payment shall be based on the most recently settled Medicare cost report available before the beginning of the state fiscal year for which a payment is being calculated.

F. Effective July 1, 2010, and prior to July 1, 2013, DSH payments shall be rebased for all hospitals with the final calculation reduced by a uniform percentage such that the expenditures in FY 2011 do not exceed expenditures in FY 2010 separately for Type One and Type Two hospitals. The reduction shall be calculated after determination of eligibility. Payments determined in FY 2011 shall not be adjusted for inflation in FY 2012.

G. Effective July 1, 2013, DSH payments shall not be rebased for all hospitals in FY 2014 and shall be frozen at the payment levels for FY 2013 eligible providers.

## Article 2

### Plant Cost Component

## **12VAC30-90-30. Plant cost.**

A. This article describes a capital payment methodology that will be phased out for most nursing facilities by SFY 2012. The terms and timing of the transition to a different methodology are described in 12VAC30-90-29. The methodology that will eventually replace this one for most facilities is described in Article 3 (12VAC30-90-35 et seq.) of this subpart.

B. Plant cost shall include actual allowable depreciation, interest, rent or lease payments for buildings and equipment as well as property insurance, property taxes and debt financing costs allowable under Medicare principles of reimbursement or as defined herein.

C. Effective July 1, 2001, to calculate the reimbursement rate, plant cost shall be converted to a per diem amount by dividing ~~the~~ plant cost by the greater of actual patient days or the number of patient days. Patient days shall be computed as

90% the required occupancy percentage of the daily licensed bed complement during the applicable cost reporting period. The required occupancy percentage means the ratio of nursing facility total patient days to total potential patient days for all available licensed beds. The required occupancy percentage for dates of service on or before June 30, 2013, shall be 90%, and for dates of service on or after July 1, 2013, the required occupancy percentage shall be 88%. For facilities that also provide specialized care services, see subdivision 40 2 of 12VAC30-90-264 for special procedures for computing the number of patient days required to meet the 90% occupancy requirement.

D. Costs related to equipment and portions of a building/facility not available for patient care related activities are nonreimbursable plant costs.

**12VAC30-90-36. Nursing facility capital payment methodology.**

A. Applicability. The capital payment methodology described in this article shall be applicable to freestanding nursing facilities but not to hospital-based facilities. Hospital-based facilities shall continue to be reimbursed under the methodology contained in Article 2 (12VAC30-90-30 et seq.) of this subpart. For purposes of this provision, a hospital-based nursing facility shall be one for which a combined cost report is submitted on behalf of both the hospital and the nursing facility.

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

"Capital costs" means costs that include the cost elements of depreciation, interest, financing costs, rent and lease costs for property, building and equipment, property insurance and property taxes.

"Date of acquisition" means the date legal title passed to the buyer. If a legal titling date is not determinable for a nursing facility building, date of acquisition shall be considered to be the date a certificate of occupancy was issued by the appropriate licensing or building inspection agency of the locality where the nursing facility is located.

"Facility average age" means for a facility the weighted average of the ages of all capitalized assets of the facility, with the weights equal to the expenditures for those assets. The calculation of average age shall take into account land improvements, building and fixed equipment, and major movable equipment. The basis for the calculation of average age shall be the schedule of assets submitted annually to the department in accordance with the provisions of this section.

"Facility imputed gross square feet" means a number that is determined by multiplying the facility's number of nursing facility licensed beds licensed by the Virginia Department of Health by the imputed number of gross square feet per bed. The imputed number of gross square feet per bed shall be 461 for facilities of 90 or fewer beds, and 438 for facilities of

more than 90 beds. The number of licensed nursing facility beds shall be the number on the last day of the provider's most recent fiscal year end for which a cost report has been filed.

"Factor for land and soft costs" means a factor equaling 1.429 that adjusts the construction cost amount to recognize land and capitalized costs associated with construction of a facility that are not part of the R.S. Means construction cost amount.

"Fixed capital replacement value" means an amount equal to the R.S. Means 75th percentile nursing home construction cost per square foot, times the applicable R.S. Means historical cost index factor, times the factor for land and soft costs, times the applicable R.S. Means ~~"Location Factor,"~~ location factor times facility imputed gross square feet.

"FRV depreciation rate" means a depreciation rate equal to 2.86% per year.

"Hospital-based facility" means one for which a single combined Medicare cost report is filed that includes the costs of both the hospital and the nursing home.

"Movable capital replacement value" means a value equal to \$3,475 per bed in SFY 2001, and shall be increased each July 1 by the same R.S. Means historical cost index factor that is used to calculate the fixed capital replacement value. Each year's updated movable capital replacement value shall be used in the calculation of each provider's rate for the provider year beginning on or after the date the new value becomes effective.

"R.S. Means 75th percentile nursing construction cost per square foot" means the 75th percentile value published in the 59th Annual Edition of the R.S. Means Building Construction Cost Data, 2001. In the 2000 edition of the R.S. Means publication this value is \$110, which is reported as a January 2000 value.

"R.S. Means historical cost index factor" means the ratio of the two most recent R.S. Means Historical Cost Indexes published in the 59th Annual Edition of the R.S. Means Building Construction Cost Data, 2001. In the 2000 edition of this R.S. Means publication these two values are 117.6 (for 1999) and 115.1 (for 1998). The ratio of these values, and therefore the factor to be used, would be 1.022. This factor would be used to adjust the January 2000 value for the one year of change from January 2000 to January 2001, the mid-point of the prospective rate year (SFY 2001). The resulting cost value that would be used in SFY 2001 is \$112.42. The indexes used in this calculation do not match the time period for which a factor is needed. They relate to 1998 and 1999, while 2000 and 2001 would be ideal. However, R.S. Means does not publish index forecasts, so the most recent available indexes shall be used.

"R.S. Means ~~Location Factors"~~ location factors" means those published in the 22nd Annual Edition of the R.S. Means Square Foot Costs, 2001. The 2000 location factors are

# Regulations

shown in the following Table 1. They will be updated annually and distributed to providers based upon the most recent available data.

Zip Code	Principal City	Location Factor
220-221	Fairfax	0.90
222	Arlington	0.90
223	Alexandria	0.91
224-225	Fredericksburg	0.85
226	Winchester	0.80
227	Culpeper	0.80
228	Harrisonburg	0.77
229	Charlottesville	0.82
230-232	Richmond	0.85
233-235	Norfolk	0.82
236	Newport News	0.82
237	Portsmouth	0.81
238	Petersburg	0.84
239	Farmville	0.74
240-241	Roanoke	0.77
242	Bristol	0.75
243	Pulaski	0.70
244	Staunton	0.76
245	Lynchburg	0.77
246	Grundy	0.70

"Rental rate" means for a prospective year a rate equal to two percentage points plus the yield on U.S. Treasury Bonds with maturity over 10 years, averaged over the most recent three calendar years for which data are available, as published by the Federal Reserve (Federal Reserve Statistical Release H.15 Selected Interest Rates ([www.Federalreserve.gov/releases/](http://www.Federalreserve.gov/releases/))). The rate will be published and distributed to providers annually. Changes in the rental rate shall be effective for the providers' fiscal year beginning on or after July 1. Rental rates may not fall below 9.0% or exceed 11% and will be updated annually on or about July 1 each year. Effective July 1, 2010, through September 30, 2010, the floor for the nursing facility rental rates may not fall below 8.75%. Effective October 1, 2010, through June 30, 2011, the floor for the nursing facility rental rates may not fall below 9.0%. Effective July 1, 2011, through June 30,

2012, the floor for the nursing facility rental rates may not fall below 8.0%. Effective July 1, 2012, through June 30, 2014, the floor for the nursing facility rental rates may not fall below 8.5%. The rate will be published and distributed to providers annually. Changes in the rental rate shall be effective for the providers' fiscal year beginning on or after July 1.

"Required occupancy percentage" means ~~an~~ the ratio of nursing facility total patient days to total potential patient days for all available licensed beds. The required occupancy percentage ~~of~~ shall be 90% for dates of service on or before June 30, 2013. The required occupancy percentage for dates of service on or after July 1, 2013, shall be 88%.

"SFY" means State Fiscal Year (July 1 through June 30).

1. Fair Rental Value (FRV) Payment for Capital. Effective for dates of service on or after July 1, 2001, DMAS shall pay nursing facility capital related costs under a FRV methodology. The payment made under this methodology shall be the only payment for capital related costs, and no separate payment shall be made for depreciation or interest expense, lease costs, property taxes, insurance, or any other capital related cost, including home office capital costs. This payment is considered to cover costs related to land, buildings and fixed equipment, major movable equipment, and any other capital related item. This shall be the case regardless of whether the property is owned or leased by the operator. The department shall review the operation and performance of the FRV methodology every two years.

2. FRV Rate Year. The FRV payment rate shall be a per diem rate determined each year for each facility using the most recent available data from settled cost reports, or from other verified sources as specified herein. The per diem rate shall be determined prospectively and shall apply for the entire fiscal year. Each provider shall receive a new capital per diem rate each year effective at the start of the provider's fiscal year, except that the capital per diem rate shall be revised for the rental rate changes effective July 1, 2010, through June 30, 2012. Data elements that are provider specific shall be revised at that time and shall rely on the settled cost report and schedule of assets of the previous year. Data elements that are not provider specific, including those published by R.S. Means and the rental rate, shall be determined annually on or about July 1, and shall apply to provider fiscal years beginning on or after July 1. That is, each July 1 DMAS shall determine the R.S. Means values and the rental rate, and these shall apply to all provider fiscal years beginning on or after July 1.

## **12VAC30-90-37. Calculation of FRV per diem rate for capital; calculation of FRV rental amount; change of ownership.**

A. Calculation of FRV per diem rate for capital. The facility FRV per diem rate shall be equal to the sum of the facility FRV rental amount and the facility's allowable property tax

and insurance cost from the most recent settled cost report, divided by the greater of actual patient days or ~~90%~~ the required occupancy percentage of the potential patient days for all licensed beds throughout the cost reporting period. For facilities that also provide specialized care services, see subdivision ~~40 9~~ of 12VAC30-90-264 for special procedures for computing the number of patient days required to meet the ~~90%~~ required occupancy percentage requirement.

B. Calculation of FRV rental amount. The facility FRV rental amount shall be equal to the facility prospective year total value times the rental rate.

1. The facility prospective year total value shall be equal to the facility prospective year replacement value minus FRV depreciation. FRV depreciation equals the prospective year replacement value multiplied by the product of facility average age and the depreciation rate. FRV depreciation cannot exceed 60% of the prospective year replacement value.

2. The facility prospective year replacement value shall be equal to the fixed capital replacement value plus the movable equipment replacement value.

C. Change of ownership. As provided in connection with schedule of assets reporting, the sale of nursing facility assets after June 30, 2000, shall not result in a change to the schedule of assets or to the calculation of average age for purposes of reimbursement under the FRV methodology. Therefore, any sale or transfer of assets after this date shall not affect the FRV per diem rate.

#### Article 4

##### Operating Cost Component

#### 12VAC30-90-40. Operating cost.

Effective July 1, 2001, operating cost shall be the total allowable inpatient cost less plant cost or capital, as appropriate, and NATCEPs costs. See Subpart VII (12VAC30-90-170 et seq.) of this part for rate determination procedures for NATCEPs costs. Operating cost shall be made up of direct patient care operating cost and indirect patient care operating cost. Direct patient care operating cost is defined in ~~Appendix I~~ (12VAC30-90-271). Indirect patient care operating cost includes all operating costs not defined as direct patient care operating costs or ~~NATCEPs~~ NATCEPs costs or the actual charges by the Central Criminal Records Exchange for criminal records checks for nursing facility employees (see ~~Appendix I~~ (12VAC30-90-272)). For purposes of calculating the reimbursement rate, the direct patient care operating cost per day shall be the Medicaid portion of the direct patient care operating cost divided by the nursing facility's number of Medicaid patient days in the cost reporting period. The indirect patient care operating cost per day shall be the Medicaid portion of the indirect patient care operating cost divided by the greater of the actual number of Medicaid patient days in the cost reporting period, or ~~90%~~ the required occupancy percentage of the potential patient days for all licensed beds throughout the cost reporting period

times the Medicaid utilization percentage. The required occupancy percentage for dates of service on or before June 30, 2013, shall be 90%, and for dates of service on or after July 1, 2013, shall be 88%. For facilities that also provide specialized care services, see subdivision ~~40 9~~ of 12VAC30-90-264 for special procedures for computing the number of patient days required to meet the ~~90%~~ occupancy percentage requirement.

#### Article 6

##### New Nursing Facilities

#### 12VAC30-90-60. Interim rate.

A. A new facility shall be defined as follows:

1. A facility that is newly enrolled and new construction has taken place through the COPN process; or
2. A facility that is newly enrolled ~~which that~~ was previously denied payments for new admissions and was subsequently terminated from the program.

B. Upon a showing of good cause, and approval of DMAS, an existing NF that expands its bed capacity by 50% or more shall have the option of retaining its prospective rate or being treated as a new NF.

C. A replacement facility or one that has changed location may not be considered a new facility if it serves the same inpatient population. An exception may be granted by DMAS if the provider can demonstrate that the occupancy substantially changed as a result of the facility being replaced or changing location. A decline in the replacement facility's total occupancy of 20 percentage points, in the replacement facility's first cost reporting period, shall be considered to indicate a substantial change when compared to the lower of the old facility's previous two prior cost reporting periods. The replacement facility shall receive the previous operator's operating rates if it does not qualify to be considered a new facility.

D. A change in either ownership or adverse financial conditions (e.g., bankruptcy), or both, of a provider does not change a nursing facility's status to be considered a new facility.

E. Effective July 1, 2001, for all new NFs the ~~90%~~ required occupancy requirement percentage for indirect and capital costs shall be waived for establishing the first cost reporting period interim rate. The required occupancy percentage for dates of service on or before June 30, 2013, shall be 90%, and for dates of service on or after July 1, 2013, shall be 88%. This first cost reporting period shall not exceed 13 months from the date of the ~~NFs~~ NF's certification.

F. The ~~90%~~ required occupancy requirement percentage for indirect and capital costs shall be applied to the first and subsequent cost reporting periods' actual indirect and capital costs for establishing such NFs second and future cost reporting periods' prospective reimbursement rates. The ~~90%~~ required occupancy requirement percentage shall be considered as having been satisfied if the new NF achieved a

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90% the required occupancy percentage at any point in time during the first cost reporting period.

1. The department may grant an exception to the minimum occupancy requirement for reimbursement purposes for beds taken out of service for the purpose of renovation. In this case, the occupancy requirement shall be calculated as 90% the required occupancy percentage of available bed days for the period of the exception plus 90% the required occupancy percentage of licensed bed days for the remainder of the cost report year.

2. The provider shall notify DMAS and the Virginia Department of Health (VDH), Division of Long Term Care Services, Office of Licensure and Certification in advance and present a renovation plan including a reasonable timetable for when the beds will be placed back into service.

3. The provider shall keep the appropriate documentation of available beds and days during the renovation period, which will provide the evidence of the beds and days taken out of service for renovation purposes. This supporting documentation, along with a copy of the provider's notification letter to the VDH Division of Long Term Care Services, Office of Licensure and Certification shall be submitted with the filing of the provider's cost report, as applicable. The provider's notification letter shall account for the number of beds not in use for the defined period of time.

G. A new NF's interim rate for the first cost reporting period shall be determined based upon the lower of its anticipated allowable cost determined from a detailed budget (or pro forma cost report) prepared by the provider and accepted by DMAS, or the appropriate operating ceilings or charges.

H. Effective July 1, 2001, on the first day of its second cost reporting period, a new nursing facility's interim plant or capital, as appropriate, rate shall be converted to a per diem amount by dividing its allowable plant/capital costs for its first cost reporting period by 90% the required occupancy percentage of the potential number of patient days for all licensed beds during the first cost reporting period.

I. During its first semiannual period of operation, a newly constructed or newly enrolled NF shall have an assigned CMI based upon its peer group's normalized average Medicaid CMI for direct patient care. An expanded NF receiving new NF treatment shall receive the CMI calculated for its last semiannual period prior to obtaining new NF status.

## Subpart XVII

### Specialized Care Services

#### **12VAC30-90-264. Specialized care services.**

Specialized care services provided in conformance with 12VAC30-60-40 E and H, 12VAC30-60-320, and 12VAC30-60-340 shall be reimbursed under the following methodology. The nursing facilities that provide adult specialized care for

the categories of Ventilator Dependent Care, will be placed in one group for rate determination. The nursing facilities that provide pediatric specialized care in a dedicated pediatric unit of eight beds or more will be placed in a second group for rate determination.

1. Routine operating cost. Routine operating cost shall be defined as in 12VAC30-90-271 and 12VAC30-90-272. To calculate the routine operating cost reimbursement rate, routine operating cost shall be converted to a per diem amount by dividing it by actual patient days.

2. Allowable cost identification and cost reimbursement limitations. The provisions of Article 5 (12VAC30-90-50 et seq.) of Subpart II of Part II of this chapter and of Appendix III (12VAC30-90-290) of Part III of this chapter shall apply to specialized care cost and reimbursement.

3. Routine operating cost rates. Each facility shall be reimbursed a prospective rate for routine operating costs. This rate will be the lesser of the facility-specific prospective routine operating ceiling, or the facility-specific prospective routine operating cost per day plus an efficiency incentive. This efficiency incentive shall be calculated by the same method as in 12VAC30-90-41.

4. Facility-specific prospective routine operating ceiling. Each nursing facility's prospective routine operating ceiling shall be calculated as:

a. Statewide ceiling. The statewide routine operating ceiling shall be \$415 as of July 1, 2002. This routine operating ceiling amount shall be adjusted for inflation based on 12VAC30-90-41.

b. The portion of the statewide routine operating ceiling relating to nursing salaries (as determined by the 1994 audited cost report data, or 67.22%) will be wage adjusted using a normalized wage index. The normalized wage index shall be the wage index applicable to the individual provider's geographic location under Medicare rules of reimbursement for skilled nursing facilities, divided by the statewide average of such wage indices across the state. This normalization of wage indices shall be updated January 1, after each time the ~~Health Care Financing Administration (HCFA)~~ CMS publishes wage indices for skilled nursing facilities. Updated normalization shall be effective for fiscal years starting on and after the January 1 for which the normalization is calculated.

5. Facility-specific prospective routine operating base cost per day. The facility-specific routine operating cost per day to be used in the calculation of the routine operating rate and the efficiency incentive shall be the actual routine cost per day from the most recent fiscal year's cost report, adjusted for inflation based on 12VAC30-90-41.

6. Interim rates. Interim rates, for processing claims during the year, shall be calculated from the most recent settled cost report available at the time the interim rates must be

set, except that failure to submit a cost report timely may result in adjustment to interim rates as provided elsewhere.

7. Ancillary costs. Specialized care ancillary costs will be paid on a pass-through basis for those Medicaid specialized care patients who do not have Medicare or any other sufficient third-party insurance coverage. Ancillary costs will be reimbursed as follows:

a. All covered ancillary services, except kinetic therapy devices, will be reimbursed for reasonable costs as defined in the current NHPS. Effective for specialized care days on or after January 15, 2007, reimbursement for reasonable costs shall be subject to a ceiling. The ceiling shall be \$238.81 per day for calendar year 2004 (150% of average costs) and shall be inflated to the appropriate provider fiscal year. For cost report years beginning in each calendar year, ancillary ceilings will be inflated based on 12VAC30-90-41. See 12VAC30-90-290 for the cost reimbursement limitations.

b. Kinetic therapy devices will have a limit per day (based on 1994 audited cost report data inflated to the rate period). See 12VAC30-90-290 for the cost reimbursement limitations.

c. Kinetic therapy devices will be reimbursed only if a resident is being treated for wounds that meet the following wound care criteria. Residents receiving this wound care must require kinetic bed therapy (that is, low air loss mattresses, fluidized beds, and/or rotating/turning beds) and require treatment for a grade (stage) IV decubitus, a large surgical wound that cannot be closed, or second to third degree burns covering more than 10% of the body.

8. Covered ancillary services are defined as follows: laboratory, X-ray, medical supplies (e.g., infusion pumps, incontinence supplies), physical therapy, occupational therapy, speech therapy, inhalation therapy, IV therapy, enteral feedings, and kinetic therapy. The following are not specialized care ancillary services and are excluded from specialized care reimbursement: physician services, psychologist services, total parenteral nutrition (TPN), and drugs. These services must be separately billed to DMAS. An interim rate for the covered ancillary services will be determined (using data from the most recent settled cost report) by dividing allowable ancillary costs by the number of patient days for the same cost reporting period. The interim rate will be retroactively cost settled based on the specialized care nursing facility cost reporting period.

9. Capital costs. Effective July 1, 2001, capital cost reimbursement shall be in accordance with 12VAC30-90-35 through 12VAC30-90-37 ~~inclusive~~, except that the required occupancy percentage shall not be separately applied to specialized care. Capital cost related to specialized care patients will be cost settled on the respective nursing facility's cost reporting period. In this cost settlement, the required occupancy percentage shall be

applied to all the nursing facility's licensed nursing facility beds, inclusive of specialized care. To determine the capital cost related to specialized care patients, the following calculation shall be applied.

a. Licensed beds, including specialized care beds, multiplied by days in the cost reporting period, shall equal available days.

b. The required occupancy days shall equal the required occupancy percentage multiplied by available days.

c. The required occupancy days minus actual resident days, including specialized care days, shall equal the shortfall of days. If the shortfall of days is negative, the shortfall of days shall be zero.

d. Actual resident days, not including specialized care days, plus the shortfall of days shall equal the minimum number of days to be used to calculate the capital cost per day.

10. Nurse aide training and competency evaluation programs and competency evaluation programs (NATCEP) costs. ~~NATCEPS~~ NATCEP costs will be paid on a pass-through basis in accordance with the current NHPS.

11. Pediatric routine operating cost rate. For pediatric specialized care in a distinct part pediatric specialized care unit, one routine operating cost ceiling will be developed. The routine operating cost ceiling will be \$418 as of July 1, 2002.

a. The statewide operating ceiling shall be adjusted for each nursing facility in the same manner as described in subdivision 4 of this section.

b. The final routine operating cost reimbursement rate shall be computed as described for other than pediatric units in subdivision 3 of this section.

12. Pediatric unit capital cost. Pediatric unit capital costs will be reimbursed in accordance with the current NHPS, except that the occupancy requirement shall be 70% rather than ~~90%~~ the required occupancy percentage.

13. The cost reporting requirements of 12VAC30-90-70 and 12VAC30-90-80 shall apply to specialized care providers.

VA.R. Doc. No. R14-3871; Filed April 25, 2014, 4:28 p.m.

**TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING**

**BOARD OF NURSING**

**Notice of Extension of Emergency Regulation**

Title of Regulation: **18VAC90-30. Regulations Governing the Licensure of Nurse Practitioners (amending 18VAC90-30-10, 18VAC90-30-90, 18VAC90-30-100,**

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# Regulations

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**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.

Expiration Date Extended Through: November 6, 2014.

On April 30, 2014, the Governor approved the Board of Nursing's request to extend the expiration date of the above-referenced emergency regulation as provided in § 2.2-4011 D of the Code of Virginia. The emergency regulation was published in [29:20 V.A.R. 2444-2447 June 3, 2013](#). The regulations establish rules for practice of nurse practitioners in collaboration and consultation with a patient care team physician.

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).

V.A.R. Doc. No. R13-3349; Filed April 30, 2013, 11:30 a.m.

## Notice of Extension of 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.

Expiration Date Extended Through: November 6, 2014.

On April 30, 2014, the Governor approved the Board of Nursing's request to extend the expiration date of the above-referenced emergency regulation as provided in § 2.2-4011 D of the Code of Virginia. The emergency regulation was published in [29:20 V.A.R. 2447-2449 June 3, 2013](#). The regulations establish rules for practice pertaining to prescriptive authority for nurse practitioners in collaboration and consultation with a patient care team physician and revising the requirements for supervision and site visits.

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).

V.A.R. Doc. No. R13-3350; Filed April 30, 2013, 11:29 a.m.

## BOARD OF PHARMACY

### Proposed Regulation

Titles of Regulations: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-20).**

**18VAC110-50. Regulations Governing Wholesale Distributors, Manufacturers, and Warehousemen (amending 18VAC110-50-20).**

Statutory Authority: §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.

Public Hearing Information:

June 4, 2014 - 9 a.m. - Perimeter Center, 9960 Mayland Drive, Suite 201, Board Room 2, Richmond, VA 23233

Public Comment Deadline: July 18, 2014.

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](mailto:caroline.juran@dhp.virginia.gov).

Basis: Chapter 24 (§ 54.1-2400 et seq.) of Title 54.1 of the Code of Virginia establishes the general powers and duties of health regulatory boards, including the Board of Pharmacy, and the responsibility to promulgate regulations and levy fees as sufficient to cover all expenses for the board.

Purpose: In order for the Board of Pharmacy to meet its statutory responsibilities of licensure, inspection, and discipline, it is necessary to establish fees sufficient to cover administrative costs. Currently persons or entities that require additional services of providing duplicate licenses or verification of licensure to another regulatory body do not pay a fee, so the board is not upholding its statutory responsibility to cover the costs of providing that service. Sufficient funding is essential in order for the board to carry out its function of protecting the safety and integrity of prescription drugs in the Commonwealth.

Substance: The amendments to 18VAC110-20 and 18VAC110-50 authorize the board to charge an administrative fee of \$10 for providing duplicate licenses (including permits and registrations) and a fee of \$25 for verification of licensure (including permits and registrations).

Issues: There are no primary advantages to the public; individuals who need duplicate licenses or registrations will have to pay \$10 for the service provided. Since licensure verification can be accomplished online, it should not be necessary for a hard-copy verification, but if requested, there would be a \$25 charge. The advantage of two fees for the agency is realization of a small amount of revenue for special services provided upon request. There are no disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Pharmacy (Board) proposes to charge an administrative fee of \$10 for providing duplicate licenses (including permits and registrations) and a fee of \$25 for verification of licensure (including permits and registrations), which is the least amount charged by every other health regulatory board at the Department of Health Professions.

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

Estimated Economic Impact. In order for the Board to meet its statutory responsibilities of licensure, inspection and discipline, it is necessary to establish fees sufficient to cover administrative costs. Currently, persons or entities that require additional services of providing duplicate licenses or verification of licensure to another regulatory body do not pay a fee for those additional services. So in practice the cost of providing those services are paid for by other fee payers who did not receive those services. The Board's fees are set to cover all costs. The proposed small fees will more properly align assessed payments with those persons or entities who receive the associated services.

Businesses and Entities Affected. Pharmacists, pharmacy interns, pharmacy technicians, physicians licensed to dispense drugs, pharmacies, medical equipment suppliers and humane societies who: 1) have lost their license or registration or who need a duplicate original license or registration; or 2) seek verification of a current license, permit or registration are affected by the proposed new administrative fees. It is unknown how many persons would be affected by a duplicate license or verification fee since the Board does not currently charge a fee or track the number of requests. Staff estimates that they provide 10 to 20 duplicate licenses per week and respond to 20 to 30 requests for verification. Of the requests for verification, some would come from large health care entities, the others from individuals or small businesses.

Localities Particularly Affected. The proposed amendment does not disproportionately affect particular localities.

Projected Impact on Employment. The proposed amendments are unlikely to significantly affect employment.

Effects on the Use and Value of Private Property. The proposed new administrative fees for additional services should not increase the total dollar figure of fees assessed since fees are already assessed to cover all costs. The proposed small fees will more properly be assessed to those persons or entities who receive the associated services.

Small Businesses: Costs and Other Effects. The proposed new administrative fees for additional services should not increase the total dollar figure of fees assessed since fees are already assessed to cover all costs. The proposed small fees will more properly be assessed to those persons or entities who receive the associated services. Small businesses are unlikely to have their costs significantly change in aggregate. For individual firms, any change in costs will be quite small.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments will not significantly affect small businesses.

Real Estate Development Costs. The proposed amendments do not 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 of Pharmacy concurs with the economic impact analysis of the Department of Planning and Budget.

Summary:

*The amendments to 18VAC110-20 and 18VAC110-50 impose an administrative fee of \$10 for providing duplicate licenses (including permits and registrations) and a fee of \$25 for verification of licensure (including permits and registrations).*

**18VAC110-20-20. Fees.**

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Unless otherwise provided, any fees for taking required examinations shall be paid directly to the examination service as specified by the board.

C. Initial application fees.

1. Pharmacist license	\$180
2. Pharmacy intern registration	\$15
3. Pharmacy technician registration	\$25
4. Pharmacy permit	\$270
5. Permitted physician licensed to dispense drugs	\$270
6. Medical equipment supplier permit	\$180
7. Humane society permit	\$20
8. Nonresident pharmacy	\$270
9. Controlled substances registrations	\$90

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<p>10. Innovative program approval. If the board determines that a technical consultant is required in order to make a decision on approval, any consultant fee, not to exceed the actual cost, shall also be paid by the applicant in addition to the application fee.</p> <p>11. Approval of a pharmacy technician training program</p> <p>12. Approval of a continuing education program</p> <p>13. Approval of a repackaging training program</p> <p>D. Annual renewal fees.</p> <p>1. Pharmacist active license – due no later than December 31</p> <p>2. Pharmacist inactive license – due no later than December 31</p> <p>3. Pharmacy technician registration – due no later than December 31</p> <p>4. Pharmacy permit – due no later than April 30</p> <p>5. Physician permit to practice pharmacy – due no later than February 28</p> <p>6. Medical equipment supplier permit – due no later than February 28</p> <p>7. Humane society permit – due no later than February 28</p> <p>8. Nonresident pharmacy – due no later than April 30</p> <p>9. Controlled substances registrations – due no later than February 28</p> <p>10. Innovative program continued approval based on board order not to exceed \$200 per approval period.</p> <p>11. Approval of a pharmacy technician training program</p> <p>12. Approval of a repackaging training program</p> <p>E. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired license within one year of the expiration date or within two years in the case of a pharmacy technician training program. In addition, engaging in activities requiring a license, permit, or registration after the expiration date of such license, permit,</p>	<p>\$250</p> <p>\$150</p> <p>\$100</p> <p>\$50</p> <p>\$90</p> <p>\$45</p> <p>\$25</p> <p>\$270</p> <p>\$270</p> <p>\$180</p> <p>\$20</p> <p>\$270</p> <p>\$90</p> <p>\$75 every two years</p> <p>\$30 every two years</p>	<p>or registration shall be grounds for disciplinary action by the board.</p> <p>1. Pharmacist license \$30</p> <p>2. Pharmacist inactive license \$15</p> <p>3. Pharmacy technician registration \$10</p> <p>4. Pharmacy permit \$90</p> <p>5. Physician permit to practice pharmacy \$90</p> <p>6. Medical equipment supplier permit \$60</p> <p>7. Humane society permit \$5</p> <p>8. Nonresident pharmacy \$90</p> <p>9. Controlled substances registrations \$30</p> <p>10. Approval of a pharmacy technician training program \$15</p> <p>11. Approval of a repackaging training program \$10</p> <p>F. Reinstatement fees. Any person or entity attempting to renew a license, permit, or registration more than one year after the expiration date, or more than two years after the expiration date in the case of a pharmacy technician training program, shall submit an application for reinstatement with any required fees. Reinstatement is at the discretion of the board and, except for reinstatement following license revocation or suspension, may be granted by the executive director of the board upon completion of an application and payment of any required fees.</p> <p>1. Pharmacist license \$210</p> <p>2. Pharmacist license after revocation or suspension \$500</p> <p>3. Pharmacy technician registration \$35</p> <p>4. Pharmacy technician registration after revocation or suspension \$125</p> <p>5. Facilities or entities that cease operation and wish to resume shall not be eligible for reinstatement but shall apply for a new permit or registration. Facilities or entities that failed to renew and continued to operate for more than one renewal cycle shall pay the current and all back renewal fees for the years in which they were operating plus the following reinstatement fees:</p> <p>a. Pharmacy permit \$240</p> <p>b. Physician permit to practice pharmacy \$240</p> <p>c. Medical equipment supplier permit \$210</p> <p>d. Humane society permit \$30</p>
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e. Nonresident pharmacy	\$115
f. Controlled substances registration	\$180
g. Approval of a pharmacy technician training program	\$75
h. Approval of a repackaging training program	\$50

G. Application for change or inspection fees for facilities or other entities.

1. Change of pharmacist-in-charge	\$50
2. Change of ownership for any facility	\$50
3. Inspection for remodeling or change of location for any facility	150
4. Reinspection of any facility	\$150
5. Board-required inspection for a robotic pharmacy system	\$150
6. Board-required inspection of an innovative program location	\$150
7. Change of pharmacist responsible for an approved innovative program	\$25

H. Miscellaneous fees.

1. Duplicate wall certificate	\$25
2. Returned check	\$35
<u>3. Duplicate license or registration</u>	<u>\$10</u>
<u>4. Verification of licensure or registration</u>	<u>\$25</u>

**18VAC110-50-20. Fees.**

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Initial application fees.

1. Nonrestricted manufacturer permit	\$270
2. Restricted manufacturer permit	\$180
3. Wholesale distributor license	\$270
4. Warehouser permit	\$270
5. Nonresident wholesale distributor	\$270
6. Controlled substances registration	\$90

C. Annual renewal fees shall be due on February 28 of each year.

1. Nonrestricted manufacturer permit	\$270
2. Restricted manufacturer permit	\$180
3. Wholesale distributor license	\$270
4. Warehouser permit	\$270

5. Nonresident wholesale distributor	\$270
6. Controlled substances registration	\$90

D. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired license within one year of the expiration date. In addition, engaging in activities requiring a license, permit, or registration after the expiration date of such license, permit, or registration shall be grounds for disciplinary action by the board.

1. Nonrestricted manufacturer permit	\$90
2. Restricted manufacturer permit	\$60
3. Wholesale distributor license	\$90
4. Warehouser permit	\$90
5. Nonresident wholesale distributor	\$90
6. Controlled substances registration	\$30

E. Reinstatement fees.

1. Any entity attempting to renew a license, permit, or registration more than one year after the expiration date shall submit an application for reinstatement with any required fees. Reinstatement is at the discretion of the board and, except for reinstatement following license revocation or suspension, may be granted by the executive director of the board upon completion of an application and payment of any required fees.

2. Engaging in activities requiring a license, permit, or registration after the expiration date of such license, permit, or registration shall be grounds for disciplinary action by the board. Facilities or entities that cease operation and wish to resume shall not be eligible for reinstatement, but shall apply for a new permit or registration.

3. Facilities or entities that failed to renew and continued to operate for more than one renewal cycle shall pay the current and all back renewal fees for the years in which they were operating plus the following reinstatement fees:

a. Nonrestricted manufacturer permit	\$240
b. Restricted manufacturer permit	\$210
c. Wholesale distributor license	\$240
d. Warehouser permit	\$240
e. Nonresident wholesale distributor	\$240
f. Controlled substances registration	\$180

F. Application for change or inspection fees.

1. Reinspection fee	\$150
2. Inspection fee for change of location,	\$150

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structural changes, or security system changes

- 3. Change of ownership fee \$50
- 4. Change of responsible party \$50

G. The fee for a returned check shall be \$35.

~~H. For the annual renewal due on February 28, 2010, the following fees shall be imposed for a license or permit:~~

- ~~1. Nonrestricted manufacturer permit \$210~~
- ~~2. Restricted manufacturer permit \$140~~
- ~~3. Wholesale distributor license \$210~~
- ~~4. Warehouser permit \$210~~
- ~~5. Nonresident wholesale distributor \$210~~

H. The fee for verification of license or permit shall be \$25.

VA.R. Doc. No. R11-2783; Filed April 29, 2014, 4:43 p.m.

## BOARD OF COUNSELING

### Fast-Track Regulation

Title of Regulation: **18VAC115-20. Regulations Governing the Practice of Professional Counseling (amending 18VAC115-20-10, 18VAC115-20-20, 18VAC115-20-40 through 18VAC115-20-100, 18VAC115-20-106, 18VAC115-20-110, 18VAC115-20-130, 18VAC115-20-140).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: June 18, 2014.

Effective Date: July 3, 2014.

Agency Contact: Catherine Chappell, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, FAX (804) 527-4435, or email catherine.chappell@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 Counseling the authority to promulgate regulations to administer the regulatory system. Specific authority for regulation of the profession of counseling is found in Chapter 35 (§ 54.1-3500 et seq.) of Title 54.1 of the Code of Virginia.

Purpose: The purpose of the amendments is to clarify and simplify requirements for an applicant seeking licensure as a professional counselor. Changes such as allowing face-to-face supervision to be conducted by use of real-time technology and eliminating certain specific requirements for internships will facilitate completion of practical experience without compromising the training necessary to ensure that applicants have the competency to provide safe, effective clinical services to clients. Changes to standards of practice relating

to sexual relationships will clarify that the prohibition applies to romantic relationships, not just sexual intimacies. A clearer standard will provide greater protection for clients who are vulnerable to abuse in the practitioner/client relationship or the supervisor/supervisee or student relationship. Additionally, establishing fraud, deceit, or harm to the public as grounds for possible disciplinary actions will enable the board to deal effectively with practitioners.

Rationale for Using Fast-Track Process: The action is clarifying, is less restrictive, has been vetted by the Virginia Counselors Association, and has the unanimous approval of the Board of Counseling. The board does not expect it to be controversial.

Substance: Amendments will clarify requirements for applicants and students so that they better understand the regulatory criteria for licensure. Less restrictive requirements include: (i) deletion of requirement for a transcript in applying for licensure if one was already submitted for approval of a residency; (ii) reduction in the clinical practice required for licensure by endorsement (24 months in past 60 months versus five of the past six years) if the applicant does not meet equivalent education and experience requirements; (iii) allowance for use of real-time visual technology to meet requirement for face-to-face supervision; (iv) deletion of specific requirements for an internship, such as hours of on-site supervision and completion of 30 hours prior to initiation; and (v) inclusion of local governmental agencies, such as community service boards, as continuing education providers.

Further specification of the prohibition against sexual relationships between licensees and clients, supervisees, or students will provide greater protection for the public in seeking or receiving clinical counseling services. Likewise, establishing fraud, deceit, or harm to the public as grounds for possible disciplinary actions will enable the board to deal effectively with practitioners.

Issues: There are no disadvantages to the public. An advantage to the public is a clearer standard on sexual relationships, which will provide greater protection for clients who are vulnerable to abuse in the practitioner/client relationship or the supervisor/supervisee or student relationship. There are no advantages or disadvantages to the agency or the Commonwealth.

Small Business Impact Review Report of Findings: This regulatory action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. As part of the regulatory reform initiative, the Board of Counseling (Board) proposes to amend its Regulations Governing the Practice of Counseling to: 1) delete the requirement that a transcript be submitted with each licensure application so long as the transcript submitted for approval of

residency shows all coursework completed, 2) reduce the clinical practice requirement for licensure by endorsement, 3) allow the use of real-time distance video technology to be used to fulfill face-to-face supervision requirements, 4) include local government entities, such as community service boards, as entities that can provide continuing education and 5) allow an individual's 600-hour supervised internship to automatically count toward the 4,000 hours of total practical experience required by the Board (and reduce the number of required residency hours, from 4,000 to 3,400, to account for the automatic credit of an individual's internship).

**Result of Analysis.** Benefits likely outweigh costs for these proposed regulations.

**Estimated Economic Impact.** Currently, an applicant for licensure by examination must submit official transcripts documenting the applicant's completion of the degree program and coursework requirements. Currently, individuals who are registering whom will be supervising their residency must also submit official transcripts. The Board now proposes to eliminate the need to submit official transcripts when applying for licensure so long as all coursework is reflected on the transcript that was previously submitted for registration of supervision. Individuals who are applying for licensure will benefit from this change as it will save them the time and expense of submitting some paperwork twice.

Current regulations require applicants for licensure by endorsement to provide evidence of clinical practice in counseling during five of the last six years immediately preceding application. The Board proposes to change this requirement so that applicants will only have to provide evidence of clinical practice for 24 of the 60 months before application. This change will benefit applicants as they will qualify for licensure by endorsement with less recent experience (so more interested individuals will likely meet the active practice requirement). Applicants for licensure will still have to show that they have competently practiced their profession in the political jurisdiction they are coming from, so no future clients of these individuals are likely to be harmed on account of this change.

Current regulations require that counselors seeking licensure complete 4,000 hours of supervised experience during their residency with a set number of those hours being supervised face-to-face. The Board now proposes to revise these regulations so that individuals who are completing their experience requirements can be supervised face-to-face using secured, real-time visual technology like webcams. All individuals in supervisory relationships are likely to benefit from this change as it gives them greater flexibility to complete the experience requirement in the way that is most efficient for all involved parties. Because hours of face-to-face supervision are not changing, this requirement should remain as effective a means of training as it currently is. Consequently, no entity should be harmed or incur additional costs on account of this change.

Currently, licensed professional counselors are required to complete continuing education hours with providers that are approved by the Board as a requirement for license renewal. The Board proposes to add local government agencies to the list of approved providers. This change will benefit licensees as they will have more options to meet their continuing education requirements. Licensees will not be required to use these additional approved educational opportunities and likely will not use them unless they are the least costly, most efficient opportunities open to them.

Current regulations require that individuals seeking licensure complete a 600-hour supervised internship and complete a 4,000-hour supervised residency. Individuals can currently count their internship hours toward meeting the 4,000-hour supervised residency requirement only if their internship supervisor meets certain criteria; they provide documentation from their training program; and they fill out a separate form for the Board. Board staff reports that currently approximately 30% of individuals who are applying for licensure will take the steps necessary to have their internship count toward residency hours. The Board now proposes to amend supervised experience requirements so that 600 hours of a supervised internship will automatically apply toward the total 4,000-hour experience requirement. Concurrently, the Board proposes to reduce the total hours of supervised residency to 3,400 to account for this automatic credit of internship hours. No entity is likely to incur costs on account of this change. Individuals who are undergoing required training before licensure will benefit from this change as it will save them the time and expense of either getting their internship counted toward their total hours of practical experience or repeating 600 hours of that experience.

**Businesses and Entities Affected.** The Department of Health Professions (DHP) reports that there are 3,654 licensed professional counselors in the Commonwealth. All of these entities, as well as any applicants for licensure and individuals completing their supervised experience requirements, will be affected by these proposed regulations.

**Localities Particularly Affected.** No localities 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.

**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 additional expense on account of these regulatory changes.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** No small business is likely to incur any additional expense on account of these regulatory changes.

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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, a determination of the public benefit, 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 an 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 Counseling concurs with the analysis of the Department of Planning and Budget.

Summary:

*The amendments (i) delete the requirement that a transcript be submitted with each licensure application so long as the transcript submitted for approval of residency shows all coursework completed; (ii) reduce the clinical practice requirement for licensure by endorsement; (iii) allow the use of real-time distance video technology to fulfill face-to-face supervision requirements; (iv) delete certain requirements for an internship, such as hours of onsite supervision and completion of graduate hours prior to beginning an internship; (v) allow local government entities, such as community service boards, to provide continuing education; (vi) clarify that the prohibition relating to sexual relationships also applies to romantic relationships; and (vii) establish fraud, deceit, or harm to the public as grounds for possible disciplinary action.*

Part I  
General Provisions

**18VAC115-20-10. Definitions.**

A. The following words and terms when used in this chapter shall have the meaning ascribed to them in § 54.1-3500 of the Code of Virginia:

"Appraisal activities"

"Board"

"Counseling"

"Counseling treatment intervention"

"Professional counselor"

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

"Ancillary counseling services" means activities such as case management, recordkeeping, referral, and coordination of services.

"Applicant" means any individual who has submitted an official application and paid the application fee for licensure as a professional counselor.

~~"CACREP" means Council for Accreditation of Counseling and Related Educational Programs.~~

"Candidate for licensure" means a person who has satisfactorily completed all educational and experience requirements for licensure and has been deemed eligible by the board to sit for its examinations.

"Clinical counseling services" means activities such as assessment, diagnosis, treatment planning, and treatment implementation.

"Competency area" means an area in which a person possesses knowledge and skill and the ability to apply them in the clinical setting.

~~"COAMFTE" means the Commission on Accreditation for Marriage and Family Therapy Education.~~

~~"CORE" means Council on Rehabilitation Education.~~

"Exempt setting" means an agency or institution in which licensure is not required to engage in the practice of counseling according to the conditions set forth in § 54.1-3501 of the Code of Virginia.

"Face-to-face" means the in-person delivery of clinical counseling services for a client.

"Group supervision" means the process of clinical supervision of no more than six persons in a group setting provided by a qualified supervisor.

"Internship" means ~~supervised, planned, practical, advanced experience obtained in the clinical setting, observing and applying the principles, methods and techniques learned in training or educational settings~~ a formal academic course from a regionally accredited college or university in which supervised, practical experience is obtained in a clinical

setting in the application of counseling principles, methods, and techniques.

"Jurisdiction" means a state, territory, district, province, or country ~~which~~ that has granted a professional certificate or license to practice a profession, use a professional title, or hold oneself out as a practitioner of that profession.

"Nonexempt setting" means a setting ~~which~~ that does not meet the conditions of exemption from the requirements of licensure to engage in the practice of counseling as set forth in § 54.1-3501 of the Code of Virginia.

"Regional accrediting agency" means one of the regional accreditation agencies recognized by the United States Secretary of Education responsible for accrediting senior postsecondary institutions.

"Residency" means a ~~post-internship~~ post-graduate, supervised, clinical experience registered with the board.

"Resident" means an individual who has submitted a supervisory contract and has received board approval to provide clinical services in professional counseling under supervision.

"Supervision" means the ongoing process performed by a supervisor who monitors the performance of the person supervised and provides regular, documented individual or group consultation, guidance, and instruction with respect to the clinical skills and competencies of the person supervised.

**18VAC115-20-20. Fees required by the board.**

A. The board has established the following fees applicable to licensure as a professional counselor:

Active annual license renewal	\$105
Inactive annual license renewal	\$55
Initial licensure by examination: Application processing and initial licensure	\$140
Initial licensure by endorsement: Application processing and initial licensure	\$140
Registration of supervision	\$50
Add or change supervisor	\$25
Duplicate license	\$5
Verification of licensure to another jurisdiction	\$25
Late renewal	\$35
Reinstatement of a lapsed license	\$165
Replacement of or additional wall certificate	\$15
Returned check	\$35
Reinstatement following revocation or suspension	\$500
<del>One-time fee reduction for renewal of an</del>	<del>\$52</del>

~~active license due on June 30, 2010~~

~~One-time fee reduction for renewal of an inactive license due on June 30, 2010~~ \$27

B. All fees are nonrefundable.

C. Examination fees shall be determined and made payable as determined by the board.

Part II  
Requirements for Licensure

**18VAC115-20-40. Prerequisites for licensure by examination.**

Every applicant for licensure examination by the board shall:

1. Meet the degree program requirements prescribed in 18VAC115-20-49, the course work requirements prescribed in ~~18VAC115-20-50~~ or 18VAC115-20-51, and the experience requirements prescribed in 18VAC115-20-52; and

2. Submit the following to the board:

a. A completed application;

b. Official transcripts documenting the applicant's completion of the degree program and coursework requirements prescribed in 18VAC115-20-49 and ~~18VAC115-20-50~~ or 18VAC115-20-51. Transcripts previously submitted for registration of supervision do not have to be resubmitted unless additional coursework was subsequently obtained;

c. Verification of Supervision forms documenting fulfillment of the ~~experience~~ residency requirements of 18VAC115-20-52 and copies of all required evaluation forms, including verification of current licensure of the supervisor if any portion of the residency occurred in another jurisdiction;

d. ~~Documentation~~ Verification of any other mental health or health professional license or certificate ever held in another jurisdiction; and

e. The application processing and initial licensure fee as prescribed in 18VAC115-20-20.

3. Have no unresolved disciplinary action against a mental health or health professional license or certificate held in Virginia or in another jurisdiction. The board will consider history of disciplinary action on a case-by-case basis.

**18VAC115-20-45. Prerequisites for licensure by endorsement.**

A. Every applicant for licensure by endorsement shall hold or have held a professional counselor license in another jurisdiction of the United States and shall submit the following:

1. A completed application;

2. The application processing fee and initial licensure fee as prescribed in 18VAC115-20-20;

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3. Verification of all mental health or health professional licenses or certificates ever held in any other jurisdiction. In order to qualify for endorsement the applicant shall have no unresolved action against a license or certificate. The board will consider history of disciplinary action on a case-by-case basis;

4. Documentation of having completed education and experience requirements as specified in subsection B of this section;

5. Verification of a passing score on ~~a licensure~~ an examination required for counseling licensure in the jurisdiction in which licensure was obtained; and

6. An affidavit of having read and understood the regulations and laws governing the practice of professional counseling in Virginia.

B. Every applicant for licensure by endorsement shall meet one of the following:

1. Educational requirements consistent with those specified in 18VAC115-20-49 and 18VAC115-20-51 and experience requirements consistent with those specified in 18VAC115-20-52; or

2. If an applicant does not have educational and experience credentials consistent with those required by this chapter, he shall provide:

a. Documentation of education and supervised experience that met the requirements of the jurisdiction in which he was initially licensed as verified by an official transcript and a certified copy of the original application materials; and

b. Evidence of post-licensure clinical practice in counseling, as defined in § 54.1-3500 of the Code of Virginia, for ~~five 24~~ of the last ~~six years~~ 60 months immediately preceding his licensure application in Virginia. Clinical practice shall mean the rendering of direct clinical counseling services or clinical supervision of counseling services.

3. In lieu of transcripts verifying education and documentation verifying supervised experience, the board may accept verification from the credentials registry of the American Association of State Counseling Boards or any other board-recognized entity.

## **18VAC115-20-49. Degree program requirements.**

~~A. Programs that are approved by CACREP or CORE are recognized as meeting the definition of graduate degree programs that prepare individuals to practice counseling and counseling treatment intervention as defined in § 54.1-3500 of the Code of Virginia.~~

~~B.~~ The applicant shall have completed a graduate degree from a program that prepares individuals to practice counseling and counseling treatment intervention, as defined in § 54.1-3500 of the Code of Virginia, which is offered by a

college or university accredited by a regional accrediting agency and which meets the following criteria:

1. There must be a sequence of academic study with the expressed intent to prepare counselors as documented by the institution;

2. There must be an identifiable counselor training faculty and an identifiable body of students who complete that sequence of academic study; and

3. The academic unit must have clear authority and primary responsibility for the core and specialty areas.

## **18VAC115-20-51. Coursework requirements.**

A. The applicant shall have successfully completed 60 semester hours or 90 quarter hours of graduate study in the following core ~~areas~~ coursework with a minimum of three semester hours or 4.0 quarter hours in each of ~~the areas identified in~~ subdivisions 1 through 12 of this subsection:

1. Professional counseling identity, function, and ethics;

2. Theories of counseling and psychotherapy;

3. Counseling and psychotherapy techniques;

4. Human growth and development;

5. Group counseling and psychotherapy, theories and techniques;

6. Career counseling and development theories and techniques;

7. Appraisal, evaluation, and diagnostic procedures;

8. Abnormal behavior and psychopathology;

9. Multicultural counseling, theories and techniques;

10. Research;

11. Diagnosis and treatment of addictive disorders;

12. Marriage and family systems theory; and

13. Supervised internship of at least 600 hours to include 240 hours of face-to-face client contact.

B. If 60 graduate hours in counseling were completed prior to April 12, 2000, the board may accept those hours if they meet the regulations in effect at the time the 60 hours were completed.

## **18VAC115-20-52. Residency.**

A. Registration. ~~1.~~ Applicants who render counseling services shall:

~~a.~~ 1. With their supervisor, register their supervisory contract on the appropriate forms for board approval before starting to practice under supervision;

~~b.~~ 2. Have submitted an official transcript documenting a graduate degree as specified in 18VAC115-20-49 to include completion of the coursework and internship requirement specified in ~~18VAC115-20-50 or~~ 18VAC115-20-51; and

~~c.~~ 3. Pay the registration fee.

~~2. After September 3, 2008, applicants who are beginning their residencies in exempt settings shall register supervision with the board to assure acceptability at the time of application.~~

## B. Residency requirements.

1. The applicant for licensure shall have completed a ~~4,000-hour~~ 3,400-hour supervised residency in ~~counseling practice~~ the role of a professional counselor working with various populations, clinical problems, and theoretical approaches in the following areas:

- a. ~~Counseling and~~ Assessment and diagnosis using psychotherapy techniques;
- b. Appraisal, evaluation, and diagnostic procedures;
- c. Treatment planning and implementation;
- d. Case management and recordkeeping;
- e. Professional counselor identity and function; and
- f. Professional ethics and standards of practice.

2. The residency shall include a minimum of 200 hours of face-to-face supervision between supervisor and resident occurring in the consultation and review of clinical counseling services provided by the resident. Supervision shall occur at a minimum of one hour and a maximum of four hours per 40 hours of work experience during the period of the residency. For the purpose of meeting the 200-hour supervision requirement, face-to-face may include the use of secured technology that maintains client confidentiality and provides real-time, visual contact between the supervisor and the resident.

~~3.~~ 3. No more than half of ~~these~~ the 200 hours may be satisfied with group supervision. One hour of group supervision will be deemed equivalent to one hour of individual supervision.

~~4.~~ 4. Supervision that is not concurrent with a residency will not be accepted, nor will residency hours be accrued in the absence of approved supervision.

~~5.~~ 5. The residency shall include at least 2,000 hours of face-to-face client contact in providing clinical counseling services. The remaining hours may be spent in the performance of ancillary counseling services.

~~6.~~ 6. A graduate-level internship in excess of 600 hours, which was completed in a program that meets the requirements set forth in 18VAC115-20-49, may count for no more than 600 hours of the required 4,000 hours of experience. The internship shall include 20 hours of individual on site supervision, and 20 hours of individual or group off site supervision. In order to count toward the residency, internship hours shall not begin until completion of 30 semester hours toward the graduate degree up to an additional 300 hours towards the requirements of a residency.

~~5. A graduate level degree internship completed in a CACREP, CORE or COAMFTE approved program may~~

~~count for no more than 900 of the required 4,000 hours of experience.~~

~~6. In order for any graduate level internship to be counted toward a residency, either the clinical or faculty supervisor shall be licensed as set forth in subsection C of this section.~~

7. The board may consider special requests in the event that the regulations create an undue burden in regard to geography or disability ~~which~~ that limits the resident's access to qualified supervision.

~~8. For applicants enrolled in an integrated course of study in an accredited institution leading to a graduate degree beyond the master's level, supervised experience may begin after the completion of 30 graduate semester hours or 45 graduate quarter hours, including an internship, and shall include graduate course work in the core areas as prescribed in 18VAC115-20-50 or 18VAC115-20-51.~~

~~9.~~ 8. Residents may not call themselves professional counselors, directly bill for services rendered, or in any way represent themselves as independent, autonomous practitioners or professional counselors. During the residency, residents shall use their names and the initials of their degree, and the title "Resident in Counseling" in all written communications. Clients shall be informed in writing of the resident's status and the supervisor's name, professional address, and phone number.

~~10.~~ 9. Residents shall not engage in practice under supervision in any areas for which they have not had appropriate education.

C. Supervisory qualifications. A person who provides supervision for a resident in professional counseling shall:

1. Document two years of post-licensure clinical experience;

2. Have received professional training in supervision, consisting of three credit hours or 4.0 quarter hours in graduate-level coursework in supervision or at least 20 hours of continuing education in supervision offered by a provider approved under 18VAC115-20-106 ~~(Persons who have provided supervision for a residency prior to September 3, 2008, shall complete such coursework or continuing education by September 3, 2010; and~~

3. Shall hold an active, unrestricted license as a professional counselor, marriage and family therapist, substance abuse treatment practitioner, school psychologist, clinical psychologist, clinical social worker, or psychiatrist in the jurisdiction where the supervision is being provided. At least 100 hours of the supervision shall be rendered by a licensed professional counselor.

D. Supervisory responsibilities.

1. Supervision by any individual whose relationship to the resident compromises the objectivity of the supervisor is prohibited.

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2. The supervisor of a resident shall assume full responsibility for the clinical activities of that resident specified within the supervisory contract for the duration of the residency.

3. The supervisor shall complete evaluation forms to be given to the resident at the end of each three-month period.

4. The supervisor shall report the total hours of residency and shall evaluate the applicant's competency in the six areas stated in subdivision B 1 of this section.

5. The supervisor shall provide supervision as defined in 18VAC115-20-10.

## Part III Examinations

### **18VAC115-20-70. General examination requirements; schedules; time limits.**

A. Every applicant for initial licensure by examination by the board as a professional counselor shall pass a written examination as prescribed by the board.

B. Every applicant for licensure by endorsement shall have passed a licensure examination in the jurisdiction in which licensure was obtained.

C. A candidate approved to sit for the examination shall take the examination within two years from the date of such initial approval. If the candidate has not taken the examination by the end of the two-year period here prescribed:

1. The initial approval to sit for the examination shall then become invalid; and
2. In order to be considered for the examination later, the applicant shall file a new application with the board.

D. The board shall establish a passing score on the written examination.

E. A candidate for examination or an applicant shall not provide clinical counseling services unless he is under supervision approved by the board.

## Part IV Licensure Renewal; Reinstatement

### **18VAC115-20-100. Annual renewal of licensure.**

A. All licensees shall renew licenses on or before June 30 of each year.

B. Every license holder who intends to continue an active practice shall submit to the board on or before June 30 of each year:

1. A completed form for renewal of the license on which the licensee attests to compliance with the continuing competency requirements prescribed in this chapter; and
2. The renewal fee prescribed in 18VAC115-20-20.

C. A licensee who wishes to place his license in an inactive status may do so upon payment of the inactive renewal fee as established in 18VAC115-20-20. No person shall practice counseling in Virginia unless he holds a current active license. A licensee who has placed himself in inactive status

may become active by fulfilling the reactivation requirements set forth in 18VAC115-20-110 C.

D. Licensees shall notify the board of a change in the address of record or the public address, if different from the address of record within 60 days. Failure to receive a renewal notice from the board shall not relieve the license holder from the renewal requirement.

E. Practice with an expired license is prohibited and may constitute grounds for disciplinary action.

### **18VAC115-20-106. Continuing competency activity criteria.**

A. Continuing competency activities must focus on increasing knowledge or skills in one or more of the following areas:

1. Ethics, standards of practice, or laws governing behavioral science professions;
2. Counseling theory;
3. Human growth and development;
4. Social and cultural foundations;
5. The helping relationship;
6. Group dynamics, processing, and counseling;
7. Lifestyle and career development;
8. Appraisal of individuals;
9. Research and evaluation;
10. Professional orientation;
11. Clinical supervision;
12. Marriage and family therapy; or
13. Addictions.

B. Approved hours of continuing competency activity shall be one of the following types:

1. Formally organized learning activities or home study. Activities may be counted at their full hour value. Hours shall be obtained from one or a combination of the following board-approved, mental health-related activities:
  - a. Regionally accredited university or college level academic courses in a behavioral health discipline.
  - b. Continuing education programs offered by universities or colleges.
  - c. Workshops, seminars, conferences, or courses in the behavioral health field offered by federal, state, or local governmental agencies or licensed health facilities and licensed hospitals.
  - d. Workshops, seminars, conferences, or courses in the behavioral health field offered by an individual or organization that has been certified or approved by one of the following:
    - (1) The ~~American~~ International Association of Marriage and Family Counselors and its state affiliates.

- (2) The American Association of Marriage and Family Therapists Therapy and its state affiliates.
- (3) The American Association of State Counseling Boards.
- (4) The American Counseling Association and its state and local affiliates.
- (5) The American Psychological Association and its state affiliates.
- (6) The Commission on Rehabilitation Counselor Certification.
- (7) NAADAC, The Association for Addiction Professionals and its state and local affiliates.
- (8) National Association of Social Workers.
- (9) National Board for Certified Counselors.
- (10) A national behavioral health organization or certification body.
- (11) Individuals or organizations that have been approved as continuing competency sponsors by the American Association of State Counseling Boards or a counseling board in another state.
- (12) The American Association of Pastoral Counselors.

2. Individual professional activities.

- a. Publication/presentation/new program development.
  - (1) Publication of articles. Activity will count for a maximum of eight hours. Publication activities are limited to articles in refereed journals or a chapter in an edited book.
  - (2) Publication of books. Activity will count for a maximum of 18 hours.
  - (3) Presentations. Activity will count for a maximum of eight hours. The same presentations may be used only once in a two-year period. Only actual presentation time may be counted.
  - (4) New program development. Activity will count for a maximum of eight hours. New program development includes a new course, seminar, or workshop. New courses shall be graduate or undergraduate level college or university courses.
- b. Dissertation. Activity will count for a maximum of 18 hours. Dissertation credit may only be counted once.
- c. Clinical supervision/consultation. Activity will count for a maximum of ~~ten~~ 10 hours. Continuing competency can only be granted for clinical supervision/consultation received on a regular basis with a set agenda. Continuing competency cannot be granted for supervision ~~that you provide~~ provided to others.
- d. Leadership. Activity will count for a maximum of eight hours. The following leadership positions are acceptable for continuing competency credit: ~~officers~~ officer of state or national counseling organization; editor and/or reviewer of professional counseling journals;

member of state counseling licensure/certification board; member of a national counselor certification board; member of a national ethics disciplinary review committee rendering licenses; active member of a counseling committee producing a substantial written product; chair of a major counseling conference or convention; or other leadership positions with justifiable professional learning experiences. The leadership positions must take place for a minimum of one year after the date of first licensure.

e. Practice related programs. Activity will count up to a maximum of eight hours. The board may allow up to eight contact hours of continuing competency as long as the regulant submits proof of attendance plus a written justification of how the activity assists him in his direct service of his clients. Examples include language courses, software training, and medical topics, etc.

**18VAC115-20-110. Late renewal; reinstatement.**

A. A person whose license has expired may renew it within one year after its expiration date by paying the late fee prescribed in 18VAC115-20-20 as well as the license renewal fee prescribed for the year the license was not renewed and providing evidence of having met all applicable continuing competency requirements.

B. A person who fails to renew a license after one year or more and wishes to resume practice shall apply for reinstatement, pay the reinstatement fee for a lapsed license, ~~submit evidence regarding the continued ability to perform the functions within the scope of practice of the license~~ verification of any mental health license he holds or has held in another jurisdiction, if applicable, and provide evidence of having met all applicable continuing competency requirements not to exceed a maximum of 80 hours. The board may require the applicant for reinstatement to submit evidence regarding the continued ability to perform the functions within the scope of practice of the license.

C. A person wishing to reactivate an inactive license shall submit (i) the renewal fee for active licensure minus any fee already paid for inactive licensure renewal ~~and~~; (ii) documentation of continued competency hours equal to the number of years the license has been inactive not to exceed a maximum of 80 hours; and (iii) verification of any mental health license he holds or has held in another jurisdiction, if applicable. The board may require the applicant for reactivation to submit evidence regarding the continued ability to perform the functions within the scope of practice of the license.

Part V

Standards of Practice; Unprofessional Conduct; Disciplinary Actions; Reinstatement

**18VAC115-20-130. Standards of practice.**

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide

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# Regulations

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in determining the appropriate professional conduct of all persons whose activities are regulated by the board. Regardless of the delivery method, whether in person, by phone, or electronically, these standards shall apply to the practice of counseling.

B. Persons licensed by the board shall:

1. Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare;
2. Practice only within the boundaries of their competence, based on their education, training, supervised experience, and appropriate professional experience and represent their education, training, and experience accurately to clients;
3. Stay abreast of new counseling information, concepts, applications, and practices that are necessary to providing appropriate, effective professional services;
4. Be able to justify all services rendered to clients as necessary and appropriate for diagnostic or therapeutic purposes;
5. Document the need for and steps taken to terminate a counseling relationship when it becomes clear that the client is not benefiting from the relationship. Document the assistance provided in making appropriate arrangements for the continuation of treatment for clients, when necessary, following termination of a counseling relationship;
6. Make appropriate arrangements for continuation of services, when necessary, during interruptions such as vacations, unavailability, relocation, illness, and disability;
7. Disclose to clients all experimental methods of treatment and inform clients of the risks and benefits of any such treatment. Ensure that the welfare of the clients is in no way compromised in any experimentation or research involving those clients;
8. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services;
9. Inform clients of the purposes, goals, techniques, procedures, limitations, potential risks, and benefits of services to be performed; the limitations of confidentiality; and other pertinent information when counseling is initiated and throughout the counseling process as necessary. Provide clients with accurate information regarding the implications of diagnosis, the intended use of tests and reports, fees, and billing arrangements;
10. Select tests for use with clients that are valid, reliable, and appropriate and carefully interpret the performance of individuals not represented in standardized norms;
11. Determine whether a client is receiving services from another mental health service provider, and if so, refrain from providing services to the client without having an informed consent discussion with the client and having

been granted communication privileges with the other professional;

12. Use only in connection with one's practice as a mental health professional those educational and professional degrees or titles that have been earned at a college or university accredited by an accrediting agency recognized by the United States Department of Education, or credentials granted by a national certifying agency, and that are counseling in nature; and

13. Advertise professional services fairly and accurately in a manner that is not false, misleading, or deceptive.

C. In regard to patient records, persons licensed by the board shall:

1. Maintain written or electronic clinical records for each client to include treatment dates and identifying information to substantiate diagnosis and treatment plan, client progress, and termination;

2. Maintain client records securely, inform all employees of the requirements of confidentiality, and provide for the destruction of records that are no longer useful in a manner that ensures client confidentiality;

3. Disclose or release records to others only with ~~clients'~~ the client's expressed written consent or that of ~~their~~ the client's legally authorized representative in accordance with § 32.1-127.1:03 of the Code of Virginia;

4. Ensure confidentiality in the usage of client records and clinical materials by obtaining informed consent from ~~clients~~ the client or ~~their~~ the client's legally authorized representative before (i) videotaping, (ii) audio recording, (iii) permitting third party observation, or (iv) using identifiable client records and clinical materials in teaching, writing, or public presentations; and

5. Maintain client records for a minimum of five years or as otherwise required by law from the date of termination of the counseling relationship with the following exceptions:

a. At minimum, records of a minor child shall be maintained for five years after attaining the age of majority (18) or 10 years following termination, whichever comes later;

b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time; or

c. Records that have been transferred to another mental health service provider or given to the client or his legally authorized representative.

D. In regard to dual relationships, persons licensed by the board shall:

1. Avoid dual relationships with clients that could impair professional judgment or increase the risk of harm to clients. Examples of such relationships include, but are not limited to, familial, social, financial, business, bartering, or

close personal relationships with clients. Counselors shall take appropriate professional precautions when a dual relationship cannot be avoided, such as informed consent, consultation, supervision, and documentation to ensure that judgment is not impaired and no exploitation occurs;

2. Not engage in any type of romantic relationships or sexual intimacies with clients or those included in a collateral relationship with the client and not counsel persons with whom they have had a ~~sexual~~ romantic relationship or sexual intimacy. Counselors shall not engage in romantic relationships or sexual intimacies with former clients within a minimum of five years after terminating the counseling relationship. Counselors who engage in such relationship or intimacy after five years following termination shall have the responsibility to examine and document thoroughly that such relations do not have an exploitive nature, based on factors such as duration of counseling, amount of time since counseling, termination circumstances, client's personal history and mental status, or adverse impact on the client. A client's consent to, initiation of, or participation in sexual behavior or involvement with a counselor does not change the nature of the conduct nor lift the regulatory prohibition;

3. Not engage in any ~~sexual~~ romantic relationship or sexual intimacy or establish a counseling or psychotherapeutic relationship with a supervisee or student. Counselors shall avoid any nonsexual dual relationship with a supervisee or student in which there is a risk of exploitation or potential harm to the supervisee or student or the potential for interference with the supervisor's professional judgment; and

4. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.

E. Persons licensed by this board shall report to the board known or suspected violations of the laws and regulations governing the practice of professional counseling.

F. Persons licensed by the board shall advise their clients of their right to report to the Department of Health Professions any information of which the licensee may become aware in his professional capacity indicating that there is a reasonable probability that a person licensed or certified as a mental health service provider, as defined in § 54.1-2400.1 of the Code of Virginia, may have engaged in unethical, fraudulent, or unprofessional conduct as defined by the pertinent licensing statutes and regulations.

**18VAC115-20-140. Grounds for revocation, suspension, probation, reprimand, censure, or denial of renewal of license.**

A. Action by the board to revoke, suspend, deny issuance or renewal of a license, or take disciplinary action may be taken in accordance with the following:

1. Conviction of a felony, or of a misdemeanor involving moral turpitude, or violation of or aid to another in violating any provision of Chapter 35 (§ 54.1-3500 et seq.) of Title 54.1 of the Code of Virginia, any other statute applicable to the practice of professional counseling, or any provision of this chapter;
2. Procurement of a license, including submission of an application or supervisory forms, by fraud or misrepresentation;
3. Conducting one's practice in such a manner as to make it a danger to the health and welfare of one's clients or to the public, or if one is unable to practice counseling with reasonable skill and safety to clients by reason of illness, abusive use of alcohol, drugs, narcotics, chemicals, or other type of material or result of any mental or physical condition;
4. Intentional or negligent conduct that causes or is likely to cause injury to a client or clients;
5. Performance of functions outside the demonstrable areas of competency;
6. Failure to comply with the continued competency requirements set forth in this chapter; ~~or~~
7. Violating or abetting another person in the violation of any provision of any statute applicable to the practice of counseling, or any part or portion of this chapter; or
8. Performance of an act likely to deceive, defraud, or harm the public.

B. Following the revocation or suspension of a license, the licensee may petition the board for reinstatement upon good cause shown or as a result of substantial new evidence having been obtained that would alter the determination reached.

VA.R. Doc. No. R14-3596; Filed April 25, 2014, 1:12 p.m.



**TITLE 22. SOCIAL SERVICES**

**STATE BOARD OF SOCIAL SERVICES**

**Final Regulation**

**REGISTRAR'S NOTICE:** The State Board of Social Services is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The State Board of Social Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **22VAC40-191. Background Checks for Child Welfare Agencies (amending 22VAC40-191-50).**

Statutory Authority: §§ 63.2-217 and 63.2-901.1 of the Code of Virginia.

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# Regulations

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Effective Date: June 23, 2014.

Agency Contact: Karen Cullen, Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7152, or email karen.cullen@dss.virginia.gov.

Summary:

*The amendments correct a statutory reference and wording to conform the regulation to § 63.2-1720 C of the Code of Virginia regarding background check requirements for child welfare agencies.*

**22VAC40-191-50. Explaining requirements for satisfactory background checks.**

A. The department and registering and approving authorities must require documentation of satisfactory background checks for applicants, agents, employees, volunteers, and others living in family day homes and foster and adoptive homes as specified in 22VAC40-191-40.

1. A satisfactory sworn statement or affirmation is:
  - a. A fully completed original that states that the person:
    - (1) Does not have a criminal conviction that is a barrier crime or is any felony conviction within the last five years; and
    - (2) Is not the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth; and
  - b. When there is no other knowledge that the individual has an unsatisfactory background.

Criminal convictions include prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would be a felony if committed by an adult within or outside the Commonwealth. Convictions also include convictions in other states that are equivalent to those specified in this section.

2. A satisfactory central registry finding is one in which:
  - a. A copy of the department's child protective services check form is returned to the requesting agency or state or local Department of Social Services indicating that, as of the date on the reply, the individual whose name was searched is not identified in the Central Registry of Founded Child Abuse/Neglect Investigations as an involved caregiver with a founded disposition of child abuse/neglect; and
  - b. There is no other knowledge that the individual has a founded disposition in Virginia or elsewhere.
3. A satisfactory criminal history record check report is one in which:
  - a. An original hard copy or Internet inquiry reply from the Department of State Police is returned to the agency, individual or authorized agent making the request with:
    - (1) No convictions indicated; or

- (2) Convictions indicated, but no barrier crimes or other felony convictions in the last five years;

- b. A letter is received from the Office of Background Investigations with a finding of "eligible"; and

- c. There is no other knowledge that the individual has a barrier crime, or other felony conviction in the past five years, in Virginia or elsewhere.

The facility must have viewed an original criminal history record report maintained by a contract employee or contract agency that is dated less than six months before the independent contract employee or contract employee is hired by a contract agency begins providing services at the facility. (See also 22VAC40-191-90.)

4. A child-placing agency may approve as an adoptive or foster parent an applicant convicted of not more than one misdemeanor of assault and battery, as defined in § 18.2-57 of the Code of Virginia, not involving abuse, neglect or moral turpitude, or a minor, provided 10 years have elapsed following the conviction.

5. A child-placing agency may approve as a foster parent an applicant convicted of statutory burglary for breaking and entering a dwelling home or other structure with intent to commit larceny who has had his civil rights restored by the Governor, provided 25 years have elapsed following the conviction.

6. A child-placing agency must consider the results of background checks on a birth parent prior to placing the child of the birth parent with the birth parent, when the child is in a foster care placement (unless the birth parent has revoked an entrustment agreement pursuant to § 63.2-1223 or 63.2-1817 of the Code of Virginia or a local board or the birth parent revokes a placement agreement with legal custody remaining with the parent, parents, or guardians pursuant to § 63.2-900 of the Code of Virginia).

7. No petition for adoption shall be granted if an adoptive parent has been convicted of a sexually violent offense or an offense requiring registration pursuant to § 9.1-902 of the Code of Virginia.

8. A child-placing agency may approve as an adoptive or foster parent an applicant convicted of felony possession of drugs, who has had his civil rights restored by the Governor, provided 10 years have elapsed following the conviction.

9. A child-placing agency may approve as a kinship foster care parent an applicant convicted of the following offenses, provided that 10 years have elapsed from the date of the conviction and the local board or child-placing agency makes a specific finding that approving the kinship foster care placement would not adversely affect the safety and well-being of the child: (i) a felony conviction for possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia, but not including a felony conviction for possession of drugs

with the intent to distribute; (ii) a misdemeanor conviction for arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2; or (iii) an equivalent offense in another state.

10. A licensed child day center may hire for compensated employment persons who have been convicted of not more than one misdemeanor ~~assault~~ offense as defined in § ~~63.2-57~~ 18.2-57 of the Code of Virginia if 10 years have elapsed following the conviction, unless the person committed such offense while employed in a child day center or the object of the offense was a minor.

**B. Background checks results are not open ended.**

1. When a minor living in a family day home turns 18, the operator is responsible for making sure that the 18-year-old complies with all background check requirements for adults pursuant to 22VAC40-191-40 D 4.

2. Operators must submit new background checks as part of the renewal application packages of registered family day homes. With the exception of those facilities that are exempt per § 63.2-1716 of the Code of Virginia, background checks are required every three years for all other persons required to have background checks pursuant to 22VAC40-191-40 D.

3. If a person leaves a facility and the criminal history record report or central registry check finding is less than 91 days old, the person must be permitted to take the report or reports with him. The facility must keep a copy of any report a person takes and write on it that it is a copy, and that the original of any criminal history record report was verified.

4. Unless there is a criminal conviction or a founded complaint of child abuse and neglect during that period, a background check remains valid at a facility if no more than 12 consecutive months have passed from when a person:

- a. Began a leave of absence from that facility;
- b. Was terminated from employment at that facility; or
- c. Was transferred to a center owned and operated by the same employer or entity.

5. The facility, department, or registering or approving authority may require a new background check relevant to this suspicion if there is reason to suspect that a person who has submitted acceptable background checks, as required by this regulation, has:

- a. A barrier crime conviction in Virginia or elsewhere;
- b. A felony conviction that is not for a barrier crime within the last five years in Virginia or elsewhere; or
- c. A founded complaint of child abuse and neglect in Virginia or elsewhere.

6. When the facility, department, or registering or approving authority chooses to require a new background check:

a. The facility, department, or registering or approving authority may allow the person to continue the same relationship with the child welfare agency until the child care provider or licensing, registering, or approval authority receives the new Virginia background check information or equivalent documentation from another state; or

b. If there is reason to suspect that a person has a barrier crime conviction, a felony conviction in the last five years, or has a founded complaint of child abuse and neglect, the facility, department, or registering or approving authority may require that the person not be alone with children, even if the documentation is not Virginia background check information or equivalent information from another state.

**C. Waivers of some criminal convictions are possible. Refer to 22VAC40-191-90 through 22VAC40-191-130 for an explanation of the waiver.**

VA.R. Doc. No. R14-3914; Filed April 22, 2014, 2:26 p.m.

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# GOVERNOR

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## EXECUTIVE ORDER NUMBER 13 (2014)

### **Sharing of Criminal History Record Information for Determining Eligibility for Automatic Restoration of Rights Process**

#### Importance of the Initiative

On April 18, 2014, I announced extensive amendments to the process for automatic, individualized restoration of voting rights for rehabilitated felons who have paid their debt to society. This new policy, which will formally take effect on April 21, 2014, will ensure more transparency by providing Virginians with a defined list of the offenses that require a waiting period before an offender can apply for the restoration of their voting rights. More Virginians will be empowered to regain their rights earlier, particularly as a result of the removal of drug crimes from the list of offenses, and the change of the waiting period for rehabilitated violent offenders from five to three years.

Accordingly, pursuant to the authority vested in me under Article V of the Constitution of Virginia and under the laws of the Commonwealth, I hereby direct that the Virginia State Police and Department of Corrections share criminal history record information with the Office of the Secretary of the Commonwealth, as required, for the limited purpose of determining eligibility for automatic restoration of rights and rehabilitation.

The information shared with the Office of the Secretary of the Commonwealth shall not be used for any other purpose. The Secretary shall ensure that the information is secured and protected from further dissemination.

#### Effective Date of the Executive Order

This Executive Order replaces Executive Order No. 65 (2013), issued on July 15, 2013, by Governor Robert F. McDonnell. This Executive Order shall become effective upon its signing and shall remain in full force and effect until amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 21st day of April, 2014.

/s/ Terence R. McAuliffe  
Governor

## EXECUTIVE ORDER NUMBER 14 (2014)

### **Authority of Commissioner of the Department of Motor Vehicles Regarding Escort Vehicle Driver Reciprocity and Certifications to the Federal Highway Administration**

#### Importance of the Initiative

By virtue of the authority vested in me as Governor under Article V, Sections 1, 7, 8 and 10 of the Constitution of Virginia and Sections 2.2-103 and 2.2-104 of the Code of

Virginia, and subject always to my continuing ultimate authority and responsibility to act in such matters and to reserve to myself any and all such powers, I hereby affirm and delegate to the Commissioner of the Department of Motor Vehicles the powers and duties set out below as necessary for the Commonwealth to fulfill the requirements of Code of Virginia Sections 46.2-106, 46.2-2901, and 46.2-2907. I also delegate to the Commissioner the powers and duties for the Commonwealth to fulfill the requirements of 23 USC § 141 and 23 CFR §§ 657.13 and 669.7.

The following are the duties set out to the Commissioner of the Department of Motor Vehicles:

1. Determine whether another state's escort vehicle driver certification program is substantially similar to the Commonwealth's program for such certification;
2. Execute reciprocal agreements with states, allowing certified escort vehicle drivers to operate in Virginia as provided for in Code of Virginia Sections 46.2-2901 and 46.2-2907;
3. Provide a copy of such written reciprocal agreements to the Secretary of the Commonwealth and the Superintendent of State Police;
4. Issue annual certifications to the United States Department of Transportation, Federal Highway Administration, as required by 23 CFR § 657.13; and
5. Issue annual certifications to the United States Department of Transportation, Federal Highway Administration, as required by 23 CFR § 669.7.

#### Effective Date of the Executive Order

This Executive Order shall be effective upon its signing and shall remain in full force and effect until amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 23rd day of April, 2014.

/s/ Terence R. McAuliffe  
Governor

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# GENERAL NOTICES/ERRATA

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## STATE WATER CONTROL BOARD

### Proposed Consent Special Order for Aqua Virginia, Inc.

An enforcement action has been proposed for Aqua Virginia, Inc., for violations in Frederick County. A proposed consent order describes a settlement to resolve unpermitted discharge violations from Lake Holiday facility. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Steven W. Hetrick will accept comments by email at [steven.hetrick@deq.virginia.gov](mailto:steven.hetrick@deq.virginia.gov), FAX at (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, 4411 Early Road, Harrisonburg, VA 22801, from May 19, 2014, through June 18, 2014.

### Proposed Consent Special Order for Aqua Virginia, Inc.

An enforcement action has been proposed for Aqua Virginia, Inc. The proposed consent order describes a settlement to resolve violations of State Water Control Law and the applicable regulations associated with the Lake Land 'Or Wastewater Treatment Plant located in Ruther Glen, Virginia. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Daniel Burstein will accept comments by email at [daniel.burstein@deq.virginia.gov](mailto:daniel.burstein@deq.virginia.gov), FAX at (703) 583-3821, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from May 20, 2014, through June 19, 2014.

### Proposed Consent Special Order for Crystal Aquatics, Inc.

An enforcement action has been proposed for Crystal Aquatics, Inc. The proposed consent order describes a settlement to resolve violations of State Water Control Law and the applicable regulations associated with the Kent Gardens Recreation Club Pool located in McLean, Virginia. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Daniel Burstein will accept comments by email at [daniel.burstein@deq.virginia.gov](mailto:daniel.burstein@deq.virginia.gov), FAX at (703) 583-3821, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from May 20, 2014, through June 19, 2014.

### Proposed Consent Special Order for McGill Environmental Systems of N.C., Inc.

An enforcement action has been proposed for McGill Environmental Systems of N.C., Inc., for alleged violations at McGill Environmental Systems of N.C., Inc., Waverly Site, Sussex County, Virginia. The State Water Control Board

proposes to issue a consent special order to McGill Environmental Systems of N.C., Inc. to address noncompliance with State Water Control Board law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Gina Pisoni will accept comments by email at [gina.pisoni@deq.virginia.gov](mailto:gina.pisoni@deq.virginia.gov), FAX at (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from May 19, 2014, through June 20, 2014.

### Proposed Enforcement Action for Six M, L.L.C.

An enforcement action has been proposed for Six M, L.L.C., for violations of the State Water Control Law in Norfolk, Virginia. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). John Brandt will accept comments by email at [john.brandt@deq.virginia.gov](mailto:john.brandt@deq.virginia.gov), FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from May 19, 2014, through June 18, 2014.

## VIRGINIA CODE COMMISSION

### Notice to State Agencies

**Contact Information:** *Mailing Address:* Virginia Code Commission, General Assembly Building, 201 North 9th Street, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; FAX (804) 692-0625; *Email:* [varegs@dls.virginia.gov](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/connect/commonwealth-calendar>.

**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/documents/cumulstab.pdf>.

**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.

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# General Notices/Errata

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## ERRATA

### DEPARTMENT OF GENERAL SERVICES

Title of Regulation: **1VAC30-120. Federal Property and Administrative Services Act of 1949, as Amended.**

Publication: 29:17 VA.R. 2093-2101 April 22, 2013

Correction to Final Regulation:

Page 2093, column one, before "**1VAC30-120-20. Designation of state agency.**" insert:

"CHAPTER 120  
VIRGINIA FEDERAL PROPERTY AND  
ADMINISTRATIVE SERVICES ACT OF 1949, AS  
AMENDED AGENCY - STATE PLAN OF OPERATION"

VA.R. Doc. No. R13-1622; Filed April 17, 2014 12:42 p.m.

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **12VAC30-120. Waivered Services.**

Publication: 22:10 VA.R. 1638-1661 January 23, 2006

Correction to Final Regulation:

Page 1645, 12VAC30-120-940 C 3 h (3) (a), replace "10" with "18"

VA.R. Doc. No. R05-117; Filed April 24, 2014 2:00 p.m.

### BOARD OF PHARMACY

Title of Regulation: **18VAC110-40. Regulations Governing Collaborative Practice Agreements.**

Publication: 30:15 VA.R. 2005-2006 March 24, 2014

Correction to Final Regulation:

Page 2005, 18VAC110-40-10, replace the definition of "Practitioner" with the following:

"Practitioner" means, ~~notwithstanding the definition in § 54.1-3401 of the Code of Virginia, a doctor of medicine, osteopathy, or podiatry who writes the order and is directly and ultimately responsible for the care of a patient being treated under an agreement and who holds an active license to practice from the Virginia Board of Medicine~~ a person authorized to have an agreement with a pharmacist and his designated alternative pharmacists as prescribed in the definition of a collaborative agreement in § 54.1-3300 of the Code of Virginia.

VA.R. Doc. No. R14-3552; Filed April 28, 2014 9:42 a.m.