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VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 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.

PUBLICATION SCHEDULE AND DEADLINES

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

June 2014 through June 2015

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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 (Tuesday)	December 15, 2014
31:9	December 10, 2014	December 29, 2014
31:10	December 23, 2014 (Tuesday)	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.

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF COUNSELING

Agency Decision

Title of Regulation: 18VAC115-50. Regulations Governing the Practice of Marriage and Family Therapy.

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

Name of Petitioner: Julia Sayre for the Virginia Association for Marriage and Family Therapy.

Nature of Petitioner's Request: To clarify that board approval of registration will be provided in writing with the date of registration of supervision to be effective 30 days from the initial receipt of the applicant's request.

Agency's Decision: Request denied.

Statement of Reason for Decision: While the members understand the rationale for the request to allow applicants to begin supervision 30 days after the initial receipt of an application, they did not agree that a regulatory change was appropriate.

The board acknowledges that the application/licensing process can be time-consuming. Counseling staff reported that there has been an increase in applications and registrations of 127% in the past four years, that there are approximately 200 calls and 300+ emails per week, and that the board has received over 4,800 registrations and applications.

Applications are typically acknowledged very promptly, and once all essential information is received and determined to be complete, supervision hours can be counted from the date of approval. The delays in approval are most often due to insufficient or incomplete documentation from an applicant or his/her supervisor. A transcript may not indicate adequate educational preparation for practice in marriage and family therapy, or a supervisory contract may not provide adequate evidence of clinical practice. In any case, it would be a disservice for an applicant to accumulate hours of supervised practice prior to a determination of eligibility if those hours would later have to be disallowed. The board's primary purpose is protection of the public, and it remains concerned that supervised practice should only be conducted by persons who have been determined to be qualified.

Agency Contact: Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

V.A.R. Doc. No. R12-27; Filed June 30, 2014

BOARD OF VETERINARY MEDICINE

Agency Decision

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: Cara Lubarsky.

Nature of Petitioner's Request: Deletion of a requirement for practical experience in 18VAC150-20-130 A that no student shall be qualified to receive practical training unless such student shall be duly enrolled and in good standing in a veterinary college or school accredited or approved by the American Veterinary Medical Association and in the final year of his training or after completion of an equivalent number of hours as approved by the board.

Agency's Decision: Request granted.

Statement of Reason for Decision: On June 11, 2014, the board voted to adopt the amendment requested by the petitioner by a fast-track action.

Agency Contact: Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

V.A.R. Doc. No. R14-14; Filed June 11, 2014, 1:29 p.m.

Agency Decision

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: Diana Stuebing.

Nature of Petitioner's Request: To increase the minimum requirement for continuing education for veterinary technicians from six hours a year to eight hours a year for each annual renewal.

Agency's Decision: Request granted.

Statement of Reason for Decision: On June 11, 2014, the board voted to adopt the amendment requested by the petitioner by a fast-track action.

Agency Contact: Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

V.A.R. Doc. No. R14-18; Filed June 11, 2014, 1:30 p.

REGULATIONS

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

Symbol Key

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

TITLE 1. ADMINISTRATION

STATE BOARD OF ELECTIONS

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

Final Regulation

Title of Regulation: **1VAC20-40. Voter Registration (amending 1VAC20-40-50, 1VAC20-40-70; repealing 1VAC20-40-80).**

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

Effective Date: June 10, 2014.

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

Summary:

The amendments (i) clarify language related to application signature and determination of residency; (ii) remove a requirement for the registrar to seek information not material to the application; (iii) update referenced forms; and (iv) remove provisions related to absent military and overseas voters, which are being relocated in a separate regulatory action to a new chapter numbered 1VAC20-45.

1VAC20-40-50. Supplemental questions.

When warranted by the situations described in 1VAC20-40-40 C and where any other information on the voter registration application is unclear, the general registrar shall ask the following questions on a form prescribed by the board after notifying the applicant that any response he makes is subject to the same oath he took to sign the application:

1. Are you currently registered to vote at another address? The general registrar shall not ask this question unless the applicant failed to provide the information on the voter registration application.
 - a. If yes to subdivision 1 of this section, what is that address, and in what county, city, or state is that address located?
 - b. If yes to subdivision 1 of this section or as indicated on the voter registration application, do you wish to cancel your registration in that county, city, or state and register and establish residence in this county or city in Virginia?

2. Do you have a specific plan to move away from this county or city at a fixed date in the future? If so, when?

1VAC20-40-70. Applications for voter registration; affirmation of United States citizenship.

A. Form and signature.

1. Applications for voter registration shall be on a form approved by the State Board of Elections or appropriate federal agency.
2. Applications for voter registration must be signed by the applicant ~~or the name and address of the assistant entered on the signature line for an applicant with.~~ If the applicant is unable to sign due to a physical disability, the name and address of the person assisting the voter shall be entered on the application according to the form instructions.

B. Material omissions on applications for voter registration in general. The following omissions are not material if any of the following, or combination thereof, exists:

1. Daytime telephone number;
2. Description of a rural address;
3. Mailing address different from residence address;
4. Date of the application;
5. Whether the applicant is interested in working as an election official;
6. Whether the applicant requests to have his residence address excluded from published lists;
7. Whether the applicant has a disability that requires accommodation in order to vote; or
8. Gender.

~~C. Material omissions from applications for voter registration on a Federal Post Card Application or Federal Write in Absentee Ballot. The following omissions are not material:~~

- ~~1. Service identification number, rank, grade, or rate on an application that declares active duty military status.~~
- ~~2. Employer name and address on an application that declares temporary overseas residence with no date of last residence.~~
- ~~3. Employer name and address on an application that declares temporary overseas residence with a date of last residence. If practicable, the general registrar should inform the applicant that eligibility for full ballots requires providing the name and address of an employer outside the United States.~~
- ~~4. Date of last residence on an application that declares indefinite overseas residence. The date of last residence for~~

~~an application declaring indefinite overseas residence without indicating a date of last residence in the United States shall be the date the application is signed.~~

~~D. C.~~ Middle name may be material to determining eligibility to vote. If the applicant does not include a middle name the registrar shall:

1. As far as practical, attempt to contact the applicant and obtain his middle name or lack thereof to determine if the application is complete.

2. a. If the applicant indicates that he has no middle name, the registrar shall process the application.

3. b. If the applicant indicates that he has a middle name, the registrar shall inform the applicant that the middle name is required, deny the application, and send the applicant a new application.

4. 2. If the registrar is unable to contact the applicant and therefore unable to determine if the application is incomplete, he shall give the benefit of doubt to the applicant and process the application.

~~E. Except for gender, the general registrar, if practicable, shall attempt to contact the applicant and obtain the missing information requested on an application for voter registration that is not material to determining eligibility to vote. If the general registrar obtains any missing information, he shall write the information, his name, and the date on the reverse side of the application for voter registration to indicate that the alteration was made by the general registrar.~~

~~F. D.~~ A general registrar shall not change information provided by an applicant on an application for voter registration without written authorization signed by the applicant.

~~G. E.~~ Persons identified as noncitizens in reports from the Department of Motor Vehicles shall have the opportunity to affirm United States citizenship status using any approved voter registration application or other form containing the required affirmation. The State Board of Elections shall automate the process for requesting affirmation of United States citizenship prior to cancellation.

~~H. F.~~ For cases not covered by this section, the general registrar in consultation with the electoral board and State Board of Elections staff shall determine materiality on a case-by-case basis that may result in further amendment of this regulation.

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

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

~~registration and request an absentee ballot if signed and otherwise complete.~~

NOTICE: The following 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 (1VAC20-40)

~~Virginia Voter Registration Application Form, VA NVRA-1 (rev. 02/10)~~

[Virginia Voter Registration Application Form, SBE-416.2 \(rev. 7/13\)](#)

[National Voter Registration Application Form, Register to Vote in Your State by Using this Postcard Form and Guide \(rev. 3/06\)](#)

~~Federal Post Card Application (FPCA), Voter Registration and Absentee Ballot Request, Standard Form 76 (rev. 08/11)~~

~~Federal Write In Absentee Ballot (FWAB), Voter's Declaration/Affirmation, Standard Form 186 (rev. 08/11)~~

VA.R. Doc. No. R14-3929; Filed June 10, 2014, 4:13 p.m.

Final Regulation

Title of Regulation: 1VAC20-40. Voter Registration (amending 1VAC20-40-10; adding 1VAC20-40-90).

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

Effective Date: June 12, 2014.

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

Summary:

The amendments (i) establish the situations when a voter can request a voter photo identification card and the requirements that a voter must meet prior to the issuance of a card; (ii) provide that general registrars and the Department of Elections are required to solicit applications for voter photo identification cards at their permanent satellite locations but are not otherwise required to solicit applications outside of their general registrars' offices; (iii) provide guidance for the issuance of a temporary identification document and for replacement cards; (iv) establish that a person's inclusion in the Department of Motor Vehicles database does not exclude such person from receiving a voter photo identification card; (v) designate applications for voter photo identification cards as registration records that are available for public inspection after redaction of certain personal information and are retained by the general registrars for a period of time; (vi) add

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definitions for "authorized personnel," "permanent satellite location," and "valid"; and (vii) prohibit the issuance of a temporary identification document to an unregistered person.

Article 1 General Provisions

1VAC20-40-10. Definitions.

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

"Abode" or "place of abode" means a physical place where a person dwells. One may have multiple places of abode, such as a second home.

"Address" or "residence address" for purposes of voter registration and address confirmation means the address of residence in the precinct required for voter registration. An alternative mailing address may be included on a voter registration application when: (i) the residence address of the applicant cannot receive mail; or (ii) the voter is otherwise eligible by law to provide an alternative mailing address. Alternative mailing addresses must be sufficient to enable the delivery of mail by the United States Postal Service. The post office box for published lists may be provided either by the United States Postal Service or a commercial mail receiving agency (CMRA) described in the United States Postal Service Domestic Mail Manual.

["Authorized personnel" means the designated individuals of a general registrar's office or the Department of Elections who are permitted to access the voter registration database and capture information necessary to generate photo identification cards.]

"Domicile" means a person's primary home, the place where a person dwells and which he considers to be the center of his domestic, social, and civil life. Domicile is primarily a matter of intention, supported by an individual's factual circumstances. Once a person has established domicile, establishing a new domicile requires that he intentionally abandon his old domicile. For any applicant, the registrar shall presume that domicile is at the address of residence given by the person on the application. The registrar shall not solicit evidence to rebut this presumption if the application appears to be legitimate, except as provided in 1VAC20-40-40 B and C.

["Permanent satellite location" means an office managed, maintained, and operated under the control of the general registrar for the locality that is consistently operational throughout the year and is not the principal office of the general registrar. Offices of other agencies where registration takes place pursuant to § 24.2-412 B of the Code of Virginia are not considered permanent satellite locations.]

"Residence," "residency," or "resident" for all purposes of qualification to register and vote means and requires both domicile and a place of abode.

["Valid" for all purposes related to voter identification means documents containing the name and photograph of the voter appearing to be genuinely issued by the agency or issuing entity appearing upon the document where the bearer of the document reasonably appears to be the person whose photograph is contained thereon. Other data contained on the document, including but not limited to expiration date, shall not be considered in determining the validity of the document.]

"Voter photo identification card" means the official voter registration card containing the voter's photograph and signature referenced in § 24.2-404 A 3 of the Code of Virginia.

1VAC20-40-90. Voter photo identification cards.

A. Pursuant to the requirements of § 24.2-404 of the Code of Virginia, a voter who does not have an acceptable form of identification listed in § 24.2-643 of the Code of Virginia may obtain a voter photo identification card free of charge through any general registrar's office [or the Department of Elections] if:

1. The voter [~~completes and~~] signs a [~~voter identification card application form~~ completed Voter Photo Identification Card Application];
2. The voter's information is correct in the voter registration system;
3. A photograph of the voter is taken by [~~the a~~] general registrar or [~~the registrar's designated staff~~ authorized personnel]; and
4. The voter's signature is captured by [~~the a~~] general registrar or [~~the registrar's designated staff~~ authorized personnel].

B. Any voter applying for the voter photo identification card whose record in the voter registration system is materially inaccurate or incomplete will be issued a card after the information has been corrected and updated within the system. [~~Such voter may be provided with~~

C. A general registrar's office shall provide] a temporary identification document [~~if the voter's~~ to any eligible voter whose] application for the voter photo identification card is made after the deadline for registering to vote in the next most proximate election in which the voter is eligible to vote. [A temporary identification document may only be issued by the general registrar's office in the locality where the voter is registered for any voter whose Voter Photo Identification Card Application is received after election day and through the conclusion of the period to submit a copy of an identification card provided within § 24.2-653 A of the Code of Virginia.] The temporary identification document shall be considered an acceptable form of identification and is valid for 30 days after its issuance.

[~~C. D.~~] A person who is unregistered may apply for a voter photo identification card, and will be provided with the card upon approval of the submitted application for voter

registration. A person who is unregistered [~~may~~ shall] not be provided with a temporary identification document.

[~~D. E.~~] General registrars [and the Department of Elections] may solicit applicants for voter photo identification cards at locations other than their offices. [~~No general registrar shall be required to offer this service~~ General registrars shall accept applications and produce temporary identification documents at all permanent satellite offices established within their locality].

[~~E. F.~~] A voter's inclusion in the Department of Motor Vehicle's database will not exclude such person from being eligible to receive a voter photo identification card so long as the person affirms he is not in possession of the identification document [or the identification document could not otherwise be considered valid. A voter's signature upon the Voter Photo Identification Card Application shall be considered sufficient affirmation].

[~~F. G.~~] A voter may request a replacement voter photo identification card if (i) the original card is damaged, lost, or stolen; (ii) the voter's appearance has changed substantially; or (iii) eight years have elapsed since the issuance date upon the card.

[~~G. H.~~] Applications for voter photo identification cards shall be (i) considered "registration records," as defined in § 24.2-101 of the Code of Virginia; (ii) [~~unavailable~~ only available] for public inspection as provided in § 24.2-444 C of the Code of Virginia [after redaction of the social security number and day and month of the birth date]; and (iii) retained by the registrar as provided by subdivision 8 of § 24.2-114 [of the Code of Virginia] and the applicable Library of Virginia retention schedule for local election records.

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

FORMS (1VAC20-40)

[Virginia Voter Registration Application Form, SBE-416.2 \(rev. 7/13\)](#)

[National Voter Registration Application Form, Register to Vote in Your State by Using this Postcard Form and Guide \(rev. 3/06\)](#)

[Voter Photo Identification Card Application \(undated\)](#)

V.A.R. Doc. No. R14-4012; Filed June 12, 2014, 11:05 a.m.

Final Regulation

Title of Regulation: 1VAC20-45. Absent Military and Overseas Voters (adding 1VAC20-45-10 through 1VAC20-45-40).

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

Effective Date: June 10, 2014.

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

Summary:

The State Board of Elections is adopting a new chapter for all regulations regarding absent military and overseas voters, which are currently found in 1VAC20-40 and 1VAC20-70, consistent with Chapter 353 of the 2012 Acts of Assembly establishing the Uniform Military and Overseas Voters Act. The regulations address voter registration, electronic submission of the Federal Post Card Application, and material omissions from Federal Write-In Absentee Ballots.

CHAPTER 45

ABSENT MILITARY AND OVERSEAS VOTERS

1VAC20-45-10. Definitions.

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

"Application for an absentee ballot" means a Federal Post Card Application (Form SF-76). A Federal Write-In Absentee Ballot (SF-186) is an absentee ballot application only for the voted ballot being submitted and is not an application for future elections.

"Federal-only ballot overseas voter" means a United States citizen residing outside the United States indefinitely who has not provided his last date of residence in Virginia or employment information showing that he is employed overseas or is the spouse or dependent residing with a person employed overseas. The date the applicant has provided next to his affirmation will serve as his last date of residence.

1VAC20-45-20. Voter registration.

A. Presumptions. As provided in 1VAC20-40-30 B, no presumption in favor of or against residence may arise merely on the basis of a person's presence or absence in the following circumstances:

1. While employed in the service of the Commonwealth or United States, whether military or civilian; or
2. While engaged in the navigation of the waters of the United States or of the high seas.

B. Material omissions from applications for voter registration on a Federal Post Card Application or Federal Write-in Absentee Ballot. The following omissions are not material:

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1. Service identification number, rank, grade, or rate on an application that declares active duty military status.
2. Employer name and address on an application that declares temporary overseas residence with no date of last residence.
3. Employer name and address on an application that declares temporary overseas residence with a date of last residence. If practicable, the general registrar should inform the applicant that eligibility for full ballots requires providing the name and address of an employer outside the United States.
4. Date of last residence on an application that declares indefinite overseas residence. The date of last residence for an application declaring indefinite overseas residence without indicating a date of last residence in the United States shall be the date the application is signed.

1VAC20-45-30. Electronic submission of Federal Post Card Application.

An applicant eligible for registration who applies for registration simultaneously with a request for an absentee ballot on a Federal Post Card Application (FPCA) as authorized by §§ 24.2-458 and 24.2-703 of the Code of Virginia may apply for registration as well as request an absentee ballot by facsimile transmission or scanned email attachment. An electronically submitted FPCA shall be sufficient to apply for registration and request an absentee ballot if signed and otherwise complete.

1VAC20-45-40. Material omissions from Federal Write-In Absentee Ballots.

A. Pursuant to the requirements of §§ 24.2-467, 24.2-702.1, and 24.2-706 of the Code of Virginia, a timely received write-in absentee ballot on a Federal Write-In Absentee Ballot (FWAB) (Form SF-186) should not be rendered invalid if it contains an error or omission not material to determining the eligibility of the applicant to vote in the election in which he offers to vote.

B. If the applicant is not registered, the FWAB may not be accepted as timely for registration unless the applicant has met the applicable registration deadline. Section 24.2-419 of the Code of Virginia extends the mail registration deadline for certain military applicants. All applications requesting mailed ballots are subject to the mail absentee application deadline in §§ 24.2-459 and 24.2-701 of the Code of Virginia.

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

1. The applicant has omitted the signature of the voter or the notation of an assistant in the voter signature box that the voter is unable to sign;
2. The applicant has omitted the signature of the witness;
or

3. The applicant did not include the declaration/affirmation page.
- D. The ballot should not be rendered invalid if on the FWAB any of the following, or combination thereof, exists:
 1. The applicant has not listed the names specifically in the order of last, first, and middle name;
 2. The applicant has listed a middle initial or maiden name, instead of the full middle name;
 3. The applicant has omitted the street identifier, such as the term "road" or "street," when filling in the legal residence;
 4. The applicant has omitted the county or city of registration if the county or city is clearly identifiable by the residence address information provided;
 5. The applicant has omitted the zip code;
 6. The applicant has omitted the date of the signature of the voter;
 7. The applicant has omitted the address of the witness;
 8. The applicant has omitted the date of signature of the witness;
 9. The applicant did not seal the ballot within the security envelope, provided there is substantial compliance with the requirement that the ballot be accompanied by the required voter statement; or
 10. The applicant has submitted a ballot containing offices or issues for which he is not eligible.

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 (1VAC20-45)

- [[Federal Post Card Application \(FPCA\), Voter Registration and Absentee Ballot Request, Standard Form 76 \(rev. 8/11\)](#)
[Federal Write-In Absentee Ballot \(FWAB\), Voter's Declaration/Affirmation, Standard Form 186 \(rev. 8/11\)](#)
[Federal Post Card Application \(FPCA\), Voter Registration and Absentee Ballot Request, Standard Form 76 \(rev. 8/13\)](#)
[Federal Write-In Absentee Ballot \(FWAB\), Voter's Declaration/Affirmation, Standard Form 186 \(rev. 8/13\)](#)]
[Envelope B for Statement of UOCAVA Absentee Voter, 42 USC 1973ff-1 \(rev. 7/13\)](#)

VA.R. Doc. No. R14-3928; Filed June 10, 2014, 4:12 p.m.

Proposed Regulation

Titles of Regulations: 1VAC20-45. Absent Military and Overseas Voters (amending 1VAC20-45-40).

1VAC20-70. Absentee Voting (amending 1VAC20-70-20).

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

Public Hearing Information:

August 27, 2014 - 10 a.m. - General Assembly Building, House Room C, 201 North 9th Street, Richmond, Virginia.

Public Comment Deadline: July 21, 2014.

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

Summary:

The proposed amendments conform the regulations to Chapters 453 and 575, 574, and 580 of the 2014 Acts of Assembly regarding absentee ballots by (i) allowing a ballot to be counted if the inner envelope is imperfectly sealed provided that the outer envelope is sealed, (ii) specifying that neither the omission of the date nor the omission of the voter's middle name or initial require rejection of the ballot if the voter's first and last names are provided, (iii) requiring that the voter provide his generational suffix when one or more individuals with the same name are registered at the same address, (iv) requiring a voter to provide his residential street identifier, and (v) requiring military and overseas voters to provide the information required by § 24.2-702.1 of the Code of Virginia.

1VAC20-45-40. Material omissions from Federal Write-In Absentee Ballots.

A. Pursuant to the requirements of §§ 24.2-467, 24.2-702.1, and 24.2-706 of the Code of Virginia, a timely received write-in absentee ballot on a Federal Write-In Absentee Ballot (FWAB) (Form SF-186) should not be rendered invalid if it contains an error or omission not material to determining the eligibility of the applicant to vote in the election in which he offers to vote.

B. If the applicant is not registered, the FWAB may not be accepted as timely for registration unless the applicant has met the applicable registration deadline. Section 24.2-419 of the Code of Virginia extends the mail registration deadline for certain military applicants. All applications requesting mailed ballots are subject to the mail absentee application deadline in §§ 24.2-459 and 24.2-701 of the Code of Virginia.

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

1. The applicant has omitted the signature of the voter or the notation of an assistant in the voter signature box that the voter is unable to sign;

2. The applicant has omitted the signature of the witness; ~~or~~

3. The applicant did not include the declaration/affirmation page; or

4. The applicant omitted from the declaration/affirmation information required by § 24.2-702.1 of the Code of Virginia needed to determine identity or eligibility including, but not limited to, (i) current military or overseas address; (ii) the street identifier, such as the term "road" or "street" when filling in the legal residence; or (iii) his generational suffix when more than one individual with the same name are registered at the same address, and it is impossible to determine the identity of the voter from the voter declaration/affirmation page.

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

1. The applicant has not listed the names specifically in the order of last, first, and middle name;

2. The applicant has listed a middle initial or maiden name, instead of the full middle name;

~~3. The applicant has omitted the street identifier, such as the term "road" or "street," when filling in the legal residence;~~

4. ~~3.~~ The applicant has omitted the county or city of registration if the county or city is clearly identifiable by the residence address information provided;

~~5.~~ 4. The applicant has omitted the zip code;

~~6.~~ 5. The applicant has omitted the date of the signature of the voter;

~~7.~~ 6. The applicant has omitted the address of the witness;

~~8.~~ 7. The applicant has omitted the date of signature of the witness;

~~9.~~ 8. The applicant did not seal the ballot within the security envelope, ~~provided there is substantial compliance with the requirement that the ballot be accompanied by the required voter statement so long as the outside envelope containing the ballot and the voter's declaration/affirmation page arrived sealed;~~ or

~~10.~~ 9. The applicant has submitted a ballot containing offices or issues for which he is not eligible.

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

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

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

1. Except as provided in subdivisions C 2 and 3 of this section, the voter did not include his full first name;
2. The voter did not provide his last name;
3. ~~If the voter has a legal middle name, the voter did not provide at least a middle initial~~ The voter omitted his generational suffix when one or more individuals with the same name are registered at the same address, and it is impossible to determine the identity of the voter from Envelope B;
4. The voter did not provide his house number and street name with his residential street identifier (e.g., "street," "drive," etc.) or his rural route address;
5. The voter did not provide either his city or zip code;
6. The voter did not sign Envelope B; or
7. ~~The voter did not provide the date on which he signed Envelope B; or~~
8. 7. The voter's witness did not sign Envelope B.

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

1. The voter included his full name in an order other than "last, first, middle";
2. The voter used his first initial instead of his first full name, so long as the voter provided his full middle name;
3. The voter provided a derivative of his legal name as his first or middle name (e.g., "Bob" instead of "Robert");
4. ~~The voter did not provide his generational suffix~~ If the voter provided his first name and last name, the voter did not provide a middle name or a middle initial;
5. ~~The voter did not provide his residential street identifier (Street, Drive, etc.);~~
6. 5. The voter did not provide a zip code, so long as the voter provided his city;
7. 6. The voter did not provide his city, so long as the voter provided his zip code;
8. 7. The voter omitted ~~the year in the date, or provided an incorrect or incomplete date~~ on which he signed Envelope B; or
9. ~~The voter provided the incorrect date on which he signed Envelope B; or~~
10. 8. The ballot is imperfectly sealed within Envelope B, provided that ~~the ballot is contained within Envelope B, there is evidence that a good faith effort was made to seal the envelope, the outer envelope with Envelope B and the ballot arrived sealed, and the circumstances create no reason to suspect fraud.~~
9. The illegibility of a voter's or witness' signature on an Envelope B shall not be considered an omission or error.

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

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

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

VA.R. Doc. No. R14-4033; Filed June 11, 2014, 11:25 a.m.

Final Regulation

Title of Regulation: **1VAC20-70. Absentee Voting (amending 1VAC20-70-10; repealing 1VAC20-70-30).**

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

Effective Date: June 10, 2014.

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

Summary:

The amendments remove provisions related to absent military and overseas voters, which are being relocated to a new chapter numbered 1VAC20-45 by a separate regulatory action.

1VAC20-70-10. Definitions.

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

"Application for an absentee ballot" means an application for an absentee ballot submitted on any form approved for that purpose according to federal and state laws. The term includes a Virginia Absentee Ballot Application (SBE-701); and a Virginia Annual Absentee Ballot Application (SBE-703.1), and a Federal Post Card Application (SF 76A). A Federal Write In Absentee Ballot (SF 186A) is an absentee ballot application only for the voted ballot being submitted and is not an application for future elections.

"Envelope B" means the envelope required by § 24.2-706 of the Code of Virginia which identifies the voter.

~~"Federal only ballot overseas voter" means a United States citizen residing outside the United States indefinitely who has not provided his last date of residence in Virginia. The date the applicant has provided next to his affirmation will serve as his last date of residence.~~

1VAC20-70-30. Material omissions from Federal Write In Absentee Ballots. (Repealed.)

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

eligibility of the applicant to vote in the election in which he offers to vote.

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

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

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

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

- ~~1. The applicant has not listed the names specifically in the order of last, first, and middle name;~~
- ~~2. The applicant has listed a middle initial or maiden name, instead of the full middle name;~~
- ~~3. The applicant has omitted the street identifier, such as the term "road" or "street" when filling in the legal residence;~~
- ~~4. The applicant has omitted the county or city of registration if the county or city is clearly identifiable by the residence address information provided;~~
- ~~5. The applicant has omitted the zip code;~~
- ~~6. The applicant has omitted the date of the signature of the voter;~~
- ~~7. The applicant has omitted the address of the witness;~~
- ~~8. The applicant has omitted the date of signature of the witness;~~
- ~~9. The applicant did not seal the ballot within the security envelope, provided there is substantial compliance with the requirement that the ballot be accompanied by the required voter statement; or~~
- ~~10. The applicant has submitted a ballot containing offices or issues for which he is not eligible.~~

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 (1VAC20-70)

- ~~Absentee Ballot Application Form, SBE 701 (rev. 7/10)~~
- ~~Annual Absentee Ballot Application, SBE 703.1 (rev. 1/10)~~
- ~~Federal Post Card Application (FPCA), Voter Registration and Absentee Ballot Request, Standard Form 76 (rev. 08/11)~~
- ~~Federal Write in Absentee Ballot (FWAB), Voter's Declaration/Affirmation, Standard Form 186 (rev. 08/11)~~
- ~~Envelope B for Statement of UOCAVA Absentee Voter, 42 USC 1973ff 1(b) (rev. 5/04)~~
- ~~Envelope B for Statement of Absentee Voter, SBE 706-2 (rev. 7/03)~~
- [Annual Absentee Ballot Application, SBE-703.1 \(rev. 7/13\)](#)
- [Virginia Absentee Ballot Application Form, SBE-701 \(rev. 7/13\)](#)
- [Envelope B - Ballot - Statement of Absentee Voter \(undated\)](#)

VA.R. Doc. No. R14-3930; Filed June 10, 2014, 4:13 p.m.



TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Final Regulation

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

Title of Regulation: **14VAC5-200. Rules Governing Long-Term Care Insurance (amending 14VAC5-200-65).**

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

Effective Date: January 1, 2015.

Agency Contact: Robert Grissom, Chief Insurance Market Examiner, Life and Health Division, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9152, FAX (804) 371-9944, or email bob.grissom@scc.virginia.gov.

Summary:

The amendments enhance the mailing notice provisions to long-term care insurance policyholders or designees. The current rules require that notice only be mailed by first class United States mail. The amendments (i) require that long-term care insurance carriers provide the policyholder

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or certificateholder, as well as a person designated by the policyholder or certificateholder, notice of lapse or termination of the policy or certificate for nonpayment of premium at least 30 days prior to the effective date of such lapse or termination; (ii) expand the notice mailing provisions to allow mailing by one of several means; and (iii) require the insurance carrier to retain evidence of mailing the notice for at least three years from the date of the notice.

AT RICHMOND, JUNE 4, 2014

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2014-00019

Ex Parte: In the matter of
Amending the Rules Governing
Long-Term Care Insurance

ORDER ADOPTING RULES

By Order to Take Notice ("Order") entered February 11, 2014, all interested persons were ordered to take notice that subsequent to March 31, 2014, the State Corporation Commission ("Commission") would consider the entry of an order to adopt amendments to the Rules Governing Long-Term Care Insurance at Chapter 200 of Title 14 of the Virginia Administrative Code specifically set forth at 14 VAC 5-200-65, Unintentional lapse ("Rules"). These amendments were proposed by the Bureau of Insurance ("Bureau").

The amendments to 14 VAC 5-200-65 were proposed to enhance the mailing of notice of lapse or termination provisions to long-term care insurance policyholders and/or designees in order to protect such policyholders and/or designees from unintentionally lapsing their long-term care policies due to nonpayment of premium. The current rules require that notice of lapse or termination only be mailed by first class United States mail. The proposed amendments require that long-term care insurance carriers provide the policyholder or certificateholder, as well as a person designated by the policyholder or certificateholder, notice of lapse or termination of the policy or certificate for nonpayment of premium at least 30 days prior to the effective date of such lapse or termination. They also specify that notice of lapse or termination may be mailed by one of several means and that carriers must retain evidence of mailing the required notices. These proof-of-mailing provisions will assist with determining whether a notice of lapse or termination was properly sent.

The Order required that on or before March 31, 2014, any person requesting a hearing on the amendments to 14 VAC 5-200-65 shall have filed such request for hearing with the Clerk of the Commission ("Clerk"). No request for a hearing was filed with the Clerk.

The Order also required all interested persons to file their comments in support of or in opposition to the amendments to

14 VAC 5-200-65 on or before March 31, 2014. Eleven residents of the Commonwealth of Virginia, as well as AARP Virginia, the Alzheimer's Association, the American Council of Life Insurers, and the Virginia Poverty Law Center filed timely comments with the Clerk. The Bureau provided a response to these comments, which it filed with the Clerk on May 12, 2014 ("Response").

As a result of these comments received, the Bureau recommended in its Response that the proposed amendments to 14 VAC 5-200-65 be further revised as follows: amend 14 VAC 5-200-65 A 3 b and 14 VAC 5-200-65 A 3 c to provide for proof of mailing to specifically identified recipients obtained from the commercial delivery service or United States Postal Service, respectively. This amendment will assist in determining whether a notice of lapse or termination was properly sent to specified recipients.

The Bureau recommends that 14 VAC 5-200-65 be adopted as revised.

NOW THE COMMISSION, having considered this matter, the filed comments, the Bureau's response to the comments, and the Bureau's recommendation to amend and revise 14 VAC 5-200-65, is of the opinion that 14 VAC 5-200-65 should be adopted as amended and revised.

Accordingly, IT IS ORDERED THAT:

- (1) The amendments and revisions to the Rules Governing Long-Term Care Insurance at Chapter 200 of Title 14 of the Virginia Administrative Code, specifically set forth at 14 VAC 5-200-65, Unintentional lapse, which Rules are attached hereto and made a part hereof, are hereby ADOPTED to be effective January 1, 2015.
- (2) AN ATTESTED COPY hereof, together with a copy of the adopted, amended and revised Rules shall be sent by the Clerk to Althelia P. Battle, Deputy Commissioner, Bureau of Insurance, State Corporation Commission, who forthwith shall give further notice of the adopted, amended and revised Rules by mailing a copy of this Order, including a clean copy of the revised 14 VAC 5-200-65 to all companies licensed by the Commission to write long-term care insurance in the Commonwealth of Virginia, as well as all interested persons.
- (3) The Commission's Division of Information Resources shall cause a copy of this Order, together with the adopted, amended and revised 14 VAC 5-200-65, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.
- (4) The Commission's Division of Information Resources shall make available this Order and the attached adopted, amended and revised 14 VAC 5-200-65, on the Commission's website: <http://www.scc.virginia.gov/case>.
- (5) The Bureau shall file with the Clerk an affidavit of compliance with the notice requirements of Ordering Paragraph (2) above.

14VAC5-200-65. Unintentional lapse.

A. Each insurer offering long-term care insurance shall, as a protection against unintentional lapse, comply with the following:

1. Notice before lapse or termination. No individual long-term care policy or certificate shall be issued until the insurer has received from the applicant either a written designation of at least one person, in addition to the applicant, who is to receive notice of lapse or termination of the policy or certificate for nonpayment of premium, or a written waiver dated and signed by the applicant electing not to designate additional persons to receive notice. The applicant has the right to designate at least one person who is to receive the notice of termination, in addition to the insured. Designation shall not constitute acceptance of any liability on the third party for services provided to the insured. The form used for the written designation must provide space clearly designated for listing at least one person. The designation shall include each person's full name and home address. In the case of an applicant who elects not to designate an additional person, the waiver shall state: "Protection against unintended lapse. I understand that I have the right to designate at least one person other than myself to receive notice of lapse or termination of this long-term care insurance policy for nonpayment of premium. I understand that notice will not be given until 30 days after a premium is due and unpaid. I elect NOT to designate a person to receive this notice."

The insurer shall notify the insured in writing of the right to change this written designation, no less often than once every two years.

2. When the policyholder or certificateholder pays premium for a long-term care insurance policy or certificate through a payroll or pension deduction plan, the requirements contained in subdivision 1 of this subsection need not be met until 60 days after the policyholder or certificateholder is no longer on such a payment plan. The application or enrollment form for such policies or certificates shall clearly indicate the payment plan selected by the applicant.

3. Lapse or termination for nonpayment of premium. No individual long-term care policy or certificate shall lapse or be terminated for nonpayment of premium unless the insurer, at least 30 days before the effective date of the lapse or termination, has given notice to the insured and to those persons designated pursuant to subdivision 1 of this subsection, at the address provided by the insured for purposes of receiving notice of lapse or termination. ~~Notice shall be given by first class United States mail, postage prepaid; and notice~~ No notice shall be effective unless it has been mailed in accordance with one of the following:

a. The notice is sent by certified mail, or the insurer obtains a certificate of mailing by the United States Postal Service;

b. The notice is sent by a commercial delivery service, and the insurer [~~shall (i) obtain~~ obtains] at the time of mailing a written receipt from the service showing the date of mailing [~~and,~~] the number of items mailed [,] and [~~(ii) retain a mailing list showing~~] the name and address of the insured and [~~of~~] those persons designated pursuant to subdivision 1 of this subsection to whom the [~~notices were~~ notice was] mailed [~~together with a signed statement by the insurer that the written receipt from the service corresponds to the mailing list retained by the insurer~~]; or

c. The notice is sent by first-class United States mail, and the insurer [~~shall (i) obtain~~ obtains] at the time of mailing a written receipt from the United States Postal Service showing the date of mailing [~~and,~~] the number of items mailed [,] and [~~(ii) retain a mailing list showing~~] the name and address of the insured and [~~of~~] those persons designated pursuant to subdivision 1 of this subsection to whom the [~~notices were~~ notice was] mailed.

Notification shall also be provided to the agent of record of the insured, if any, within 72 hours after the notice has been mailed to the insured and those persons designated pursuant to subdivision 1 of this subsection.

There is a presumption that notice is delivered five days after the date [~~that certified mail, commercial delivery service mail, or first class United States mail is sent, the date of a certificate of mailing, or the date that notice was returned as undeliverable~~ of mailing, as evidenced in the written receipt obtained by the insurer pursuant to subdivision 3 a, b, or c of this subsection]. The insurer shall retain [any and all] evidence of mailing the notice, including the [~~street address list~~] of [~~the~~] recipients, as applicable, and [~~the content of the notification~~ a copy of the notice], for at least three years following the date of notice. Notice may not be given until 30 days after a premium is due and unpaid. ~~Notice shall be deemed to have been given as of five days after the date of mailing.~~

B. Reinstatement. In addition to the requirement in subsection A of this section, a long-term care insurance policy or certificate shall include a provision that provides for reinstatement of coverage in the event of lapse if the insurer is provided proof that the policyholder or certificateholder was cognitively impaired or had a loss of functional capacity before the grace period contained in the policy expired. This option shall be available to the insured if requested within five months after termination and shall allow for the collection of past due premium, where appropriate. The standard of proof of cognitive impairment or loss of functional capacity shall not be more stringent than the benefit eligibility criteria on cognitive impairment or the loss of functional capacity contained in the policy and certificate.

VA.R. Doc. No. R14-3968; Filed June 4, 2014, 4:19 p.m.

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Proposed Regulation

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

Title of Regulation: 14VAC5-211. Rules Governing Health Maintenance Organizations (amending 14VAC5-211-20, 14VAC5-211-70, 14VAC5-211-80, 14VAC5-211-90, 14VAC5-211-130, 14VAC5-211-160 through 14VAC5-211-190, 14VAC5-211-210 through 14VAC5-211-240; adding 14VAC5-211-165; repealing 14VAC5-211-60, 14VAC5-211-100, 14VAC5-211-110, 14VAC5-211-120, 14VAC5-211-200, 14VAC5-211-260).

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

Public Hearing Information: A public hearing will be held upon request.

Public Comment Deadline: August 1, 2014.

Agency Contact: Robert Grissom, Chief Insurance Market Examiner, Life and Health Division, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9152, FAX (804) 371-9944, or email bob.grissom@scc.virginia.gov.

Summary:

The amendments remove conversion requirements, modify point-of-service benefits, and establish "reasonable assurance" criteria to conform to new provisions of the Code of Virginia enacted by the 2014 General Assembly. In addition, the amendments incorporate various new state statutory requirements, including those that appear in §§ 38.2-3444, 38.2-3451, and 38.2-3452 of the Code of Virginia and safeguard against potential conflicts between the rules and the provisions of the Affordable Care Act.

AT RICHMOND, JUNE 4, 2014

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2014-00118

Ex Parte: In the matter of
Amending the Rules Governing
Health Maintenance Organizations

ORDER TO TAKE NOTICE

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

appropriate for the administration and enforcement of Title 38.2 of the Code.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code are set forth in Title 14 of the Virginia Administrative Code. A copy may also be found at the Commission's website: <http://www.scc.virginia.gov/boi/laws.aspx>.

The Bureau of Insurance ("Bureau") has submitted to the Commission proposed amendments to rules set forth in Chapter 211 of Title 14 of the Virginia Administrative Code, entitled Rules Governing Health Maintenance Organizations, 14 VAC 5-211-10 et seq. ("Rules"), which amend the Rules at 14 VAC 5-211-20, 14 VAC 5-211-70 through 14 VAC 5-211-90, 14 VAC 5-211-130, 14 VAC 5-211-160 through 14 VAC 5-211-190, 14 VAC 5-211-210 through 14 VAC 5-211-240; add new Rules at 14 VAC 5-211-165; and repeal the Rules at 14 VAC 5-211-60, 14 VAC 5-211-100 through 14 VAC 5-211-120, 14 VAC 5-211-200, and 14 VAC 5-211-260.

The amendments to Chapter 211 are necessary to conform the Rules to new provisions of the Code passed by the 2014 General Assembly that remove conversion of coverage requirements, modify point-of-service benefits, and establish "reasonable assurance" criteria. In addition, the amendments to the Rules incorporate various new state statutory requirements, including those that appear in §§ 38.2-3444, 38.2-3451, and 38.2-3452 of the Code and safeguard against potential conflicts between the Rules and the provisions of the Affordable Care Act.

NOW THE COMMISSION is of the opinion that the proposed amendments submitted by the Bureau to amend the Rules at 14 VAC 5-211-20, 14 VAC 5-211-70 through 14 VAC 5-211-90, 14 VAC 5-211-130, 14 VAC 5-211-160 through 14 VAC 5-211-190, 14 VAC 5-211-210 through 14 VAC 5-211-240; add new Rules at 14 VAC 5-211-165; and repeal the Rules at 14 VAC 5-211-60, 14 VAC 5-211-100 through 14 VAC 5-211-120, 14 VAC 5-211-200, and 14 VAC 5-211-260, should be considered for adoption.

Accordingly, IT IS ORDERED THAT:

(1) The proposal to amend the Rules at 14 VAC 5-211-20, 14 VAC 5-211-70 through 14 VAC 5-211-90, 14 VAC 5-211-130, 14 VAC 5-211-160 through 14 VAC 5-211-190, 14 VAC 5-211-210 through 14 VAC 5-211-240; add new Rules at 14 VAC 5-211-165; and repeal the Rules at 14 VAC 5-211-60, 14 VAC 5-211-100 through 14 VAC 5-211-120, 14 VAC 5-211-200, and 14 VAC 5-211-260, is attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to consider the amendments to Chapter 211 of Title 14, shall file such comments or hearing request on or before August 1, 2014, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Interested persons

desiring to submit comments electronically may do so by following the instructions at the Commission's website: <http://www.scc.virginia.gov/case>. All comments shall refer to Case No. INS-2014-00118.

(3) If no written request for a hearing on the proposal to amend Chapter 211 of Title 14 is received on or before August 1, 2014, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may amend the Rules.

(4) AN ATTESTED COPY hereof, together with a copy of the proposal to amend the Rules, shall be sent by the Clerk of the Commission to the Bureau in care of Deputy Commissioner Althelia P. Battle, who forthwith shall give further notice of the proposal to amend the Rules by mailing a copy of this Order, together with the proposal, to all health maintenance organizations licensed by the Commission, and to all interested persons.

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

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

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

(8) This matter is continued.

14VAC5-211-20. Definitions.

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

"ACA" means the Patient Protection and Affordable Care Act (P.L. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (P.L. 111-152) and any federal regulations issued pursuant thereto.

"Allowable charge" means the amount from which the health maintenance organization's payment to a provider for any covered item or service is determined before taking into account the enrollee's cost sharing.

"Basic health care services" means in-area and out-of-area emergency services, inpatient hospital and physician care, outpatient medical services, laboratory and radiologic services, and preventive health services as further described in 14VAC5-211-160 and mental health and substance use disorder services, or all essential health benefits required under § 38.2-3451 of the Code of Virginia. "Basic health care services" also means limited treatment of mental illness and substance abuse in accordance with the minimum standards as may be prescribed by the commission, which shall not exceed the level of services mandated for insurance carriers

~~pursuant to Chapter 34 (§ 38.2-3400 et seq.) of Title 38.2 of the Code of Virginia.~~ In the case of a health maintenance organization that has contracted with this Commonwealth to furnish basic health care services to recipients of medical assistance under Title XIX of the Social Security Act (42 USC § 1396 et seq.) pursuant to § 38.2-4320 of the Code of Virginia, the basic health care services to be provided by the health maintenance organization to program recipients may differ from the basic health care services required by this chapter to the extent necessary to meet the benefit standards prescribed by the state plan for medical assistance services authorized pursuant to § 32.1-325 of the Code of Virginia.

"Coinsurance" means a copayment, expressed as a percentage of the allowable charge for a specific health care service.

"Commission" means the State Corporation Commission.

~~"Conversion contract" means an individual contract that the health maintenance organization issues after a conversion option has been exercised.~~

"Copayment" means an amount an enrollee is required to pay in order to receive a specific health care service.

"Cost sharing" means any coinsurance, copayment, or deductible.

"Deductible" means ~~an~~ a dollar amount an enrollee is required to pay out of pocket before the health care plan ~~begins to pay~~ pays the costs associated with certain health care services.

"Dependent" means the spouse, child, or other class of persons of a subscriber or eligible employee, subject to the applicable terms of the policy, contract, or plan.

"Emergency services" shall have the same meaning as § 38.2-3438 of the Code of Virginia and means those health care services that are rendered by affiliated or nonaffiliated providers after the sudden onset of a medical condition that manifests itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected by a prudent layperson who possesses an average knowledge of health and medicine to result in (i) serious jeopardy to the mental or physical health of the individual, (ii) danger of serious impairment of the individual's bodily functions, (iii) serious dysfunction of any of the individual's bodily organs, or (iv) in the case of a pregnant woman, serious jeopardy to the health of the fetus. ~~Emergency services provided within the plan's service area shall include covered health care services from nonaffiliated providers only when delay in receiving care from a provider affiliated with the health maintenance organization could reasonably be expected to cause the enrollee's condition to worsen if left unattended.~~

"Enrollee" or "member" means an individual who is enrolled in a health care plan a policyholder, subscriber, participant, member, or other individual covered by a health benefit plan.

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"Essential health benefits" includes the following general categories and items and services covered within the categories in accordance with regulations issued pursuant to the ACA: (i) ambulatory patient services; (ii) emergency services; (iii) hospitalization; (iv) laboratory services; (v) maternity and newborn care; (vi) mental health and substance use disorder services; (vii) pediatric services, including oral and vision care; (viii) prescription drugs; (ix) preventive and wellness services and chronic disease management; and (x) rehabilitative and habilitative services and devices.

"Evidence of coverage" means a certificate, individual or group agreement or contract, or identification card issued in conjunction with the certificate, agreement or contract, issued to a subscriber setting out the coverage and other rights to which an enrollee is entitled.

"Excess insurance" or "stop loss insurance" means insurance issued to a health maintenance organization by an insurer licensed in this Commonwealth, on a form approved by the commission, or a risk assumption transaction acceptable to the commission, providing indemnity or reimbursement against the cost of health care services provided by the health maintenance organization.

"Exchange certified stand-alone dental plan" means a limited dental care services plan that has been approved to meet the criteria for certification pursuant to the ACA.

"Grandfathered plan" means coverage provided by a health carrier to (i) a small employer on March 23, 2010; (ii) an individual who was enrolled on March 23, 2010, including any extension of coverage to an individual who becomes a dependent of a grandfathered enrollee after March 23, 2010; or (iii) an employee who enrolls in the employer's grandfathered plan after March 23, 2010, for as long as such plan maintains that status in accordance with the ACA.

"Group contract" means a contract for health care services issued by a health maintenance organization, which by its terms limits the eligibility of subscribers and enrollees to a specified group.

"Group health plan" means an employee welfare benefit plan as defined in § 3(1) of the Employee Retirement Income Security Act of 1974 (ERISA) (29 USC § 1002(1)) to the extent that the plan provides medical care within the meaning of § 733(a) of ERISA (29 USC § 1191b(a)) to employees, including both current and former employees, or their dependents as defined under the terms of the plan directly or through insurance, reimbursement, or otherwise.

"Health benefit plan" or "health care plan" means an arrangement in which a person undertakes to provide, arrange for, pay for, or reimburse a part of the cost of health care services. A significant part of the arrangement shall consist of arranging for or providing health care services, including emergency services and services rendered by nonparticipating referral providers, as distinguished from mere indemnification against the cost of the services, on a prepaid basis. For

purposes of this chapter, a significant part shall mean at least 90% of total costs of health care services.

"Health care professional" means a physician or other health care practitioner licensed, accredited, or certified to perform specified health care services consistent with state law.

"Health care services" means the furnishing of services to an individual for the purpose of preventing, alleviating, curing, or healing human illness, injury or physical disability.

"Health insurance exchange" means a health benefit exchange established or operated in the Commonwealth pursuant to § 1311(b) of the ACA, including the Federally Facilitated Marketplace established pursuant to § 1321 of the ACA.

"Health maintenance organization" means a person who undertakes to provide or arrange for one or more health care plans. A health maintenance organization is deemed to be offering one or more managed care health insurance plans and is subject to Chapter 58 (§ 38.2-5800 et seq.) of Title 38.2 of the Code of Virginia.

"Individual health insurance coverage" means health insurance coverage offered to individuals in the individual market, but does not include coverage defined as excepted benefits. Individual health insurance coverage does not include short-term limited duration coverage.

"Individual market" means the market for health insurance coverage offered to individuals other than in connection with a group health plan.

"Large employer" means, in connection with a group health plan or health insurance coverage with respect to a calendar year and a plan year, an employer who employed an average of at least 51 employees on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year. Effective January 1, 2016, "large employer" means, in connection with a group health plan or health insurance coverage with respect to a calendar year and a plan year, an employer who employed an average of at least 101 employees on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year.

"Large group market" means the health insurance market under which individuals obtain health insurance coverage (directly or through any arrangement) on behalf of themselves (and their dependents) through a group health plan maintained by a large employer.

~~"Limited health care services" means dental care services; or vision care services; mental health services; substance abuse services; pharmaceutical services; and other services as may be determined by the commission to be limited health care services. Limited health care services shall not include hospital, medical, surgical or emergency services unless the services are provided incidental to the limited health care services set forth in the preceding sentence.~~

"Medical necessity" or "medically necessary" means appropriate and necessary health care services that are rendered for a condition which, according to generally accepted principles of good medical practice, requires the diagnosis or direct care and treatment of an illness, injury, or pregnancy-related condition, and are not provided only as a convenience.

~~"NAIC" means the National Association of Insurance Commissioners.~~

"Net worth" or "capital and surplus" means the excess of total admitted assets over the total liabilities of the health maintenance organization, provided that surplus notes shall be reported and accounted for in accordance with § 38.2-4300 of the Code of Virginia.

"Nonparticipating referral provider" means a provider who is not a participating provider but with whom a health maintenance organization has arranged, through referral by its participating providers, to provide health care services to enrollees. Payment or reimbursement by a health maintenance organization for health care services provided by nonparticipating referral providers may exceed 5.0% of total costs of health care services, only to the extent that any excess payment or reimbursement over 5.0% shall be combined with the costs for services that represent mere indemnification, with the combined amount subject to the combination of limitations set forth in this definition and in this section's definition of health care plan.

"Out-of-area services" means the health care services that the health maintenance organization ~~covers~~ may cover when its ~~members~~ enrollees are outside the geographical limits of the health maintenance organization's service area.

"Out-of-pocket maximum" means the maximum dollar amount that an enrollee is required to pay during a plan or policy year before the health benefit plan begins to pay 100% of covered basic health care services. This amount shall include deductibles, coinsurance or copayments, and any other expenditure required of an enrollee for any covered medical expense. This limit may or may not include premiums, balance billed amounts for out-of-network services, or payments for services that are not basic health care services.

"Participating provider" or "affiliated provider" means a provider who has agreed to provide health care services to enrollees and to hold those enrollees harmless from payment with an expectation of receiving payment, other than copayments or deductibles, directly or indirectly from the health maintenance organization.

"Point-of-service benefit" means a health maintenance organization's delivery system or covered benefits, or the delivery system or covered benefits of another carrier under contract or arrangement with the health maintenance organization, that permit an enrollee to receive covered items and services outside of the provider panel of the health maintenance organization under the terms and conditions of

the group contract holder's group health benefit plan with the health maintenance organization or with another carrier arranged by or under contract with the health maintenance organization and that otherwise complies with § 38.2-3407.12 of the Code of Virginia.

"Preexisting condition exclusion" means a limitation or exclusion of benefits, including a denial of coverage, based on the fact that the condition was present before the effective date of coverage, or if the coverage is denied, the date of denial, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before the effective date of coverage. "Preexisting condition exclusion" also includes a condition identified as a result of a pre-enrollment questionnaire or physical examination given to an individual, or review of medical records relating to the pre-enrollment period.

"Premium" means all moneys paid by an employer, eligible employee, or covered person as a condition of coverage from a health carrier, including fees and other contributions associated with the health benefit plan.

"Primary care health care professional" means a health care professional who provides initial and primary care to enrollees; who supervises, coordinates, and maintains continuity of patient care; and who may initiate referrals for specialist care, if referrals are a requirement of the enrollee's health care coverage.

"Provider" or "health care provider" means a physician, hospital, or other person that is licensed or otherwise authorized to furnish health care services.

"Rescission" means a cancellation or discontinuance of coverage under a health care plan that has a retroactive effect. "Rescission" does not include: (i) a cancellation or discontinuance of coverage under a health care plan if the cancellation or discontinuance of coverage has only a prospective effect, or the cancellation or discontinuance of coverage is effective retroactively to the extent it is attributable to a failure to timely pay required premiums or contributions towards the cost of coverage; or (ii) a cancellation or discontinuance of coverage when the health care plan covers active employees and, if applicable, dependents and those covered under continuation coverage provisions, if the employee pays no premiums for coverage after termination of employment and the cancellation or discontinuance of coverage is effective retroactively back to the date of termination of employment due to a delay in administrative recordkeeping.

"Service area" means a clearly defined geographic area in which the health maintenance organization has directly or indirectly arranged for the provision of health care services to be generally available and readily accessible to enrollees.

"Small employer" means in connection with a group health plan or health insurance coverage with respect to a calendar year and a plan year, an employer who employed an average of at least one but not more than 50 employees on business

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days during the preceding calendar year and who employs at least one employee on the first day of the plan year. Effective January 1, 2016, "small employer" means in connection with a group health plan or health insurance coverage with respect to a calendar year and a plan year, an employer who employed an average of at least one but not more than 100 employees on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year.

"Small group market" means the health insurance market under which individuals obtain health insurance coverage (directly or through any arrangement) on behalf of themselves (and their dependents) through a group health plan maintained by a small employer.

"Specialist" means a licensed health care provider to whom an enrollee may be referred by his primary care health care professional and who is certified or eligible for certification by the appropriate specialty board, where applicable, to provide health care services in a specialized area of health care.

"Subscriber" means a contract holder, ~~an individual enrollee, or the enrollee in an enrolled family~~ or enrollee who is responsible for payment to the health maintenance organization or on whose behalf the payment is made.

"Supplemental health care services" means health care services that may be offered by a health maintenance organization in addition to the required basic health care services.

"Surplus notes" means those instruments that meet the requirements of 14VAC5-211-40.

Part III Contract Requirements

14VAC5-211-60. Filing requirements. (Repealed.)

~~A. A contract, evidence of coverage, or amendment shall not be delivered or issued for delivery in this Commonwealth until a copy of the form or amendment has been filed with and approved by the commission pursuant to § 38.2-4306 of the Code of Virginia. The contract, evidence of coverage, or amendment shall be identified by a form number in the lower left hand corner of the first page. If the commission does not disapprove a form within 30 days of its filing, it shall be deemed approved unless the filer is notified in writing that this period is extended by the commission for an additional 30 days.~~

~~B. A schedule of charges or amendment shall not be put into effect in conjunction with a health care plan until a copy of the schedule or amendment has been filed with the commission pursuant to § 38.2-4306 of the Code of Virginia.~~

14VAC5-211-70. Conversion Continuation of coverage.

A. A health care plan shall offer to its group contract holders, for an An enrollee whose eligibility for coverage terminates under the group contract, the options to convert to an individual policy or continue coverage as set forth in this

~~section. The group contract holder shall select one of the following options: 1. Conversion of coverage within 31 days after issuance of the written notice required in subsection C of this section, but in no event beyond the 60 day period following the date of termination of the enrollee's coverage under the group contract, to an individual contract that provides benefits which, at a minimum, meet the requirements of basic or limited health care services as applicable, in accordance with this chapter. Coverage shall not be refused on the basis that the enrollee no longer resides or is employed in the health maintenance organization's service area. The conversion contract shall cover the enrollee covered under the group contract as of the date of termination of the enrollee's coverage under the group contract. Coverage shall be provided without additional evidence of insurability, and no preexisting condition limitations or exclusions may be imposed other than those remaining unexpired under the contract from which conversion is exercised. A probationary or waiting period set forth in the conversion contract shall be deemed to commence on the effective date of coverage under the original contract. 2. Continuation of shall have the opportunity to continue coverage under the existing group contract for a period of at least 12 months immediately following the date of termination of the enrollee's eligibility for coverage under the group contract. Continuation coverage shall not be applicable if the group contract holder is required by federal law to provide for continuation of coverage under its group health plan pursuant to the Consolidated Omnibus Budget Reconciliation Act (COBRA) (P.L. 99-272). Coverage shall be provided without additional evidence of insurability subject to the following requirements:~~

- ~~a. 1.~~ The application and payment for the extended coverage is made to the group contract holder within 31 days after issuance of the written notice required in subsection C of this section, but in no event beyond the 60-day period following the date of the termination of the person's eligibility;
- ~~b. 2.~~ Each premium for the extended coverage is timely paid to the group contract holder on a monthly basis during the 12-month period; and
- ~~e. 3.~~ The premium for continuing the group coverage shall be at the health care plan's current rate applicable to the group contract plus any applicable administrative fee not to exceed 2.0% of the current rate.

~~B. A ~~conversion contract~~ or continuation of coverage shall not be required to be made available when:~~

1. The enrollee is covered by or is eligible for benefits under Title XVIII of the Social Security Act (42 USC § 1395 et seq.) known as Medicare;
2. The enrollee is covered by or is eligible for substantially the same level of hospital, medical, and surgical benefits under state or federal law;

~~3.~~ 2. The enrollee is covered by substantially the same level of benefits under any policy, contract, or plan for individuals in a group;

~~4.~~ 3. The enrollee has not been continuously covered during the three-month period immediately preceding the enrollee's termination of coverage;

~~5.~~ 4. The enrollee was terminated by the health care plan for any of the reasons stated in 14VAC5-211-230 A 1, ~~2,~~ or ~~5~~ 2, or coverage was rescinded; or

~~6.~~ 5. The enrollee was terminated from a plan administered by the Department of Medical Assistance Services that provided benefits pursuant to Title XIX or XXI of the Social Security Act (42 USC § 1396 et seq. or § 1397aa et seq.).

C. The group contract holder shall provide each enrollee or other person covered under the group contract written notice of the ~~availability of the option chosen and the~~ procedures and timeframes for obtaining continuation ~~or conversion~~ of the group contract. The notice shall be provided within 14 days of the group contract holder's knowledge of the enrollee's or other covered person's loss of eligibility under the group contract.

14VAC5-211-80. Coordination of benefits.

A. A health care plan may include in its group or individual contract a provision that the value of any benefit or service provided by the health maintenance organization may be coordinated with other health insurance or health care benefits or services that are provided by other individual or group policies, group contracts, or group health care plans, including coverage provided under governmental programs, so that no more than 100% of the eligible incurred expenses is paid.

B. A health care plan shall not be relieved of its duty to provide a covered health care service to an enrollee because the enrollee is entitled to coverage under other policies, contracts, or health care plans. In the event that benefits are provided by a health care plan and another policy, contract, or health care plan, the determination of the order of benefits shall in no way restrict or impede the rendering of services required to be provided by the health care plan. The health maintenance organization shall be required to provide or arrange for the service first and then, at its option, seek coordination of benefits with any other health insurance or health care benefits or services that are provided by other ~~group~~ policies, ~~group~~ contracts, or ~~group~~ plans. Until a coordination of benefits determination is made, the enrollee shall not be held liable for the cost of covered services provided.

14VAC5-211-90. Copayments Cost sharing.

A. Except for preventive services required by § 38.2-3442 of the Code of Virginia, a health maintenance organization may require a copayment of enrollees as a condition for the receipt of a specific health care service. A copayment shall be shown

in the evidence of coverage as either a specified dollar amount or as coinsurance.

B. If the health maintenance organization has an established ~~copayment maximum~~ out-of-pocket maximum for cost sharing, it shall keep accurate records of each enrollee's ~~copayment expenses~~ cost sharing and notify the enrollee when his ~~copayment~~ out-of-pocket maximum is reached. The notification shall be given no later than 30 days after the health maintenance organization has processed sufficient claims to determine that the ~~copayment~~ out-of-pocket maximum is reached. The health maintenance organization shall not charge additional ~~copayments~~ cost sharing for the remainder of the contract or calendar year, as appropriate. The health maintenance organization shall also promptly refund to the enrollee all ~~copayments~~ cost sharing payments charged after the ~~copayment~~ out-of-pocket maximum is reached. Any maximum ~~copayment~~ out-of-pocket amount shall be shown in the evidence of coverage as a specified dollar amount, and the evidence of coverage shall clearly state the health maintenance organization's procedure for meeting the requirements of this subsection.

C. The provisions of this subsection shall not apply to any Family Access to Medical Insurance Security (FAMIS) Plan (i) authorized by the United States Centers for Medicare and Medicaid Services pursuant to Title XXI of the Social Security Act (42 USC § 1397aa et seq.) and the state plan established pursuant to Chapter 13 (§ 32.1-351 et seq.) of Title 32.1 of the Code of Virginia and (ii) underwritten by a health maintenance organization.

14VAC5-211-100. ~~Deductibles.~~ (Repealed.)

~~Except for preventive services required by § 38.2-3442 of the Code of Virginia, a health maintenance organization may require an enrollee to pay an annual deductible in accordance with § 38.2-4303 A 8 of the Code of Virginia.~~

14VAC5-211-110. ~~Description of providers.~~ (Repealed.)

~~A list of the names and locations of all participating providers shall be provided in accordance with § 38.2-3407.10 G of the Code of Virginia.~~

14VAC5-211-120. ~~Description of service area.~~ (Repealed.)

~~A description of the service area in which the health maintenance organization shall provide health care services shall be provided to subscribers by the health maintenance organization at the time of enrollment or at the time the contract or evidence of coverage is issued and shall be made available upon request or at least annually.~~

14VAC5-211-130. Extension of benefits for total disability.

A. A group contract issued by a health maintenance organization in the large group market shall contain a reasonable extension of benefits upon discontinuance of the group contract with respect to ~~members~~ enrollees who become totally disabled while enrolled under the contract and who continue to be totally disabled at the date of discontinuance of the contract.

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B. Upon payment of premium, coverage shall remain in full force and effect for a reasonable period of time not less than 180 days, or until the ~~member~~ enrollee is no longer totally disabled, or a succeeding carrier elects to provide replacement coverage to that ~~member~~ enrollee without limitation as to the disabling condition.

~~C. Upon termination of the extension of benefits, the enrollee shall have the right to convert or continue coverage as provided for in 14VAC5-211-70.~~

~~D. C.~~ The provisions of this section shall not apply to contracts entered into by any health maintenance organization that has contracted with the Virginia Department of Medical Assistance Services to provide health care services to recipients of medical assistance services pursuant to Title XIX of the Social Security Act, as amended, or to individuals covered by the Family Access to Medical Insurance Security Insurance (FAMIS) plan developed pursuant to Title XXI of the Social Security Act, as amended.

Part IV Services

14VAC5-211-160. Basic health care services.

A. A health maintenance organization that offers coverage in the large group market shall provide, or arrange for the provision of, as a minimum, basic health care services. These services shall include the following:

1. Inpatient hospital and physician services. Medically necessary hospital and physician services affording inpatient treatment to enrollees in a licensed hospital for a minimum of 90 days per contract or calendar year. Hospital services include room and board; general nursing care; special diets when medically necessary; use of operating room and related facilities; use of intensive care unit and services; x-ray, laboratory, and other diagnostic tests; drugs, medications, biologicals, anesthesia, and oxygen services; special duty nursing when medically necessary; short-term physical therapy, radiation therapy, and inhalation therapy; administration of whole blood and blood plasma; and short-term rehabilitation services. Physician services include medically necessary health care services performed, prescribed, or supervised by physicians within a hospital for registered bed patients.

2. Outpatient medical services. Medically necessary health care services performed, prescribed or supervised by physicians for enrollees, which may be provided in a nonhospital based health care facility, at a hospital, in a physician's office, or in the enrollee's home, and shall include consultation and referral services. Outpatient medical services shall also include diagnostic services, treatment services, short-term physical therapy and rehabilitation services the provision of which the health maintenance organization determines can be expected to result in the significant improvement of ~~a member's~~ an enrollee's condition within a period of 90 days, laboratory services, x-ray services, and outpatient surgery.

3. Diagnostic laboratory and diagnostic and therapeutic radiologic services.

~~4. Preventive health services. Services provided with the goal of early detection and minimization of the ill effects and causes of disease or disability, including well child care from birth, eye and ear examinations for children age 17 and under to determine the need for vision and hearing correction, periodic health evaluations, and immunizations shall be provided in accordance with the provisions of § 38.2-3442 of the Code of Virginia.~~

5. In-area and out-of-area emergency services, including medically necessary ambulance services, available on an inpatient or an outpatient basis 24 hours per day, seven days per week.

6. Mental health and substance use disorder services as follows:

~~a. Medically necessary services for the treatment of biologically based mental illnesses as defined in § 38.2-3412.1:01 of the Code of Virginia; and~~

~~b. Except for a group contract issued to a large employer as defined in § 38.2-3431 of the Code of Virginia, services for the treatment of all other mental health and substance use disorders shall at a minimum include:~~

~~(1) Inpatient services or partial hospitalization for an adult for a minimum period of 20 days per enrollee per contract year;~~

~~(2) Inpatient services or partial hospitalization for a child or adolescent for a minimum period of 25 days per enrollee per contract year; and~~

~~(3) Twenty outpatient visits per enrollee per contract year. A medication management visit shall be covered in the same manner as a medication management visit for the treatment of a physical illness and shall not be counted as an outpatient treatment visit in the calculation of the benefit set forth in this subdivision.~~

~~The limits of the benefits set forth in this subdivision shall not be more restrictive than for any other illness, however, the coinsurance applicable to any outpatient visit beyond the first five visits covered per contract year shall not exceed 50%. If all covered expenses for outpatient services apply toward any deductible required by a policy or contract, the visit shall not count toward the outpatient visit benefit maximum set forth in the policy or contract. Definitions set forth in § 38.2-3412.1 of the Code of Virginia shall be applicable to terms used in this subsection.~~

~~Group contracts issued to a large employer as defined in § 38.2-3431 of the Code of Virginia shall provide mental health and substance use disorder benefits shall be provided on parity with the medical and surgical benefits contained in the plan in accordance with the Mental Health Parity and Addiction Equity Act of 2008 (P.L. 110-343).~~

7. Medically necessary dental services as a result of accidental injury, regardless of the date of such injury. Contracts may require that treatment be sought within 60 days of the accident for injuries occurring on or after the effective date of coverage.

B. A health maintenance organization that offers coverage in the individual or small group market shall provide, or arrange for the provision of, as a minimum, the essential health benefits required under § 38.2-3451 of the Code of Virginia.

14VAC5-211-165. Point-of-service benefits.

A. A health maintenance organization shall offer point-of-service benefits to its enrollees in the large group market in accordance with the provisions of § 38.2-3407.12 of the Code of Virginia.

B. If point-of-service benefits are chosen, a description of the procedure for obtaining point-of-service benefits and notification requirements before obtaining these benefits shall be included in the evidence of coverage as well as a description of the restrictions or limitations on such benefits.

14VAC5-211-170. Supplemental health care services.

In addition to the basic health care services required to be provided in 14VAC5-211-160, a health maintenance organization may offer to its enrollees any supplemental health care services it chooses to provide, as allowed by applicable law. These services may be limited as to time and cost and are not subject to copayment and deductible limitations not be subject to cost sharing limitations or out-of-pocket or deductible maximums that are applicable to basic health care services.

14VAC5-211-180. Out-of-area services.

In addition to out-of-area emergency services required to be provided as basic health care services, a health maintenance organization may offer to its enrollees indemnity benefits covering out-of-area services to its enrollees. A description of the procedure for obtaining out-of-area services and notification requirements before obtaining these services shall be included in the evidence of coverage as well as a description of restrictions or limitations on out-of-area services. Except for out-of-area emergency services, a health care plan that requires the enrollee to contact the health maintenance organization before obtaining out-of-area services shall provide for telephone consultation on a 24-hour per day, seven-day per week basis.

14VAC5-211-190. Limited health care services.

A. A health maintenance organization offering only may offer limited health care services shall provide, or arrange for the provision of, at least one of the following services: in either dental care or vision care services.

1. Dental care services;
2. Vision care services;
3. Mental health services;

4. Substance abuse services;

5. Pharmaceutical services;

6. Other services as may be determined by the commission.

B. A health maintenance organization shall be reasonably assured that the enrollee has obtained pediatric oral essential health benefits from an exchange-certified stand-alone dental plan for coverage purchased in the individual or small group markets outside the health insurance exchange. A health maintenance organization shall be deemed to have obtained reasonable assurance that such pediatric oral health benefits are provided to the enrollee if:

1. At least one qualified dental plan, as defined in § 38.2-3455 of the Code of Virginia, (i) offers the minimum essential pediatric oral health benefits that are required under the ACA and (ii) is available for purchase by a subscriber or enrollee; and

2. The health maintenance organization prominently discloses, in a form approved by the commission, at the time that it offers the health benefit plan that the plan does not provide ACA-required minimum essential pediatric oral health benefits.

14VAC5-211-200. Essential and standard benefit plans. (Repealed.)

~~Health maintenance organizations offering the essential or standard health benefit plans shall offer the benefits specified in 14VAC5-234-50 and 14VAC5-234-60 for these plans.~~

Part V

Disclosure and Prohibitions

14VAC5-211-210. Disclosure Evidence of coverage requirements.

~~A. A subscriber~~ An enrollee shall be entitled to receive an evidence of coverage under a health care plan provided by a health maintenance organization established or operating in this Commonwealth, including any amendments to it. The evidence of coverage excluding the identification card shall be delivered or issued for delivery within a reasonable period of time after enrollment, but not more than 60 days from the later of the effective date of coverage or the date on which the health maintenance organization is notified of enrollment. The An identification card shall be delivered or issued for delivery within 15 days from the later of the effective date of coverage or the date on which the health maintenance organization is notified of enrollment.

B. An evidence of coverage delivered or issued for delivery shall contain the following:

1. The name, address, and telephone number of the health maintenance organization;
2. The health care services and other benefits to which the enrollee is entitled under the health care plan;
3. Exclusions or limitations on the services, kind of services, benefits, or kind of benefits to be provided,

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including any ~~deductible or copayment~~ cost sharing features;

4. Where and in what manner information is available as to how services may be obtained;

5. The effective date and the term of coverage;

6. The total amount of payment for health care services and any indemnity or service benefits that the enrollee is obligated to pay with respect to individual contracts, or an indication whether the plan is contributory or noncontributory for group certificates;

7. A description of the health maintenance organization's method of resolving enrollee complaints, including a description of any arbitration procedure if complaints may be resolved through a specified arbitration agreement;

8. A list of providers and a description of the service area that shall be provided with the evidence of coverage if the information is not given at the time of enrollment;

9. The right of an enrollee ~~to convert to an individual contract issued by the health maintenance organization or to continue group coverage, as applicable,~~ including the terms and conditions under which coverage may be ~~converted or~~ continued;

10. The terms and conditions under which coverage may be terminated or rescinded;

11. Coordination of benefits provisions, if applicable;

12. Assignment of benefits restrictions in the contract;

13. The health maintenance organization's procedure for filing claims, including any requirements for notifying the health maintenance organization of a claim and requirements for filing proof of loss;

14. The health maintenance organization's eligibility requirements, including the conditions under which dependents may be added and ~~the~~ any limiting age for dependents ~~and subscribers~~ covered under an individual or group contract;

~~15. An incontestability clause that states that all statements made by a subscriber shall be considered representations and not warranties and that no statement shall be the basis for terminating coverage or denying a claim after the contract has been in force for two years from its effective date, unless the contract can be rescinded under § 38.2-3441 of the Code of Virginia;~~

~~16. 15.~~ A provision that the contract or evidence of coverage and any amendments to it constitutes the entire contractual agreement between the parties involved and that no portion of the charter, bylaws, or other document of the health maintenance organization shall constitute part of the contract unless it is set forth in full in the contract;

~~17. 16.~~ Except for an evidence of coverage that does not provide for the periodic payment of premium or for the payment of any premium, a provision that the contract holder is entitled to a grace period of not less than 31 days

for the payment of any premium due except the first premium. The provision shall also state that during the grace period the coverage shall continue in force unless the contract holder has given the health maintenance organization written notice of discontinuance in accordance with the terms of the contract and in advance of the date of discontinuance. The contract may provide that the contract holder shall be liable to the health maintenance organization for the payment of a pro rata premium for the time the contract was in force during the grace period; and ~~18. 17.~~ Terms and conditions related to the designation of a primary care health care professional.

C. A copy of the evidence of coverage shall be delivered to each enrollee and may be delivered electronically in accordance with the Uniform Electronic Transactions Act (§ 59.1-479 et seq. of the Code of Virginia).

14VAC5-211-220. Exclusions for preexisting Preexisting conditions and waiting periods.

~~In addition to the limitations on preexisting conditions exclusions set forth in §§ 38.2-3432.3, 38.2-3444, and 38.2-3514.1 of the Code of Virginia, a health maintenance organization shall not exclude or limit health care services for a preexisting condition when the enrollee transfers coverage from one health care plan to another during open enrollment or when the enrollee converts coverage under his conversion option, except to the extent that a preexisting condition limitation or exclusion remains unexpired under the original contract. Any required probationary or~~ A. In accordance with § 38.2-3444 of the Code of Virginia, a health maintenance organization shall not limit or exclude coverage for an enrollee by imposing a preexisting condition exclusion. This section shall apply to any health maintenance organization providing a health benefit plan in the individual or group markets, including a grandfathered group health plan, but not including a grandfathered plan for individual health insurance coverage.

B. A waiting period not to exceed 90 days may be allowed for a group health plan or excepted benefits policies that do not provide for essential health benefits. Any waiting period is deemed to commence on the effective date for individual coverage, and on the enrollment date of the contract for group coverage or the effective date of the policy, as applicable.

14VAC5-211-230. Reasons for termination or rescission.

A. A health maintenance organization shall not terminate an enrollee's coverage for services provided under a health maintenance organization contract except for one or more of the following reasons:

1. Failure to pay the ~~amounts due under the contract, including failure to pay a premium~~ required by the contract as shown in the contract or evidence of coverage;

2. ~~Material violation of the terms of the contract~~ The policyholder has performed an act or practice that

constitutes fraud or made an intentional misrepresentation of material fact in connection with the coverage;

~~3. Failure to meet the eligibility requirements under a group contract, provided that a conversion or continuation option is offered. The group contract holder has failed to comply with a material plan provision relating to employer contribution or group participation rules; or~~

~~4. Termination~~ Discontinuance of the group contract under which the enrollee was covered; ~~or,~~

~~5. Other good cause as agreed upon in the contract between the health care plan and the group or the subscriber. Coverage shall not be terminated on the basis of the status of the enrollee's health or because the enrollee has exercised his rights under the plan's complaint or appeals system by registering a complaint against the health maintenance organization. Failure of the enrollee and the primary care health care professional to establish a satisfactory relationship shall not be deemed good cause unless the health maintenance organization has in good faith made an effort to provide the opportunity for the enrollee to establish a satisfactory patient physician relationship, including assigning the enrollee to other primary care health care professionals from among the organization's participating providers.~~

B. A health maintenance organization shall not terminate coverage for services provided under a contract without giving the subscriber written notice of termination, effective at least 31 days from the date of mailing or, if not mailed, from the date of delivery, except that:

1. For termination due to nonpayment of premium, the grace period as required in 14VAC5-211-210 B 47 16 shall apply;

2. For termination due to nonpayment of premium by an employer, the notice provisions required in § 38.2-3542 C of the Code of Virginia shall apply; or

~~3. For termination due to activities that endanger the safety and welfare of the health maintenance organization or its employees or providers, immediate notice of termination may be given; or~~

4. 3. For termination due to change of eligibility status, immediate notice of termination may be given.

C. A health maintenance organization shall not rescind coverage for services provided under a contract unless the enrollee or a person seeking coverage on behalf of an enrollee performs an act, practice, or omission that constitutes fraud, or the person makes an intentional misrepresentation of material fact, as prohibited by the terms of the plan. Notice of any rescission shall comply with the requirements of § 38.2-3441 of the Code of Virginia. Upon rescission, a health maintenance organization shall promptly refund all premiums less any claims paid.

14VAC5-211-240. Unfair discrimination.

~~A. A health maintenance organization shall not unfairly discriminate against an enrollee on the basis of the age, sex, health status, race, color, creed, national origin, ancestry, religion, marital status, or lawful occupation of the enrollee, or because of the frequency of utilization of services by the enrollee. However, nothing shall prohibit a health maintenance organization from setting rates or establishing a schedule of charges in accordance with relevant actuarial data.~~

~~B. A health maintenance organization shall not unreasonably discriminate against physicians as a class or any class of providers listed in § 38.2-4221 of the Code of Virginia when contracting for specialty or referral practitioners, provided the plan covers services that the class of providers are licensed to render. Nothing in this section shall prevent a health maintenance organization from selecting, in the judgment of the health maintenance organization, the number of providers necessary to render the services offered by the health maintenance organization, or from limiting certain specialty services to particular types of practitioners, provided these services are within the scope of their license.~~

14VAC5-211-260. Penalties. (Repealed.)

~~Any violation of this chapter shall be punished pursuant to § 38.2-218 of the Code of Virginia and any other applicable law of this Commonwealth.~~

VA.R. Doc. No. R14-3888; Filed June 4, 2014; 3:38 p.m.

Proposed Regulation

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

Title of Regulation: **14VAC5-234. Rules Governing Essential and Standard Health Benefit Plan Contracts (repealing 14VAC5-234-10 through 14VAC5-234-100).**

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

Public Hearing Information: A public hearing will be held upon request.

Public Comment Deadline: August 1, 2014.

Agency Contact: Robert Grissom, Chief Insurance Market Examiner, Life and Health Division, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9152, FAX (804) 371-9944, or email bob.grissom@scc.virginia.gov.

Summary:

In 1992, the Essential Health Services Panel established a requirement to offer all small employers essential and

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standard health benefit plans that covered various minimum health benefits. 14VAC5-234 was promulgated as a result of this requirement, and its repeal is necessary because the plan requirements for essential and standard health benefit plan contracts have been preempted by the provisions of the Affordable Care Act (P.L. 111-148, as amended), which require health plans offered in the individual and small group markets to provide a comprehensive set of benefits referred to as "essential health benefits." These essential health benefits are codified at § 38.2-3451 of the Code of Virginia. In addition, the 2013 General Assembly deleted references to the requirement for essential and standard health benefit plans contained in § 38.2-3431 of the Code of Virginia.

AT RICHMOND, JUNE 4, 2014

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2014-00117

Ex Parte: In the matter of Repealing the
Rules Governing Essential and Standard
Health Benefit Plan Contracts

ORDER TO TAKE NOTICE

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

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code are set forth in Title 14 of the Virginia Administrative Code. A copy may also be found at the Commission's website: <http://www.scc.virginia.gov/case/boi/laws.aspx>.

The Bureau of Insurance ("Bureau") has submitted to the Commission a proposal to repeal the rules set forth in Chapter 234 of Title 14 of the Virginia Administrative Code, entitled Rules Governing Essential and Standard Health Benefit Plan Contracts, 14 VAC 5-234-10 et seq. ("Rules").

In 1992, the Essential Health Services Panel established a requirement to offer all small employers essential and standard health benefit plans that covered various minimum health benefits. Chapter 234 was promulgated as a result of this requirement. The repeal of Chapter 234 is necessary because the plan requirements for essential and standard health benefit plan contracts have been preempted by the provisions of the Affordable Care Act (P.L. 111-148, as amended), which require health plans offered in the individual and small group markets to provide a comprehensive set of benefits referred to as "essential health benefits." These essential health benefits are codified at § 38.2-3451 of the Code. In addition, the 2013 General

Assembly deleted references to the requirement for essential and standard health benefit plans contained in § 38.2-3431 of the Code.

NOW THE COMMISSION is of the opinion that Chapter 234 of Title 14 of the Virginia Administrative Code should be considered for repeal.

Accordingly, IT IS ORDERED THAT:

(1) The proposal that Chapter 234 of Title 14 of the Virginia Administrative Code be repealed is attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to oppose repealing Chapter 234 of Title 14 of the Virginia Administrative Code, shall file such comments or hearing request on or before August 1, 2014, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website: <http://www.scc.virginia.gov/case>. All comments shall refer to Case No. INS-2014-00117.

(3) If no written request for a hearing on the proposal to repeal Chapter 234 of Title 14 of the Virginia Administrative Code is received on or before August 1, 2014, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may repeal the Rules.

(4) AN ATTESTED COPY hereof, together with a copy of the proposal to repeal the Rules, shall be sent by the Clerk of the Commission to the Bureau in care of Deputy Commissioner Althelia P. Battle, who forthwith shall give further notice of the proposal to repeal the Rules by mailing a copy of this Order, together with the proposal, to all insurers, health services plans, fraternal benefit societies, and health maintenance organizations licensed to issue policies of accident and sickness insurance, subscription contracts, or evidences of coverage in this Commonwealth; and every multiple employer welfare arrangement operating in this Commonwealth and subject to the jurisdiction of the Commission, as well as to all interested persons.

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

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

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

VA.R. Doc. No. R14-3838; Filed June 4, 2014, 2:57 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Final Regulation

REGISTRAR'S NOTICE: The Board of Funeral Directors and Embalmers is claiming an exclusion 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 where no agency discretion is involved. The Board of Funeral Directors and Embalmers will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 18VAC65-20. Regulations of the Board of Funeral Directors and Embalmers (amending 18VAC65-20-436).

Statutory Authority: §§ 54.1-2400 and 54.1-2803 of the Code of Virginia.

Effective Date: July 30, 2014.

Agency Contact: Lisa Russell Hahn, Executive Director, Board of Funeral Directors and Embalmers, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4424, FAX (804) 527-4637, or email lisa.hahn@dhp.virginia.gov.

Summary:

The amendment replaces the specifics regarding the execution of a cremation authorization with a reference to the requirements of § 54.1-2818.1 of the Code of Virginia to conform to Chapters 228 and 355 of the 2014 Acts of the Assembly.

18VAC65-20-436. Standards for registered crematories or funeral establishments relating to cremation.

A. Authorization to cremate.

1. ~~In accordance with § 54.1-2818.1 of the Code of Virginia, a~~ crematory shall require a cremation authorization form executed in person or electronically in a manner that provides a copy of an original signature ~~of the next of kin or his representative, who may be any person designated to make arrangements for the decedent's burial or the disposition of his remains pursuant to § 54.1-2825 of the Code of Virginia; an agent named in an advance directive pursuant to § 54.1-2984; or a sheriff, upon court~~

~~order, if no next of kin, designated person, or agent is available~~ in accordance with § 54.1-2818.1 of the Code of Virginia.

2. The cremation authorization form shall include an attestation of visual identification of the deceased from a viewing of the remains or a photograph signed by the person making the identification. The identification attestation shall either be given on the cremation authorization form or on an identification form attached to the cremation authorization form.

3. In the event visual identification is not feasible, a crematory may use other positive identification of the deceased as a prerequisite for cremation pursuant to § 54.1-2818.1 of the Code of Virginia.

B. Standards for cremation. The following standards shall be required for every crematory:

1. Every crematory shall provide evidence at the time of an inspection of a permit to operate issued by the Department of Environmental Quality (DEQ).

2. A crematory shall not knowingly cremate a body with a pacemaker, defibrillator or other potentially hazardous implant in place.

3. A crematory shall not cremate the human remains of more than one person simultaneously in the same retort, unless the crematory has received specific written authorization to do so from the person signing the cremation authorization form.

4. A crematory shall not cremate nonhuman remains in a retort permitted by DEQ for cremation of human remains.

5. Whenever a crematory is unable to cremate the remains within 24 hours upon taking custody thereof, the crematory shall maintain the remains in refrigeration at approximately 40° Fahrenheit or less, unless the remains have been embalmed.

C. Handling of human remains.

1. Human remains shall be transported to a crematory in a cremation container and shall not be removed from the container unless the crematory has been provided with written instructions to the contrary by the person who signed the authorization form. A cremation container shall substantially meet all the following standards:

- a. Be composed of readily combustible materials suitable for cremation;
- b. Be able to be closed in order to provide complete covering for the human remains;
- c. Be resistant to leakage or spillage; and
- d. Be rigid enough for handling with ease.

2. No crematory shall require that human remains be placed in a casket before cremation nor shall it require that the cremains be placed in a cremation urn, cremation vault or receptacle designed to permanently encase the cremains after cremation. Cremated remains shall be placed in a

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plastic bag inside a rigid container provided by the crematory or by the next-of-kin for return to the funeral establishment or to the next-of-kin. If cremated remains are placed in a biodegradable container, a biodegradable bag shall be used. If placed in a container designed for scattering, the cremated remains may be placed directly into the container if the next-of-kin so authorized in writing.

3. The identification of the decedent shall be physically attached to the remains, and appropriate identification placed on the exterior of the cremation container. The crematory operator shall verify the identification on the remains with the identification attached to the cremation container and with the identification attached to the cremation authorization. The crematory operator shall also verify the identification of the cremains and place evidence of such verification in the cremation record.

D. Recordkeeping. A crematory shall maintain the records of cremation for a period of three years from the date of the cremation that indicate the name of the decedent, the date and time of the receipt of the body, and the date and time of the cremation and shall include:

1. The cremation authorization form signed by the person authorized by law to dispose of the remains and the form on which the next-of-kin or the person authorized by § 54.1-2818.1 of the Code of Virginia to make the identification has made a visual identification of the deceased or evidence of positive identification if visual identification is not feasible;
2. The permission form from the medical examiner;
3. The DEQ permit number of the retort used for the cremation and the name of the retort operator; and
4. The form verifying the release of the cremains, including date and time of release, the name of the person and the entity to whom the cremains were released and the name of the decedent.

VA.R. Doc. No. R14-4066; Filed June 3, 2014, 12:00 p.m.

GOVERNOR

EXECUTIVE ORDER NUMBER 16 (2014)

Establishing the Virginia Energy Council

Importance of the Issue

The Commonwealth of Virginia's energy industry is a source of great pride, prosperity, and potential. Historically, Virginia has ensured reliable and affordable energy, helping businesses and consumers thrive. The Commonwealth boasts tens of thousands of energy-related jobs, including miners, gas well crews, manufacturing workers, engineers, mechanics, computer programmers, accountants, and managers. Virginians can and should be proud of the energy industry, but a changing market and energy environment requires decisive action to position the Commonwealth to be a national leader in innovative energy generation and utilization. Virginia must continue to leverage its business-friendly climate, high-quality research and educational institutions, and varied energy resources to attract businesses and create jobs. This requires Virginia to develop and implement a cohesive, comprehensive, and aggressive strategy for energy policy.

The Commonwealth will update the Virginia Energy Plan ("Plan") to be submitted to the General Assembly by October 1, 2014. The Plan will address the objectives of the Commonwealth Energy Policy set forth in the Code of Virginia.

These objectives include:

- Accelerating the development and use of renewable energy sources – Virginia can become a hub of innovative and alternative energy research and development by focusing on expanding the use of the Commonwealth's underutilized renewable assets, such as solar and offshore wind.
- Increasing energy productivity through greater efficiency – Virginia can become a national leader in energy efficiency practices that will increase the productivity of the energy used by citizens and businesses throughout the Commonwealth, while not imposing a disproportionate adverse impact on economically disadvantaged or minority communities.
- Promoting a diverse energy mix – Virginia should continue to increase the diversity of sources used to generate energy in the Commonwealth to ensure that we are not overly-reliant on particular sources.
- Growing jobs in the energy sector – Virginia's quality higher education institutions and world-class community college system are well-positioned to educate and prepare the next generation of energy workers. A trained and skilled energy workforce will attract new businesses and help expand existing businesses.

To achieve these objectives, it is critical that the Commonwealth engage the private sector, localities, and other interested stakeholders to develop significant and meaningful energy policies.

Establishment of the Council

The Governor shall create The Virginia Energy Council ("Council"), an advisory group comprised of members representing all areas of the Commonwealth's energy industry. The Council shall work to formulate a comprehensive and innovative energy plan.

All members of the Council will be appointed by the Governor and shall serve at his pleasure.

Responsibilities and Duties of the Council

The 20-25 person Council is charged with working to update the Virginia Energy Plan. Duties of the Virginia Energy Council include:

- Receiving, reviewing, and evaluating input offered by Virginia's residents and businesses related to the Plan;
- Developing strategies to make Virginia a national leader in energy efficiency and ensure that the cost of energy for Virginia consumers remains highly competitive;
- Developing strategies to increase the diversity of energy used to power Virginia, while ensuring a commitment to the most efficient use of existing energy sources;
- Developing strategies to increase Virginia's renewable energy economy and grow the entire energy industry in Virginia by retaining, expanding, and attracting businesses in the energy sector;
- Developing strategies to increase the international export of Virginia's coal;
- Identifying opportunities to expand Virginia's needed energy infrastructure and to increase the reliability of the Commonwealth's existing energy infrastructure;
- Reviewing an analysis of any regulations proposed or promulgated by the U.S. Environmental Protection Agency to reduce carbon dioxide emissions from fossil fuel-fired electric generating units under § 111(d) of the Clean Air Act, 42 USC § 7411(d);
- Providing expertise and advice on other policy strategies deemed appropriate during the drafting of the Plan to grow the energy industry in the Commonwealth; and,
- Monitoring the implementation of the Plan, providing strategic guidance to ensure successful achievement of Plan goals, and reviewing the interim update of the Plan required to be presented by October 1, 2017.

Governor

Council Staffing and Funding

Staff support for the Council shall be furnished by the Secretary of Commerce and Trade, Secretary of Natural Resources, the Department of Mines, Minerals and Energy, and such other agencies and offices as designated by the Governor. Necessary funding to support the Council and its staff shall be \$5000. All executive branch agencies shall cooperate fully with the Council and provide any assistance necessary, upon request of the Council or its staff.

The Council shall meet at the call of the Chairman.

Effective Date of the Executive Order

This Executive Order shall be effective upon signing and shall remain in force and effect from its signing unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 4th day of June, 2014.

/s/ Terence R. McAuliffe
Governor

GENERAL NOTICES/ERRATA

STATE AIR POLLUTION CONTROL BOARD

Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Environmental Quality is conducting a periodic review and small business impact review of portions of the Regulations for the Control and Abatement of Air Pollution, specifically **9VAC5-45, Consumer and Commercial Products: Part I Special Provisions (9VAC5-45-10 et seq.)** and Part II Emission Standards, Article 7, Emission Standards for Asphalt Paving Operations (9VAC5-45-760 et seq.). The review of this regulation will be guided by the principles in Executive Order 14 (2010).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins June 30, 2014, and ends July 21, 2014.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to Gary Graham, Regulatory Analyst, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, FAX (804) 698-4510, or email gary.graham@deq.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Environmental Quality is conducting a periodic review and small business impact review of portions of the Regulations for the Control and Abatement of Air Pollution, specifically **9VAC5-80, Permits for Stationary Sources: Part I, Permit Actions before the Board (9VAC5-80-5 et seq.)**. The review of this regulation will be guided by the principles in Executive Order 14 (2010).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins June 30, 2014, and ends July 21, 2014.

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Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

STATE CORPORATION COMMISSION

Bureau of Insurance

May 28, 2014

Administrative Letter 2014-04

To: All Insurers and Other Interested Parties

Re: Insurance-Related Legislation Enacted by the 2014 Virginia General Assembly

We have attached for your reference summaries of certain insurance-related statutes enacted or amended and re-enacted during the 2014 Session of the Virginia General Assembly. The effective date of these statutes is July 1, 2014, except as otherwise indicated in this letter. Each organization to which this letter is being sent should review the summaries carefully and see that notice of these laws is directed to the proper persons, including appointed representatives, to ensure that appropriate action is taken to effect compliance with these new legal requirements. Copies of individual bills may be obtained at <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=142&typ=lnk&val=53> or via the links we have provided in the summary headings. You may enter the bill number (not the chapter number) on the Virginia General Assembly Home Page, and you will be linked to the

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Legislative Information System. You may also link from the Legislative Information System to any existing section of the Code of Virginia. All statutory references made in the letter are to Title 38.2 (Insurance) of the Code of Virginia unless otherwise noted. All references to the Commission refer to the State Corporation Commission. The federal Patient Protection and Affordable Care Act is referred to as the ACA throughout this letter.

Please note that this document is a summary of legislation. It is neither a legal review and interpretation nor a full description of the legislative amendments affecting insurance-related laws during the 2014 Session. Each person or organization is responsible for review of relevant statutes.

/s/ Jacqueline K. Cunningham
Commissioner of Insurance

Chapter 154 (Senate Bill 70)

The bill amends § 38.2-1611.1 (Property & Casualty Insurance Guaranty Association) and § 38.2-1705 (Life, Accident & Sickness Insurance Guaranty Association) by designating the Virginia Department of Taxation as the agency responsible for the collection of any surplus fund refunds from Guaranty Association member insurers after the insolvency of an insurer. The responsibility for the collection of premium license tax was transferred from the Commission to the Department of Taxation in 2011.

Chapter 155 (Senate Bill 86) and Chapter 411 (House Bill 634)

The bill amends § 38.2-3115 (Life Insurance) to require the payment of interest on claims for variable annuity contracts beginning from the date of receipt of a completed claim form.

Chapter 198 (House Bill 336)

The bill amends §§ 38.2-2803 [Medical Malpractice Joint Underwriting Association (JUA)] and 38.2-2903 (Commercial Liability Insurance JUA) to update the names of the insurance company trade associations referenced in the law. References to the Alliance of American Insurers are changed to the Property Casualty Insurers Association of America and references to the National Association of Independent Insurers are changed to the National Association of Mutual Insurance Companies.

Chapter 206 (House Bill 466) and Chapter 159 (Senate Bill 406)

The bills amend §§ 38.2-1414 and 38.2-1433 (Investments) to increase the portion of a domestic insurer's total admitted assets allowed in foreign investments; increase the aggregate investments allowed in a single foreign jurisdiction; and allow investments to be payable in a foreign currency if the investment is effectively hedged, substantially in its entirety, against U.S. currency.

Chapter 248 (Senate Bill 88) (Effective January 1, 2015)

This bill adds a new Article 5.1 to Chapter 13 (Reports, Reserves & Examinations) of Title 38.2 of the Code of Virginia, setting forth the requirements for the completion and filing of an Own Risk and Solvency Assessment (ORSA). An ORSA is a confidential internal assessment conducted by an insurer, or the insurance group to which it is a member, of the material and relevant risks associated with the insurer's current business plan and the sufficiency of capital resources to support those risks. These requirements apply to all insurers domiciled in Virginia unless they meet certain exemption provisions. The provisions of this bill will become effective on January 1, 2015.

Chapter 272 (House Bill 308) and Chapter 297 (Senate Bill 201)

The bill adds a subsection C to § 38.2-3407.9.01 (Provisions Relating to Accident and Sickness Insurance) to require each insurer, corporation, or health maintenance organization that uses a prescription drug formulary for prescription drug benefits to provide at least 30 days' written notice to each group policy/contract holder and each individual policy/contract holder before making a modification to a drug formulary that moves a prescription drug to a tier with higher cost-sharing requirements. This requirement does not apply to modifications that occur at the time of coverage renewal.

Chapter 282 (House Bill 771) (Effective January 1, 2015)

The bill amends § 38.2-2217 (Liability Insurance Policies), as well as several sections in Title 46.2, to address mature driver crash prevention courses. Only those mature drivers who complete driver crash prevention courses that are voluntarily taken will qualify for a reduction in their insurance rates for the three-year period. Mature drivers assigned by the courts to take such crash prevention courses do not qualify for the reduction in their insurance rates.

Chapter 307 (House Bill 33) and Chapter 369 (Senate Bill 484)

The bill amends § 38.2-3451 (Provisions Relating to Accident and Sickness Insurance). The bill specifies that the ACA requirement for inclusion of minimum essential pediatric oral health benefits will be satisfied for health plans available in the small group and individual markets outside an exchange and issued on or after January 1, 2015, if the health carrier has obtained reasonable assurance that the benefits are provided to the plan purchaser. The health carrier shall be deemed to have obtained reasonable assurance if certain requirements specified in the bill are met.

Chapter 308 (House Bill 108)

The bill adds § 38.2-3407.15:1 (Provisions Relating to Accident and Sickness Insurance) to provide that any contract between a carrier and its intermediary, pursuant to which the intermediary has the right or obligation to conduct audits of

participating pharmacy providers (PPP), and any provider contract between a carrier and a PPP or its contracting agent pursuant to which the carrier has the right or obligation to conduct audits of PPPs, must contain specific provisions which prohibit the carrier or intermediary, in the absence of fraud, from recouping amounts calculated from or arising out of certain acts, claims or methods. The bill applies to contracts entered into, amended, extended, or renewed on or after January 1, 2015.

Chapter 309 (House Bill 109) (Part of Bill Effective January 1, 2015 - See Note)

The bill amends various sections of Chapter 13 of Title 38.2 (Reports, Reserves, Examinations, Insurance Holding Companies, etc.), § 38.2-4509 (Dental or Optometric Services Plans), and §§ 38.2-5500 and 38.2-5501 (Risk-Based Capital) to expand the Commission's authority to examine the financial condition of an insurer. The bill requires the ultimate controlling person of an insurance holding company system to submit a confidential Enterprise Risk filing; requires the parent company seeking to divest its interest in an insurance company subsidiary to provide notice to the domestic regulator prior to the divestiture; requires the insurer's board of directors to make statements regarding the corporate governance and internal control responsibilities within the annual holding company registration statement; subjects the cost-sharing services and management agreements among affiliated entities to minimum reporting requirements to eliminate the potential for capital to flow out of the insurer through these types of agreements; provides regulators with explicit authority to participate in supervisory colleges; and adds confidentiality protections for information shared. Note: The provisions of this bill are effective on July 1, 2014 with the exception of the amendments to Article 5 of Chapter 13 (§ 38.2-1322 et seq.), which are effective January 1, 2015.

Chapter 337 (House Bill 755)

The bill amends §§ 38.2-1845.5 and 38.2-1845.8 (Insurance Agents) to require nonresident public adjusters to keep in force a bond in favor of the Commonwealth in the amount of \$50,000 with a surety licensed by the Commission. The bill also provides that no public adjuster license shall be renewed unless the applicant meets all of the initial requirements for licensure including the obtaining of the surety bond.

Chapter 350 (House Bill 1166)

This bill amends § 38.2-3521.1 and adds § 38.2-3521.2 (Accident & Sickness Insurance Policies) to add blanket insurance as a type of group insurance that can be delivered in Virginia. Blanket insurance is defined as a form of limited accident and sickness insurance which provides coverage for specified circumstances or specific classes of persons defined in a policy issued to a master policyholder.

Chapter 417 (House Bill 765) and Chapter 157 (Senate Bill 360)

The bill amends § 8.01-27.5 (Civil Remedies and Procedure Title); § 38.2-2201 (Liability Insurance Policies); and §§ 38.2-3407.12 and 38.2-3407.15 (Provisions Relating to Accident & Sickness Insurance) to update references to federal programs (Medicaid, CHIP, and TRICARE) in the definitions of "health care policy," "group health benefit plan," and "health plan."

Chapter 511 (House Bill 1176)

The bill amends § 38.2-3407.14 (Provisions Relating to Accident & Sickness Insurance), relating to notices of increases in premiums and deductibles. Insurers offering individual or group accident and sickness policies providing hospital, medical, and surgical or major medical coverage on an expense-incurred basis; corporations providing subscription contracts; and health maintenance organizations providing health care plans are required to give written notice before renewal if there is an increase in premium or any deductible. The 60 days' notice requirement increases to 75 days' notice for policy renewals on or after January 1, 2015, for individual health insurance coverage. The Commission may adjust the time frames relating to the provision of notices to account for delays in product or rate approval resulting from filing requirements established by the U.S. Department of Health & Human Services.

Chapter 571 (House Bill 631) (Effective January 1, 2015)

The bill adds a new Article 10 (Standard Valuation Act) to Chapter 13 of Title 38.2 (Reports, Reserves and Examinations) and amends numerous related sections in Title 38.2 to require insurers to use a principle-based reserve basis for life, annuity, and accident and health contracts, and to use a Valuation Manual adopted by the National Association of Insurance Commissioners (NAIC). The Valuation Manual will become effective on January 1 of the first calendar year following the first July 1 when certain conditions have been met, including that at least 42 states/U.S. jurisdictions have enacted the revised NAIC Standard Valuation Law model, or substantially similar terms and provisions. The provisions of this bill will become effective on January 1, 2015.

Chapter 769 (House Bill 1043) and Chapter 752 (Senate Bill 542)

The bill amends and adds new sections to Article 7 (Navigators) of Chapter 34 (Provisions Relating to Accident & Sickness Insurance) to require navigators operating in the Commonwealth on and after September 1, 2014, to be registered with the Commission in addition to obtaining certification by the U.S. Department of Health & Human Services (HHS). The bill requires navigators to submit an application to the Commission in a form the Commission prescribes, pay an application fee, and provide a criminal record history. The bill also requires each registered navigator

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to report to the Commission (i) any action taken by the HHS, (ii) any felony conviction, and (iii) the disposition of the matter of any administrative action taken against the navigator in another jurisdiction or by another governmental agency in the Commonwealth. The bill further authorizes the Commission's Bureau of Insurance to investigate individuals and entities involved in navigator activities.

Chapter 814 (House Bill 1005)

This bill amends numerous sections of Chapter 34 (Provisions Relating to Accident & Sickness Insurance) and also makes these amendments applicable to health services plans and health maintenance organizations (HMOs). The bill repeals provisions relating to the conversion of health insurance coverage under a group policy to an individual policy and includes technical and conforming changes in related sections. The bill also limits the mandated offer of coverage requirement for the treatment of morbid obesity to the large group market. For HMOs, the bill limits the requirement to offer a point-of-service benefit to the large group market and exempts a qualified health plan offered in the Commonwealth by a health carrier through a health benefit exchange from the point-of-service offer requirement.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Total Maximum Daily Load Study for Aarons Creek, North Fork Aarons Creek, Big Bluewing Creek, Coleman Creek, Little Coleman Creek, Little Buffalo Creek, Hyco River, Beech Creek in Halifax County and Mecklenburg County

The Virginia Department of Environmental Quality (DEQ) will host a public meeting on a water quality study for these streams on Thursday, July 10, 2014.

The meeting will start at 7 p.m. in the Midway Volunteer Fire Department located at 10801 Bill Tuck Highway, Virgilina, VA 24598. The purpose of the meeting is to present the final draft total maximum daily load (TMDL) report to interested local community members and local government.

Aarons Creek (VAC-L73R_AAR01A00) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the primary contact use. The impairment is based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for bacteria.

North Fork Aarons Creek (VAC-L73R_AAR02A10) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the primary contact use. The impairment is based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for bacteria.

Big Bluewing Creek (VAC-L74R_BLU01A08) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the primary contact use. The impairment is based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for bacteria.

Coleman Creek (VAC-L74R_CLB01A06) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the primary contact use. The impairment is based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for bacteria.

Little Coleman Creek (VAC-L74R_LOL01A06) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the primary contact use. The impairment is based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for bacteria.

Little Buffalo Creek (VAC-L76R_LFF01A00) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the primary contact use. The impairment is based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for bacteria.

Hyco River (VAC-L74R_HYC02A06) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the primary contact use. The impairment is based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for bacteria.

Beech Creek (VAC-L75R_BEE01A98) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the primary contact use. The impairment is based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for bacteria.

Coleman Creek (VAC-L74R_CLB01A06) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the aquatic life use. The impairment is based on benthic macroinvertebrate bioassessments.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia, require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's 303(d) TMDL Priority List and Report and subsequent water quality assessment reports.

DEQ developed a total maximum daily load for the impaired water. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL amount.

The public comment period on materials presented at this meeting will extend from July 10, 2014, to August 11, 2014. For additional information or to submit comments, contact Paula Nash, Virginia Department of Environmental Quality, Blue Ridge Regional Office, 7705 Timberlake Road, Lynchburg, VA 24502, telephone (434) 582-6216, or email paula.nash@deq.virginia.gov.

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on June 3, 2014, and June 10, 2014. The orders may be viewed at the State Lottery Department, 900 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 201 North 9th Street, 2nd Floor, Richmond, Virginia.

Director's Order Number Seventy-Nine (14)

Virginia's Computer-Generated Game Lottery "Fast Play Smokin' Hot Crossword" Final Rules for Game Operation (effective June 9, 2014)

Director's Order Number Eighty (14)

Virginia's Computer-Generated Game Lottery "Fast Play Fast \$50's Slots of Fun" Final Rules for Game Operation (effective June 9, 2014)

Director's Order Number Eighty-One (14)

Virginia's Computer-Generated Game Lottery "Fast Play Vacation Cash" Final Rules for Game Operation (effective June 9, 2014)

Director's Order Number Eighty-Two (14)

Certain Virginia Fast Play Game; End of Game - Virginia Lottery's "Fast Play Money Bag Crossword" (120 (13)) (effective June 8, 2014)

Director's Order Number Eighty-Three (14)

Certain Virginia Fast Play Game; End of Game - Virginia Lottery's "Fast Play Fast \$50s Hot Slots Doubler" (119 (13)) (effective June 8, 2014)

Director's Order Number Eighty-Four (14)

Certain Virginia Fast Play Game; End of Game - Virginia Lottery's "Fast Play Bow Wow Bucks" (48 (14)) (effective June 8, 2014)

Director's Order Number Eighty-Five (14)

"\$1,000,000 Money Ball Retailer Incentive Promotion" Virginia Lottery Retailer Incentive Program Requirements (This Director's Order becomes effective June 2, 2014, and shall remain in full force and effect until ninety (90) days after the conclusion of the Incentive Program, unless otherwise extended by the Director.)

Director's Order Number Eighty-Six (14)

Virginia's Instant Game Lottery 1496 "Lucky Numbers" Final Rules for Game Operation (effective June 3, 2014.)

Director's Order Number Eighty-Seven (14)

Virginia Lottery's "NASCAR® Championship Banquet" Event Promotion Final Rules for Operation (effective June 11, 2014)

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

2014 Medicaid Provider Reimbursement Changes - Notice of Intent to Amend the Virginia State Plan for Medical Assistance (pursuant to § 1902(a)(13) of the Social Security Act (42 USC § 1396a(a)(13)))

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Amount, Duration, and Scope of Medical and Remedial Care Services (12VAC30-50); Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services (12VAC30-70); Methods and Standards for Establishing Payment Rates; Other Types of Care (12VAC30-80); and Methods and Standards for Establishing Payment Rates for Long-Term Care (12VAC30-90). The department is implementing a number of changes in reimbursement methodology effective July 1, 2014, pursuant to Item 301 of the Budget Bill of 2014. If the final budget modifies these anticipated changes, the department will subsequently publish an amended notice. Citations are to state regulations that correspond to the Medicaid State Plan. Estimated impact on providers in fiscal year (FY) 2015 is included.

Reimbursement Changes Affecting Hospitals (12VAC30-70)

12VAC30-70-221 is being amended to implement all patient refined-diagnosis-related group reimbursement methodology for inpatient hospitals.

- Anticipated Provider Fiscal Impact = \$0

12VAC30-70-301 is being amended to establish a new methodology for DSH reimbursement.

- Anticipated Provider Fiscal Impact = \$0

12VAC30-70-351 is being amended to eliminate inflation for inpatient hospital operating, GME, DSH, and IME payments in FY 2015.

- Anticipated Provider Fiscal Impact = (\$32,694,706)

12VAC30-70 and 12VAC30-80 are being amended to establish supplemental inpatient and outpatient hospital payments for partners of Type One hospitals.

- Anticipated Provider Fiscal Impact = \$3,422,675

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Reimbursement Changes Affecting Other Providers (12VAC30-80)

An effective date change will be made in the fee schedule corresponding to a change in the billing unit for mental health support services from a block of time to 15-minute increments (12VAC30-50-226).

- Anticipated Provider Fiscal Impact = \$0

12VAC30-80-30 is being amended to:

1. Reduce clinical lab fees by 12% to match the laboratory rates paid by Medicaid managed care organizations.

- Anticipated Provider Fiscal Impact = (\$2,127,356)

2. Reduce DME rates to Medicare competitive bid rates if they are lower than DMERC minus 10%.

- Anticipated Provider Fiscal Impact = (\$4,866,000)

3. Increase supplemental payments for freestanding children's hospitals with more than 50% Medicaid inpatient utilization.

- Anticipated Provider Fiscal Impact = \$2,763,460

4. Establish supplemental payments for physicians affiliated with publicly funded medical school.

- Anticipated Provider Fiscal Impact = \$2,149,138

12VAC30-80-200 is being amended to eliminate inflation adjustments in FY 2015 and FY 2016 for outpatient rehabilitation agency rates.

- Anticipated Provider Fiscal Impact = (\$413,744)

12VAC30-80-180 is being amended to eliminate inflation adjustments in FY 2015 and FY 2016 for home health agency rates.

- Anticipated Provider Fiscal Impact = (\$154,126)

Reimbursement Changes Affecting Nursing Facilities (12VAC30-90)

12VAC30-90 is being amended to:

1. Replace cost-based reimbursement methodology for nursing facilities with a price-based reimbursement methodology including reductions in the rental rate floor for capital reimbursement.

- Anticipated Provider Fiscal Impact = \$0

2. Make additional reductions to the rental rate floor for nursing facility capital reimbursement.

- Anticipated Provider Fiscal Impact = (\$8,123,510)

3. Establish supplemental nursing facility payments for government-owned facilities.

- Anticipated Provider Fiscal Impact = \$13,600,000

This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review on the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>). Comments or inquiries may be submitted, in writing, within 30 days of this notice

publication to the contact listed below and such comments are available for review at the same address.

Contact Information: William Lessard, Director, DMAS Provider Reimbursement Division, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 225-4593, FAX (804) 786-1600, or email william.lessard@dmas.virginia.gov.

SAFETY AND HEALTH CODES BOARD

Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Safety and Health Codes Board is conducting a periodic review and small business impact review of **16VAC25-145, Safety Standards for Fall Protection in Steel Erection, Construction Industry**. The review of this regulation will be guided by the principles in Executive Order 14 (2010).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins June 30, 2014, and ends July 21, 2014.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to Reba O'Connor, Regulatory Coordinator, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-2631, FAX (804) 786-8418, or email oonconnor.reba@dol.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

VIRGINIA WASTE MANAGEMENT BOARD

Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Virginia Waste Management Board is conducting a periodic review and small business impact review of **9VAC20-170, Transportation of Solid and Medical Wastes on State Waters**. The review of

this regulation will be guided by the principles in Executive Order 14 (2010).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins June 30, 2014, and ends July 21, 2014.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to Melissa Porterfield, Office of Regulatory Affairs, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4346, or email melissa.porterfield@deq.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

STATE WATER CONTROL BOARD Proposed Consent Special Order for Greensville County

An enforcement action has been proposed for Greensville County for alleged violations at the Three Creek Wastewater Treatment Plant at 428 Moonlight Road, Emporia, Virginia. The State Water Control Board proposes to issue a consent special order to Greensville County to address noncompliance with State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at <http://www.deq.virginia.gov>. Frank Lupini will accept comments by email at frank.lupini@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 June 30, 2014, through July 30, 2014.

Proposed Consent Order for Hahn Transportation, Inc.

An enforcement action has been proposed for Hahn Transportation, Inc., for violations of the State Water Control Law and Regulations in Bristow, Virginia. The consent order

describes a settlement to resolve the unauthorized discharge of oil to state waters. A description of the proposed action is available at the Department of Environmental Quality office named below or online at <http://www.deq.virginia.gov>. Stephanie Bellotti will accept comments by email at stephanie.bellotti@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 July 1, 2014, through July 31, 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.

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/cumulatab.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.

ERRATA

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Title of Regulation: 13VAC5-63. **Virginia Uniform Statewide Building Code.**

Publication: 30:16 VA.R. 2071-2232 April 7, 2014.

Correction to Final Regulation:

Page 2138, 13VAC5-63-210 S 62, paragraph 3.4, change "AMC" to "AWC"

VA.R. Doc. No. R12-3159; Filed June 17, 2014, 3:34 p.m

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BOARD OF NURSING

Title of Regulation: **8VAC90-20. Regulations Governing the Practice of Nursing.**

Publication: 29:24 V.A.R. 3422-3424 July 29, 2013.

Correction to Emergency Regulation:

Page 3422, Effective Dates, the expiration date of the emergency regulation should be "January 28, 2015."

V.A.R. Doc. No. R13-2989; Filed June 17, 2014, 10:41 a.m.